

JUDGMENT SHEET
IN THE LAHORE HIGH COURT, LAHORE
JUDICIAL DEPARTMENT
JUDGMENT

I.C.A. No.77894/2022

Zoya Islam **VS.** Government of Pakistan etc.

Date of hearing	11.09.2024
Appellant by	Mr. Atif Ashraf, Advocate
Respondents by	Mr. Shehbaz Ahmad Khan Yousafzai, Assistant Attorney General alongwith Riaz-ud-Din Shaikh, Assistant Director (Legal)

Ch. Muhammad Iqbal, J:- Through this intra court appeal the appellant has challenged the validity of order dated 22.11.2022 passed by the learned Single Judge in Chamber whereby Writ Petition No.73497/2022 filed by appellant was dismissed.

2. Brief facts of the case are that the appellant’s husband Muhammad Aslam who was an employee of Pakistan Mint passed away during his service and the appellant being widow of the deceased employee was appointed as Naib Qasid (BS-01) in Pakistan Mint on contract basis for a period of five years on 03.01.2020 in the light of a notification dated 04.12.2015 titled “Revision of Assistance Package for Families of Government Employees who Die in Service”. The appellant contracted second marriage upon which respondent authority while relying on a notification dated 15.12.2015 issued by the Establishment Division, Government of Pakistan terminated her service on 30.9.2021. The appellant challenged her termination order as well

as Memorandum dated 21.06.2022 whereby request for her reinstatement was declined through W.P. No.73497/2022. The learned Single Judge in Chamber dismissed the writ petition vide order dated 22.11.2022 on the ground that the appellant was a contract employee as such the writ petition is not maintainable. Hence, this appeal.

3. Arguments heard. Record perused.

4. Admittedly, the husband of the appellant who was serving in the respondent-department/Pakistan Mint died during his service. The appellant being widow of deceased employee was appointed as Naib Qasid (BS-01) vide Memorandum/Order dated 03.01.2020 on contract basis for a period of five years in pursuance of notification dated 04.12.2015 titled “Revision of Assistance Package for Families of Government Employees who Die in Service” and accordingly the appellant joined her duties. Thereafter, she contracted second marriage upon which she was terminated from the service on 30.9.2021 on the basis of a notification dated 15.12.2015 issued by the Establishment Division, Government of Pakistan. Marriage is a religiously, ritually, socially and legally recognized bond between spouses that establishes rights and obligations between them. Islam, being a complete code of life, it not only provides guidance about the process of contracting first marriage of a Muslim [male or female] but also guides about the second marriage in case of death of a spouse. Prior to teaching of Islam and unfortunately even at present in different parts of the world, second marriage of a widow, was/ is treated as a social evil, which practice has seriously been discouraged by Islam. Allah Ta’la in Quran Majeed in clear terms has not only given choice to a widow to contract marriage but also has ordered to support marriage of a

widow. In this regard, translation of two verses (Ayaat-e-Karima) from Holy Quran are mentioned hereunder:

"اور جو لوگ تم میں سے مر جائیں اور عورتیں چھوڑ جائیں تو عورتیں چار مہینے دس دن اپنے آپ کو روکے رہیں۔ اور جب (یہ) عدت پوری کر چکیں اور اپنے حق میں پسندیدہ کام (یعنی نکاح) کر لیں تو ان پر کچھ گناہ نہیں۔ اور خدا تمہارے سب کاموں سے واقف ہے۔"
(سورۃ البقرہ: 234)

"اور اپنی قوم کی بیوہ عورتوں کے نکاح کر دیا کرو۔"
(سورۃ النور: 32)

Further, Articles 31 and 35 of the Constitution of the Islamic Republic of Pakistan, 1973 also guarantees the citizens of this country to order their lives in accordance with the fundamental principles and basic concepts of Islam. The Constitution also guarantees the protection of marriage and family of a citizen. For ready reference the above said Articles of the Constitution are reproduced as under:

“31. (1) Steps shall be taken to enable the Muslims of Pakistan, individually and collectively, to order their lives in accordance with the fundamental principles and basic concepts of Islam and to provide facilities whereby they may be enabled to understand the meaning of life according to the Holy Quran and Sunnah.

(2) The State shall endeavour, as respects the Muslims of Pakistan,—

(a) to make the teaching of the Holy Quran and Islamiat compulsory, to encourage and facilitate the learning of Arabic language and to secure correct and exact printing and publishing of the Holy Quran;

(b) to promote unity and the observance of the Islamic moral standards; and

(c) to secure the proper organisation of zakat, ushr, auqaf and mosques.

....

35. The State shall protect the marriage, the family, the mother and the child.”

As per aforequoted verses from Holy Quran as well as provisions of the Constitution, it is crystal clear that a Muslim widow cannot be prevented or discouraged to contract marriage rather her such action is appreciable which is duly safeguarded by Shariah. A widow, at the time of death of her husband, is given her due share from the estate left by her husband and there is no embargo on her to contract second marriage after the completion of stipulated period of Iddat. The Government in contravention to the aforesaid principles of Shariah as well as Constitution of the Islamic Republic of Pakistan, 1973 issued Memorandum dated 15.12.2015 that a widow, who was granted employment (job) on the ground of demise of her husband during service, will be disentitled to continue her service on account of her solemnizing of second marriage.

