

**JUDGMENT SHEET
IN THE LAHORE HIGH COURT, LAHORE
JUDICIAL DEPARTMENT**

Writ Petition No.8419 of 2019

Syed Farooq Ahmad Shah

Versus

**Government of the Punjab through Home Secretary
Punjab, Lahore & others**

J U D G M E N T

Date of hearing: 04.12.2019.

Petitioner by: Mirza Qamar-uz-Zaman, Advocate.

Respondents by: Mr. Ameer Abbas Ali Khan, Assistant Advocate
General, along with Najia Iqbal, Inspector
Legal.

Amicus Curie: Hafiz Tariq Naseem, Advocate.

MUHAMMAD SAJID MEHMOOD SETHI, J.: Brief facts of the case are that petitioner's father namely Syed Safdar Ali Shah joined the Police Department as Constable on 22.10.1990. On 21.08.1994, when petitioner's father was performing duties under the control of respondent No.5 / Capital City Police Officer, Lahore, at Police Station Lytton Road, Lahore, during encounter with dacoits, petitioner's father embraced *Shahadat* and case FIR No.215 of 1994 was registered at Police Station Lytton Road, Lahore. Thereafter, family of the deceased was awarded compensation as per rules and monthly salary was being received by petitioner's grandfather till October, 2013. After the death of petitioner's grandfather, salary was disbursed in favour of petitioner being legal heir of the deceased. Vide notification dated 30.08.2008, the Provincial Police Officer, Punjab, awarded full pay and allowances to the families of Police Officials who embrace *Shahadat* till the date of superannuation with increments and with

full benefits of the revised rates of all pay & allowances, special / adhoc relief etc., as allowed by the Government from time to time with effect from 04.11.1992. The said benefits were also adopted / ordered to be given vide notification dated 10.04.2017, issued by Provincial Police Officer, Lahore, however, subject to relevant pension rules. Ultimately, salary of petitioner's *Shaheed* father was stopped from June, 2017, on the pretext that petitioner was not entitled to receive the same in view of the Punjab Civil Service Pension Rules. Petitioner time and again approached the respondents, through various applications, with the request that he is entitled to receive full pay and allowances of his *Shaheed* father till 31.12.2028 but his genuine request was not acceded to. Hence, instant petition.

2. Learned counsel for petitioner submits that petitioner is entitled to receive full pay and allowances of his *Shaheed* father till the date of superannuation, with increments and other benefits at revised rates of pay and allowances, special / adhoc relief etc. as granted by the Government from time to time but inaction on part of respondents is unwarranted.

3. Learned Law Officer, on the other hand, submitted that disbursement of full pay & allowances to legal heirs of *Shaheed* is also in accordance with the Punjab Civil Services Pension Rules, 1963 and petitioner being above 24-years of age, is neither entitled to receive full pay & allowance nor pensionary benefits of his *Shaheed* father.

4. Learned *Amicus Curie* submits that petitioner's father was martyred during service, thus, his family was entitled to full pay and allowance as per notification 04.12.1991 under the head of "Continuation of Payment of Salary to the Martyr in Police Department" till the martyr's superannuation. He adds that salary and pension are two different things under the provisions of the Punjab Civil Servants Act, 1974, thus, petitioner is entitled for the pay / allowances of the martyr till his age of superannuation and

pension to martyr's family after his age of superannuation. He further submits that notification dated 10.04.2017 does not bar the petitioner to receive salary of the martyr till the age of superannuation and cannot be applied adverse to petitioner's rights and even otherwise it cannot be given retrospective effect.

5. Arguments heard. Available record perused.

6. The question for determination before this Court is whether petitioner is entitled to receive full pay and allowances of his *Shaheed* father till the age of his superannuation i.e. 31.12.2028. Perusal of record shows that the Home Department, Government of the Punjab, vide letter dated 06.06.1992, granted approval for payment of last pay & allowances drawn by *Shaheed* police official for the remaining period of their service up to the age of superannuation, the relevant portion whereof is as under:-

"Subject:- CONTINUATION OF PAYMENT OF SALARY ETC. TO THE MARTYRS IN THE POLICE DEPARTMENT.

