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Judgment Sheet

LAHORE HIGH COURT

RAWALPINDI BENCH RAWALPINDI

JUDICIAL DEPARTMENT

....

INTRA COURT APPEAL NO.41 of 2021

Mst. SHAMIM AKHTAR

Versus

FEDERATION OF PAKISTAN Through Secretary Ministry of Defence, Government of Pakistan, Rawalpindi Cantt. and another

JUDGMENT

Date of Hearing:	27.11.2024
Appellant by:	Malik Jawwad Khalid Advocate.
Respondents by:	Mr. Muhammad Sajid Ilyas Bhatti, Additional Attorney General Pakistan alongwith Muhammad Sajid Khan, Assistant Accounts Officer.

MIRZA VIQAS RAUF, J. This appeal in terms of Section 3 of the Law Reforms Ordinance, 1972 (hereinafter referred to as “**Ordinance**”) arises out of order dated 17th February, 2021, whereby learned Single Judge in Chamber proceeded to dismiss Writ Petition No.253 of 2020 filed by the appellant, seeking pensionary benefits.

2. Facts in brief forming background of this appeal are that the appellant is the mother of Captain Aamir Butt, who has been martyred on 23rd June, 2009 in an operation namely “*Rah-e-Rast*” at Swat, leaving behind a widow and two sons. As per permissible benefits, the widow was granted special family pension w.e.f. 24th June, 2009, however, she later on passed away on 14th October, 2011, after remained hospitalized in Combined Military Hospital, Abbottabad. After the death of widow, the appellant being mother of martyr officer considering herself to be entitled for full pension

amounting to Rs.13,871/- per month w.e.f. 15th October, 2011 applied to the respondent-department but her request was not acceded to. Feeling aggrieved, she filed Writ Petition No.253 of 2020, in response to which the respondents submitted their report and parawise comments wherein it is pleaded that after the martyrdom of Captain Aamir Butt special family pension was granted to his widow, being first recipient and after her death, the appellant being mother was granted pension as second life dependent but she erroneously claims herself eligible for full special family pension. The constitutional petition was ultimately dismissed through order under appeal.

3. Learned counsel for the appellant, while making reference to Regulation No.55 of the Pension Regulations, Volume-I (Armed Forces) 2010 submitted that family pension is intended for the support of all the eligible members of a family irrespective of the fact in whose name it stands. He added that the appellant being the mother of the martyr officer is entitled for the pension in terms of the Regulation No.49.b.(5) of the Pension Regulations, Volume-I (Armed Forces) 2010. In order to give strength to his contentions, learned counsel also made reference to Regulation No.63 and submitted that after the death of widow, the appellant would become entitled to get the pensionary benefits as previously the original grantee was receiving. It is emphatically contended by learned counsel for the appellant that in terms of Regulation No.100, mother of martyr Junior Commissioned Officer becomes entitle for full pension in absence of the widow and as such the appellant has been treated discriminately in oblivious of Article 25 of the Constitution of the Islamic Republic of Pakistan, 1973. Placed reliance on Mst. YASMEEN AKHTAR versus FEDERATION OF PAKISTAN through Secretary Ministry of Defence (2017 PLC (C.S.) 703).

4. Conversely, learned Law Officer submitted that there is mark distinction between the family pension and special family pension. He added that the appellant being the mother is only entitled to get pension in terms of Regulation No.49.b.(1) of the Pension

Regulations, Volume-I (Armed Forces) 2010. Learned Law Officer argued with vehemence that Regulation No.63 is only restricted to normal pension and the appellant cannot press it in service for her own benefit.