5. The Federal Government through office Memorandum dated 15.12.2015 clarified that the appointment of a widow of the deceased servant of the Government is a part of terminal benefits to which widow is entitled. For ready reference, Memorandum dated 15.12.2015 is reproduced as under:-

GOVERNMENT OF PAKISTAN
CABINET SECRETARIAT
ESTABLISHMENT DIVISION

No.8/10/2013-E-2 Islamabad, the 15th December, 2015

OFFICE MEMORANDUM

Subject: ASSISTANCE PACKAGE FOR
FAMILIES OF GOVERNMENT
EMPLOYEES WHO DIED IN SERVICE.

The undersigned is directed to refer the subject cited above and to state that queries and references have been received in the Division that whether a widow who was appointed under Prime Minister's Assistance Package is entitled for extension in contract appointment after remarriage. The issue has been considered in this Division. It is clarified that appointment of a widow of the deceased Government servant is a part of terminal benefits to which a widow is entitled. After remarriage the widow becomes ineligible to receive family pension. Therefore, this Division is of the view that her contract should be terminated from the

date of her remarriage. In case, she got married after regularization of her service, she would only be ineligible for pensionary benefits of her earlier deceased husband.

(Mansoor Ahmed)
Section Officer (E-2)

(emphasis supplied)

The vires of the above said Memorandum were challenged before Islamabad High Court in a case titled as *Mst. Samia Tabassum Vs. Federation of Pakistan* through Writ Petition No.389 of 2016 and the said Memorandum was declared ultra vires and illegal vide judgment dated 27.05.2016. The relevant portion of the judgment is reproduced as under:

...The impugned Office Memorandum dated 15-12-2015 is sheer violation of Articles 34 and 35 of the Constitution of Islamic Republic of Pakistan according to which steps shall be taken to ensure full participation of women in all spheres of national life as well as to provide protection to marriage, the family, the mother and the child. However, in the instant matter it is quite astonishing that the respondents are depriving the petitioner from a legal right for which she is ultimately entitled because though she has remarried but despite that two daughters of deceased Muhammad Irfan Siddique and petitioners are being looked after by her. The impugned order dated 15-12-2015 is also against the principle of Locus poenitentiae. The petitioner was appointed after fulfillment of all the formalities under the Prime Minister Assistance Package and as such it cannot be held that the said appointment was procured by the petitioner through fraud, concealment of facts or by impersonation. And in such a way a legal right has been created in favour of petitioner which cannot be taken away merely on the basis of her re-marriage. In this regard I am also fortified by the judgment reported as **2015 SCMR 1418 titled as Mst. Basharat Jehan Versus Director General, Federal Government Education, FGEI (C/O) Rawalpindi and others** wherein it was held that:-

“Once a right is accrued to the appellant by appointment letters issued after complying with the all codal formalities could not be taken away on mere assumption and or supposition and or whims and fancy of any executive functionary. Such right once vests, cannot be destroyed or withdrawn as legal bar would come into play under the well doctrine of locus poenitentiae, well recognized and entrenched in our jurisprudence.”

As such, the impugned office Memorandum dated 15th December, 2015 has been issued without any legal justification and is hereby declared as illegal as well as against the fundamental rights guaranteed under the Constitution of Islamic Republic of Pakistan.

The said judgment was challenged before the Hon'ble Supreme Court of Pakistan through Civil Petition No.2666 of 2016 which was dismissed vide order dated 03.11.2017 with the following observation:

“4. The very perusal of the Office Memorandum would reveal that it was issued in a mechanical way without due diligence and application of mind. This on the fact of it is against the constitutional and fundamental rights of a person provided by the Constitution of the land. It is an alienable right of every citizen to have the protection of law and also to be treated and dealt with in accordance with law with the particularity that no one can take action against the detrimental to his life and liberty and cannot be prevented from an act which is not prohibited by law. The reasons made the basis of questioned Office Memorandum have no statutory backing or carry any intellection behind the same. It would not be legally and morally justified at this stage to snatch the bread of the two minor daughters of the deceased employee.

The learned Judge of the High Court while allowing the Writ Petition has mainly held that although the respondent No.1 remarried but the fact remains that two daughters of the deceased Mohammad Irfan Siddiqui are being looked after by the respondent and that the appointment of respondent was made after completing all codal formalities and the same was not the result of any fraud or concealment of facts. We, in the circumstances, find no error of law in the impugned judgment of the High Court.”

