

**JUDGMENT SHEET
PESHAWAR HIGH COURT, PESHAWAR
JUDICIAL DEPARTMENT**

Writ Petition No.5614-P/2018

**Mst. Hajira Bibi
Versus
Civil Admin Officer, PAF Base, Peshawar and 2 others**

Date of hearing 04.12.2019

Petitioner (by) Mr. Muhammad Isa Khan Khalil, Advocate.

Respondents (by) Mr. Rab Nawaz Khan, A.A.G.

JUDGMENT

MUHAMMAD NASIR MAHFOOZ, J.- Through the present petition, the petitioner has invoked constitutional jurisdiction of this Court under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973, for the following relief:-

“In this view of the matter, it is, therefore, prayed that on acceptance of this petition, this Hon’ble Court may be pleased:

- (i) to declare the act of the respondents of pressing the petitioner to receive the pension of her missing husband, and to prohibit them from enforcing the petitioner in this regard;**
- (ii) to direct the respondents to release to the missing employee’s family his**

- monthly salaries and also to restore the facilities along with health care to which they were entitled during his presence; and**
- (iii) to grant any other relief to which the petitioner and her family are entitled in law, justice and equity.”**

2. Brief facts of the case as per contents of the writ petition are, that spouse of the petitioner, namely, Imdad Khan was serving as Civil LDC, service No.M-2398, who, after performing his duty on 24.03.2016, was proceeding towards his house when he was intercepted by the Air Force Agency officials and picked up with them, whose whereabouts are not known since then. The petitioner and her aged father, viz. Hayatullah Khan searched for him a lot, but his whereabouts could not be discovered. Father of the petitioner also requested the respondents, more than once, to help him out in searching their employee, but no serious effort was made by them. Instead of helping the petitioner in searching out the missing employee, the respondents have been pressing her for obtaining family pension, which has been refused by her duly in writing. However, respondent No.1 again directed the petitioner for submitting certain documents for obtaining family pension through two separate letters dated 12.07.2017 and 30.07.2018. During the presence of the missing employee certain facilities were available to his family, including health care through a Family Medical Book, but after his missing,

those facilities have been withdrawn and the Family Medical Book cancelled. It also averred in the petition that the missing employee was/is the employee of the respondents and they, being in better position, both in terms of resources and contacts with the intelligence agencies, can easily trace out not only the missing employee but also the culprits/persons who have abducted him, besides causes of his abduction. In this scenario, finding no other adequate and efficacious remedy, the petitioner has approached this Court through the instant constitutional petition.

3. Respondents 1 to 3 filed their comments/reply wherein they have admitted some of the contents of the writ petition regarding husband of the petitioner being unknown for the last more than two years, so a charge sheet dated 23.05.2016 together with statement of allegations was sent to him but the office was informed that he is missing. Pakistan Air Force authorities made all possible efforts to inquire whereabouts of the petitioner's husband, by getting the assistance of law enforcement agencies of the Government as well but no concrete information was received from any source till date. Even the Commission on Enforced Disappearance was approached. It is denied that the petitioner was forced to receive pension of her husband rather she herself approached the respondents to extend all pensionary benefits to her but she refused to accept the entitled benefits of retirement of her

husband whom she claims to be alive. It is also added in their reply that the petitioner claims arrears of pay and allowances of her husband with effect from the date of his absence (24.03.2016). Reference has been made to Finance Division OM No. F.2(1)-Reg.6/97 dated 25.09.1997 regarding grant of pension to an employee who remains absent or unheard of for a period of 12 months and under the prescribed rules, the following two rules have been quoted, in their comments/ reply,:-

- (a) **The spouse of the pension claiming to be entitled to the pensionary benefits of the missing person shall, before such benefits are paid, guarantee, through affidavit or as the pensionary authority may require, the repayment of pensionary benefits to the missing person if subsequently he appears and makes any claim thereto.**
- (b) **The pensionary authority shall not be responsible for repayment of any pensionary benefits to the missing person which has already been paid to his spouse or family members who shall personally be responsible for satisfaction thereof on appearance of the missing person.**

It is further added that application of the petitioner for financially/ compensation/ grant of pension, gratuity and other related benefits of her missing husband was processed and in reply thereto, on 12.07.2018, she was sent a letter to provide

certain information/documents for processing the case of her husband but she did not provide the same on the ground that he is still alive and living. The case of husband of the petitioner has been treated as absence without leave though every effort to trace him proved abortive.

4. We have heard arguments of learned counsel for the petitioner as well as learned A.A.G. for the respondents and have perused the documents available on the file.

5. Any employee performing any kind of duty is entitled to be treated in accordance with law and equity so that he gets his remuneration for the work done. Grant of salary or pension emoluments is not bounty of the State but one of the basic fundamental rights. Similarly petitioner is entitled, whatever the reason may be that the husband of the petitioner has not been heard of for the last more than three years because no such reason is forthcoming from the record and the commitment of officials of respondents through various correspondence placed on file showed that they have made considerable efforts to trace his whereabouts but all the efforts turned futile and no clue is found. Petitioner has run from pillar to post by submitting applications to various quarters to trace out her husband but her husband is reportedly missing.

