

**PLJ 2022 Quetta 118**

*Present: ABDULLAH BALOCH, J.*

ASIYA NAZ--Petitioner

versus

LAL BIBI and others--Respondents

C.R. No. 784 of 2021, decided on 27.4.2022.

**Balochistan Civil Servants Pension Rules, 1989--**

----Rr. 4 & 10(2)(ii)--Death during service--Two widows were receiving monthly pension on equal basis--Divorced daughter--Death of petitioner's mother--Entitlement of petitioner for monthly pension--Pension rules absolutely entitled petitioner for receiving half share in monthly pension of his late father and trial Court after proper appreciation of law has rightly granted relief to petitioner--The impugned order passed by appellate Court suffers from mis-reading, non-reading and miss appreciation of evidence and law, which is not sustainable--Petition allowed.

[Pp. 120 & 121] A & B

*Miss Asia Naz Muhammad Akram Shah, Advocate for Petitioner.*

*Syed Mumtaz H. Baqri and Mr. Rasool Bakhsh Baloch, Advocates for Respondents.*

Date of hearing: 15.4.2022.

**JUDGMENT**

This judgment disposes of the instant petition filed by Asia Naz daughter of Abdul Hayee, against the order dated 24th November 2021 (**“the impugned order”**) passed by learned Additional District Judge-VII, Quetta (**“the appellate Court”**) whereby the order dated 18th September 2021 passed by learned Senior Civil Judge-I, Quetta (**“the trial Court”**) was set aside.

2. Brief facts arising from the instant petition are that the petitioner is the daughter of 2nd wife of late Abdul Hayee namely Jan Bibi, the said late Abdul Hayee was working in Regional Transport Authority Department, who had contracted two marriages one with Jan Bibi (the mother of petitioner) and with Lal Bibi (Respondent No.1). The late Abdul Hayee was expired during the course of service, after his death both the widows *i.e.* Respondent No. 1 and the mother of petitioner were receiving the monthly pension on the basis of equal shares. However, thereafter the mother of petitioner Mst. Jan Bibi was also expired on 10<sup>th</sup> January 2004 and half pension was also transferred in the name of Respondent No. 1 and she has receiving the whole monthly pension of late Abdul Hayee. It is further averred in the petition that from the wedlock of petitioner's mother there are seven (07) children of late Abdul Hayee, while from the wedlock of

Mst. Lal Bibi there are six (06) children and all of them are married; that the petitioner also got married with one Saeed Akhtar Malik, but on 10th December 2018 the marriage of petitioner was dissolved and she remained divorced of late Abdul Hayee, thus applied for Succession Certificate in her favour.

3. The application was contested by the respondents by means of filing written statements. After framing issues and recording evidence, the application filed by the petitioner was allowed; *vide* order dated 18th September 2021 by the learned trial Court. Being aggrieved, the respondents assailed the said order before the learned appellate Court by filing appeal, which was allowed, *vide* impugned order dated 24th November 2021 and the order dated 18th September 2021 was set aside. Whereafter the petitioner filed the instant petition.

4. Heard learned counsel for the parties and perused the record, which reveals that the petitioner is daughter of late Abdul Hayee, whereas the Respondent No. 1 is 1st wife and Respondent Nos.2 to 6 are her sons and daughters, who have been born from the wedlock of deceased Abdul Hayee, while Respondent Nos.7 to 12 and petitioner are sons and daughters from the 2nd wedlock of late Abdul Hayee. The father of petitioner was a government servant in the Regional Transport Authority Department, who was expired during the service and after his death the mother of petitioner and the Respondent No. 1 were receiving pension of late Abdul Hayee on equal basis of 50% each. However, thereafter the mother of the petitioner was also died and the whole monthly pension was transferred in the name of Respondent No. 1 and she started receiving the whole pension of late Abdul Hayee.

5. It is pertinent to mention here that all the children of late Abdul Hayee from both the widows are married, however, the marriage of petitioner was dissolved on 10th December 2018 and thereafter she was remained as divorced daughter of late of Abdul Hayee, hence she is entitled to receive her share from the pension of his late father. In this regard both the Courts below have dilated upon the Balochistan Civil Servants Pension Rules, 1989 and recorded their conflicting views with regard to Family Pension. However, the view so taken by the learned trial Court in my view having weight, which was decided in favour of petitioner with the following observations:

*“23. The facts of the matter are that the father of applicant namely Abdul Hayee was receiving pension after his retirement and after the demise of Abdul Hayee, his two wives were getting the family pension at the rate of 50% each. According to applicant her mother Jan Bibi was expired on 10.01.2004 and hence her step-mother was getting her share in the family pension. It is the contention of applicant that her marriage tie with her husband Saeed Akhtar Malik had come to an end on 10.12.2018 and she has not contracted second marriage, hence she is entitled for the share in family pension which her mother was receiving. In this application the Respondent No. 1 Lal Bibi is step mother of the applicant while other respondents are her brothers and sisters. The clause 4.10 (2) (ii) of the Balochistan Civil Servants pension Rules, 1989, provides that if the government servant had more than one wife and the number of his surviving widows and children does not exceed 4, the pension shall be divided equally amongst the surviving widows and children born out of wedlock of late Abdul Hayee and Jan Bibi. It is an admitted fact that the applicant is divorced daughter of late Abdul Hayee and the Sub-*

*clause (iv) (b) entitles the divorced daughter for the monthly pension of deceased. Apart from this the Family Pension Chart issued by the competent authority provides that if a divorced daughter has no proper sources of income, then the family pension shall be partitioned and the widow daughter becomes entitled for the half share of the monthly pension. It is an admitted fact that the applicant is a practicing lawyer and she has no proper income, the applicant has five school going children. Thus in view of pension rules, the applicant is held entitled for half of the month pension of her deceased father Abdul Hayee, which was previously being by the real mother of the applicant namely Jan Bibi. The Respondent No. 8 Nasira Shaheen is step sister of the applicant has failed rejoinder to the application stated therein that she is also divorced daughter of Adul Hayee and got separation from her husband Sab-ul-Haq Usmani through a decree dated 22.04.2007 from the Family Court-I, Quetta. The Respondent No. 8 Nasira Shaheen had claimed over one fourth portion of the pension of her father.”*

6. The plain reading of Balochistan Civil Servants Pension Rules, 1989 (“C-Family Pension”) clause 4.10 (2) (ii) clearly entitles the divorced daughter for monthly pension of deceased as the mother of petitioner has been died in the month of January 2004, whereas the petitioner was divorced on 10th December 2018 and there is no more than four family members for receiving of pension of deceased as contemplated in the ibid rules. Besides, the pension rules absolutely entitled the petitioner for receiving half share in the monthly pension

of his late father and the learned trial Court after proper appreciation of law has rightly granted relief to the petitioner. While to the contrary the learned appellate Court has misunderstand the provision of law, while setting aside the well-reasoning order of the learned trial Court. The impugned order passed by the learned appellate Court suffers from mis-reading, non-reading and miss appreciation of evidence and law, which is not sustainable.

For the reasons discussed hereinabove, the petition is allowed and the impugned order dated 24th November 2021 passed by learned appellate Court is hereby set aside and the judgment passed by the learned trial Court is maintained with further modification that she will be entitled to receive her share from pension of her late father Abdul Hayee unless contracted 2nd marriage.

The petition is disposed of in the above terms.

(Y.A.) Petition allowed