

JUDGMENT SHEET
PESHAWAR HIGH COURT, MINGORA BENCH
(DAR-UL-QAZA), SWAT
(*Judicial Department*)

W.P No. 205-M/2024

Mst. Tahira Ihsan

— *Versus.* —

District Education Officer (Male) Swat and others

Date of hearing: **16.10.2025**

PRESENT:

Mr. Sabir Shah, ASC for petitioner.

Mr. Rahimullah Chitrali, Assistant A.G. for respondents.

JUDGMENT

QAZI JAWAD EHSANULLAH, J.- This petition under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973, has been instituted by petitioner Mst. Tahira Ihsan widow of Ihsanur Rahman, seeking the following reliefs:

“It is therefore very humbly prayed that, on acceptance of this writ petition, an appropriate writ may kindly be issued to Respondents;

- a) To prepare the family pension case of the petitioner.
- b) To allow and extend all perks, emoluments and benefits extendable to the families of employees who died during service.

Any other relief not specifically prayed for but this august court deems proper may also be granted.”

2. The case of the petitioner, as delineated in the writ petition, is that her husband Ihsanur Rahman was appointed as a Theology Teacher (T.T.) in the respondent department vide order dated 19.02.1983 and served therein

until 04.05.2009. As reflected in his Service Book¹, he was promoted to the post of Arabic Teacher (A.T.) vide Order No. 19980-20094 dated 26.10.1983. During the period of insurgency, the petitioner's husband was statedly apprehended by security forces from his residence in June 2009, at a time when he was alone at home, as the rest of the family had relocated to Peshawar as Internally Displaced Persons (IDPs). Upon their return, they confirmed his custody with Army personnel, following which his dead body was handed over to the family by the local police on 17.11.2009. The petitioner repeatedly approached the office of the District Education Officer (Male), Swat (respondent No.1), for commutation of service, preparation of the family pension case, and release of other post-retirement benefits of her deceased husband, but to no avail. She submitted an application dated 28.09.2018 (Diary No. 3970 dated 16.10.2018) which was forwarded to Peshawar, and later another application dated 07.03.2024, both of which elicited no favourable response. Instead, respondent No.1, vide letter dated 13.03.2024, categorically denied her claim to pensionary benefits on the ground that her husband had been removed from service. The petitioner asserts that she was never formally informed of any such removal nor furnished with any official document specifying the reasons thereof. It was only

¹ Page 14 of the Writ Petition

through the personal efforts of her son, who obtained an unattested copy of the Service Book, that she came to learn of the alleged posthumous removal of her husband from service. In these circumstances, the petitioner has invoked the constitutional jurisdiction of this Court seeking redressal of her grievance.

3. The respondents were put on notice who, in their official comments, have not disputed that the petitioner's husband was an employee of the respondent department, nor have they controverted the fact of his death on 17.11.2009. Their stance, however, is that the deceased was allegedly involved in terrorist activities, for which departmental proceedings were initiated culminating in his removal from service vide Order No. 3646-54 dated 20.02.2010. The respondents have further relied upon internal correspondence concerning alleged involvement of certain officials in anti-state activities, particularly letter No. 1/7-SO(L400)/HD/09 dated 15.12.2009, through which the Commissioner, Malakand Division, was directed to take action under the Removal from Service (Special Powers) Ordinance, 2000. Reference was also made to letter No. SO(F)/HD/12-19/Swat/2009 dated 12.12.2009, forwarding minutes of a meeting held on 11.12.2009 in the Office of the Additional Chief Secretary (Home), Peshawar, regarding the said anti-state activities by government officials. On the basis of this correspondence, the

respondents maintain that the petitioner's husband was removed from service under the aforesaid Ordinance.

4. We have heard the learned counsel for the petitioner as well as the learned Assistant Advocate General representing the respondents. The petitioner seeks enforcement of her rightful entitlement to family pension and other ancillary benefits accruing from the death of her husband, who was admittedly serving as a government employee at the relevant time. It is not in dispute that the petitioner's husband was appointed as Theology Teacher (T.T.) on 19.02.1983 and remained in continuous service until his demise on 17.11.2009. It is also an admitted position on record that he was purportedly removed from service vide Order No. 3646-54 dated 20.02.2010 which order was passed after several months after his death. This sequence of events clearly shows that at the time of his death, the petitioner's husband was still in service and that any departmental proceedings or removal orders were initiated and concluded posthumously. The correspondence relied upon by the official respondents, including communications regarding alleged anti-state activities of certain government officials, also pertains to a period subsequent to his death. Such proceedings, conducted against a deceased employee, are inherently without legal effect and contrary to settled principles of service law, as no punitive or disciplinary action can lawfully be taken against

a civil servant after his demise to the detriment of the benefits otherwise accruing to his legal heirs.