Reference your letter No.14123 / F-II dated 4.12.1991 on the subject cited above.

2. The Chief Minister was pleased to approve payment of last pay & allowances drawn by the Shaheed Police officials for the remaining period of their service (upto the age of superannuation) subject to the following conditions.

- i. Pension will not be attracted in the matter as the bereaved families would qualify for pension only after the remaining period of service upto the age of superannuation has expired.
- ii. The Financial liability to be caused by this decision will be met out of existing budget and no addl. Funds will be demanded as savings in the head pay and allowances are quite substantial every year.
- iii. It shall not have any retrospective effect as proposed by the IGP."

Later on, the Home Department, vide notification dated 30.08.2008, made certain amendments in the Punjab Police Department (Award of Compensation to Police Officers / Officials Killed / Incapacitated in encounters / disturbances etc.) Rules, 1989, read with Notification No.HP-II/4-22/97, dated 11 May, 2004 and

Para 1(I) and 1(II) of Home Department's notification No.HP-II/10-45/91 dated October 13, 1993 and **Para-2 of letter No.HP-I/10-45/91, dated 06.06.1992.** The relevant portion of the amendments pertaining to case in hand is reproduced hereunder:-

"3. Para 1(I) and 1(II) of Home Department's notification No.HP-II/10-45/91 dated October 13, 1993 and Para-2 of letter No.HP-I/10-45/91, dated 06.06.1992 is hereby amended and shall read as follows:

"Full pay and allowances to the families of Police Officials who embrace "Shahadat", till the date of superannuation, with Increments and with full benefits of the revised rates of all pay & allowances, special / adhoc relief etc., as allowed by the Government from time to time.

"On retirement of the Shaheed, his / her spouse shall be entitled to full pension as per rules governing superannuating officials."

The benefits stated in Para 3-ante shall have retrospective effect i.e. w.e.f. November 04, 1992."

Afterwards, the Home Department, vide notification dated 30.05.2015, adopted the above amendments in the following manner:-

"3. Para 1(I) and 1(II) of Home Department's notification No.HP-II/10-45/91 dated October 13, 1993 and Para-2 of letter No.HP-I/10-45/91, dated 06.06.1992 is hereby amended and shall read as follows:

"Full pay and allowances to the families of Police Officials who embrace "Shahadat", till the date of superannuation, with Increments and with full benefits of the revised rates of all pay & allowances, special / adhoc relief etc., as allowed by the Government from time to time.

"On retirement of the Shaheed, his / her spouse shall be entitled to full pension as per rules governing superannuating officials."

The benefits stated in Para 3-ante shall have retrospective effect i.e. w.e.f. **June 06, 1992.**"

Again, the Home Department, vide notification dated 10.04.2017, further amended Rule 12 of the Police (Award of Compensation) Rules, 1989 by adopting Para 3 of notification dated 30.05.2015, supra, however, with a further note that the disbursement of full pay and allowances to the legal heirs of

Shaheed will be in accordance with the relevant Pension Rules, Punjab, the relevant portion whereof is reproduced hereunder:-

“2. **FULL PAY AND ALLOWANCES**

Para 3 of Notification No.Welfare No.7641/W-III, dated 30.05.2015, reads as “Full pay and allowances to the families of Police Officials who embrace “Shahadat”, till the date of superannuation, with Increments and with full benefits of the revised rates of all pay & allowances, special / adhoc relief etc., as allowed by the Government from time to time.

On retirement of the *Shaheed*, his / her spouse shall be entitled to full pension as per rules governing superannuating officials.