6. A Hand Book On Pension (Civilians Paid Out Of Defence Services Estimates) provides that in case of death of

father, family pension shall be re-granted to mother for life whether mother becomes eligible for it before or after drawal of family pension for ten years or more by father. Family pension of eldest un-married daughter of a deceased Government servant will be granted till her marriage with effect from 01.07.1997. As per order of Finance Division OM No.5 (I)-Reg 6/87 dated 04.03.87, it was decided that if an employee remains missing or un-heard of for a period of 7 years, to the satisfaction of the Department concerned, family pension may be granted to his heirs as admissible under the prescribed rules. It has been further clarified, that the President has been pleased to decide that with effect from 24.09.1997, if an employee remains missing or un-heard of for a period of 12 months, to the satisfaction of the Department concerned, family pension may be allowed to his heirs.

7. According to Article 123 of the Qanun-e-Shahadat, 1984, whether a man is alive or dead, the burden of proving that he is dead is on the person who affirms it while according to Article 124, if a man is not heard of for seven years and he is not heard to be alive, the burden shifts to the person who affirms it. It would be worthwhile to reproduce Article 123 and 124 which read as under:-

Article 123. Burden of proving death of person known to have been alive within thirty years.

Subject to Article 124, when the question is whether a man is alive or dead, and it is shown that he was alive within thirty years, the burden of proving that he is dead is on the person who affirms it.

Article 124. Burden of proving that person is alive who has not been heard of for seven years.

When the question is whether a man is alive or dead, and it is proved that he has not been heard of for seven years by those who would naturally have heard of him if he had been alive the burden of proving that he is alive is shifted to the person who affirms it.

8. The Hon'ble Supreme Court of Pakistan in case of **Parveen Shaukat vs. Province of Sindh and others** reported as (P L D 2019 SC 710) while dealing with the case of kidnapped Government Servant/husband of the petitioner therein, held as under:-

“11. From the above discussion, it is evident that the probable time of death within seven year period can be independently visualized and declared by a court of law keeping in view the circumstances in which a person in a particular case went missing. Article 124 by itself is of no help in drawing the inference as to when within those seven years period the missing person might have died. We, therefore, hold that the family pension is to be calculated from the probable date of lodging of the FIR i.e. 14.01.2000.

12. For what has been discussed above, this petition is converted into appeal and partly allowed. The impugned judgment is set aside. The respondents are directed to recalculate family pension by treating the probable date of death of petitioner's husband to be 14.01.2000. The respondents are directed to complete the process of revising the pensionary benefits of the petitioner within two months from the date of this judgment. Before parting with the judgment, we appreciate the valuable assistance rendered to this Court by Mr. Shahid Anwar Bajwa, learned ASC who appeared as amicus curiae."

9. While following the dictum of Hon'ble Supreme Court of Pakistan and applying the same test to the instant case, we would hold, that the first date of missing of husband of petitioner when he was shown absent without leave is 24.03.2016 and till that date, he remained in service for 24 years, 5 months and 22 days, so the respondents would not be in difficulty to recalculate the pensionary benefits and other emoluments of the husband of the petitioner. It is also admitted by the respondents that there is no trace of the husband of the petitioner to be assumed alive and there is no evidence that his absence is deliberate. Besides, the relevant rules applicable to the employees of Pakistan Air Force, as quoted in the comments/reply of the respondents, entitles family of a missing person who remains missing for 12

months. Since all the record is lying in the office of respondents and petitioner does not charge anyone, so she should not be made as scapegoat and made to run from pillar to post for a right bestowed by law.

10. We would be at a loss not to draw wisdom from oft quoted judgment passed by the Hon'ble Supreme Court of Pakistan in the case of **I.A. Sherwani and others v. Government of Pakistan through Secretary Finance Division, Islamabad and others** reported as 1991 S C M R 1041 wherein it was held:-

“A pension is intended to assist a retired civil servant in providing for his daily wants so long he is alive in consideration of his past services, though recently the above benefit has been extended inter alia in Pakistan to the widows and the dependent children of the deceased civil servants. The raison d’etre for pension seems to be inability to provide for oneself due to old-age. The right and extent to claim pension depends upon the terms of the relevant statute under which it has been granted.”

11. For what has been discussed above, the writ petition is allowed, the petitioner is held entitled to all the pensionary

emoluments including any other facility to which the family is entitled under the relevant rules and the respondents are directed to complete the process of revising the pensionary benefits to the petitioner within two months.

Announced
04.12.2019

J U D G E

J U D G E

(D.B)
Hon'ble Mr. Justice Muhammad Ibrahim Khan
Hon'ble Mr. Justice Muhammad Nasir Mehfooz

Muradullah, CS