

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

**Writ Petition No.27381 of 2023**

*Ayesha Hashmat Kamal and 2 Others*

***Versus***

*Additional District Judge and 2 Others*

**JUDGMENT**

<i>Date of hearing</i>	<i>13.09.2023</i>
<i>Petitioner(s) by</i>	<i>Malik Noor Muhammad Awan and Ejaz Khalid Khan Niazi, Advocates</i>
<i>Respondent(s) by</i>	<i>Mr. Muhammad Ayyaz Butt and Muhammad Sajid Chaudhary, Advocates for respondent No. 3.</i>

**SULTAN TANVIR AHMAD, J:**– Through the present petition, filed under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973, the petitioners seek enhancement of maintenance allowance of minors, (i) Salaar Kamal Shah (about thirteen years old) and (ii) Amaar Kamal Shah (about ten years old) (the ‘*minors*’).

2. On 10.07.2019 the petitioners instituted suit for recovery of maintenance allowance. Syed Hashmat Kamal / respondent No. 3 (the ‘*respondent-father*’) filed written statement. Out of the divergent pleadings, following issues were framed by the learned Family Court on 12.10.2019:-

- 1. Whether the plaintiffs are entitled to get a decree for recovery of maintenance allowance as prayed for, if so, at what rate and for which period? OPP*
- 2. Whether the suit of the plaintiffs is not maintainable and liable to be dismissed? OPD*

### 3. Relief.

3. Parties led their respective evidence. Petitioner No. 1 appeared as PW-1 and Ahmad Naseem appeared as PW-2. In documentary evidence, Exh. P1 to Exh. P31 and Mark-A to Mark-G are brought on record. On the other hand, respondent No. 3 appeared as DW-1 and produced Abdul Rehman Baig as DW-2. As documentary evidence, Exh.D1 to Exh.D5 were produced.

4. Learned Family Court gave issue-wise findings and vide judgment and decree dated 25.05.2021, partially decreed the suit and granted following relief in favour of the *minors*: -

*“...In view of above discussion, plaintiff No. 2 being son of defendant is entitled to recover maintenance allowance including education expenses from the defendant @ Rs. 40,000/- per month w.e.f. 21-June 2017 till date of decision of suit. After date of decision of suit plaintiff No. 2 is entitled to maintenance allowance including education expenses @ Rs. 50,000/- per month until his custody changes through process of law. Maintenance allowance would be enhanced @ 10% annual increase after passing of one year from date of decision of suit.*

*2. In view of above discussion, plaintiff No. 3 being son of defendant is entitled to recover maintenance allowance including education expenses from the defendant @ Rs. 40,000/- per month w.e.f. 21-June 2017 till date of decision of suit. After date of decision of suit plaintiff No. 3 is entitled to maintenance allowance including education expenses @ Rs. 50,000/- per month until his custody changes through process of law. Maintenance allowance would be enhanced @ 10% annual increase after passing of one year from date of decision of suit*

*3. In view of above discussion, issue No. 1 is decided partially in favour of plaintiffs....”*

5. The said judgment and decree was assailed by the parties through Family Appeals No. 02 and 06 of 2022. The appeal of the petitioners bearing No. 02 of 2022 was dismissed, whereas, appeal of the *respondent-father* has been partially allowed by the learned Additional District Judge, Lahore vide judgment and decree dated 03.02.2023. The maintenance allowance of the *minors* has been reduced from Rs. 40,000/- per month to Rs. 30,000/- per month for each, since 21<sup>st</sup> June, 2017

till decision of suit and maintenance allowance of Rs. 50,000- in favour of the *minors*, from decision of suit and onwards, has also been reduced to Rs. 30,000/-, per head, with 10% annual increase. Being dissatisfied from the same, the present petition has been instituted.

