

PESHAWAR HIGH COURT
ABBOTTABAD BENCH

JUDICIAL DEPARTMENT

JUDGMENT SHEET

WP No. 1277-A/2021.

Date of hearing 22.09.2022.

Petitioner/s (Rukhsar) by M/s. Nazish Parvez and Sehrish Parvez, Farah Pervez Advocates.

Respondent/s (Government of Khyber Pakhtunkhwa & four others) by Mr. Sajid ur Rehman, AAG.

FAZAL SUBHAN, J. Petitioner *Rukhsar*

daughter of *Gohar Rehman* has filed the instant petition under Article 199 read with Article 25 of the Constitution of Islamic Republic of Pakistan, 1973, by invoking the jurisdiction of this Court with the following prayer:-

It is therefore, humbly prayed that on acceptance of this writ petition, the respondents be directed to issue the pension and other pensionary benefits of her father or any other relief may kindly be granted by this Hon'ble Court which may

*deemed fit and property for the
petitioner may be announced.*

2. Brief but relevant facts of the case are that one Gohar Rehman son of Mir Ahmad was serving in Health department and after retirement from service on 01.01.1989, he was receiving his pension till his death i.e 21.07.2020. The mother of petitioner has already died, while other sisters of petitioner are married. That after the death of petitioner's parents, the petitioner being a transgender by birth and unmarried daughter of his parents applied for pension and other pensionary benefits of her late father to the respondents but they refused to pay the same, which constrained the petitioner to file instant constitutional petition.

3. Arguments of learned counsel for petitioner as well as learned AAG heard and record perused.

4. Before considering the averments raised in the petition, we like to first

examine the legal aspect of the case. The respondent No. 5 in his parawise comments (in para 3) has admitted that Gohar Rehman, father of the petitioner was a government servant with the department and he retired on 01.01.1989 and thenceforth he was receiving pension till his death. The Government of Khyber Pakhtunkhwa through notification No. SOSR-II/FD/204/2021, promulgated the *Khyber Pakhtunkhwa Civil Servants Pension Rules, 2021* and in S.2 (e) of the *ibid* Act, wherein “*family*” has been defined as following:-

“*Family*” means:

- (i) *wife in the case of male civil servant or husband in case of female civil servant, for life time or till re-marriage;*
- (ii) *children as per detail given below; who were dependent upon the deceased civil servant or pensioner;*

(iii) unmarried daughters, life time or till marriage;

5. The legislature, while identifying the problems and hardships being faced by transgenders in respect of their gender expression and identity promulgated The Transgender Person (*Protection of Rights*) Act, 2018 for protection, relief and rehabilitation of their rights and welfare, and section 4 of the said Act lay restrictions and prohibitions against discrimination against transgender. Section 4 (e) of the Act, being relevant is reproduced below for convenience.

Section 4. *No person shall discriminate against a transgender person on any of the following grounds namely.*

(e).....

(b).....

(c).....

(d).....

(e) *denial of, or discontinuation of, or unfair*

treatment with regard to, access to, or provision or enjoyment of use of any goods, accommodation, service, facility, benefit, privilege or opportunity dedicated to the use of general public or customarily available to the public.

Similarly, in section 16 of the *ibid* Act, the fundamental rights guaranteed by the Constitution in Chapter-I Part-II have been made available to transgender. The relevant section is as following:

Guarantee of Fundamental Rights:-

(1) In addition to rights mentioned in this chapter, Fundamental Rights mentioned in Chapter I, Part II of the Constitution of the Islamic Republic of Pakistan, 1973 shall be available unequivocally for every Transgender Person.

6. The petitioner claimed to be the daughter of deceased Gohar Rehman and being unmarried daughter, asserted her

entitlement for the family pension of her father. She has placed her CNIC on file, which shows her gender as woman (transgender) and on the basis of being unmarried daughter of Gohar Rehman, she claims pension and pensionary benefits for life time. Though, the gender of petitioner has not been medically determined but the concerned authorities, after due process and legal formalities has issued CNIC to the petitioner, which gives legal support to her claim of being woman (transgender). The constitution through Articles 4, 14, 23 and 26 guarantees equal rights to the citizen of the country which are otherwise applicable and enforceable in favour of transgender person. In the case of *Dr. Muhammad Aslam Khakhi and others-Vs- SSP (Operations) Rawalpindi and others*, reported in **PLD 2013 Supreme Court, 188** the August Supreme Court has held that:-

Constitutional petition under Article 184 (3) of the Constitution against molestation and humiliation of eunuchs and restoration of their fundamental right---Fundamental rights of eunuchs---Present petition was instituted for the enforcement of fundamental rights of eunuchs, guaranteed under the Constitution including security of life and property, as they were more vulnerable amongst citizens—Rights of eunuchs were fully protected under the Constitution including the right to inherit property---Eunuchs were not to be deprived from their legitimate right of movable and immovable property, their right to get education and their right of franchise-Participation jobs of eunuchs in all walks of life had to be ensured and they should not be intervened either by their relatives

or by any other functionary--- Eunuchs enjoyed the same rights under the Constitution and were entitled to be respected by all segments of the society and they should be treated equally with other citizens--- Supreme Court observed that in the past eunuchs were not treated at par with other citizens but now with the cooperation of the Federal and Provincial Governments and other organizations, eunuchs were being respected as citizen of the country--Constitutional petition was disposed of accordingly.

7. In another case involving identical question of entitlement of unmarried daughter of a deceased civil servant, in the case of *The Province of Punjab through Secretary, Finance Department, Government of the Punjab, Lahore and others-Vs-Kanwal Rashid and others*

reported as **2021 SCMR 730**, it was laid down that:-

Unmarried daughter of deceased civil servant parents---Entitled to draw the pension of 'both' her parents simultaneously---However, such daughter would be disentitled from drawing pension, when she was married or acquired a regular source of income on her own, regardless of the family pension received by her.

8. From all the above discourse, we are of the affirmed view that petitioner is a woman (transgender) and daughter of Gohar Rehman. She is unmarried and as per law referred to above, she is entitled to the family pension of her father, till her life time, but subject to any change in her gender expression and therefore, respondents are directed to immediately release pension and pensionary benefits to her.

Announced.
22.09.2022.

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