

ORDER SHEET

**IN THE HIGH COURT OF SINDH, CIRCUIT COURT, LARKANA.**

Constitutional Petition No.D- 554 of 2024.

(Mst.Fahmeeda v. Director Local Funds & Ors)

DATE OF HEARING                      ORDER WITH SIGNATURE OF HON'BLE JUDGE

1. For orders on office objection as flag A.
2. For hearing of main case.

**Before :**

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

**Date of hearing and Order: 27.02.2025.**

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

Mr. Liaquat Ali Shar, Addl. A.G. assisted by Mr. Aftab Ahmed Bhutto, Asstt: A.G a/w Kashif Raza, Incharge Litigation LMC on behalf of respondents No.2 to 4.

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**ORDER**

**ADNAN UL KARIM MEMON-J.:-** The petitioner is seeking direction to respondents to release the family pension and back pensionary benefits of her deceased father's pension, and the respondents are unlawfully withholding it.

2. The petitioner, a widow, is seeking the family pension of her deceased father, Himat Ali Memon, who was an employee of the Octroi Inspector Local Government Department. Her father passed away in 1998, and her mother predeceased him. After her husband died in 2021, she applied for her father's pension, but the respondents have failed to release it, allegedly demanding a bribe of Rs. 200,000. She requests the court to direct the respondents to release the pension and back pensionary benefits. Petitioner's father, Himat Ali Memon, died in service in the year 1998. Petitioner's mother predeceased her father. Petitioner is a widow, her husband Munawar Ali Soomro died in the year 2021. Petitioner has not remarried. Petitioner applied for her father's family pension. Respondent No. 2 prepared pension papers and forwarded them to Respondent No. 1. Respondent No. 1 has failed to take action.

Respondents are allegedly demanding a bribe of Rs. 200,000 for releasing the pension. Petitioner has refused to pay the bribe.

3. Learned counsel for the petitioner argued that the Respondents' inaction is illegal and violates the constitution and law. He argued that the petitioner is legally entitled to her deceased father's pension being a widow, and the respondents are unlawfully withholding it.

4. The Directorate of Local Fund Audit Sindh denies Mst. Fahmeeda's claim for her deceased father's pension. He stated that, according to Sindh Finance Department circular FD(PCDC)3(225)/2022 dated 05-12-2022, a widowed daughter is not entitled to her father's pension if both her parents died before her husband's death. He asserts that Mst. Fahmeeda's parents died before her husband, therefore she is ineligible to claim pension after the death of her husband. He further denied any wrongdoing and requested the dismissal of the case.

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

6. 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.

7. 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 ¼ 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)."

8. 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.*

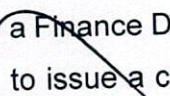
*(iv) Further, if the death of pensioner/family pensioner and divorce of daughter of pensioner occur on the same day, she will be entitled for transfer of family pension. However, if the event of divorce occurs even a day after the death of pensioner/family pensioner, the family pension shall not be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

9. A literal reading of 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.

10. Based on a straightforward reading of Rule 4.10.2(A)(ii) of the 1963 Rules, a divorced daughter 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 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.

11. 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 this power to the Secretary, the circular is void and cannot alter the established rules. Therefore, the petitioner's claim is upheld.

12. On the aforesaid analogy this court concluded that the Finance Department's 2022 circular is invalid and cannot be used to interpret pension eligibility. Prima facie a widowed daughter qualifies as 'unmarried' under the pension rules and is entitled to a family pension which factum needs to be looked into by the competent authority by hearing the petitioner and if she is found entitled under the pension rules. The authorities must immediately resume the petitioner's monthly pension payments, within one month.

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

