

ORDER SHEET.

IN THE ISLAMABAD HIGH COURT, ISLAMABAD.
JUDICIAL DEPARTMENT.

Writ Petition No.1110/2019

Qadir Baksh

versus

Federation of Pakistan & 3 others.

S. No. of order/ proceedings	Date of order/ Proceedings	Order with signature of Judge and that of parties or counsel where necessary.
	26.02.2020	Mr. Haider Ali, Advocate for petitioner. Ms. Ruqia Samee, AAG. Mr. Nadeem Arshad, S.O., Establishment Division.

Vide my detailed judgment of even date passed in
W.P. No.1104/2019 (Parveen Akhtar v. Federation of Pakistan & 3 others), the instant writ petition is hereby **ALLOWED**.

(MOHSIN AKHTAR KAKANI)
JUDGE

Khalid Z.

JUDGMENT SHEET
ISLAMABAD HIGH COURT, ISLAMABAD,
JUDICIAL DEPARTMENT

Writ Petition No.1104/2019

Parveen Akhtar v. Federation of Pakistan & 3 others

Writ Petition No.1106/2019

Balqees Begum v. Federation of Pakistan & 3 others

Writ Petition No.1107/2019

Mst. Samia Bibi v. Federation of Pakistan & 3 others

Writ Petition No.1108/2019

Javeria Kausar v. Federation of Pakistan & 3 others

Writ Petition No.1110/2019

Qadir Baksh v. Federation of Pakistan & 3 others

Writ Petition No.1829/2019

Muhammad Yasir v. Allama Iqbal Open University & 2 others

Writ Petition No.2431/2019

Nazir Atta Shah v. Federation of Pakistan & 4 others

and

Writ Petition No.4448/2019

Naheed Akhtar v. Federation of Pakistan & 3 others

Petitioners by: Mr. Haider Ali, Advocate.
Mr. Muhammad Maqbool Khattak, Advocate for
Petitioner in W.P. No.1829/2019.

Respondents by: Ms. Ruqia Samee, AAG.
Nadeem Arshad, S.O., Establishment Division.
Hafiz S.A. Rehman and Sh. Rizwan Nawaz,
Advocates for Respondent/ Allama Iqbal Open
University.
Mr. Tajammal Hussain, Advocate for
Respondent/ Ministry of Railways.

Date of Decision: 26.02.2020.

MOHSIN AKHTAR KAYANI, J: Through this single judgment, I intend to decide the captioned writ petitions for involving similar facts and question of law.

2. The petitioners through their respective writ petitions seek issuance of direction to the respondents for provision of financial assistance under the Prime

Minister Assistance Package, 2014 passed by the Cabinet Secretariat, Establishment Division, Islamabad vide O.M. dated 20.10.2014.

3. Brief facts referred in the captioned W.P. No.1104/2019 (Parveen Akhtar vs. FOP, etc.) are that the petitioner's husband namely Aftakhar Ahmad while serving as Skilled Fitter with Ministry of Railways died on 18.01.2015 and accordingly as per prevailing Prime Minister Assistance Package of 2014, the case of petitioner was put up before the concerned authorities, but the same was not processed for holding it in abeyance on account of a revised Prime Minister Assistance Package of 2015, and as such, the petitioner was given the package of Prime Minister Assistance Package, 2006 despite the fact that she was entitled for the Package of 2014. Hence, the instant writ petition.

4. Brief facts referred in the captioned W.P. No. 1106/2019 (Balqees Begum vs. FOP, etc.) are that petitioner's husband namely Khadim Hussain while serving as Skilled Fitter with the Ministry of Railway died on 02.03.2014 due to a natural death and accordingly the case of the petitioner was put up before the concerned authorities under the prevailing Prime Minister Assistance Package, 2014, but the same was not proceeded until a revised package in the name of Prime Minister Assistance Package, 2015 was introduced by the Federal Government, whereby the Prime Minister Assistance Package, 2014 was held in abeyance and petitioner's case was proceed in accordance with the Prime Minister Assistance Package, 2006. Hence, the captioned writ petition.

