

JUDGMENT SHEET

IN THE PESHAWAR HIGH COURT JUDICIAL DEPARTMENT.

Writ Petition No.2675-P/2020

J U D G M E N T

Date of hearing : 17th May, 2022

Petitioner(s) : By Mr. Ali Gohar Durrani,
(Mst. Rozina) Advocate.

Respondents : By Mr. Muhammad Taufique
(Federation) Qureshi, DAG.

Provincial Government : By Ms. Sophia Noreen, AAG

QAISER RASHID KHAN, CJ.-The petitioner, through

the instant writ petition, has asked for the issuance of an appropriate writ seeking directions to the respondents to extend her the benefit of the Prime Minister's Assistance Package, notified by the Establishment Division, Government of Pakistan vide Office Memorandum No.8/10/213-E.2 dated 20.10.2014 being deserving for the same.

2. Brief but relevant facts of the case are that the services of Amjad Shahid Afridi, the husband of the petitioner a known and reputed PAS officer were placed at the disposal of the Government of Khyber Pakhtunkhwa vide notification dated 25.02.2014 but unfortunately, after few days of his new posting, he went missing on 18.03.2014 and a proper FIR was lodged in this regard by his son. Thereafter, the federal

government also affirmed his 'missing status' vide notification dated 29.12.2015 and thereby held his family entitled to draw family pension etc. The provincial government also restored his pay in favour of his family till superannuation or reappearance on the analogy of martyred civil servants / police personnel vide letter bearing No.FD(PRC)1-1/2016 dated 02.12.2016, issued by the Finance Department. Vide office memorandum No.8/08/2016-E-2 dated 08.09.2017, the federal government announced Prime Minister's Assistance Package for the families of those federal government employees who had gone missing during their service by treating them at par with those who die during service. In the light of such policy, the petitioner on 01.10.2019 moved an application to the provincial government to extend her the said package. Pursuant thereto, both the federal and the provincial government spurred into action and after lengthy process / correspondence, the federal government / Establishment Division vide letter No.PF(496)E-5(PAS) dated 27.04.2020 asked the provincial government to extend the benefit of the Prime Minister's Assistance Package, notified vide office memorandum No.8/10/2013-E-2 dated 04.12.2015 read with Establishment Division's O.M dated 08.09.2017 and also advised the immediate stoppage of the payment of salary and adjustment of the already paid salary. Being aggrieved, on 28.04.2020, the petitioner has made representation to the

competent authority but to no avail and that is how, she is before this court with her grievance.

3. The gist of the arguments of the learned counsel for the petitioner is that since the sad incident whereby the husband of the petitioner went missing was of the year, 2014, therefore, the Prime Minister's Assistance Package of the year, 2014 prevailing at that time whereby financial help of nine million rupees has been provided would be safely applicable to the petitioner.

4. The main thrust of the arguments of the learned Deputy Attorney General is that since the mandatory period of twelve months after the date of missing of the husband of the petitioner was completed in the year, 2015, therefore, the case of the petitioner falls within the category of the subsequent Prime Minister's Package of the year, 2015 and in that event she has to return the amount already received from the provincial government.

The learned AAG too supports such arguments.

5. Arguments heard and the available record perused.

6. The crucial question before us is the applicability of the exact and relevant Prime Minister's Assistance Package to the case of the petitioner as to whether it would be of the

year, 2014 or 2015. The record depicts that the husband of the petitioner went missing since 18.03.2014, which fact has been affirmed by the federal government / Cabinet Division vide notification dated 29.12.2015. In the light of the subsequent office memorandum dated 08.09.2017 of the federal government / Establishment Division, Islamabad whereby the missing federal government employees have been treated at par with the deceased federal government employees, the status of the husband of the petitioner was converted from missing to that of deceased.

When the ibid notification dated 08.09.2017 is seen in juxtaposition with the notification dated 29.12.2015, referred to in the preceding para, we understand that where for all practical purposes, there was no clue about the husband of the petitioner to be dead or alive since the date he was missing, then in that event, he would be presumed to be dead from that very date i.e. 18.03.2014. However, such fact has been totally misconceived by the respondents while holding the petitioner entitled to the Prime Minister's Assistance Package of the year, 2015. Even otherwise, keeping in view the explicit language of the subsequent Prime Minister's Package, 2015 whereby the date of its giving effect or for that matter death time in service of a government servant is to be reckoned from 09.02.2015, the case of the petitioner does not fall within the

ambit of the ibid package, which is later in time much after the traumatic event / incident having taken place on 18.03.2014.

7. Accordingly, we hold the petitioner entitled for the grant of the Prime Minister's Assistance Package of the year, 2014, notified by the federal government / Establishment Department vide office memorandum No.8/10/2013-E.2 dated 20.10.2014 and in turn direct the federal government through the learned DAG to forthwith extend such benefit to her. The petitioner shall however surrender the amount on account of salaries of her husband, which she received pursuant to the letter bearing No.FD(PRC)1-1/2016 dated 02.12.2016 of the Finance Department, Khyber Pakhtunkhwa. Both the transactions shall run consecutively in their respective forms as the bread and butter of the family of the petitioner is involved. The provincial government is however at liberty to make said recovery from the petitioner in easy equal installments as during the course of arguments, her counsel readily agreed to return the said amount to the provincial government.

This writ petition is disposed of in the above terms.

Announced
17.05.2022


CHIEF JUSTICE


JUDGE

(Fayaz)

(D.B) Justice Qaiser Rashid Khan, CJ & Justice Syed Muhammad Attique Shah, J