

FORM No: HCJD/C-121

ORDER SHEET

IN THE LAHORE HIGH COURT, LAHORE

JUDICIAL DEPARTMENT

Case No: W.P. 24111/2017

Kanwal Rasheed		versus	Accountant General, Punjab etc.
S.No.of order / Proceeding	Date of Order/ Proceeding	Order with signature of Judge, and that of parties of counsel, where necessary	

15.02.2019	Rana Asad Ullah Khan, Advocate for the petitioner. Raja Saleem Ullah Khan, Law Officer Finance Department. Mr. Saeed ul Hassan Jaffrey, AAG with Ch. Asif Javaid, Accounts Officer.
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Through this Constitutional petition under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 petitioner has challenged the notification No. FD-SR-III-4-471/2014 whereby previous notification No. FD-SR-III-4-111/89 dated 22.07.1989, was clarified.

2. Brief facts giving rise to the filing of the present writ petition are that parents of the petitioner were government servants who had already died one after the other. After the death of her father, Professor S.A. Rashid, on 22.10.1983, his pension was transferred in the name of his widow, namely, Professor Mrs. Shamshad Rashid, a government servant,

who after her retirement, started getting her own pension, alongwith the pension of her late husband, until her death on 12.08.2009. In the year 2012, the petitioner filed an application and the Accountant General, Punjab got the pension of her deceased parents disbursed in her account according to law. However, in May 2016, the old procedure was changed and now the pension was required to be withdrawn on-line. However, after great efforts, only the pension of her mother was released in October, 2016 but the pension of her father was not released, in view of the impugned clarification issued in the month of September, 2015, which according to the petitioner, did not apply to her. The respondents, on the contrary, demanded the recovery of Rs. 1.94 million from her vide letter dated 11.11.2016 after 7 years, hence this writ petition.

3. In the report and parawise comments submitted by respondents No. 1 to 3, it is specifically stated that under

the Punjab Civil Services Pension Rules, 1963, the two pensions cannot be claimed by the petitioner as one pension is a sufficient source of income, and that purposely she did not inform the department about the drawal of second pension and that under the Notification No. FD.SR-III-4-471/2014 dated 11.09.2015, she cannot draw two pensions, therefore, the petitioner could not claim the future pension, and was required to return Rs. 1.94 Million drawn by her vide PPO No. MNF/10005.

4. In the report and parawise comments submitted by the Finance Department/ respondent No.4, it is stated that when the pension was put on-line, it came on the surface that petitioner was illegally drawing two pensions, as one pension is a regular source of income, therefore, second pension cannot be allowed, hence prays for dismiss of the writ petition.

5. Arguments heard. File perused.

6. According to the notification No. FD.SR.III-4-111/89 dated 22.07.1989 of

the Finance Department titled “LIBERLIZATION OF PENSION RULES CLARIFICATION FAMILY PENSION” the earlier circular letter No. FD-SR-III-4-54/83 dated 25.08.1983 was extended to widow for life or until re-marriage and in the case of death of widow, family pension is admissible to son until he attains the age of 29 years and unmarried daughter until she is married or attains the age of 21 years, whichever is earlier. Later, it was modified in view of the decision taken by the Governor of Punjab on 01.07.1989, when the family pension in case of widow’s death was admissible to the dependent sons until the age of 24 years or until they are gainfully employed whichever is earlier, and to unmarried daughter until their marriage or they acquired regular source of income whichever is earlier. This notification was further interpreted on 11.09.2015 vide notification No. FD-SR-III-4-471/2014 under which it was observed that a monthly family pension received by a pensioner is construed as a

regular source of income, therefore, the unmarried daughter cannot draw the family pension of her father and mother simultaneously so as to grant her two family pensions. Consequently, on 10.08.2016, 11.11.2016 and 26.01.2017 notices for recovery of Rs. 19,41,631/- was issued to the petitioner to provide original pension book. The petitioner replied the respondents by sending a letter on 22.08.2016 and also on 02.02.2017 but of no avail. She, therefore, filed the present petition in the above said context.

