

ORDER SHEET  
IN THE HIGH COURT OF SINDH, CIRCUIT COURT, LARKANA

C. P. No.D-226 of 2024  
(Mst.Sorath Fatima v. P.O Sindh & Others)

Date of Hearing	ORDER WITH SIGNATURE OF JUDGE
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27.02.2025.

**BEFORE:**

**Mr. Justice Muhammad Saleem Jessar,  
Mr. Justice Adnan-ul-Karim Memon,**

1. For orders on office objection.
2. For hearing of Main Case.

M/s Nazeer Ahmed Kolachi and Zulfiqar Ali Memon, advocates for the petitioner.

Mr. Liaquat Ali Shar, Addl. A.G. Sindh, assisted by Mr. Aftab Ahmed Bhutto, Asst. A.G., along with Hamid Ali Abro, Assistant Accountant, DAO, Larkana.

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**ORDER**

**ADNAN-UL-KARIM MEMON, J.-** Petitioner Mst. Sorath Fatima, daughter of Mushtaque Ahmed Mahar has filed this petition seeking the following relief(s):-

- a) *This Honourable Court may be pleased to direct respondents No.4 to 6 to redress the grievance of the petitioner in respect of the releasing of the family pension as well as other pensionary benefits since December 2022 till yet.*
- b) *To direct respondent No.9 to conduct an inquiry against respondent No.6 Abdul Fatah Soomro against his high-handedness of creating/general hindrance in the genuine pension matters of innocent people to achieve his ulterior motives per law as well as to appoint any honest officer on his post at district level.*

2. Petitioner, daughter of deceased government employee Mushtaque Ahmed Mahar, seeks resumption of her father's pension. Her mother, the original pensioner, passed away in 2012. Petitioner received the pension until December 2022, when it was stopped due to her marriage. She subsequently obtained a divorce (khula) in August 2022. Despite submitting the necessary documents, the pension has not been reinstated. Petitioner cites government policy allowing divorced daughters to receive pensions.

3. Learned Counsel argues that the petitioner, daughter of the late Mushtaque Ahmed Mahar, is entitled to her father's pension. After her mother died in 2012, she received a pension until her marriage. Following her divorce in August 2022, and per government policy, she is eligible to resume receiving the pension. Despite submitting all necessary documentation, the pension has not been reinstated, prompting allegations of maladministration and a request for an inquiry.

4. The Assistant Advocate General (AAG) argued that while the petitioner received her deceased father's pension as an unmarried daughter, her subsequent divorce does not entitle her to its resumption. Government regulations, specifically the 2022 circular and 1963 pension rules, preclude re-granting pensions to daughters divorced after the original pensioner's death. Therefore, her claim was rejected.

5. We have heard the learned counsel for the parties and perused the record with their assistance.

6. The petitioner, once eligible for her father's pension as an unmarried daughter, lost that eligibility upon marriage. Her subsequent divorce does not reinstate her entitlement. Government rules, specifically the 2022 circular and 1963 regulations, prevent re-granting pensions to daughters divorced *after* the pensioner's death. Essentially, the timing of the divorce is the disqualifying factor as urged by the learned AAG. The aforesaid stance is establishing the petitioner's initial, legitimate claim. She was entitled to the pension because she was the unmarried daughter of the deceased government employee. This is a common provision in pension rules, designed to support dependents.

7. This circular outlines family pension eligibility for daughters and sisters of deceased pensioners. Eligibility hinges on marital status: she must be widowed or divorced *at the time of the pensioner's death*. Changes in marital status afterward, even by one day, disqualify her. This also applies to the remarriage of widows.

8. Rule 4.10(A)(iii), Rule 4.10 (2) B, (v), (vi) and (vii) and Rule 4.10.5(a) and (b) of the West Pakistan Civil Servants Pensions Rules, 1963 (hereinafter referred to as the "Rules, 1963") determine a persons entitlement to Family Pension and which provisions read as hereinunder:

*" ... 4.10.(1) Family for the purpose of payment of family pension shall be as defined in sub-rule (1) or rule 4.7. It shall also include*

the Government servant's relatives mentioned in clause (d) of the 4.8.

4.10.2(A) A family pension sanctioned under this section shall be allowed as under:-

(i)(a) To the widow of the deceased, if the deceased is a male Government servant, or to the husband if the deceased is a female Government servant.

