

IN THE SUPREME COURT OF PAKISTAN
(APPELLATE JURISDICTION)

PRESENT:

MR. JUSTICE MUSHIR ALAM
MR. JUSTICE FAISAL ARAB
MR. JUSTICE MUNIB AKHTAR

CIVIL APPEAL NO. 1189 OF 2017

(On appeal against the judgment dated 13.03.2017
passed by the High Court of Sindh, Karachi in C.P.
No. D-4291/2015)

Syeda Sakina Riaz

... Appellant

VERSUS

Federation of Pakistan and another

... Respondents

For the Appellant: Syed Fiaz Ahmed Shah, ASC

For the Respondent (1): Mr. Sohail Mahmood, DAG

For the Respondent (2): Mr. Shoaib M. Ashraf, ASC

Date of Hearing: 22.05.2018

JUDGMENT

FAISAL ARAB, J.- When appellant's late husband died in a fatal car accident on 11.01.2012 he was working as an Assistant Controller in BPS-18 in the examination department of the University of Karachi. By then he had served the university only for about five years so his tenure in office was well short of the minimum qualifying service which would have made her widow eligible to claim family pension under the University of Karachi Service Pension Statute, 1972. To seek family pension, the appellant sought recourse to the Prime Minister's Family Assistance Package notification No.7/40/2005-E-2 dated 13.06.2006 which inter alia granted a lump-sum payment as well

as enhanced pensionary benefits to the families of the federal government employees who die while in service. This package was made applicable to the families of the university's employees as well by virtue of its adoption by the syndicate of the university on 15.01.2008. The appellant was though paid the lump-sum grant of Rs.800,000/- as provided in the package but the claim for grant of family pension was denied for the reason that her husband had not put in the minimum qualifying service of ten years as envisaged under Section 26 of the University of Karachi Service Pension Statute, 1972.

2. Having failed to seek family pension on the basis of the family assistance package, the appellant invoked the constitutional jurisdiction of the High Court of Sindh seeking directions to the University to grant her family pension. Such relief was not only sought under the family assistance package that was in force at the time of her husband's death but in terms of family assistance package that was subsequently revised by the federal government on 20.10.2014. The university contested her claim primarily on the ground that her husband had not put in the minimum of ten year qualifying service to make his service pensionable so she was not entitled to claim any concession towards pension under the family assistance package. The appellant's petition was dismissed. The reasons that prevailed with the High Court in denying the relief to the appellant was that her petition was not maintainable as the university's pension law was not statutory and that her deceased husband had not put in minimum qualifying service as envisaged

under Section 26 of University of Karachi Service Pension Statute, 1972 in order to become entitled for family pension.

3. Right to claim pension is a right connected with the tenure of service which under the applicable pension rules has to be served by an employee in order to make him eligible for pension. Where a deceased employee has put in pensionable service, only then his family becomes entitled to pension. So in order to claim pension, a minimum qualifying service is the threshold that has to be first crossed which would then entitle an employee or his family after his death to claim pension. The right to claim pension cannot be equated with an insurance policy that becomes enforceable due to an event that occurs even before its maturity date as right to claim pension is always attached to a specified term of office which an employee has to put in i.e. it is a benefit which is earned by an employee as a result of giving service to an employer for a specified number of years. Employees do die before completing qualifying length of service. It has been happening in the past and is likely to happen in the future. Unfortunately, those who do not cross the threshold of minimum qualifying service, their service falls short of being regarded as pensionable service. It's very disappointing for the families of the employees who die while in service without completing minimum qualifying service. Nevertheless, this principle of completing minimum qualifying service is ingrained in every law that grants pension to the employees or after their death to their families. Thus this principle is based on '*quid pro quo*', which mandates that an employee must put in minimum

qualifying years of service before he becomes entitled to claim pensionary benefits.

4. The above discussed principle is clearly depicted in the provisions of the University of Karachi Service Pension Statute, 1972 which provides four categories or classes of pension. These have been described as (i) Superannuation Pension which becomes payable on attaining 60 years of age; (ii) Retiring Pension, where an employee opts to retire after putting in 25 years qualifying service or such less time as has been prescribed for any special class of employees or is compulsorily retired by the authority competent to remove him from service; (iii) Compensation Pension which is granted to an employee on account of abolition of his permanent post or on account of change in the nature of duties of his post and who has not opted to accept another post and (iv) Invalid Pension where an employee on account of bodily or mental infirmity has been permanently incapacitated from rendering further service. The death of an employee before his retirement can be equated with this last category i.e. Invalid Pension. For all these four categories of pension, the condition precedent is rendition of minimum length of service. It is for this reason that Section 26 of the University of Karachi Service Pension Statute, 1972 proceeds by stating *"After a qualifying service of not less than 10 years, full superannuation, retiring, invalid or compensation pension may be granted....."* Therefore, rendering of qualifying service is a prerequisite for claiming pension. Unless an employee of the university renders minimum qualifying service his family upon his death cannot become entitled to claim family pension or any other

privilege that is attached with pensionary rights. The family assistance package, in so far as it relates to pension, has only enhanced the quantum of family pension that is payable under the law of pension. It cannot be read to convert a non-pensionable service into a pensionable service.

5. In the present case admittedly the late husband of the appellant had put in only about five years of service, well short of rendering qualifying length of service which only would have entitled his widow to claim any concession granted towards the quantum of pension. As stated earlier, only where a person renders qualifying service under pension rules that he becomes eligible for any further concession that may be granted towards pension from time to time. Thus the University's family assistance package, in so far as it relates to enhanced pensionary benefits, was payable to the family of such deceased employee who had rendered minimum qualifying service in his lifetime under the provisions of the University of Karachi Service Pension Statute, 1972. This appeal, therefore, fails, which is hereby dismissed.

JUDGE

JUDGE

JUDGE

Islamabad, the
Announced on **01.06.2018** by Hon'ble Mr. Justice Faisal Arab

Approved For Reporting
Khurram