5. Brief facts referred in the captioned W.P. No.1108/2019 (Javeria Kausar vs. FOP, etc.) are that petitioner is the widow of deceased Qaisar Mehmood, who was serving as Sorter with the Pakistan Post Office and died a natural death on 22.12.2014. At the relevant, the Prime Minister Assistance Package, 2014 was prevailing, but the petitioner's case was not decided in accordance with Prime

Minister Assistance Package, 2014, rather the same was proceed as per Prime Minister Assistance Package, 2006 on account of a revised package introduced by the Federal Government in the name of Prime Minister Assistance Package, 2015, which held in abeyance the earlier package of 2014. Hence, the captioned writ petition.

6. Brief facts referred in the captioned W.P. No.1110/2019 (Qadir Baksh vs. FOP, etc.) are that petitioner's son namely Ghulam Muhammad while serving as Gunman with the Ministry of Railways died a natural death on 13.03.2014 and as per the prevailing package at the relevant time i.e. Prime Minister Assistance Package, 2014, the petitioner's case was initiated, however the same was not decided on account of holding the said Prime Minister Assistance Package, 2014 in abeyance due to introduction of a revised package in the name of Prime Minister Assistance Package, 2015, whereafter the case of petitioner was decided as per Prime Minister Assistance Package, 2006 despite the fact that petitioner's case fall within the interregnum period of Prime Minister Assistance Package, 2014 and Prime Minister Assistance Package, 2015. Hence, the instant writ petition.

7. Brief facts referred in the captioned W.P. No.1829/2019 (Muhammad Yasir vs. AIQU, etc.) are that petitioner's father namely Muhammad Qasim while serving as LDC with Allama Iqbal Open University on Daily Wages Basis died on 17.01.2019 and the petitioner being real son of the deceased employee applied for employment/recruitment together with monetary benefits as per Prime Minister Assistance Package, 2017, but no such benefits of Prime Minister Assistance Package, 2017 have been extended to the petitioner. Hence, the captioned writ petition.

8. Brief facts referred in the captioned W.P. No.2431/2019 (Nazir Atta Shah vs. FOP, etc.), are that the petitioner has prayed for issuance of direction to the respondents for implementation of Prime Minister Assistance Package in accordance with OM No.8/10/2013 E.2/PT, dated 02.10.2014 with the contention that the petitioner is the widow of Ata Ullah Shah, who was serving as Chief System Analyst with Respondents No.2, 4 & 6, who died in service on 18.03.2014 due to natural death and petitioner being widow of the deceased employee is entitled to get benefit of Prime Minister Assistance Package, 2014, but due to budgetary constraints of the respondent department the financial benefits could not be extended.

9. Brief facts referred in the captioned in W.P. No 1107/2019 (Mst. Samia Bibi vs. FOP, etc.), are that the petitioner is claiming the benefit of Prime Minister Assistance Package on behalf of her deceased father Muhammad Rashid, who was serving as Constable with I.G. of Police, Islamabad and died on 26.12.2014 due to natural death and after the death of Muhammad Rashid, his widow namely Shireen Akhtar also died on 29.08.2018, leaving behind the legal heirs including the petitioner, to whom the relief of Prime Minister Assistance Package has not yet been cleared due to non-availability of funds by the respondent department.

10. Brief facts referred in the captioned in W.P. No.4448/2019 (Naheed Akhtar v. FOP, etc.) are that the petitioner i.e. sister of Rukhsana Mushtaq claims that her sister Rukhsana Mustahaq, who was working under the control of General Headquarters in BPS-14, died on 18.10.2014, and she is entitled for Prime Minister Assistance Package of 2014, but the funds were not arranged by the respondent department.

11. Learned counsel for petitioners in WPs No.1104, 1106, 1107, 1108, 1110, 2431 & 4448 of 2019 contend that the respondent authorities while deciding the case of petitioners have ignored the interregnum period of the two packages i.e. Prime Minister Assistance Package, 2014 and Prime Minister Assistance Package, 2015, in which the cases of petitioners fall; that several cases of families of deceased employees falling in the said interregnum period have been extended benefit of Prime Minister Assistance Package, 2014, but the petitioners have deprived of such benefits, rather their cases have unlawfully been dealt with in accordance with Prime Minister Assistance Package, 2006; that this Hon'ble Court has also settled this question in abundant writ petitions while granting relief to such families of deceased employees in accordance with the Prime Minister Assistance Package, 2014.