6. The service of the appellant was terminated by the respondents on the ground of re-marriage vide order dated 30.09.2021, which order is reproduced as under:

“Government of Pakistan

Pakistan Mint

No.F.26-22/2020-HR/285-A Lahore, the 30th September, 2021

OFFICE ORDER

Subject: **Termination of contract appointment**

In pursuance of re-marriage of Ms. Zoya Islam, widow of Mr. M. Islam, ex-T.No.961, the Competent Authority viz Deputy Director General has approved to terminate her contract appointment as Naib Qasid (BS-01) with immediate effect in terms of Establishment Division's O.M. No.8/10/2013-E-2 dated 15-12-2015 (received in Pakistan Mint on 30-09-2021)

2. This issues with approval of Competent Authority.

(Arslan Nisar)
Admin Officer"

After receipt of her termination order, the appellant filed an application to the respondent/Director General, Pakistan Mint, Lahore contending therein that she has contracted second marriage as per Shariah and the Memorandum in question has been declared illegal by the Superior Courts as such she may be reinstated into service. The application moved by the appellant is reproduced as under:

"بخدمت جناب ڈائریکٹر جنرل صاحب

پاکستان منٹ لاہور۔

جناب عالی

گزارش ہے کہ فدویہ کا پہلا خاوند محمد اسلام ٹکٹ نمبر 961 دوران سروس مورخہ 25-12-2018 کو وفات پا گیا تھا، فدویہ کو پرائم منسٹر اسسٹنٹ پیسج کے تحت نائب قاصد کی ملازمت پر بھرتی کیا گیا تھا، جناب عالی فدویہ کے چھوٹے بچے ہیں جن کی کفالت اور دیگر معاملات کی وجہ سے فدویہ کا گزارا ممکن نہیں تھا، فدویہ نے مورخہ 8-01-2020 کو شریعت محمدی ﷺ کا حکم بجالاتے ہوئے شادی کر لی۔

شادی کرنے کی وجہ سے فدویہ کو لیٹر نمبر F.26-22/2020-HR285A

بتاریخ 3 ستمبر 2021 کے تحت ملازمت سے برطرف کر دیا گیا۔ فدویہ کو میڈیا سے معلوم ہوا کہ ہائیکورٹ نے ایک فیصلہ دیا ہے، جس کے مطابق بیوہ دوران ملازمت شادی کر سکتی اور دوسری شادی کرنے سے اس کی ملازمت پے کوئی اثر نہیں آئے گا، فیصلے کی کاپی لف ہے۔ یہ گزارش ہے کہ فدویہ کے بچوں پر شفقت فرماتے ہوئے فدویہ کو اپنی ملازمت پر بحال کر دیا جائے، فدویہ تمام عمر آپ کی ترقی اور آپ کے بچوں کی ترقی کے لئے دعا گو رہے گی۔

عین نوازش ہوگی۔

العارض

زویہ

بتاریخ 10-03-2022

The respondents, despite knowledge of the dictum of the Superior Courts on the matter in issue, instead of reinstating the appellant into service, remained adamant to follow the illegal and unlawful instructions of the Establishment Division and declined the request of the appellant for reinstatement vide order dated 21.06.2022 as under:

“Government of Pakistan
Pakistan Mint

No.927/2021-HR/1330 Lahore, the 21st June, 2022

OFFICE ORDER

Subject:- **Request for re-instatement of contract appointment**

Reference your application dated 10-03-2022 for re-instatement of contract appointment. You are hereby informed that your request is hereby turned down being not covered under the rules as clarified by the Establishment Division vide O.M. No.8/4/2018-E-2 dated 06-06-2022.

(**Arslan Nisar**)
Admin Officer”

As the Memorandum in question dated 15.12.2015 has already been declared illegal by the Hon'ble Supreme Court of Pakistan, as such under Article 189 of the Constitution of the Islamic Republic of Pakistan, compliance of the decisions rendered by the Hon'ble Apex Court is mandatory for all the organs of the state. Reliance in this regard is placed on the cases cited as Muhammad Sharif Vs. Settlement Commissioner and others (2007 SCMR 707), Iffat Jabeen Vs. District Education Officer (M.E.E), Lahore and another (2011 SCMR 437) and Dr. Iqrar Ahmad Khan Vs. Dr. Muhammad Ashraf and others (2021 SCMR 1509). Thus, the application of the appellant for her reinstatement was malafidely and illegally declined by the respondents in contemptuous manner.

7. In the aforesaid circumstances, it can safely be held that the termination order dated 30.09.2021 of the appellant on the ground of re-marriage was arbitrarily issued by the respondent-department in violation of the principles of Shariah, Constitution as well as supra dictum of the Hon'ble Supreme Court of Pakistan, as such same is nullity in the eyes of law and liable to be set aside.

8. For what has been discussed above, instant appeal is allowed, the order dated 22.11.2022 passed by the learned Single Judge in Chamber is set aside and consequently the Writ Petition [No.73497/2022] filed by the appellant is accepted and the orders of her termination dated 30.09.2021 as well as decline of request for reinstatement dated 21.06.2022 are also set at naught accordingly.

(Ahmad Nadeem Arshad)
Judge

(Ch. Muhammad Iqbal)
Judge

Approved for reporting.

Judge

Judge