6. Malik Noor Muhammad Awan, learned counsel for the petitioners, has submitted that the judgment of learned Appellate Court is imprecise and it lacks sound reasons, therefore, the same requires interference as per law settled in case titled “Nazia Bibi and Others Versus Additional District Judge, Ferozewala and Others”(PLD 2018 Lahore 916). It is further submitted by the learned counsel for the petitioners that learned Appellate Court has ignored the several aspects requiring consideration such as amount of school fee being paid, actual needs of the *minors*, social status of the parties and their families as well as income of the *respondent-father* that includes salary and other emoluments; that the *respondent-father* who is serving as Deputy Inspector General of Punjab Police (in Grade-20), is drawing Rs. 400,000/- per month after including annual bonuses and other perks and privileges. He has also relied on pay-slips of other police officers who had been serving as Senior Superintendents of police or Deputy Inspector General in the police department. Learned counsel for the petitioners contended that the *respondent-father* is commandant of Motorway Police Training School; that besides other emoluments it is normal for the police officers of given rank that they are given annual awards which are normally not less than Rs. 450,000/-; that the *respondent-father* belongs to a rich family; that grandfather of minors / father of respondent No. 3 (the ‘*grandfather*’), who retired as Inspector General of Police, is presently serving as country-head of a Singapore based company and he is getting Rs. 300,000/- as pension and huge amount per month from his present job. Malik Noor Muhammad Awan, learned senior-ASC

has further relied on some plots in Naval Colony & Sector E-11 Society, Islamabad, earnings from Arcane Security Agency and income from St. Francis High School in Hayatabad, Peshawar. Learned counsel for the petitioners added that the *minors* are going to Aitchison College and their fee was about Rs. 40,000/- each when the suit was filed and at present the same is about Rs. 68,500/- and Rs. 74,000/-; that during the wedlock and before the dispute, the *respondent-father* himself obtained admission of the *minors* in Kids Campus and admittedly, the *respondent-father* was paying fee of about Rs. 27,000/- to Rs. 30,000/- per minor; that this school is known for preparation of children for admission in Aitchison College and other premium or expensive schools of the Country. He has further relied on the travel history of the parties and their stay in five-star hotels in different countries.

7. On the other hand, Mr. Muhammad Ayyaz Butt, learned counsel for the *respondent-father* has relied upon the salary-slips of the *respondent-father* and stated that he does not have any other income. He has not denied the status of the *grandfather* but submitted that his sources cannot be taken into consideration to grant the maintenance allowance to the *minors* as this case is not covered in paragraph No. 370 of book compiled by D.F. Mulla's on the Principles of Muhammadan Law. He has added that the judgment of the learned Appellate Court is based on cogent reasons, therefore, it must take precedence over the judgment of the learned Family Court. Mr. Muhammad Ayyaz Butt, during his arguments, has also relied upon cases titled "Humayun Hassan Versus Arslan Humayun and another"(PLD 2013 Supreme Court 557), "Shaikh Farrukh Hussain Versus Mst. Farah Nishat and Others"(2021 YLR 1363), "Manzoor Ahmed Versus Hamad Raza and Others" (2003 SCMR 1836), "Khalid Mahmood Versus Naseem Akhtar and Others"(2019 MLD 820), "Syed Najmul Hassan Versus

Mst. Nabeela Tabassum and 3 Others”(2001 CLC 78) and “Hanzla Khalid and Others Versus Khalid Parvaiz and Others” (2019 MLD 1128).

8. I have heard the arguments. The available documents have also been perused with the able assistance of learned counsel for the parties.

