

JUDGMENT SHEET.
ISLAMABAD HIGH COURT, ISLAMABAD,
JUDICIAL DEPARTMENT.

W.P No.191/2019.

Sajida Begum **Vs.** **Federation of Pakistan etc.**

Petitioner by: Mr. Muhammad Ramzan Khan,
Advocate.

Respondent No.1 & 2 by: Raja Muhammad Aftab Ahmed, AAG.
Mehmood Khan Lakho, S.O (Lit-V)
Establishment Division.

Respondent No.3 by: Mr. Muhammad Azam Hussain,
Advocate.

Date of Decision: **11.06.2019.**

MOHSIN AKHTAR KAYANI, J:- Through this writ petition, the petitioner has prayed for issuance of direction to the respondents for grant of gratuity, pension and other financial benefits under Prime Minister Assistance Package.

2. Learned counsel for the petitioner contends that son of the petitioner Imran Latif (late), ex-Head Constable had died during service on 10.02.2017 and he was unmarried; that the petitioner being mother applied for the benefits of Prime Minister Assistance Package as well as financial benefits, whereby she has been granted financial assistance amounting to Rs.9,00,000/- on 20.06.2017 but pension and gratuity have not been released by the respondent/department and the gratuity, which was prepared to be released to the petitioner has been revoked; that deceased son of the petitioner was four years old at the time of death of her husband and the petitioner married to Muhammad Hanif, who assisted the petitioner and other family members; that under O.M dated 23.10.1983 issued by Finance Division, the petitioner being mother is entitled for pensionary benefits of her son, who was unmarried at the time of his death, while he was in civil service.

3. Conversely, learned Attorney General contends that in O.M dated 23.10.1983, no pensionary benefits are permissible to the surviving mother unless

she submits reasonable proof that she was dependent on the deceased government servant.

4. I have heard the arguments and perused the record.

5. Perusal of the record reveals that Imran Latif (late) ex-Head Constable, IB Headquarters had died on 10.02.2017 leaving behind his real mother (petitioner) being the only surviving family member as the deceased was unmarried at the time of his death. Under the Prime Minister Assistance Package, the petitioner has been granted financial assistance amounting to Rs.9,00,000/-, however, pensionary benefits have not been released.

6. Keeping in view above background, I have gone through the relevant provisions of O.M dated 23.10.1983 referred by learned counsel for the parties, which are reproduced as under:-

2. (1) *The 'family' for the purpose of payment of death-cum-retirement gratuity will include the following relatives of the Government servant:-*

- (a) *wife or wives, in case of a male Government servant.*
- (b) *husband, in the case of a female Government servant.*
- (c) *children of the Government Servant.*
- (d) *widow or widows and children of a deceased son of the Government servant.*

3. *When the amount of gratuity has become payable to the family it shall be the duty of the Accounts Officer to make payment to the family according to the following procedure:-*

(1) *When the Government servant leaves a family;*

- (a) *the amount of gratuity or any part thereof to which the nomination relates shall become payable to his/her nominee or nominees in the proportion specified in the nomination.*
- (b) *if no nomination in favour of a member or members of a family subsists, or if a nomination relates only to apart of the amount of the gratuity, the whole amount of the gratuity or the part thereof to which the nomination does not relate, shall become payable to the members of his/her family in equal shares;*

Provided that no share shall be payable to---

- (i) *sons who have attained the age of 18 years.*
- (ii) *sons of a deceased son who have attained the age of 18 years;*
- (iii) *married daughters whose husbands are alive;*

- (iv) *married daughters of a deceased son whose husbands are alive;*

if there is any member of the family other than those specified in clause (i), (ii), (iii) and (iv) above.

Provided further that the widow or widows and the child or children of a deceased son shall receive between them in equal parts only the share which that son would have received if he had survived that Government servant and had been exempted from the operation of the first proviso.

- (2) *When the Government servant leaves no family, the amount of gratuity shall be payable to the following surviving relatives, if any, of the Government servant in equal shares:---*

- (a) *brothers below the age of 18 years;*
 (b) *unmarried and widow sisters;*
 (c) *father; and*
 (d) *mother.*

(4) *No gratuity will be payable by Government after the death of a Government servant if he/she does not leave a family as defined in para (2) of above to an eligible dependent relative or relatives specified in sub-para of paragraph above.*

5. (1) *Family for the purpose of payment of pension will be as defined in para 2(1) above. It will also include the Government servant's relatives mentioned in sub-para (2) of paragraph 3 above.*

- (2) (a) *A pension sanctioned under the Section will be allowed---*

(i) *to the widow of the deceased, if the deceased is a male Government servant or the husband, if the deceased is a female Government servant. If the Government servant had more than one wife, and the number of his surviving widows and children do not exceed four, the pension shall be divided equally among the surviving widows and children. If the number of surviving widows and children together is more than four, the pension shall be divided in the following manner, viz, each surviving widow shall get 1/4th of the pension and the balance (if any) shall be divided equally among the surviving children. For the purpose of this clause, the term "children" excludes sons above the age of 18 years and married daughters.*

(ii)

(iii)

(iv)

(v)

(vi)

(vii)

(viii)

- (b) *In the event of no pension being payable under rule (a) the pension*

- (i) *to the father;*
 (ii) *failing the father, to the mother;*

(iii) failing the father and the mother, to the eldest surviving brother below the age of 18;

(iv) failing (i) to (iii), to the eldest surviving, unmarried sister; if the eldest sister marries or dies, then the next eldest;

(v) failing (i) to (iv), to the eldest surviving widow sister.

(3) No pension will be payable under this Section---

(a) to a person mentioned in clause (b) of sub-para (2) of this para without production of a reasonable proof that such person was dependent on the deceased Government servant for support.

(b)

(c)

(d)

(e)

(4) ”

7. Keeping in view above background and the factual side argued by learned AAG, there is no denial that the petitioner is mother of deceased servant, who married to Muhammad Hanif after death of her husband and on this score alone, the respondents/department is heavily relying upon 3(a) of section 2 Family Pension of O.M dated 23.10.1983. In such situation, the onus is upon the petitioner/mother of the deceased employee to submit reasonable proof that she was dependent upon the deceased government servant at the time of his death. This aspect is based upon disputed facts and cannot be resolved in constitutional jurisdiction, which requires recording of evidence. As such it requires declaration from competent Court of law, therefore, without touching merits of the case, instant writ petition is **disposed of** with direction to the petitioner to approach competent Court of law for redressal of her grievance, if so, advised.

(MOHSIN AKHTAR KAYANI)
JUDGE

R. Anjam