

IN THE HIGH COURT OF SINDH, KARACHI

CP. No. D- 7270 of 2017

Date

Order with Signature(s) of Judge(s)

For hearing of CMA No.10940/2019 (Contempt)

14.03.2022

Syed Aijaz Hussain Sheerazi, advocate for the petitioner
Mr. Ali Safdar Depar, AAG

The instant petition was disposed of vide order passed by this Court on 18.10.2018 with the following direction:

6. *We, therefore, under the circumstances and keeping in view the interest of justice, direct the IGP to decide the matter of the **Deceased DSP** strictly in accordance with Police rules, regulations, and the laws with regard to the compensation of Shaheed preferably within a period of [02] months from the date of receipt of this order. It is expected from the IGP that he while deciding the matter would keep in view the aspect of compensation, enhanced compensation, and other benefits as available to a Shaheed which should not be discriminatory with the compensation awarded to other Shaheeds falling under a similar situation. The IGP if deems necessary, before passing the order may call the Petitioner or his representative, as the case may be.*

7. *With these directions, the instant petition stands disposed of."*

Learned counsel for the petitioner has submitted that the case of the petitioner is based on discrimination. Learned counsel referred to section 4 of the Sindh Shaheed Recognition and Compensation Act and Rules, 2014, and submitted that the monetary award is to be fixed by the Government from time to time. In addition to that, the legal heirs of *Shaheed* shall be given a job and plot which has not been given to the petitioner, whereas in another case the respondent Government has allowed the grant at the enhanced rate with other fringed benefits, whereas the petitioner has been left at the lurch. Learned counsel referred to the order dated 18.10.2018 passed by this Court and submitted that IGP Sindh was directed to comply with the directions of this court about the implication of proposed enhancement in line with Article 25 of the Constitution. He prayed for the implementation of the orders passed by this Court.

Learned AAG has submitted that the respondent Government has already granted relief to the other families of Shaheed Police Personnel and it is the competent authority who could enhance the Shaheed compensation as provided under the law, however, he then admitted that the petitioner family has been granted two million in pursuance of the order of the Finance Department, Government of Sindh, in the year 2009.

We have heard learned counsel for the parties on the listed application and perused the material available on record.

The Sindh Shaheed Recognition and Compensation Act, 2014 (Sindh Act No. XVI of 2014) was published in Sindh Government Gazette on 11.06.2014. For ready reference Section 2 (f) is reproduced as under:-

“Shaheed” means a person who offered the sacrifice of his life in the line of duty in counter-terrorism or becomes a victim of an act of terrorism operation or targeted and killed by the terrorist group and declared Shaheed in the manner prescribed by Government.”

The record reflects that the father of the petitioner embraced Shahadat in 2015 and received compensation of Rs.02 million, however, the families of other *Shaheeds* were given different emoluments at the enhanced rate along with other benefits including plots and the petitioner has received a lesser amount. Petitioner claims similar treatment as meted out with Shaheed DSP Abdul Fateh Sangri in pursuance of Finance Department, Government of Sindh, letter dated 09.08.2016 and other police officials who embraced *Shahadat*.

Prima-facie the respondent-Government is treating the family of *Shaheeds* differently at their wish and will; and, prima facie, the usage of public funds in a manner as discussed supra is prejudicial to the interest of the public at large.

The respondents being the custodian of public money are under constitutional obligation to protect the public funds / fundamental rights of the public at large as per judgment of Hon'ble Supreme Court in the case of *Muhammad Yasin v. Federation of Pakistan through Secretary, Establishment Division, Islamabad, and others* **PLD 2012 SC 132**. The Superior courts are bound to protect the misuse of public funds / fundamental rights of citizens in the exercise of the jurisdiction conferred via Article 199 of the Constitution.