5. Heard. Record perused.

6. It is an admitted fact that son of the appellant namely Captain Aamir Butt was an army officer, who was martyred in an operation “*Rah-e-Rast*” in Swat. The officer survived a widow and two sons. Section 176A of the Pakistan Army Act, 1952 empowers the Federal Government to make regulations for the governance, command, discipline, recruitment, terms and conditions of service, rank, precedence and administration of the Pakistan Army and generally for all or any of the purposes of the Act. In exercise of powers conferred thereunder the Federal Government framed the Pension Regulations, Volume-I (Armed Forces) 2010 (hereinafter referred to as “**Pension Regulations**”). Pension is defined in regulation 2(j) in the following manner :-

“j. “Pension” includes, except when the expression “pension” is used in contradistinction to gratuity, gratuity;”

Regulation No.32 of the **Pension Regulations** provides the classification of pensions, which reads as under :-

“32. **Classification of Pension.** The pension of officer shall be classified as follows, namely:-

a. **Compensation Pension**

(1) **Premature Retirement Without Fault**

(a) A compensation pension is granted to a permanent regular officer who is compulsorily retired from service before the prescribed period laid down as the age/service limits for compulsory retirement of the rank he is holding and provided that the compulsory retirement is not due to any fault of the officer.

(b) An officer retired as above with a qualifying service of not less than ten years will add to his service qualifying for compensation pension and for invalid pension for attributable disability of less than 20% (but not for other class of pension), the actual period not exceeding five years for which he would have ordinarily continued in service if he was allowed to complete the maximum age and service limit prescribed for the rank. The addition to qualifying service upto a maximum of five years shall be allowed only if the following conditions are fulfilled, namely:-

- i. This bonus will be granted subject to the COAS/CNS/CAS having satisfied himself that the officer is being compulsorily released/ retired from service for service reasons only.
- ii. The officer has had an 'Average' or 'Above Average' service record, excluding isolated adverse reports.
- iii. The officer is not being compulsorily retired/released from service on account of failure to pass the prescribed examination for promotion or in anticipation of any disciplinary action.
- iv. The officer is not being compulsorily retired/ released at his own request.

(2) **Premature Retirement Due to Fault.** An officer compulsorily retired before completion of age/service limit for reasons other than those specified in sub-rule a (1) (b) above, will be granted actual pension/gratuity earned.

Note: The above benefit is admissible if service of an officer before allowing the benefit of automatic condonation is not less than ten years.

b. **Invalid Pension.** An invalid pension is awarded, on retirement from the service to an officer who by bodily or mental infirmity, is incapacitated for the service, or for the particular branch of it, to which he belongs and whose disability is:-

- (1) Viewed as not attributable to or aggravated by military service.
- (2) Viewed as attributable to or aggravated by military service but not disability pension falls due because of non-pensionable degree of the disability or because of unreasonable refusal by the officer to undergo surgical or medical treatment. Invalid pension will not be granted in addition to disability pension.

c. **Superannuation Pension.** A superannuation pension is granted to an officer entitled or compelled by rules to retire at a particular age or after any extension of service approved by the Government.

d. **Retiring Pension.** A retiring pension is granted to an officer who is retired after completing qualifying service for such number of years as is prescribed for the rank in the Service Regulations or after any extension of service approved by the Government”

The terms “ordinary family pension” or “special family pension” though have nowhere been defined in the **Pension Regulations** but the said terms find mentioned in Regulation No.35 as separate entities. Regulation No.47 ordains that pension cannot be claimed as of right. Regulation No.49 deals with Grant of Special Family Pension to Widows/Parents/Children and Dependent Pension of the Armed Forces Officers/AFNS Officers. The most relevant for the matter in controversy are clauses b(1), b(2) & b(5) of Regulation No.49, which are reproduced below :-

“49. Grant of Special Family Pension to Widow/Parents/Children and Dependent Pension of the Armed Forces Officers/AFNS Officers. With effect from

1 Jul 2005 and will cover all the casualties occurring on or after such date. The rate of their pension shall be as follow:-

a. -----

(1) -----

(2) -----

(a) -----

(b) -----

(c) -----

(d) -----

(e) -----

b. The above benefit will be governed/regulated as under:-

(1) **In cases where widow is the first recipient at the time of casualty.** Special Family Pension with one fourth of Special Family Pension as lump sum gratuity on rate applicable at next birthday applicable to the deceased in commutation table and 3/4th the amount of Special Family Pension on monthly basis will continue to be admissible. The children, if any, will receive Special Children Allowance at with-mother rate under the existing conditions. After the disqualification/death of the widow, parents will be eligible for second life Dependent Pension as admissible under the existing rules. The children will, however, receive the Special Children Allowance at motherless rate as provided for under the existing conditions.