9. Malik Noor Muhammad Awan, learned counsel for the petitioners, has emphasized the income of the *grandfather* and claimed that his sources of earning and wealth should also be taken into account, while fixing the maintenance of the *minors*. The statutory law in this regard is silent but guidance is available in paragraph No. 370 by D.F Mulla’s on Principles of Muhammadan Law. This paragraph reads as follows:-

***“Maintenance of Children and grandchildren.—(1) A father is bound to maintain his sons until they have attained the age of puberty. He is also bound to maintain his daughters until they are married. But he is not bound to maintain his adult sons unless they are disabled by infirmity or disease. The fact that the children are in the custody of their mother during their infancy (S.352) does not relieve the father from the obligation of maintaining them. But the father is not bound to maintain a child who is capable of being maintained out of his or her own property.***

*(2). If the father is poor, and incapable of earning by his own labour, the mother, if she is in easy circumstances, is bound to maintain her children as the father would be.*

*(3). If the father is poor and infirm, and the mother also is poor, the obligation to maintain the children lies on the grandfather, provided he is in easy circumstances.”*

*(Underlining is added)*

10. Perusal of above reflects that grandfather when is affluent, then the obligation to maintain children lies on the grandfather but only when father is poor, infirm and incapable of earning by his own labour and mother is also poor. This is not

the position in the present case. The *respondent-father* is in decent employment and not indigent, thus, holding the *grandfather* responsible to contribute towards maintenance allowance is not warranted. Reference, if required, can be made to case titled “Ghulam Nabi Versus Muhammad Asghar and 3 Others” (PLD 1991 Supreme Court 543). The relevant para reads as follows:-

“...Although leave was not granted to examine this point we permitted the learned counsel to advance the same so as to clarify the legal position. No doubt grandparents, if affluent, will be obliged to maintain grandchildren if they are destitute. But the command would issue in this behalf when there is no other nearer relation and / or more responsible in this behalf. Accordingly, when a specific proposition was put to the learned counsel in this behalf he could not advance his argument any further. The question posed was: whether, in presence of the father the grandparents, whether on the paternal or on the maternal side, will be more responsible for maintaining their grandchildren as compared to the father’s duty to maintain his own children learned counsel without hesitation admitted that the priority-wise it would be the duty of the father.”

(Underlining is added)

11. The reference to the alleged opulence or income of the *grandfather*, including his salary that he is drawing being chief of a multinational company and about Rs. 300,000/-, he is getting as pension being retired Inspector General or other properties, perhaps in present case can only be useful for the petitioner-mother to show that the *respondent-father* does not have any other liability. The *respondent-father* stated before me that his brother is a doctor and remaining family members are even better placed than the *respondent-father* himself. Same is also apparent from the record. This at



least can be used as confirmation of the status of the family, their easy circumstances and the fact that there is no dependence of anyone on the *respondent-father* but the *minors*, alone.

12. Fixing quantum of maintenance always requires to strike a balance between needs of minors and earnings of a father as well as his other sources. The award in favour of minors should not be incompatible or inconsistent with the financial conditions of father or the one who is held to be obliged by law to take care of children. The learned Family Courts should consider the education, medical, food expenses and other day to day needs of minor(s) at one side and on the other hand, the Courts are required to determine the financial status of the father. In “Nazia Bibi and Others” case (*supra*) this Court has laid down guidelines, as to how the power to ascertain the needs of minor(s) and financials of the father is required to be exercised by the learned Family Courts. When a father makes it impossible to reach a just conclusion as to his earning or paying capacity, by mis-declarations or unfair disclosures as well as by hiding his sources then the learned Family Courts are empowered to draw adverse inference as per the law settled in case titled “Muhammad Asim and Others Versus Mst. Samro Begum and Others” (PLD 2018 Supreme Court 819). While doing the implementation it should also be borne in mind that the case is one of maintenance and decree should be passed after taking into account the requirements for proper upbringing of a child or children after scrutinizing income and finances of father but at the same time the order should not result into unjust enrichment of one side or operate as vexatious or oppressive to a father.

