

JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT,
ISLAMABAD

WRIT PETITION NO. 3098 OF 2020

MST. PARVEEN KHALID.

Vs.

PAKISTAN INSTITUTE OF MEDICAL SCIENCES (PIMS), ETC.

Petitioner by : **Mr. Abid Hussain Ranjha,**
Advocate.

Respondents by : **Sajid Raza Khan, Advocate.**
Syed Nazar Hussain Shah, AAG.
Mr. Shamsheer, Superintendent, PIMS.

Date of hearing : **08.03.2021.**

LUBNA SALEEM PERVEZ, J. Through instant petition, the petitioner [Mst. Parveen Khalid], assailed office order dated 13.10.2020, issued by Deputy Executive Director, Pakistan Institute of Medical Sciences (PIMS), whereby petitioner/Mst. Parveen Khalid (widow), Mst. Munawar Jan (mother) and Altaf Hussain (father) of deceased Khalid Pervaiz have been allowed to draw amount sanctioned, vide Prime Minister Assistance Package for families of deceased employees being legal heirs of the deceased as declared vide Succession Certificate dated 23.09.2020.

2. As per facts, late Khalid Pervaiz an employee of Pakistan Institute of Medical Sciences (PIMS), working as Ward Boy, died while in service on 11.07.2019. In accordance with revised Assistance Package for families of government employees, who die in service, announced vide Office Memorandum dated 04.12.2015 (*hereinafter referred to as PM Assistance Package*), the family of the deceased employees ranging between BPS 1 to 4 is entitled for a lump sum grant of Rs. 600,000/- and a grant of Rs. 2 million in lieu of plot. On the application of the legal heirs of the deceased Khalid Pervez, the learned Senior Civil Judge-III, East-Islamabad, issued Succession Certificate on 23.09.2020 in favour of petitioner (Perveen Khalid), mother (Munawar Jan) and father (Altaf Hussain) declaring them to be the legal heirs of the deceased. On the basis of this Certificate

Respondent No. 1 issued Office Order dated 13.10.2020, whereby all the three legal heirs of the deceased were allowed to draw the lump sum grant under PM Assistance Package. The petitioner, being aggrieved with the office order dated 13.10.2020, has assailed the same through instant writ petition on the ground that the lump sum grant announced vide PM Assistance Package, is not a *tarka* left behind by the deceased to be distributed amongst the legal heirs but a right of family of the deceased and in the present case, petitioner being an issueless spouse of the deceased is the only eligible legal heir entitled to receive the said grant as father and mother of deceased do not fall within the definition of “family” for the purpose of grant under PM Assistance Package.

3. Learned counsel for the petitioner submitted that the impugned Office Order dated 13.10.2020, is arbitrary without any legal justification against the intention of the government policy announced, vide PM Assistance Package for the families of the deceased employee expired during service; that the grant allowed in PM Assistance Package is not a *tarka* wherein the parents of the issueless deceased could be considered as sharer; that the Respondent Nos. 4 and 5/parents of the deceased are only entitled to receive share from the *tarka* amount in the National Bank of Pakistan left by deceased government employee at the time of his death to be distributed according to the ratio of shares fixed by the learned Civil Court vide Succession Certificate dated 23.09.2020; that the Respondent No.1 is misinterpreting the contents of the Succession Certificate; that the petitioner is the only family member of the deceased who is entitled to draw the lump sum grant under PM Assistance Package. In support, learned counsel relied on the clarification issued by Cabinet Secretariat, Establishment Division dated 25.09.2003 according to which only widow/widower and children of the deceased employee are entitled to claim the benefits of PM Assistance Package. He also relied upon judgments re: *Sher Ali v. Director General Pakistan Rangers* (PLD 2019 Lahore 474) and *Mst. Rabia Qavi v. Mst. Hina Qavi Khan* (PLD 2020 Sindh 263).

4. On the other hand, learned counsel for respondent Nos. 4 & 5 submitted that vide section 2(5) of the Benevolent Fund and Group Insurance Act, 1969, the parents of the deceased are included in the

definition of the “family” thus, are also entitled to receive the lump sum grant under the PM Assistance Package as the deceased died issueless and being legal heir of the deceased, vide succession certificate dated 23.09.2020, his parents have every right to receive their share in the amounts sanctioned, vide PM Assistance Package according to the sharing ratio. He relied on the judgments re: *Federal Government of Pakistan v. Public at Large* (1991 SCMR 731 Shariat Appellate Bench) and *Mst. Ameeran Khatoon v. Mst. Shamim Akhtar* (2005 SCMR 512).