5. The respondents have opposed the petitioner's claim for family pension primarily on the ground that her late husband was allegedly involved in anti-State activities and was declared an absconder. However, no specific particulars of such alleged activities have been disclosed, nor has any credible material been placed on record to substantiate this assertion. The respondents have merely relied upon a general list of government officials purportedly involved in such activities, wherein the petitioner's husband appears at Serial No. 128 with the remarks: "*He is a teacher in GMS Dangram, supported Taliban, and presently absconding.*" In legal parlance, an absconder is a person who wilfully conceals himself or evades arrest to avoid legal proceedings or the execution of a warrant issued by a competent court. The respondents have failed to produce any FIR, charge-sheet, or any judicial proceedings to indicate that the petitioner's husband was ever nominated or proceeded against in any criminal case, much less declared an absconder by a court of law. No report from the security forces has been furnished to corroborate the allegation of his involvement in anti-State activities or his supposed absconce. The respondents have also annexed minutes of a meeting held on 11.12.2009 under the chairmanship of the Additional

Chief Secretary, Home Department, N.W.F.P., wherein the following decision was recorded:

“2. All the absconding government officials on the list shall be prosecuted against Anti-Terrorist Act. The retired officials’ pension shall be stopped immediately. And enquiry shall be initiated against them as well under ATA (amendment) Ordinance, 2009”

The above decision was subsequently conveyed to the Commissioners of various divisions, including Malakand, through letter No. 1/7-SO(L400)/HD/09 dated 15.12.2009², directing initiation of action against the mentioned officials under the Removal from Service (Special Powers) Ordinance, 2000. The said Ordinance, however, prescribes a detailed and mandatory procedure for initiating disciplinary action, including issuance of a show-cause notice, framing of specific charges, holding of a proper inquiry, and affording a reasonable opportunity of defence to the accused employee, as envisaged in Paragraph 5 thereof. In the present case, the record is conspicuously silent on compliance with any of these statutory requirements. No show-cause notice was ever served upon the petitioner’s husband, no inquiry proceedings were conducted, and no inquiry report exists to indicate how or on what evidence he was found guilty of “supporting the Taliban.” The respondents appear to have removed him from service summarily and posthumously, solely on

² Page 08 of comments

unverified allegations. Such an arbitrary action, unsupported by due process or any legally admissible evidence, is devoid of lawful authority and violative of fundamental principles of natural justice. It follows, therefore, that the respondents have wholly failed to establish that the petitioner's husband was dealt with in accordance with law during his lifetime.

6. It is an admitted and undeniable fact that all departmental proceedings purportedly initiated against the petitioner's husband were conducted at a time when he had already passed away on 17.11.2009. Such posthumous proceedings are inherently void and without legal consequence. It is a well-settled principle of law that while the terms and conditions of service of a civil servant come to an end upon his death, the pecuniary and pensionary benefits which accrue to his legal heirs as a result of his service do not abate. These benefits become vested rights of the legal heirs, and no adverse action can be taken to deprive them of such entitlements merely because disciplinary proceedings were pending or contemplated against the deceased employee at the time of his death. The principle finds authoritative support in the judgment of the Supreme Court of Pakistan in *Chief Secretary, Government of Punjab and others v. Ch. Iftikhar Ahmad*³, wherein the Court, while dismissing the Government's petition against

³ 2013 SCMR 392

the grant of pensionary benefits to the legal heirs of a deceased civil servant, observed as follows:

“4..... The question, therefore, is whether upon death of Mst. Akhtar Tufail, the petitioner, husband can claim her pensionary benefits. Though other terms and conditions of the services of a civil servant may abate upon his death but not peculiar benefits to which the legal heirs would become entitled. In this view of the matter, the petition has no merits, which is dismissed and leave declined.”

Similarly, in Mst. S. Yasmin v. Pakistan Railways through General Manager and others⁴, the learned Lahore High Court categorically held that no penalty can be imposed upon a civil servant who dies during the pendency of disciplinary proceedings. The relevant extract of the judgment reads as under:

“12. In the attending circumstances, this Court is of the view that with the demise of the husband of the petitioner, disciplinary proceedings initiated against him stood abated and the respondent department was divested of the jurisdiction from imposing any penalty on its deceased employee. It is also clear from the tenor of order of imposition of penalty that respondents were conscious of the fact that disciplinary proceedings have abated and they could not impose the penalty, however, they deliberately made the said order/penalty applicable from a retrospective date (06.08.2002) for which no explanation has been given. They lost sight of the fact that once the employee against whom disciplinary proceedings were initiated had expired and with his demise he no more remains to be in service, therefore, against whom they will implement the penalty so awarded? Moreover, there is nothing on the record to show that the said order was ever communicated, which further fortifies the view that with death proceedings stood abated.”

⁴ 2017 PLC (C.S.) 1

The above judicial pronouncements clearly enunciate that once a civil servant passes away, all disciplinary or adverse proceedings against him automatically abate, and any subsequent action taken to his detriment or to the prejudice of his heirs is legally unsustainable. Consequently, the removal of the petitioner's husband from service after his death, being in violation of these settled principles, is without lawful authority and of no legal effect, and cannot extinguish or curtail the vested right of the petitioner and her family to receive family pension and other service-related benefits.