13. The *respondent-father* during the pendency of the suit was serving as Senior Superintendent of Police in Grade-19 and as per Exh. D2 his net salary or take home was Rs. 112,074/-. At present the *respondent-father* is working as

Deputy Inspector General and in August, 2023 his take home / net salary was about Rs. 175,000/-. The argument of Malik Noor Muhammad Awan-learned senior ASC that the police-officers of the same standing normally and at least once a year are awarded with bonuses, could not be denied by respondent-side. The petitioners alleged that the *respondent-father* was getting annual bonuses / rewards when he was serving as Senior Superintendent of Police, minimum at the rate of Rs. 450,000/- but now since he has been promoted such rewards or per annum bonuses in routine are always higher than half a million and sometimes, keeping in view the conditions and performance, bonuses are granted more than once a year; other perks and privileges are in addition to it.

14. The *respondent-father* remained present in the Court throughout the proceedings and he could not deny the fact that he has been receiving such rewards or bonuses, though his learned lawyer vaguely disputed quantum of annual bonuses. Same remained the position during the trial when the *respondent-father* after admitting this fact tried to explain the same as follows:-

"----- یہ درست ہے کہ موٹر وے پولیس سے ماہانہ تنخواہ کے علاوہ Annual Reward Fund بھی ملتا ہے۔-----"

"----- یہ درست ہے کہ سال 2018 میں یہ ایوارڈ مجھے ملتا تھا ہم یاد نہ ہے کہ کتنا ملا۔-----"

"----- از خود کہا کہ ایوارڈ کی رقم میرے گھریلو اخراجات میں صرف ہوتی ہے۔ کیونکہ میری سیلری میں سے بچوں کا نان و نفقہ ماہانہ ادا ہو رہا ہے۔-----"

15. In case titled "Marriam Bibi and Others Versus Azhar Iqbal and Others" (PLD 2022 Lahore 840) this Court has already concluded that to determine 'resources' and 'royalty', additional payments can be kept in view. In order to ascertain the consistency of rewards / bonuses and their volume, this Court directed the *respondent-father* to produce the details of rewards etc. given by concerned department in previous years to the *respondent-father* but for some reasons the *respondent-*



*father* has failed to respond. There is no convincing reason available for not extending benefit of those rewards or bonuses, perks and privileges to the *minors*. Specially, when the *respondent-father* has no other liability and he has his permanent residence at the house of the *grandfather* and for temporary purposes, at the places of his posting, official residence is being used.

16. The learned Family Court quite deeply went into the evidence led by the parties. It appears that the record was examined carefully. The various trips to USA and other Countries during the wedlock were also examined by the learned Family Court. Somehow, learned Appellate Court, while remarkably reducing the quantum of maintenance, could not very well grasp the matter. Several pieces of evidence and parts of examination have not been discussed, which were worth considering to reach at correct conclusion.

17. It is an admitted position that parents (*petitioner-mother* and the *respondent-father*) got the *minors* admitted in 'Kids Campus' school and the then fee per child was about the same as the total maintenance per month is awarded by the learned Appellate Court. The *respondent-father* has already admitted in his cross-examination that the *minors* were going to 'Kids Campus', which is meant for preparation for admission of children in premium schools. He unduly remained reluctant to state the exact or even tentative amount being paid as fee during those years. The following part of his cross-examination is noticeable:-

"مجھے یاد نہ ہے کہ اُس وقت بھی ماہانہ فیس Kids Campus میں -/27,000 روپے سے زیادہ تھی چھوٹے بیٹے عمار کمال شاہ کو میری بیوی نے سال 2015-16 سیشن میں Kids Campus میں داخل کروایا۔ مجھے یاد نہ ہے کہ عمار کمال شاہ کی Kids Campus کی ماہانہ فیس -/35,000 روپے سے زیادہ تھی۔ مجھے یاد نہ ہے کہ دونوں بچوں کی اُس وقت ماہانہ فیس -/63,261 روپے تھی۔ اور میں ادا کرتا رہا ہوں۔"

18. Mr. Muhammad Ayyaz Butt, learned counsel for the *respondent-father*, has not stated that the fee of the *minors* at ‘Kids Campus’ was paid by some other family member. No such evidence or stance is observed, either. Mother is admittedly a housewife. No convincing reason is recorded in the judgment-in-appeal to reduce the maintenance allowance to the level, which is less or equal to the fee being paid by the *respondent-father* in the year 2015-16.