5. Arguments heard. Record perused.

6. The controversy involved in the present petition is with regard to right to receive amount of grant under P.M. Assistance Package payable to the families of Government employees who die in service, in case where an employee dies issueless whether the widow of the deceased would be considered as only family entitled to receive the same or the grant would be treated as a ‘tarka’ distributable among the legal heirs of the deceased declared vide succession certificate issued by the Civil Court.

7. Prime Minister of Pakistan, vide Office Memorandum No. 7 / 40 / 2005-E-2, dated 13.06.2006, approved the Assistance Package for families of Government Employees who die in service which, inter alia, includes lump sum grant, pension, plot of land, etc. This Assistance Package has been revised from time to time. The revised PM package enforced at the time of the death of the deceased Khalid Pervaiz is dated 04.12.2015, according to which the family of said deceased is allowed to receive lump sum grant of Rs. 600,000/- and Rs. 2,000,000/- in lieu of allotment of plot. Respondent No. 1, vide office order dated 13.10.2020, has sanctioned the grant in the name of Mst. Parveen Khalid (widow/petitioner), Mst. Munwar Jan (mother/Respondent No. 4) and Mr. Altaf Hussain (father/Respondent No.5) as they have been determined as legal heirs of late Khalid Pervaiz, vide Succession Certificate dated 23.09.2020. The contention of the learned counsel for the petitioner is that the Assistance Package is a grant announced by Prime Minister for the family of deceased and according to the clarification issued by Cabinet Secretariat, Establishment Division, vide Office Memorandum dated 25.09.2020, only widow / widower and children of the deceased employee are entitled to claim the benefits under PM

Assistance Package, 2015. For reference, the said clarification is reproduced below:

OFFICE MEMORANDUM

*Subject: **CLARIFICATION REGARDING ENTITLEMENT OF ASSISTANCE PACKAGE FOR FAMILIES OF GOVERNMENT EMPLOYEES WHO DIE IN SERVICE.***

The undersigned is directed to refer to Ministry of Interior's O.M. No. 4/56/2011-Admn-II dated 31st August, 2020 on the subject noted above.

Establishment Division agrees with the opinion of Ministry of Interior and it is clarified that only widow/widower and children of the deceased employee are entitled to claim benefits under PMAP-2015. It is further informed that Pension will be paid as per governing rules of Pension whose custodian is Finance Division."

Plain reading of the above clarification shows that the widow of late Khalid Pervaiz being issueless is the sole beneficiary of the grant under PM Assistance Package dated 04.12.2015.

8. Learned counsel for the respondent challenged the above clarification dated 25.09.2020 and contended that the PM Assistance Package has been announced for the family of the government employee who dies during service and the family as per definition includes the parents of the deceased as well. He heavily relied on the judgment of Shariat Appellate Bench, passed in case of *Federal Government of Pakistan v. Public at Large* reported as (PLD 1991 SC 731) and referred the definition of the term 'family' vide section 2(5) of the Benevolent Fund and Group Insurance Act, 1969 (hereinafter referred to as Act, 1969), which is as under:-

"(5) "family" means;

- (a) *in the case of male employee, the wife or wives, and in the case of a female employee the husband of the employee;*
- (b) *the natural sons upto the age of twenty-one years, provided that they are not handicapped or mentally retarded; and*
- (c) *parents, minor brothers, unmarried, divorced or widowed daughters and sisters of the employee wholly dependent upon him."*

9. I have carefully gone through the above referred judgment relied upon by the learned counsel for the respondents. In this case, the Hon'ble Shariat Appellate Bench has interpreted the provisions of Benevolent Fund and

[illegible]

10. The Hon'ble Court, in the light of the concept of *tarka* under the Islamic law explained the provision of benevolent fund and held that the grant of such benevolent fund is paid to the family of the employee who dies while in service or after retirement but before the age of 65 years. Section 13 of the Benevolent Fund & Group Insurance Act 1969, has also been perused. According to which only those employees who are declared completely incapacitated mentally or physically and unable to perform duties and retired or removed from service for such reason are entitled to receive the grant from the fund under the Act 1969 during his lifetime. It has been noted that, vide sub-section (1) of section 13 of the Act 1969, prior to 4th day of September 1988, the family of that employee, who died in service or dies before attaining age of 65 years was entitled for grant and vide sub-section (2) only the spouse of the deceased employee who dies during service or after retirement but before the age of 70 years is held entitled for grant. Sub-section (3) & (4) have been subsequently added, vide Act No. IV of 2005 effective from 01.12.2003 which shows no change regarding the entitlement, however, it has been provided through *1st proviso* that if the deceased has no spouse then in that case the other family members shall be entitled to receive

benevolent grant from Benevolent Fund. The employee in no case can be said to be the owner of the grant from the benevolent fund and since, it is not payable to him during his lifetime (but subject to Section 13 of the Act) as held by the Hon'ble Appellate Shariat Bench the property (whether moveable or immoveable) which a person do not own or can claim it as a right during his life time then the same cannot be considered a *tarka* of the deceased employee.

