

IN THE HIGH COURT OF SINDH KARACHI

Before:

Mr. Justice Muhammad Shafi Siddiqui
Mr. Justice Adnan-ul-Karim Memon

Constitutional Petition No. D -3784 of 2017

Mst. Sakina

Versus

Province of Sindh and 06 others

Date of hearing
& order : 25.01.2021

Mr. Muzafar Ali, advocate for the petitioner.

Mr. Ali Safdar Depar, Assistant Advocate General along with Raza Mian DSP Legal-AIGP.

ORDER

ADNAN-UL-KARIM MEMON, J. - Through the captioned petition, the petitioner-mother is seeking the direction to the respondents to release the pensionary benefits of her son namely Muhammad Haroon Dahiri (Police Constable) who was martyred in the line of duty on 29.06.1995, such FIR No.142/1995 of the incident was lodged under section 365, 302/34 PPC with Baldia Town Police Station Karachi West. Per petitioner, the competent authority i.e. Chief Minister, Sindh, was pleased to condone the requisite period of length of service of her martyred son i.e. 01 year 04 months and 27 days vide letter dated 08.08.2009 (page 65), however, the office of Accountant General Sindh vide letter dated 14.03.2014 opined that the aforesaid deficiency in the length of service of Constable Muhammad Haroon Dahiri of Sindh Reserve Police Sukkur could not be condoned in the light of Circulars dated 19.03.1987 & 12.03.1997 issued by the Finance Department, Government of Sindh, therefore, her pensionary papers were returned to the office of the Superintendent of Police, Sindh Reserve Police, Sukkur vide letter dated 26.08.2014 on the premise that she had already been paid amount of gratuity.

2. At the outset, we asked learned counsel for the petitioner to satisfy this Court about the maintainability of this petition.

3. Mr. Muzafar Ali, learned counsel for the petitioner, submits that the petitioner-mother was/is entitled to receive full pay and allowances of her Shaheed son till the date of his superannuation, with increment and other benefits as admissible under the law, but inaction on the part of respondents is unwarranted. In support of his contention, he relied upon the FIR

No.142/1995 of the incident and argued that since the respondents have conceded the factum of the martyrdom of Constable Muhammad Haroon Dahiri, therefore, under the West Pakistan Civil Servants Pension Rules, 1963, she is entitled to receive full pay and allowance/pensionary benefits of her *Shaheed* son. In support of his contention, he relied upon the case of *Syed Farooq Ahmed Shah v. Government of Punjab through Home Secretary, Punjab, Lahore and others*, 2020 PLC (CS) 1378; and, further argued that the order dated 08.08.2009 passed by the competent authority being beneficial could operate retrospectively. He emphasized that since the competent authority has condoned the length of service as discussed supra, therefore, the Accountant General Office is not competent to object in this regard. He further argued that petitioner-mother is entitled to get 100% special family pension benefits and refusal on part of respondent-Accountant General Office for such pensionary benefits is a clear-cut violation of the pension rules as discussed supra and is based on discrimination. In support of his contention, he relied upon the case of *Mst. Yasmeen Akhtar v. Federation of Pakistan through Secretary Ministry of Defence and others*, 2017 PLC (CS) 703. He lastly prayed for allowing the instant petition.

4. Learned Assistant Advocate General Sindh has objected to the petition on the premise that petitioner's son lacked the requisite length of service, therefore, she was/is not entitled to the family pension under the law, however, he admits that other emoluments of Shaheed Muhammad Haroon have been paid to his family accordingly. He prayed for dismissal of the petition.

5. We have heard the learned counsel for the parties and have perused the material available on record and the case-law cited at the bar.

6. *Prima facie*, petitioner's son was martyred at the hands of the terrorist on 29.05.1995 vide FIR No.142/1995 and after his *Shahadat* Rs. 500,000/- was paid to his legal heirs i.e. father Qaimuddin and mother Mst. Sakina; and, his brothers namely Muhammad Murad, Nazir Ahmed, and Muhammad Aslam were paid Rs. 100,000/-, each and petitioner-mother is regularly drawing Rs.3000/- per month with effect from 2009 and benevolent fund and will continue to draw until she is alive. Besides, the above the following amount was also paid to his legal heirs.

(i)	Final payment of GP fund	Rs.10780/-
(ii)	Group insurance	Rs.25000/-
(iii)	Immediate relief	Rs.10000/-

(iv)	180 days' lump sum pay	Rs.10717/-
(v)	Gratuity	Rs.18858/-

7. As per record, Constable Muhammad Haroon Dahiri, at the time of his *Shahadat* was having eight years seven months' service in his credit and there was/is the deficiency of 01 year 04 months and 27 days of requisite length of service to become entitled to the family pension, therefore, her case was declined by the District Accounts Officer Sukkur vide letter dated 12.06.2013 in the light of Circular dated 19.3.1987 as discussed supra. We are fortified with the judgment passed by the Hon'ble Supreme Court in the case of *Syeda Sakina Riaz v. Federation of Pakistan and another*, 2018 SCMR 1272.

8. Admittedly, the petitioner's son was short of rendering qualifying length of service which only would have entitled his mother to claim any concession granted towards the quantum of pension under pension rules, thus the other emoluments were paid to the family of the Shaheed Constable who had rendered short of the requisite length of service, therefore, we do not find merit in this petition which fails on the aforesaid account and is hereby dismissed with no order as to costs.

J U D G E

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Nadir*