19. Mr. Muhammad Ayyaz Butt, learned counsel for the *respondent-father* has repeatedly taken the attention of the Court towards the law settled by Honourable Supreme Court in cases titled “Amjad Ikram Versus Mst. Asiya Kausar and 2 Others” (2015 SCMR 1) and “Bahar Shah and Others Versus Manzoor Ahmad” (2022 SCMR 284) and argued that in case of inconsistency in findings of learned two Courts below, preference has to be given to the one rendered by the learned Appellate Court. This is correct when the interference of learned Appellate Court in findings of learned trial Court is based on cogent and confidence inspiring reasons. However, when such decision is not based on correct exposition of law and facts then leaving it to hold the field is unsafe.

20. Malik Noor Muhammad Awan, learned senior-ASC has prayed for decree of the entire fee of the *minors* and their travel expenses by adding other needs. For grant of such prayer he has relied on some properties and business of private school but when confronted to show any proof of the same, he could not do the needful and stated that the same are kept as *benami*. Again no proof, even little, could be brought on record during the whole trial for the allegation of *benami* properties or business. As far as the contention of learned counsel for the petitioners that maintenance award or decree should cover the entire education and other expenses is concerned, it is suffice to reproduce the relevant observation of the Supreme Court of

Pakistan in case titled “Tauqeer Ahmad Qureshi Versus Additional District Judge, Lahore and 2 Others” (PLD 2009 Supreme Court 760):-

*“We have given our anxious consideration to the entire facts and circumstances of the case. The minors are entitled to be maintained by the father in the manner befitting the status and financial condition of the father and for this reason the Family Court is under an obligation while granting the maintenance allowance, to keep in mind the financial condition and status of the father. It has to make an inquiry in this regard. It cannot act arbitrarily or whimsically. Furthermore, at the same time, the unjust enrichment of the minors cannot be permitted at the cost of the father. In the present case, there is nothing on the record to show that the appellant is a rich man and can afford paying at the end, Rs. 6.88 crores to the minors towards their maintenance. We have also noticed that the Family Court had no basis before it and had no criteria for awarding 20% annual increase in the maintenance allowance granted by it and it gave no reasons for ordering such an increase. It thus acted arbitrarily, illegally and whimsically in awarding such an exorbitant annual increase in the maintenance allowance. There was no justification for the annual increase of maintenance allowance at the rate of 20%. It was not a reasonable exercise of authority by the Family Court. It is well-settled that the judicial officers are required to act justly and fairly and reasonably in discharge of judicial functions. **The argument that school fees of the minors are more than the rate of maintenance allowance granted by the Family Court, therefore, the annual increase granted by the Family Court should not be interfered with, has also no force. The mother, if she desires or can afford, may put the children in expensive schools but the father’s obligation to maintain the minors is only to the extent of his status and financial condition and the Family Court must keep these factors in mind while granting maintenance allowance.”***

*(Emphasis supplied)*

21. It appears that the learned Appellate Court has not maintained the requisite equilibrium while fixing quantum of maintenance for the *minors*. Several parts of evidence have been

unduly ignored. The status of the parties and available sources have been overlooked. After hearing the arguments and going through the record with able assistance of the learned counsel for the parties, I am of opinion that it is just to enhance the maintenance of the *minors*, therefore, the same is fixed as Rs. 40,000/- per month for each minor from the date already fixed by the learned Appellate Court, with 10% annual increase.

Petition is **allowed** in above terms.

**(SULTAN TANVIR AHMAD)**  
**JUDGE**

Approved for Reporting

Announced in open Court on 01.11.2023.

**JUDGE**