11. Similar is the opinion of the Hon'ble Court regarding Group Insurance and the relevant observation is as under:-

12. The Hon'ble Shariat Appellate Bench proceeded to hold that the grant from the fund is a donation from the employer and as such reserves right to give this donation to the family member it considers entitled to receive the same. The law of Inheritance is not necessarily applicable on the donation from the employer as it is not a "Tarka". The relevant part is reproduced below:-

3. The first step is to identify the problem. This involves understanding the current situation and the goals that need to be achieved.

13. Thus, in the light of the opinion of the Hon'ble Shariat Appellate Bench, the fund and grants announced by the employer to be paid after the

death of employee during service to compensate the untimely death of the employee, is a prerogative and discretion of the employer to nominate the person from his family to receive such compensation.

14. The principle laid down by the Hon'ble Shariat Appellate Bench in *Federal Government of Pakistan v. Public-at-Large (PLD 1991 SC 731)* is on all force applicable to Prime Minister Assistance Package as it is a relief package announced with the intention to provide financial support to bereaved family in the shape of a grant according to the basic scales of the employee. The word "grant" has been defined by the Hon'ble Lahore High Court in case re: *Habib Bank Limited v. Service Fabrics Limited (2004 CLD 1117)* in the following words:-

"The main stay of his case is upon the meaning of the word "grant". The learned counsel states it to mean release and disbursement of finances but he has overlooked that the word "grant" means the giving, bestowing or forwarding of a privilege, right, interest, benefit, subsidy, exemption, concession, approval, sanction or permission."

15. In view of the judgments discussed above it is concluded that the PM Assistance Package being a special grant in the nature of death grant, as such, it has been restricted only for the families of those government employees, who unfortunately expire while in service which cannot even be claimed by the family members of the government employees who die after retirement on attaining the age of superannuation. The deceased government employee thus, in no way is the owner of this grant or can claim it as a right or demand this grant from the government/employer during his life time. Therefore, the grant under PM Assistance Package is held not to be a *tarka* to be distributed amongst legal heirs as inheritable property. Being a special compensatory package by the government, the right to nominate the beneficiary to receive this benefit from the family of the deceased is also held by Government and vide O.M. dated 25.09.2020, the issue has been resolved by clarifying that the widow/widower and children of the deceased have been held entitled to claim the benefits of the PM Assistance Package, 2015. Reliance in this regard is further placed on the following cases:

"Mst. Rabia Qavi v. Mst. Hina Qavi Khan (2020 PLD Sindh 263):

'Tarka', is a 'financial benefit' over and regarding which a deceased during his life time is not only authorized but also entitled to withdraw or get such financial benefits from the employer. All other 'financial

benefits' which yet to mature or the deceased cannot get it during his life time do not form part of a 'Tarka'.

Sher Ali v. Director General Pakistan Rangers (PLD 2019 Lahore 474):

4. In terms of the law enunciated in Federal Government of Pakistan v. Public-at-Large PLD 1991 SC 731, it is clear that only such benefits are inheritable that become receivable by the deceased during his lifetime, i.e. payable to employee before his death. And such service benefits, as given by an employer as grant/compensation, in lieu of death of an employee and made payable to a nominee or family - as defined under the relevant rules and regulations - such grant or compensation, by its very nature, is not heritable and cannot be treated as Tarka - estate of the deceased. In these circumstances, the service benefits claimed cannot be treated as heritable, being a grant/compensation accrued after the death of deceased employee. Reference is also made to an unreported judgment dated 28.01.2019 [announced on 07.02.2019] in Writ Petition No.4167 of 2012 in case of "Shahbaz Wali Khan v. Government of Pakistan Establishment Division, Regional Board Federal Employees.".

16. For what has been discussed above and in the light of above cited judgments of superior courts, I am of the view that the grant under PM Assistance Package, 2015 is not a *tarka* and the petitioner / widow of the deceased Khalid Pervaiz is the only beneficiary of the lump sum grant and the amount, in lieu of plot, as clarified vide O.M. dated 25.09.2020, and parents of the deceased government employee are not entitled for the same. The petition is **allowed**, accordingly.

(LUBNA SALEEM PERVEZ)
JUDGE

Announced in open Court on _____.

JUDGE

Approved for Reporting

Blue Slip added.

Adnan