


**PESHAWAR HIGH COURT, MINGORA BENCH**  
**(DAR-UL-QAZA), SWAT**

**FORM OF ORDER SHEET**

Court of .....

Case No..... of.....

Serial No. of order or proceeding	Date of Order or Proceedings	Order or other Proceedings with Signature of Judge and that of parties or counsel where necessary.
1	2	3
	11.05.2022	<p><b><u>W.P No.805-M/2021 with Interim Relief</u></b></p> <p><b>Present:</b> <u>Mr. Imtiaz Ali Khan, Advocate for Petitioners.</u></p> <p><u>Mr. Raza Uddin Khan, A.A.G for official Respondents alongwith Mr. Naeem Hussain DSP (Legal).</u></p> <p style="text-align: center;">***</p> <p><b><u>MUHAMMAD NAEEM ANWAR, J.-</u></b> The petitioners, by invoking the constitutional jurisdiction of this Court under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973, have filed the instant petition with contention that they being the brothers and sister of Mst. Alia, the lady constable who had been serving in police department and she, during performance of her official duties, was martyred in the year 2008 in an incident, regarding which, F.I.R bearing No.352 dated 15.12.2008 was registered under sections 364/353/120-A/120-B/109 P.P.C read with section 7 of the Anti-Terrorism Act, 1997 at Police Station <i>Kabal</i>, District Swat; that <i>Shaheed</i> Mst. Alia was unmarried at the time of her death and they being her legal heirs alongwith their mother filed a list in the</p>

		<p>police department for compensation in accordance with law, for which, they have also obtained a Succession Certificate from the concerned Court; that they have received all the compensation package including salary/emoluments till August 2020 when respondent No.1 through the impugned letter bearing No.16619/A (Saidu Sharif Swat) dated 22<sup>nd</sup> of September, 2020 sought for clarification/guidance from respondent No.3 on the ground that after the death of <i>Shaheed</i> Mst. Alia, whether the petitioners (brothers and sister) would be entitled to receive the salary of martyred Mst. Alia? Respondent No.4, in response to the letter of respondent No.1 directed him through letter bearing No.763/Sh: D. (Peshawar) dated 17.11.2020 to stop the salary/ compensation forthwith, save the matter of succession shall be decided by the Court of competent jurisdiction and accordingly respondent No.7 was directed to comply with the directions mentioned above. The petitioners feeling themselves aggrieved from the directions of respondent No.4, vide which, salary of Mst. Alia was stopped, challenged the order of stoppage of salary through instant petition on the ground that they being the legal heir of deceased are entitled for salary thus, the order is unlawful, unjustified and that they have no other efficacious and appropriate remedy therefore, prayed that:</p>
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"the impugned letter No.763/Sh. D dated 17.11.2020 may kindly be cancelled, declared illegal, against the law and Shuhada's pay/package/ policy and the respondents be directed to pay the petitioners all the salaries and allied financial benefits with other emoluments and financial assistance till date and onwards as per their entitlement, being the brothers and sister of Mst. Alia, the martyred lady constable."


2. When put on notice, respondents No.1 & 4 have submitted their parawise comments by refuting the contentions raised in the petition and opposed the issuance of writ on the ground that after the death of mother of the martyred lady constable Mst. Alia, the petitioners No.1 to 4, being brothers, and petitioner No.5, being sister, who all are major, are not entitled for continuation of the salary, as the same is permissible only to the family of those police personal who embraced shahadat.

3. Arguments heard and record perused.

4. During the course of arguments, learned counsel for the petitioners in support of his contentions referred to the judgment rendered by this Court in the case of "Mst. Hussan Jamala and another Vs. Government of Khyber Pakhtunkhwa through Secretary, Home and Tribal

Affairs, Peshawar” (PLD 2013 Peshawar 1). We have gone through from the principle enunciated in the referred to above case, however it is restricted to the matter of inheritance and that too in the case of an issueless male deceased with regard to the interpretation of legal heirs and their shares, whereas the instant matter pertains to *Shuhada* package and the controversy to the extent as to whether the brothers and sisters, in absence of mother of Shaheed/deceased police personnel, would be entitled for continuation of the salary as it was being paid in the lifetime of the mother of Shaheed to her or not? In such circumstances, the case law relied upon by the petitioners is distinguishable and therefore it cannot be applied in the matter in hand.

5. Undeniably, Mst. Alia, was done to death in an incident which took place on 13.12.2008, as reflected from the contents of the F.I.R No.352 registered at Police Station *Kabal*, District Swat. It is indisputable rather learned counsel representing the petitioners stated at the bar that all the compensation package admissible for *Shuhada* was awarded to them, however, the only controversy arose when the salary of Mst. Alia was stopped on the plea that her mother had died and the petitioners being brothers and