(2) **In cases where parents happen to be the first recipient.** Where there is no widow, the parents would be entitled to Special Family Pension vide Rule 49 a (1) and (2) (including one fourth gratuity) for life. In case the parents are disqualified or they die, the Special Family Pension shall be payable to the eldest surviving son/daughter below the age of 21 years in order of merit subject to the fulfillment of conditions. The remaining children, if any, will receive the Special Children Allowance at motherless rate under the existing conditions.

(3) -----

(4) -----

(a) -----

(b) -----

(c) -----

(5) **Dependent Pension**

(a) **Parents.** In case there is no wife as specified in Rule 49 a (1) and (2).

(b) **Others.** 33% of pay subject to a minimum of Rs.350/-pm and maximum of Rs. 750/-pm

Note:- All dearness increases/ indexation sanctioned in the past shall be allowed. The existing condition that special family pension/dependent pension plus children allowance will not exceed pay last drawn would remain continue but dearness increases/ indexation in pension will not be limited by the said condition and these (dearness increases/indexations) shall be admissible in addition.”

(Underlining supplied for emphasis)

From the bare reading of both the clauses of Regulation No.49 it clearly manifests that when the deceased officer survives widow in

such case clause b(1) of Regulation No.49 would be attracted and if there is no widow at the time of death of deceased officer clause b(2) would come into force. The case of the appellant being mother would thus be covered under the former clause and she cannot press into service the Regulation No.63 in support of her claim, as the said provision of law primarily deals with the cases of normal pension and it carries the eventualities where the original grantee, dies or suffers some disqualification. The appellant is precluded to take refuge of said provision of law.

7. So far contention of learned counsel for the appellant that there is disparity in the **Pension Regulations** relating to Commissioned Officer and Junior Commissioned Officer, as is evident from Regulation No.100; suffice to observe that Article 25 of the Constitution of the Islamic Republic of Pakistan, 1973 though ordains that all citizens are equal before law and are entitled to equal protection of law and also guarantees that there shall be no discrimination on the basis of sex but by now it is well entrenched principle that equality does not prohibit classification for differently placed prisons. The doctrine of reasonable classification is founded on the assumption that the State has to perform multifarious activities and deal with a vast number of problems. Right of equality of citizens is always founded on an intelligible differentia, which distinguishes persons or things that are grouped together from those, who have been left out. Right of equality is always to be weighed amongst equal in all respects and it is not necessary that every citizen shall be treated alike in all eventualities. Thus in the light of clear distinction of service cadre and nature between the Commissioned Officer and Junior Commissioned Officer, the contention of learned counsel for the appellant is highly ill-founded. Guidance in this respect can be sought from SECRETARY ECONOMIC AFFAIRS DIVISION, ISLAMABAD and others versus ANWARUL HAQ AHMED and others (2013 SCMR 1687). Reference to the above can also be made to PROVINCE OF PUNJAB through Chief Secretary and another versus SAMUEL BHATTI and others (2009 SCMR 1034) and GOVERNMENT OF THE

PUNJAB through Chief Secretary, Lahore and others versus Ch. ABDUL SATTAR HANS and 29 others (2015 SCMR 915).

8. So far judgment in the case of **Mst. Yasmeen Akhtar's supra** is concerned, it is observed that the principles laid down therein are rested upon entirely different facts and circumstances as in the said case matter with regard to pension was to be governed as per mandate of Regulation No.100 of the **Pension Regulations**, which as already observed is not attracted to the present case, as the martyred officer was Commissioned Officer.

9. The nutshell of above discussion is that we feel no cavil to hold that learned Single Judge in Chamber, while dismissing the constitutional petition filed by the appellant has committed no illegality at all and the order under appeal is unexceptionable. Resultantly this appeal fails and is **dismissed** with no order as to costs.

(ANWAAR HUSSAIN)
JUDGE

(MIRZA VIQAS RAUF)
JUDGE

APPROVED FOR REPORTING

JUDGE

JUDGE

*Shahbaz Ali**