12. Likewise, learned counsel for petitioner in W.P. No.1829/2019 contends that the act of respondents (AIOU) depriving the petitioner for appointment together with other monetary benefits as per Prime Minister Assistance Package, 2017 is against the law and natural justice as the petitioner fulfills the minimum criteria for appointment against a suitable post; that the apex Court as well as superior Courts held in various judgments that dependent/legal heir of a deceased Work Charge Employee is entitled of all financial benefits but the petitioner has been deprived of such benefits by the respondent department, which act is a sheer violation of fundamental rights of petitioner.

13. Conversely, learned AAG along with Section Officer, Established Division and learned counsel for Ministry of Railways contended that legal heir of deceased employees have received the benefits as per Prime Minister Assistance Package and nothing is outstanding against the answering departments; that the O.M. dated 24.10.2014 notifying the Prime Minister Assistance Package, 2014 was

already held in abeyance by the then Prime Minister and as such, no legal right has accrued in favour of the petitioners; that the petitioners moved this Court by concealing the facts, rather tried to mislead the Court in order to get benefits of the Prime Minister Assistance Package to which they are not entitled, therefore, the captioned writ petitions may be dismissed.

14. In addition, learned counsel for AIOU while opposing the captioned W.P. No.1829/2019 contended that the same is not maintainable as the rules relating to the terms and conditions of services are non-statutory in nature; that constitutional jurisdiction is a discretionary jurisdiction and the same may not be exercised in favour of a person who has no legs to stand and is, therefore, liable to be dismissed; that only regular employees working in AIOU are entitled to draw the benefits of the Prime Minister Assistance Package, whereas petitioner's father had been working on Daily Wages Basis, therefore, petitioner's request for such monetary benefits was turned down for not being covered under the rules.

15. Likewise, the learned AAG along with DSP Legal in attendance contend that benefits of the Prime Minister Assistance Package, 2014, dated 20.10.2014, applicable to the employees of Islamabad Police Department will be released subject to fulfillment of codal formalities of law after receiving funds from the Finance Division.

16. Respondents No.1 and 2 i.e. Ministry of Defence and GHQ submitted their para-wise comments in W.P. No.4448/2019 and have acknowledged that the deceased being a civil servant died on 18.10.2014, but she was unmarried and under the law her father Mushtaq Ali Khan was the legal heir, in whose favour the amount had been forwarded vide letter dated 25.06.2019, but he could not claim some benefits due to his own death and the legal heirs of Mushtaq Ali Khan i.e. family members were directed to produce succession certificate from

competent court of law, whereafter the due payment will be released under the law.

17. Arguments heard, record perused.

18. Perusal of record reveals that the petitioners are claiming benefits of Prime Minister Assistance Package, 2014, notified vide O.M. dated 20.10.2014, on behalf of their deceased predecessors, who have been confirmed as civil servants and respondent departments have acknowledged the rights of deceased civil servants falling under the Prime Minister Assistance Package.

19. The case of Muhammad Yasir in W.P. No.1829/2019 is related to Allama Iqbal Open University, in which the deceased employee namely Muhammad Qasim while serving as LDC on Daily Wages basis died on 17.01.2019 and as such, the respondent University has adopted the Prime Minister Assistance Package, however as per the para-wise comments filed by the respondent University, the Prime Minister Assistance Package is applicable only to regular employees of the University and since the deceased Muhammad Qasim was serving on Daily Wages Basis, the package could not be applicable to him despite the fact that he was working w.e.f. 04.10.2004 as per the stance of the respondent University. I have gone through the para-wise comments and the Prime Minister Assistance Package, which deals with the employees without any distinction of permanent or temporary or daily wages basis. Similarly, the AIOU has also notified the Prime Minister Assistance Package through notification dated 19.07.2017 in restrictive manner, but no distinction has been referred that the adopted package by the AIOU is applicable to regular employees only, even such aspect has not been discussed in the Executive Council of the AIOU in its meeting, therefore, this aspect requires determination.

