

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

Present:

Mr. Justice Manzoor Ahmad Malik
Mr. Justice Syed Mansoor Ali Shah

C.P.883-L/2020 and C.P.1791-L/2020

(Against the judgment of Lahore High Court, Lahore dated 27.01.2020, passed in ICA No.50253/2019 and order dated 07.09.2020 passed in W.P. No.13125/2020)

The Province of Punjab through Secretary, Finance Department, Government of the Punjab, Lahore, etc. (In both cases)

.....Petitioner(s)

Versus

Kanwal Rashid (In CP 883-L/2020)
Mst. Mizna, etc. (In CP 179-L/2020)

.....Respondent(s)

For the petitioner(s): Mr. M. Shan Gull, Addl. A.G, Pb.
(In both cases) Rana Shamshad Khan, Addl. A.G.
 Jawad Yaqoob, Addl. A.G.
 Abdul Rauf, Deputy Secretary
 Nasir Mahmood, Law Officer

For the respondent(s): Rana Asad Ullah Khan, ASC
 (In CP 883-L/2020)
 N.R. (In C.P. 1791-L/2020)

Date of hearing: 09.02.2021

ORDER

Syed Mansoor Ali Shah, J.- The question of law before us is whether an unmarried daughter of deceased civil servant parents can draw the pension of both her parents simultaneously or instead, entitled to draw the pension of only one of her parents?

2. Brief facts of the case are that both the parents of the respondent were civil servants and entitled to pension under the law. On their passing away, pension of both the parents, formed part of the family pension and passed on to the respondent under the law. Being unmarried, the respondent was continuously drawing the family pension after the passing away of her parents till she was informed vide letter dated 10.08.2016 issued by the Accountant General, Punjab, that she could not draw the pension of

both the parents simultaneously and could only draw the pension of one parent. Thereafter vide notice dated 11.11.2016, the respondent was asked to deposit a sum of Rs.1,941,631/- into the Government treasury on account of the pension unduly received by her of one of her parent. The background and the basis for the issuance of the aforesaid letter and notice to the respondent was the clarification issued by the Finance Department, Government of the Punjab dated 11.09.2015 whereby Punjab Civil Services Pension Rules, 1963¹ ("**Rules**") were clarified.

3. We have heard the learned counsel for the parties and have examined the record, the law on the subject and the impugned judgments of both the benches of the High Court in detail. The right to pension of a civil servant is recognized under section 18 of the Punjab Civil Servants Act, 1974 ("**Act**") which provides as follows:

18. Pension and gratuity. – (1) On retirement from service, a civil servant shall be entitled to receive such pension or gratuity as may be prescribed.

(2) In the event of death of a civil servant, whether before or after retirement, his family shall be entitled to receive such pension, or gratuity, or both, as may be prescribed.

A civil servant after retirement and after his or her death, the family is entitled to receive his or her pension, as prescribed in the rules.² Under section 23, the Governor or any person authorized in this behalf shall make rules for carrying out the purposes of the Act. Rule 4.10 of the Punjab Civil Services Pension Rules, 1963 ("**Rules**")³ deals with "Family Pension" and provides that family pension in case of widow's death will be admissible to the dependent sons until they attain the age of 24 years or till they are gainfully employed,

¹ As amended till 22.07.1989

² Section 2(g).

³ As amended on 22.07.1989

which ever is earlier and to unmarried daughters till their marriage or they acquiring regular source of income which ever is earlier. Therefore, as per the Rule, an unmarried daughter is disentitled from drawing family pension *after marriage* or *on acquiring a regular source of income*. The entitlement under consideration is of Family Pension, which may comprise of pension from one parent or both the parents. The distinction between pension from one parent or both is not recognized under the Act or the Rules and is collectively referred to as Family Pension under the Rules. The son or the daughter of the deceased civil servants have a right to draw Family Pension unless they are disentitled due to the disqualification mentioned in the Rules. The disentitlement is based on the independent acts of the children or their age. Pension itself, however, cannot amount to be a disentitlement, as discussed and explained hereunder.