The benefits stated in Para 3-ante shall have retrospective effect i.e. w.e.f. June 06, 1992.” **Shall remain intact.**

Note

The disbursement of full pay and allowances to the legal heirs of *Shaheed* will be in accordance with the relevant Pension Rules, Punjab.”

7. It reflects from above history of the notifications that payment of last drawn pay and allowances of *Shaheed* police official was ordered to be given to the family for the first time vide letter dated 04.12.1991. However, said benefit was later on adopted, with certain stipulations / conditions, through notifications dated 06.06.1992, 30.08.2008 and 30.05.2015. Finally, vide impugned notification dated 10.04.2017, said benefit was kept intact, subject to the applicable pension rules.

8. Though, policy making is the exclusive domain of the executive but retrospective application of a policy curtailing / withdrawing certain vested rights accrued in favour of an aggrieved party is not plausible. The benefit in question was accrued in favour of family of the *Shaheed* in 1994 and petitioner is in continuous receipt of said benefit till May, 2017, thus, vested right accrued in favour of petitioner cannot be taken away through the notification dated 10.04.2017.

9. Needless to say that effect of a notification taking away certain rights would start from the date of its issuance. Even otherwise, notification issued in exercise of executive powers could not be operated retrospectively. Only beneficial notification can operate retrospectively and notification impairing an existing right would operate prospectively. Reference is made to Jawaria Maqsood v. Joint Admission Committee for Medical Colleges through Chairman and 3 others (2017 YLR 1571), Al-Noor Sugar Mills Limited and another v. Federation of Pakistan and others (2018 SCMR 1792), Malik Muhammad Hashim Awan and another v. Chief Secretary Government of Punjab, Lahore and 3 others [2017 PLC (C.S.) 1085], Province of Punjab through Secretary to the Government v. Dr. Muhammad Zafar Iqbal and 10 others [2018 PLC (C.S.) 152] and Kanwal Rasheed v. Accountant General, Punjab and others [2019 PLC (C.S.) 783].

10. Law is well-settled that once a right is created by extending benefit after complying with all codal formalities, the same cannot be destroyed or withdrawn as legal bar would come into play under the doctrine of *locus poenitentiae*. Reliance is placed upon Federation of Pakistan through Secretary Capital Administration and Development Division, Islamabad and others v. Nusrat Tahir and others [2018 PLC (CS) 669] and Muhammad Saeed and others v. Secretary Finance and others [2019 PLC (CS) 893].

11. Sections 16 & 18 of the Punjab Civil Servants Act., 1974, deal with the 'Pay' and 'Pension', respectively, which are reproduced hereunder for ready reference:-

16. Pay.— A civil servant appointed to a post shall be entitled, in accordance with the rules, to the pay sanctioned for such post:

Provided that, when the appointment is made on a [current charge or acting charge basis in the manner prescribed] or by way of additional charge, his pay shall be fixed in the prescribed manner:

Provided further that where a civil servant has been dismissed or removed from service or reduced in rank, he shall, in the event of the

order of dismissal, removal from service or reduction in rank being set aside, be entitled to such arrears of pay as the authority setting aside the order may determine.

18. Pension and gratuity.—(1) On retirement from service, a civil servant shall be entitled to receive such pension or gratuity as may be prescribed.

(2) In the event of death of a civil servant, whether before or after retirement, his family shall be entitled to receive such pension, or gratuity, or both, as may be prescribed.

It is clear that pay is altogether different and distinct subject from pension and it cannot be treated as pension for the purpose of its disbursement to family of a *Shaheed*.

12. In view of the above, instant petition is **allowed** with direction to the respondents to disburse full pay and allowances to the petitioner till the date of superannuation of his *Shaheed* father, with increments and with full benefits of the revised rates of all pay & allowances, special / adhoc relief etc., as allowed by the Government from time to time along with the arrears.

(Muhammad Sajid Mehmood Sethi)
Judge

Announced in Open Court on 04.02.2020.

Judge

APPROVED FOR REPORTING

Judge