7. The learned Assistant Advocate General has also laid considerable emphasis on the bar contained in Article 212 of the Constitution, arguing that the present matter relates to the terms and conditions of service of a civil servant, and that the petitioner should have approached the appropriate forum instead of invoking the constitutional jurisdiction of this Court. This contention, however, is misconceived and devoid of substance. The law on the subject is quite explicit. The bar under Article 212 applies only to matters concerning the terms and conditions of service of a civil servant as defined in clause (a) of Section 2 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974, which, for facility of reference, is reproduced below:

- (a) "Civil Servant" means a person who is or has been a civil servant within the meaning of the Khyber Pakhtunkhwa Civil Servants Act, 1973 (Khyber Pakhtunkhwa Act No.

XVIII of 1973), but does not include a civil servant covered by the Khyber Pakhtunkhwa Subordinate Judiciary Service Tribunal Act, 1991;

Further, according to clause (b) of Section 2(1) of the Khyber Pakhtunkhwa Civil Servants Act, 1973:

“Civil servant” means a person who is a member of a civil service of the Province, or who holds a civil post in connection with the affairs of the Province, but does not include

- (i) a person who is on deputation to the Province from the Federation or any other Province or other authority;
- (ii) a person who is employed on contract or on work-charged basis, or who is paid from contingencies; or
- (iii) a person who is a ‘worker’ or ‘workman’ as defined in the Factories Act, 1934 (Act XXV of 1934), or the Workmen’s Compensation Act, 1923 (Act VIII of 1923).”

The present petitioner does not fall within the ambit of the above definition, as she herself has never been a civil servant. Her grievance does not pertain to the terms and conditions of service of her own employment but rather concerns her right, as a widow and legal heir, to the pensionary and post-service benefits lawfully earned by her deceased husband who died during service. In this context, it is well recognized that claims relating to pension, gratuity, or family benefits of a deceased government employee are independent civil rights accruing to the legal heirs, and do not amount to a service dispute within the meaning of Article 212. Accordingly, the constitutional bar

contained in Article 212 of the Constitution is not attracted to the case of the petitioner, and this Court is fully competent to exercise its jurisdiction under Article 199 to adjudicate upon and redress her grievance.

8. The learned Assistant Advocate General has further argued that the petitioner has invoked the constitutional jurisdiction of this Court after an inordinate delay of nearly one and a half decades, and thus her claim for pensionary benefits is barred by *laches*. This contention, however, is misconceived and untenable in law. It is a settled proposition, consistently upheld by the superior Courts, that a claim relating to pensionary benefits constitutes a recurring cause of action which continues to arise when the entitled person is deprived of such benefits⁵. Consequently, the bar of limitation or laches does not apply to matters concerning pension, gratuity, or other post-retirement entitlements of a government servant or his legal heirs. The principle rests on the rationale that pension is not a bounty or concession but a vested right flowing from the length of service rendered by a civil servant, and its denial gives rise to a continuous and recurring grievance. Therefore, even if the petitioner approached this Court after the passage of time, her claim remains maintainable, as each successive non-payment of pension constitutes a fresh

⁵ *Abdul Jabbar and others V. General Manager (Personnel) Pakistan Railways (2018 SCMR 64)* and *Bahadar Khan and others V. Federation of Pakistan through Secretary M/O Finance, Islamabad and others (2017 SCMR 2066)*

cause of action. Hence, the objection raised by the learned Assistant A.G. regarding laches is devoid of force and is accordingly repelled.

9. The record reflects that the petitioner's husband had rendered nearly twenty-seven years of unblemished service in the respondent department, discharging his duties with dedication until his tragic demise. His death not only inflicted an irreparable personal loss upon his family but also extinguished their immediate source of livelihood. Instead of extending compassion and fulfilling the lawful obligations owed to the bereaved family, the respondents unjustifiably deprived them of their statutory entitlement to pensionary and post-service benefits, thereby compounding their suffering. It is evident from the available material that the petitioner's husband was never proceeded against in accordance with law during his lifetime, nor were any disciplinary proceedings validly concluded in the manner prescribed under the Removal from Service (Special Powers) Ordinance, 2000. The so-called removal from service, having been effected posthumously and without observance of due process, is legally null and void. Consequently, the action of the respondents in withholding family pension and allied benefits from the petitioner and other legal heirs stands unsupported by any statutory provision, rule or administrative justification. Such deprivation not only

violates the express provisions of service law but also offends against the principles of fairness, justice and good governance. Pension is a vested right, earned by long and faithful service, and is meant to ensure financial security to the family of a deceased government servant. The conduct of the respondents in denying these lawful dues is thus not only arbitrary and oppressive but also contrary to the settled norms, law and procedural safeguards governing the rights of civil servants and their families.

10. In view of the foregoing discussion, the petition is hereby admitted and allowed. Respondent No.1 is directed to forthwith prepare and process the family pension case of the petitioner, relating to the service of her late husband, and to ensure release of all admissible perks, emoluments and ancillary benefits available under the law to the families of government employees who die during service. The entire exercise shall be completed expeditiously, preferably within a period of sixty (60) days from the receipt of this order. Compliance report shall thereafter be submitted to the Additional Registrar of this Court for perusal and necessary record.

Announced
Dt:16.10.2025

Sd/-
JUDGE

Sd/-
JUDGE