20. It is settled by different pronouncements of the superior Courts that a daily wager employee, who has performed work for 89 days with an artificial break created by the department, is considered to be regular employee and he could not be deprived of his rights. In such scenario, the Executive Council of the AIOU is directed to decide the case of Muhammad Yasir independently in the next Executive Council meeting with reasons, under intimation to this Court, as to why an employee working on daily wages and has performed his duties for more than 20 years in the respondent University could be discriminated to permanent employees, especially when he lost his life serving the respondent University and leaving his family to suffer thereafter on their own without any support from the respondent University, unlikely in case of family members of a permanent employee of the respondent University.

21. In view of above terms, the captioned W.P. No.1829/2019 (Muhammad Yasir v. Allama Iqbal Open University & 2 others) is hereby **DISPOSED OF.**

22. While considering the stance taken by the respondents in their para-wise comments as well as before this Court, which have been recorded in abovementioned paragraphs, this Court, vide order dated 17.10.2017, had earlier allowed a similar writ petition i.e. W.P. No.No.515/2017 along with 20 other writ petitions, and the said order was upheld by the Hon'ble Division Bench of this Court as well as by the apex Court and as such, the cases of petitioners fall within the purview of judgment rendered by this Court in abovementioned cases. However, at this stage, in majority of cases, the question of funds is involved and the matter is pending with the Finance Division, therefore, while considering memorandum dated 11.06.2018, the Cabinet Secretariat,

Establishment Division has settled the question of funds in the following manner. The extract of contents of said OM is reproduced as under:

GOVERNMENT OF PAKISTAN CABINET SECRETARIAT ESTABLISHMENT DIVISION *****	
No.8/13/2016 E-2	Islamabad, the 11th June, 2018
OFFICE MEMORANDUM	
Subject: <u>REVISION OF ASSISTANCE PACKAGE FOR THE FAMILIES OF GOVERNMENT EMPLOYEES WHO DIE IN SERVICE.</u>	
<p><i>The undersigned is directed to refer to the subject noted above and to say that the Prime Minister has been pleased to approve that the:</i></p> <p><i>"Claims arising during the period between 15.06.2013 and 09.02.2015, while the assistance package dated 20.10.2014 was in the field have to be processed in accordance with the law and rights created there under this package."</i></p> <p>2. <i>The cases of Assistance Package falling under the above stated can be submitted to Finance Division for consideration of funds provision through re-appropriation/supplementary grant through respective F.As.</i></p> <p>3. <i>All Ministries/Divisions are requested to ensure circulation of the above mentioned decisions to their attached departments and subordinate offices under their administrative control for implementation in letter and spirit.</i></p> <p style="text-align: right;">(Muhammad Ijaz Khan) Section Officer (E.2) Tele# 9103653</p> <p><i>All Secretaries Additional Secretaries Incharge, Ministries/Divisions. AG. CGA. AGPR. MAG, Islamabad/Rawalpindi.</i></p> <p>Copy to:</p> <p>i) <i>Deputy Secretary (Admin), Establishment Division, Islamabad.</i></p> <p>ii) <i>Deputy Secretary (CP-5), Establishment Division, Islamabad.</i></p> <p>iii) <i>All officers of the Establishment Division.</i></p>	

23. In view of preceding position, all the captioned writ petitions, except W.P. No.1829/2019, are hereby ALLOWED. The respective departments are

directed to get their funds arranged through re-appropriation under the Prime Minister Assistance Package of 2014 for payment to the legal heirs of deceased civil servants and in case of non-availability of funds with the departments concerned, the same may be arranged through supplementary grant as referred in O.M. dated 11.06.2018. The needful shall be done within the period of next three (03) months, under intimation to this Court. It is expected that the cases of the petitioners will be considered sympathetically on urgent basis.

(MOHSIN AKHTAR KAYANI)
JUDGE

Khalid Z.