

Judgment Sheet

IN THE LAHORE HIGH COURT, LAHORE.
JUDICIAL DEPARTMENT

W.P.No.15570 of 2022

Mst. Gul Baha
Vs.
G.M. Pakistan Railways, etc.

J U D G M E N T

Date of hearing	25.05.2023
Petitioner By:	Ch. Abdul Sattar Ghumman, Advocate
Respondents By:	Sh. Shahzad Ahmed Pasha, Advocate for respondents. Mr. Ijaz Rehmat Basra, Asst. Attorney General.

Faisal Zaman Khan, J:- Through this petition petitioner seeks a direction to the respondents to allow her family pension.

2. Succinctly, the facts of the case are that real brother of the petitioner namely Sher Afzal (**deceased**), who had been working with the respondent-department as Head Clerk, expired on 30.05.2005, whereafter, petitioner applied for a succession certificate for seeking family pension of the deceased brother, which was allowed vide order dated 26.04.2011. Subsequently, time and again petitioner has been approaching the respondents for seeking family pension, however, the needful has not been done, therefore, this petition.

3. Report and parawise comments were filed by the respondents denying the claim of the petitioner.

4. In the above backdrop, learned counsel for the petitioner submits that under Rule 4.10 of the West Pakistan Civil Services Pension Rules, 1963 (**Rules**) petitioner being unmarried sister of the deceased

should be allowed family pension and in this regard a succession certificate has also been issued by the civil court of competent jurisdiction.

5. Replying to the above, learned counsel for the respondents submits that petitioner obtained succession certificate by concealing material facts for the reason that while applying for issuance of succession certificate it was asserted by the petitioner that she is the sole legal heir of the deceased, whereas, the deceased was succeeded by two sons. Further submits that under the Rules petitioner is not entitled to any pension.

6. Arguments heard. Record perused.

7. From the perusal of the available record, it transpires that for seeking family pension of the deceased, petitioner applied for issuance of succession certificate, which vide order dated 26.04.2011 was granted to her by the civil court of competent jurisdiction and she was held entitled to receive the family pension. Thereafter, petitioner filed a contempt petition against the respondents for non-compliance of the said order, which was disposed of vide order dated 27.02.2020 with the observation that petitioner is entitled to family pension of her deceased brother and a direction was issued to the respondent to pay the family pension, whereafter, an application for setting aside/revocation of the succession certificate was filed by the respondents, which was dismissed vide order dated 05.12.2020. Feeling aggrieved of orders dated 27.02.2020 and 05.12.2020, two civil revisions were filed by the respondents, which were dismissed vide orders dated 12.06.2021, however, the available record would show that the said orders were not assailed by the respondents before any court or *fora*, therefore, the same have attained finality.

8. Keeping in view the above factual matrix the moot point, which requires determination by this Court is that as to whether petitioner being an unmarried sister of the deceased is entitled to family pension.

9. For resolving the above proposition, it is expedient to reproduce **Rule 4.10** of the Rules, which is as under:

“4.10. (I) Family for the purpose of payment of family pension shall be as defined in sub-rule(I) of rule 4.7. It shall also include the Government servants relative mentioned in clause (d) of rule 4.8.

(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 widows and children together is more than 4, 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 surviving children of a wife that 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 1/4th of the pension and the remaining amount distributed equally among the eligible children.

(ii) Failing a widow or husband as the case may be the pension shall be divided equal among the surviving sons not above 24 years and unmarried daughters.

Note.- In working out the share of the various heirs under sub-clause(A)(i) and(ii), the amount should be calculated to the nearest paisa:-

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

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

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

(vi) Failing(i) to(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.

(B) If the family pension is not payable under clause(A), it may be granted:-

(i) to the father;

(ii) failing the father, to the mother;

(iii) failing the father and the mother, to the eldest surviving brother below the age of 21 years;

(iv) failing(i) to (iii), **to the eldest surviving unmarried sister, if the eldest sister married or dies than the next eldest;**

(v) failing(i)to(iv), to the eldest surviving widowed sister.

(3) No family pension shall be payable under this section:-

(a). to an un-married female member of a Government servant family in the event of her marriage;

(b). to a widowed female member of a Government servant's family in the event of her remarriage;

(c). to the brother of a Government servant on his attaining the age of 21 years.

(d). to a person who is not member of a Government servant's family.

(4) A family pension awarded under this section shall not be payable to more than one member of a Government servant's family at the same time except as provided for in sub-clause(A)(i), and(ii), of sub-rule(2) above.

(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 falling under sub-clause (A) (i) and (ii) of sub-rule (2) above, the amount shall be granted to other recipients in equal shares.

(b) If a family pension awarded under this section other than that mentioned in clause (A) (i) or (ii) of sub-rule (2) of this rule ceases to be payable before the expiry of the period upto which it is admissible on account of death or marriage of the recipient or other causes, it shall be regarded to the person next lower in order mentioned in sub-rule (2).

(6) Government shall have discretion to make such modification in the mode of allotment or conditions of tenure set forth in sub-rules (2) to (5) above as they may consider desirable to suit the special circumstances of the beneficiaries.

(7) A family pension sanctioned under this section shall be payable in addition to any extra-ordinary pension or gratuity that may be granted to the members of a Government servant's family under any other rules in force for the time being.

(8) Further good conduct of the recipient is an implied condition of every grant of a family pension under this section.

(Emphasis supplied)

10. A reading of the above provision stipulates that where a civil servant, who was entitled to receive or has been receiving pensionary benefits, expires, after his demise, his pension will be received/transferred to his family members, a complete chart/resume according to their preferential right has been given in this Rule.

11. Placing the afore-noted provision of law in juxtaposition with the facts of the present case, it has surfaced that since no other legal heir of the deceased, who is entitled to receive the family pension was available thus in view of **Rule 4.10(2)(B)(iv)** of the Rules, petitioner is entitled to receive the family pension, thus, refusal of the respondents to allow the family pension to her, is not only illegal, but is also an act of cruelty on their part, especially so when the question of succession and the payment of pension has already been resolved by the court of competent jurisdiction by way of issuing a succession certificate, which has attained finality after dismissal of civil revision filed by the respondents.

12. As regards the objection of the learned counsel for the respondents that petitioner is not entitled to family pension for the reason that the deceased was succeeded by his two sons, the same is not tenable for the reason that both the sons admittedly are more than 24 years of age thus keeping in view **Rule 4.10(2)(A)(ii)** of the Rules they are disentitled to receive family pension. Moreover, reliance of the learned counsel for the respondents on Rule 4.7 and 4.8 to argue that since petitioner was not nominated by the deceased to receive family pension is misplaced for the reason that the said provisions deal with payment of gratuity and for that concept of “nomination” is available, whereas, in Rule 4.10 (applicable in the present case), which specifically deal with family pension nomination by the deceased employee for receiving family pension is not required. Moreover, while promulgating Rule 4.10, the competent authority has in fact added certain categories of the relatives to the definition of family as

defined in Rules 4.7 and 4.8, only for the payment of family pension (and not gratuity) and, thus, has amplified and extended the definition.

13. For what has been discussed above, this petition is **allowed**, as a sequel to which respondents are directed to pay the family pension of the deceased to the petitioner from the date of death of the deceased. The payment shall be made within a period of 30 days of the receipt of a certified copy of this judgment.

Shafaqat Ali*

(FAISAL ZAMAN KHAN)
JUDGE

Approved for Reporting

JUDGE.