

IN THE HIGH COURT OF SINDH KARACHI

Before :

Mr. Justice Muhammad Iqbal Kalhoro

Mr. Justice Adnan-ul-Karim Memon

Constitutional Petition No.D-1140 of 2022 (*Ghulam Sakina v. Province of Sindh and 2 others*)

Mir Ali Nawaz, advocate for the petitioner

Mr. Ali Safdar Depar, AAG

Date of hearing

& Decision: 03.03.2023.

ORDER

Through the captioned Constitutional petition, the petitioner-widow Ghulam Sakina is seeking directions to the respondent / Local Government Board to release her family pension which has been purportedly withheld in terms of the notification dated 12.11.2020 issued by the Secretary, Local Government Board, whereby direction has been issued to the petitioner-widow to receive the monthly pension/family pension from the concerned Union Councils/Union Committees, *inter-alia*, on the ground that petitioner's late husband Muhammad Urs Channa was the employee of Sindh Council Unified Grade and after his death, the family pension was transferred to her name by Sindh Local Government Board on 10.06.2010 and since then she has been getting family pension from the office of Sindh Local Government Board till November 2020. However, on account of the issuance of the notification dated 12.11.2020, her family pension has been diverted to the concerned Union Council/Union Committee although the post of Naib Qasid falls under the purview of SCUG service.

2. Mir Ali Nawaz, learned counsel for the petitioner, submitted that the petitioner is an old age widow and permanent resident of Karachi, she is suffering from various diseases, therefore, at this stage change of her pension place and stopping her pension is quite illegal and against the fundamental rights of the petitioner. The learned counsel submitted that the unmarried daughters of the petitioner are also suffering from diseases Cancer & TB, and the petitioner is wholly dependent on the family pension which has been withheld due to the issuance of the notification dated 12.11.2020 and the petitioner is facing very hardship on the aforesaid decision of the respondents.

3. Mr. Ali Safdar Depar learned AAG submits that the late husband of the petitioner was appointed as Naib Qasid and retired from service on 01.02.2002 from the Union Council Palano, however, due to the policy decision dated 12.11.2020, the petitioner and other pensioners have been directed to receive their pension from the concerned union council/committee. Per learned AAG, the post of Naib Qasid relates to the Council and not SCUG service and all non-SCUG officials are not covered in SCUG Service Rules 2020, besides, they are getting pensionary benefits from their parent Union Council without any complaint. Learned AAG submitted that no right existed in favor of the petitioner-widow to insist on receiving the pension from SLGB Karachi. He prayed for the dismissal of the instant petition.

4. The aforesaid stance of learned AAG has been refuted by learned counsel for the petitioner, *inter-alia*, on the ground that permission was accorded by the Secretary, Sindh Local Government Board vide office order dated 10.06.2010 to receive a family pension from the office of Secretary Local Government Board for the reasons that Sindh Local Government Board is making payment of Naib Qasid and Secretary (SCUG) Union Council in pursuance of Finance Department letter dated 15.01.1986. therefore, diverting the monthly pension to be received from the concerned Union Council is an illegal act on the part of the respondent Secretary which will cause further hardship. In support of his contention, he relied upon the case of Senior Member Board and others v. Sardar Bakhsh Bhutta and another (**2012 SCMR 864**).

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

6. Primarily, the right to pension has been conferred by law and cannot be arbitrarily abridged or reduced, or refused except to the extent and in the manner provided in the rules and it becomes a property of the retiring employee as a matter of right upon the termination of his/her service.

7. The post-retirement benefits of the petitioner could not be withheld by respondents on any ground whatsoever. The impugned hurdle and or delay in the finalization and payment thereof to the petitioner is in clear violation of not only the judgments passed by the Supreme Court of Pakistan in the cases of Re: Haji Muhammad Ismail Advocate, PLD 2007 SC 35 and Re: Pensionary Benefits of the Judges of Superior Courts, PLD 2013 SC 829, but also the unalienable fundamental rights of the petitioner guaranteed by the Constitution.

8. To create bottlenecks for the widow to appear before the concerned union counsel from Karachi to a remote area to receive the family pension is illogical and is not sustainable under the law for the simple reason that the government should facilitate the pensioner rather creating troubles which action on their part is apathy and amounts hardship and humiliation to retiring officials and their families. The respondents shall not cause unnecessary hurdle or delay in finalizing the payment of pensionary/retirement benefits to the retiring officials and /or family pension, and any violation of such direction shall amount to criminal negligence and dereliction of the duty assigned to them. The respondents shall ensure that their monthly pension shall be credited to their account without delay either from the concerned Union Council / Union committee or from the office of Sindh Local Government Board under the rules.

9. In view of the above, the competent authority of respondents is hereby directed to pay all the postretirement benefits to the petitioner strictly under the law without fail within fifteen (15) days and to submit a compliance report to this Court through MIT-II within seven (07) days thereafter. For future as well as for cases pending for calculation and/or payment of post-retirement benefits of retiring employees of Sindh Local Government Department / Board. The Competent Authority is further directed to ensure compliance with the directions given by the Supreme Court of Pakistan in the case of Haji Muhammad Ismail Advocate (supra) in letter and spirit.

10. This petition stands disposed of with no order as to costs along with the pending application(s) in the above terms. Let notice be issued to respondents as well as to the Chief Secretary, Government of Sindh, Secretary Local Government, and the Accountant General, Sindh, for compliance.

JUDGE

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