(b) If the Government servant had more than one wife, and the number of his surviving widows and children does not exceed 4, the pension shall be divided equally among the surviving widows and eligible children. If the number of surviving widow and children together is more than 3, the pension shall be divided in the following manner, viz, each surviving widow shall get 1/4th of the pension and the balance(if any) shall be divided equally among the surviving eligible children. Distribution in the above manner shall also take place whenever the Government servant leaves behind the surviving children of a wife who has predeceased him in addition to the widow and her children if any.

(c) In the case of a female Government servant leaving behind children from a former marriage in addition to her husband and children by her surviving husband, the amount of pension shall be divided equally among the husband and all eligible children. In case the total number of beneficiaries exceeds four, the husband shall be allowed 1/4 of the pension, and the remaining amount distributed equally among the eligible children.

(ii) Failing a widow of husband, as the case may be the pension shall be divided equally among the surviving sons not above 25 years and unmarried daughter.

(iii) Failing (i) and (ii), to the eldest widowed daughter.

(iv) Failing (i) and (iii), to the eldest widowed of the deceased son of the Government servant.

(v) Failing (i) and (iv), to the eldest surviving son of a deceased son of the Government servant.

(vi) Failing (i) and (v), to the eldest unmarried daughter of a deceased son of the Government servant.

(vii) Failing these, to the eldest widowed daughter of a deceased son of the Government servant.

4.10.5.(a) If the pension ceases to be granted before the expiry of the period for which it is admissible on death or marriage of the recipient or on account of other causes, to persons failing under sub-clauses A(i) and (ii) sub-rule (2) above, the amount shall be granted to other recipients in equal shares.

(b) If a family pension awarded under the section other than the mentioned in clause (A)(i) and (ii) of sub-clause (2) of this rule ceases to be payable before the expiry of the period up to which it is admissible on account of death or marriage of the recipient or

*other causes, it shall be regranted to the persons next lower in the order mentioned in sub-rule (2)."*

9. It seems the Secretary Finance Department, Province of Sindh has on 5 December 2022 issued a Circular which attempts to clarify an office memorandum dated 7 April 2016 interpreting Rule 4.10(A)(iii), Rule 4.10 (2) B, (v), (vi) and (vii) and Rule 4.10.5(a) and (b) which reads as hereinunder

*"(i) If daughter of the deceased pensioner is widow at the time of death of pensioner/family pensioner, she will be entitled for transfer of family pension. However, if she becomes widow after the date of death of pensioner/family pensioner, the family pension shall not be granted/re-granted.*

*(ii) It is further clarified that if the death of pensioner/family pensioner and husband of daughter of pensioner occur on the same day, the family pension shall be transferred to widow daughter. However, if she becomes widow even a day later after death of pensioner/family pensioner, the family pension shall not be granted/re-granted to her.*

*(iii) Likewise, if the daughter of deceased pensioner is divorced at the time of death of pensioner/family pensioner, she will be entitled for transfer of family pension. However, if she is divorced after date of death of pensioner/family pensioner, the family pension shall not be granted/regranted.*

*(iv) Further, if the death of pensioner/family pensioner and divorce of daughter of pensioner occur on the same day, she will be entitled for transfer of family pension. However, if the event of divorce occurs even a day after the death of pensioner/family pensioner, the family pension shall not be granted/re-granted.*

*(v) The above mentioned clarification will also be applicable to widowed and divorced sister also in case of re-marriage of widow and unmarried/widow/divorce daughter/sister."*

10. A literal reading of this clause (iii) of this Circular clarifies that if a daughter is divorced after the demise of her father she would not be entitled to claim on the pension of her father.

11. Based on a straightforward reading of Rule 4.10.2(A)(ii) of the 1963 Rules, a divorced daughter, like the petitioner, qualifies as 'unmarried' and is eligible for family pension after her mother's death. This interpretation was supported by the fact that the authorities had, in fact, been paying the petitioner the pension for many years. However, a later circular contradicted this literal reading, stating that a divorced daughter is ineligible. The key issue is whether this clarifying circular can effectively amend the original rule, thereby changing the petitioner's entitlement.

12. The changes to the pension rules require Provincial Cabinet action, not a Finance Department Secretary's circular. The Secretary lacked the authority to issue a clarifying circular that contradicted the rule's plain meaning. As no legal provision grants the Secretary this power, the circular is void and cannot alter the established rules. Therefore, the petitioner's claim is upheld.

13. On the aforesaid analogy this court concluded that the Finance Department's 2022 circular is invalid and cannot be used to interpret pension eligibility. A divorced daughter qualifies as 'unmarried' under the pension rules and is entitled to a family pension. The authorities must immediately resume the petitioner's monthly pension payments, starting from when it was, and pay all backdated amounts within one month.

14. This petition is disposed of in the above terms.