

**HIGH COURT OF SINDH, CIRCUIT COURT AT  
HYDERABAD**

C.P. No. D- 1216 of 2020  
[Martha Bibi v. Province of Sindh & Others]

**Before :**

**Mr. Justice Adnan-ul-Karim Memon**  
**Mr. Justice Adnan Iqbal Chaudhry**

Petitioner : Martha Bibi through  
Mr. Mashooque Ali Mahar, advocate

Respondents 2,3&4: Through Mr. Kamaluddin, Advocate  
Mr. Rafiq Ahmed Dahri, Asstt: A.G.

Date of Hearing & Decision : 14.12.2021

**ORDER**

**ADNAN-UL-KARIM MEMON, J.** - Through this petition, the petitioner has sought direction to the respondent-Liaquat University of Medical and Health Sciences/Jamshoro (LUMHS) for payment of pensionary benefits of her late husband namely Arif Masih.

2. Background of the case, as narrated in the memo of the petition, is that Arif Masih husband of the petitioner was working as Sweeper (BPS-3) at LUMHS Jamshoro, who during service, met with his natural death in the year 2007; and since then the petitioner is approaching the respondent-university for payment of family pension and other ancillary benefits, including GP Fund, however till date, nothing has been done on the part of respondent-university. The plea taken by the respondents is that the late husband of the petitioner was found guilty under the disciplinary proceedings initiated by the respondent-university on account of being absent from duty since 2008, thus major penalty of removal from service was imposed upon him vide office order dated 13.5.2010, therefore the family of the deceased is not entitled to pensionary benefits.

3. The aforesaid assertion of the respondent-university has been refuted by the counsel for petitioner on the analogy that the

husband of the petitioner was performing his duty punctually and he died during service on 9.11.2007; and, the acts of respondents by not releasing pensionary benefits of deceased Arif Masih to his wife is illegal, improper and without jurisdiction and in violation of Constitution of Pakistan.

4. On the other hand learned counsel for respondent university has submitted that the petitioner without first exhausting the alternate remedy available to her under Section 41 of LUMHS Ordinance VIII of 2001 has invoked the constitutional jurisdiction of this court, which is immature, incompetent and not maintainable; while replying para 4 of the petition it is denied that late Arif Masih died on 9.11.2007 for the reasons that the late Arif Masih was paid salary up to September 2008 and credited in his A/C No. CA-2061-8 operated by him in National Bank of Pakistan, LMC Branch, Jamshoro; that letter dated 16.6.2008 from Hostel Provost to Registrar to stop the salary of late Arif Masih due to his absence from the duty; that letter dated 17.7.2008 calling explanation from Arif Masih was not replied; that Show-cause notice dated 25.2.2010 was issued by the respondent-university, the same was not replied; that final show-cause notice dated 13.4.2010 was issued to him, however, the same was not replied; that finally, the competent authority awarded him major penalty of Removal from Service vide order dated 13.5.2010; that thereafter, the application dated 25.5.2020 made by petitioner to Vice Chancellor for appointment in place of her husband, who was already removed from service on 13.5.2010, was entertained and offer of appointment was made in favour of the petitioner vide order dated 27.7.2010 on contract for 6 months from 2.8.2010 to 1.2.2011 ( Order dated 10.2.2011 and 11.8.2011 for extension of the contract for 12 months more from 3.2.2011 to 3.2.2012; that application dated 8/9.9.2011 was made by the petitioner for the first time informing the respondent-university about the death of her husband on 9.11.2007, seeking pensionary benefits of her husband. He further argued that the husband of petitioner was removed from service on account of his continuous absence from duty, therefore, the question of payment of pensionary benefits does not arise; that the death certificate of late Arif Masih showing his death on 9.11.2007 appears to be a managed one. He lastly prayed for dismissal of the instant petition.

5. We have heard learned counsel for the petitioner and learned counsel representing the respondent-university at length.

6. The question is whether, after the death of husband of the petitioner in 2007, disciplinary proceedings could be initiated in the year 2008 and culminate into his removal from service in the year 2010.

7. Primarily, pensionary benefits of the deceased are a survivable right and flow down to the legal heirs. It is well settled that departmental proceeding can be initiated against the government servant to impose a penalty if misconduct is established during his service. The imposition of penalty like removal has nexus to the contract of service. The proceeding therefore automatically lapses or is terminated because of the death of a delinquent employee unless otherwise it is continued under rules. Petitioner is a widow of late Arif Masih, who was serving as Sweeper (BPS-03) in LUMHS and according to the death certificate her husband passed away on 09.11.2007. Apparently, the petitioner was appointed in 1978; however, in 2010 his services were terminated on account of absconding from duty w.e.f 01.06.2008.

8. We have noticed that husband of the petitioner is no more in the world and whether after death the respondent University could initiate the proceedings against him or otherwise. The answer is in the negative.

9. In our view after the death of husband's in the year 2007 for which the death certificate is prima facie evidence, the departmental proceeding initiated against him has automatically terminated and/or abated, in that circumstance, any subsequent action of the Inquiry Officer or Disciplinary Officer of the respondent university in the said proceeding is illegal in the eye of law. Further on the death of petitioner's husband no punishment could be awarded against him, therefore, it would be deemed that he died in harness. Consequently, his dependents including the petitioner are entitled to get all the benefits available under the law of respondent-university and the respondent-university is liable to give such benefit to them.

10. So far as the salary credited in the account of the deceased in the year 2008 and its withdrawal, the respondent – university is free to take action in accordance with law.

11. For the foregoing reasons, we take exception to the impugned termination of service of the late husband of petitioner in the year 2010 after his death in the year 2007 by the respondent university and are of the view that it does warrant interference by this court under Article 199 of the Constitution, 1973, and set aside the decision dated 13.5.2010 of the respondent-university. Therefore we are of the considered view that the widow of deceased is fully entitled to pensionary benefits of her deceased husband as the deceased had full length of service in his credit at the time of his death.

12. In view of the above facts and circumstances of the case, we direct the competent authority of respondent University to verify the factum of death of the husband of the petitioner and after such proceedings disburse the pensionary benefits to the family of the deceased under the law. The aforesaid exercise shall be completed within one month.

13. Petition stands disposed of accordingly.

**JUDGE**

**JUDGE**

Karar\_Hussain/PS\*