The Honorable Supreme Court in the case of *Action against Distribution of Development Funds by Ex-Prime Minister* (**PLD 2014 Supreme Court 131**), after a detailed consideration of the different Articles of the Constitution of the Islamic Republic of Pakistan and the applicable rules observed, that:

“... it is obligatory upon the Federal Government to lay before the National Assembly the supplementary Budget Statement so that it is subjected to the same scrutiny and procedure as is applicable to the Annual Budget Statement in terms of Articles 80 to 83 *ibid.*’ (paragraph 31) ‘... under the Constitution, there is no provision whatsoever that permits to use allocation of funds at the discretion of the Prime Minister/Chief Minister.’ (paragraph 40) 2 ‘In other words, the item-wise estimate of the grant is required to be placed before the National Assembly for discussion in terms of rule 186 *ibid.*’ (paragraph 42) ‘... to leave or earmark any amount of money to be used/allocated at some subsequent stage during the financial year at the discretion of the Prime Minister/Chief Minister is also repugnant to the very concept and connotation of the Annual Budget Statement.’ (Paragraph 45) ‘In fact, expenditure envisaged to be incurred under the Constitution is not “person-specific”, rather it is “grant specific”...’ (Paragraph 46) ‘... the language employed in the above-referred provisions of the Constitution i.e. Articles 80 to 84 *ibid.*, implicitly excludes such person-specific allocations.’ (Paragraph 49) ‘... the allocation of funds for development schemes has to be made following the procedure provided in Articles 80 to 84 of the Constitution and the rules/instructions noted hereinabove.’ (Paragraph 51).

The Judgment of the Honorable Supreme court concluded and held (Paragraph 52) as under:

“(1) The National Assembly, while giving assent to a grant which is to be utilized by the Executive at its discretion, has to follow the procedure provided in Articles 80 to 84 of the Constitution as well as the Rules of Procedure, 2007. However, such discretionary grant cannot be spent at the absolute discretion of the Executive and the discretion has to be exercised in a structured manner;

(2) The Constitution does not permit the use/allocation of funds to MNAs/MPAs/Notables at the sole discretion of the Prime Minister or the Chief Minister. If there is any practice of allocation of funds to the MNAs/MPAs/Notables at the sole discretion of the Prime Minister/Chief Minister, the same is illegal and unconstitutional. The government is bound to establish procedure/criteria for governing allocation of such funds for this purpose;

(3) Though funds can be provided for development schemes by way of supplementary grant but for that purpose procedure provided in Articles 80 to 84 of the Constitution and the rules/instructions noted hereinabove has to be followed strictly;

(4) Funds can be allocated by way of re-appropriation but the procedure provided in the Constitution and the rules has to be followed in its true perspective;

(5) No bulk grant can be made in the budget without giving detailed estimates under each grant divided into items and that every item has to be specified.

(6) The amounts as approved in the budget passed by the National Assembly have to be utilized for the purpose specified in the budget statement. Any re-appropriation of funds or their utilization for some other purpose, though within the permissible limits of the budget, are not justified. In such circumstances, the supplementary budget statement has to be placed before the Parliament following the procedure provided in Articles 80 to 84 of the Constitution and the rules/instructions noted hereinabove.”

We accordingly remit this matter to Chief Secretary, Government of Sindh, to constitute a committee headed by him and co-opted by the Secretary Finance, Government of Sindh, to examine as to whether the delinquent officials of Government of Sindh has misused the public funds in terms of the Sindh Shaheed Recognition and Compensation Act and Rules, 2014 by enhancing the compensation in violation of the law. The aforesaid exercise shall be undertaken after providing the meaningful opportunity of hearing to the petitioner and aggrieved family members and fix responsibility upon the delinquents and refer the matter to the concerned authority for penal consequences if the funds are found to be misused. The said exercise shall be undertaken within two months and; submit a compliance report through MIT-II of this Court. The listed application stands disposed of in the above terms.

Office to communicate this order to the Chief Secretary, Sindh, and Finance Secretary, Government of Sindh, for compliance.

JUDGE

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