		<p>sister and they all being major are not entitled for the salary. It is also an admitted fact that Government of Khyber Pakhtunkhwa has modified notification dated 22.02.2011 revised vide notification dated 21.01.2014 in supersession of letters/notifications dated 24.11.2009, 22.03.2010 &amp; 27.07.2010 and issued a single consolidated uniform compensation package for legal heirs of the Provincial Police Personnel and all persons in the service of Provincial Government or working on civil posts in connection with the affairs of province, who while in service are martyred, incapacitated for further service or seriously injured due to the acts of terrorism, as defined in section 6 of the Anti-Terrorism Act, 1997, irrespective of the facts whether they meet such incidents either during performance of their respective official duties or otherwise. It is also not disputed that all the facilities to the family/ legal heirs of the martyred regular police personnel/civil servants were extended and held to be admissible vide finance/ establishment department letters, in respect of items mentioned below,</p> <p style="text-align: center;"><b>Letter bearing No. FD (PRC)1-1/2010 dated 29.10.2010 (Payment of full pay and allowances and pensionary benefits).</b></p> <p style="text-align: center;"><b>i. Notification bearing No. FD(SOSR-II)4-199/2010 dated 25.11.2010 (Education package/scholarship).</b></p>
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- ii. Letter bearing No. FD/SOSR-II/4-199/2002 dated 24.02.2004 (Medical facilities).
- iii. Letter No. SO(FR)/FD/10-3/2001 dated 02.08.2001 (Accommodation).
- iv. Notification No. SOR-VI(E&AD)/1-3/2011/Vol-VIII dated 31.08.2012 (Employment); and
- v. Notification No. FD(SOSR-II)4-199/2010 dated 10.0.2010 (Salary of Special Police Force appointed on contract basis).

6. Accordingly, the Government of Khyber Pakhtunkhwa has extended the continuation of payment of salary etc. of martyred in the police department to the families of those police personal who embrace *Shahadat* and sacrifice their lives during the discharge of their official duties within the parameters, which read as under:

- i. Grant of full pay and allowance (except conveyance allowance) including annual increments to the families of *Shuhada* at the revised rates as admissible to all Government Servants till the date of superannuation.
- ii. On retirement at the date of superannuation of the Shaheed Police Personnel, his/her family/legal heirs, as specified in the Civil Servant Pension Rules of NWFP, would be entitled to full pensionary benefits.

The above notification was given effect from 02.02.2004. The above reproduced contents of letter No. FD(PRC)1-1/2010 dated 29.10.2010 are self-explanatory, vivid, unambiguous, easily intelligible and open to only one

interpretation that full pay and allowances including increments were restricted to the families of *Shuhada* and this restriction was specified in the Khyber Pakhtunkhwa Civil Servants Pension Rules 2021. The term "*family*" has been defined in Khyber Pakhtunkhwa Civil Servants Pension Rules, 2021 under Rule 2 (c), which reads as under:

(c) "**family**" means-

- i. wife in the case of male civil servant or husband in the case of female civil servant, for lifetime or till re-marriage;
- ii. children as per detail given below; who were dependent upon the deceased civil servant or pensioner;
  - a) unmarried daughters, lifetime or till marriage;
  - b) disabled and retarded children, for lifetime and without age limit;
  - c) widowed or divorced daughters, for lifetime or till remarriage;
  - d) son (s) upto the age of 21 year; and
  - e) in case of non-existence of any of the above family members, to the father or failing the father to the mother subject to the condition that they were wholly dependent upon the deceased civil servant or pensioner and have no other source of income."

Whereas the definition of family pension is provided in Rule 2 (f) of the Rules, which reads as under:

(f) "**family pension**" means a compassionate grant paid to the family at the rate of hundred (100%) of the pension."

7. In consonance with the provision of Rule 2 (c) of the *ibid* Rules, the definition of family has been restricted to the wife or husband of a civil servant, as the case may be, children including unmarried daughters, disabled and

retarded children, widowed or divorced daughters, son (s) upto the age of 21 years and in case of non-existence of the above family members to the father or failing the father to mother subject to the condition that they were wholly dependent upon the deceased civil servant or pensioner and have no other source of income. The petitioners being the brothers and sister of the martyred and in view of the above rule, do not fall within the ambit of the term "*family*". Though, full sister is a legal heir as per Table of Sharer provided in Muhammadan Law subject to the condition that the deceased when has no child, child of a son h.l.s, father, true grandfather or full brother, with a further condition that with full brother the sister shall become a residuary at serial No.5 of Table of Residuaries. In accordance with Muhammadan Law and even in accordance with the injunction of Islam, the brothers and sisters with the condition mentioned above are the legal heirs but all the legal heirs have not been included in definition of the "*family*" and the package of *Shuhada* to the extent of continuation of salary which has been restricted to the term "*family*" as provided in the Rules *ibid*.

8. Furthermore, the petitioners being not falling within the definition of family, as such they are not entitled for



continuation of salary, which has rightly been stopped by the respondents upon the death of the mother of the *Shaheed* police lady constable Mst. Alia. Neither the petitioners could establish the infringement of their constitutional rights nor the violation of any law against the respondents. According to the rules husband, widows and children constitute the family and they are entitled to receive gratuity and pension in case of death of the employee. Thus, for the reasons discussed above, the instant petition, being devoid of merits, stands dismissed in *limine*.

**Announced**  
**11.05.2022**



**JUDGE**



**JUDGE**