4. The Finance Department, Government of the Punjab interpreting the Rules issued a clarification dated 11.09.2015 to the effect if in case of *two pensions* (of both the parents) drawn by the unmarried daughter, one pension constitutes her regular income hence it disentitles her from drawing the other pension. As a result she is only entitled to one pension. The clarification issued by the Finance Department is as follows;

No.FD-SR-III-4-471/2014
GOVERNMENT OF THE PUNJAB
FINANCE DEPARTMENT
Dated Lahore the 11th September, 2015

Subject: **LIBERALIZATION OF PENSION RULES-CLARIFICATION.**

I am directed to refer to Para-1 of this Department's letter No.FD-SR-III-4-11/89 Dated 22nd July, 1989 and to state that a question has arisen as to whether an un-married daughter can draw family pension of her father and mother simultaneously. The matter has been examined and it is observed that a monthly family pension being received by a person is construed as regular

source of income. Therefore, such person is not entitled to receive another family pension.

Sd/-
(M. NAWAZ KHALID ARBI)
DEPUTY SECRETARY (SR)

5. The above clarification suffers from multiple constitutional and legal defects as discussed hereunder:

- (i) The Finance Department has no authority under the law to clarify, interpret, abridge or extend the right of pension provided under Section 18(2) of the Punjab Civil Servants Act, 1974 and further regulated by the Punjab Civil Services Pension Rules, 1963 promulgated by the Governor. The impugned clarification issued by the Finance Department dated 11.09.2015 has usurped the rule making power of the Governor by interpreting, clarifying and modifying Rule 4.10. Finance Department has also encroached upon the legislative power under section 18 of the Act which entitles the family of the deceased civil servant to pension in the manner prescribed;
- (ii) Without prejudice to the above, impugned clarification in the year 2015 cannot operate retrospectively and adversely affect the right to family pension that had accrued to the respondent on the death of her mother in the year 2006 and the family pension she has regularly drawn since then;
- (iii) We have noticed that in case of a son, he can draw the family pension (comprising of both the parents) till he attains the age of 24 or is gainfully employed. Before the son attains the age of 24 he is entitled to draw the family pension (comprising of both the parents) as one of the pension does not amount to being

“gainfully employed” in order to disentitle him of the second pension. So while the son can draw family pension of both the parents, the unmarried daughter is treated differently as one of the two pensions in her case is considered to be her regular source of income, disentitling her of the second pension. This is discriminatory and offensive to Article 25 of the Constitution and a gender insensitive act of the Finance Department;

- (v) “Acquiring a regular source of income” under the Rules means that the unmarried daughter on her own, irrespective of the source of pension, has acquired a regular source of income. The word “acquire” under the Black’s Law Dictionary⁴, supplied by the learned AAG means: “to gain by any means, usually by one’s own exertions; to obtain by search, endeavor, practice or purchase.” Acquire signifies gain by one’s own effort. Entitlement to family pension by virtue of the death of the parents does not constitute acquisition of a regular source of income. It is also not “regular” as the unmarried daughter is disentitled to receive family pension the minute she is married. Both these conditions must be met by her own self irrespective of the pension. She must acquire a regular income of her own expertise and efforts. The disqualification mentioned in the amendment brought about in the Rules, must be independent of the family pension and pension itself cannot constitute a ground for disqualification;
- (vi) The right to pension has a constitutional significance. It draws its strength from the right to life or the right to livelihood under Article 9 of

⁴ revised 4th edition. p.41.

the Constitution. It is important to appreciate that both the parents of the respondent(s) gave the best years of their lives to government service with the expectation to receive pension upon retirement and to leave a family pension for their children upon their death, subject to the lawful disentitlements under the Rules. Depriving the children of civil servants of their family pension on the basis of an unauthorized and unlawful clarification by the Finance Department, offends the right to dignity of the deceased civil servants who were assured under the law that they and their children will enjoy the security of pension upon retirement.

Reference to the Income Tax Ordinance, 2000 ("**Ordinance**") by the learned AAG is of little significance. Even if pension is considered to be an income under the Ordinance it is neither an income "acquired" by the respondent nor is it "regular" income as envisaged under the Rules.

6. In this background we see no reason to interfere in the well reasoned concurrent findings of the High Court. The pension of the respondent shall continue strictly in accordance with the Act and the Rules, while the impugned clarification dated 11.09.2015 is struck down as being illegal and unconstitutional. The respondent will, however, be disentitled from drawing pension, when she is married or acquires a regular source of income on her own, regardless of the family pension received by her.

7. Leave is, therefore, declined and these petitions are dismissed.

Lahore,
9th February, 2021.
Approved for reporting
Iqbal

Judge

Judge