7. In order to assess the possible retrospective effect the notification dated 11.08.2015 is reproduced as under:-

No.FD-SR-III-4-47/2017
GOVERNMENT OF THE PUNJAB
FINANCE DEPARTMENT
Dated Lahore, The 11th September 2015

To

1. All Administrative Secretaries to Government of Punjab.
2. The Principal Secretary to Governor of the Punjab.
3. The Principle Secretary to Chief Minister, Punjab.
4. The Military Secretary to Governor of Punjab.
5. All Commissioners in the Punjab.
6. All District Coordination Officer in the Punjab.
7. All Heads of attached Departments, Government of Punjab.
8. The Registrar, Lahore High Court, Lahore.

9. All District & Sessions Judge in the Punjab.
10. The Secretary, Punjab Public Service Commission, Lahore.
11. The Secretary, Punjab Provincial Assembly, Lahore.
12. The Secretary TEVTA Government of the Punjab.
13. The Director General Audit & Accounts (Works), Lahore.
14. The Chief Inspector of Treasuries & Accounts, Punjab, Lahore.
15. The Provincial Director, Local Fund and Audit, Punjab, Lahore.
16. The Chief Pilot, Flight Lahore.

Subject:- **LIBERALIZATION OF PENSION RULES CLARIFICATION.**

I am directed to refer to para 1 of this Department's letter No. FD-SR-III-4-111/89 dated 22nd July, 1989 and to state that a question has arisen as to whether an unmarried daughter can draw family pension of her father and mother simultaneously. The matter has been examined and is observed that a monthly family pension being received by a pension is construed as regular source of income. Therefore, such pension is not entitled to receive another family pension.

Sd/-
(M. NAWAZ KHALID ARABI)
DEPUTY SECRETARY (SR)

Its close reading does not mention that it was drafted to have its effect from 22.07.1989. Secondly, said notification does not mention any power/authority in the exercise of which it was issued. Thirdly, drawing of a pension by the son or daughter was incorrectly considered as a regular source of income. Fourthly, it was not issued in accordance with the spirit of the Punjab Service Pension Rules, 1963.

8. The effect of the notification, unless so stipulated in the notification itself, will start from the date it was issued particularly if it was to take away certain rights. A guidance can easily be sought in this regard from MOZAFFAR AHMED versus ANWAR ALI AND OTHERS (**PLD 1965 Dacca 296**) in which it was held that a statute cannot be construed to take away a vested right unless there are express provisions of law to that effect and unless such a result follows as necessary implication of the language in the statute. In COLLECTOR OF CENTRAL EXCISE AND LAND CUSTOMS AND 3 OTHERS versus AZIZUDDIN INDUSTRIES LTD., CHITTAGONG (**PLD 1970 Supreme Court 439**) it was observed at page 444 that if a notification is purported to completely take away the vested rights, it will be interpreted in the context of exercise of executive authority of rule-making power which could not take away the vested rights of the citizen by law. In BADSHAH GUL WAZIR versus GOVERNMENT OF KHYBER

PAKHTUNKHWA through Chief Secretary and others (2015 SCMR 43) a statutory provision, particularly one curtailing substantive rights, does not have retrospective operation unless the legislature elected to give it retrospective effect. In MUHAMMAD AMIN MUHAMMAD BASHIR LIMITED versus GOVERNMENT OF PAKISTAN through Secretary Ministry of Finance, Central Secretariat, Islamabad and others (2015 SCMR 630) the purpose to exercise a legislative authority to an executive authority is intended to enforce the law and not to override it. They can fill in details but not vary the underlining statutory principles and in case of conflict they must yield to the legislative will. Similar was the view held in Messrs ARMY WELFARE SUGAR MILLS LTD. and others versus FEDERATION OF PAKISTAN and others (1992 SCMR 1652) in which it was held that only the beneficial notifications can operate retrospectively and not otherwise. In B.P. BISCUIT FACTORY LTD., KARACHI versus WEALTH TAX OFFICER and another

(1996 SCMR 1470) it was held that when it comes to interpretation of statute, if the language is ambiguous and further interpretations are possible then doubt should be resolved in favour of the citizen. If **Rule 4.10 clause 6 of the Punjab Civil Services Pension Rules, 1963** is interpreted in view of the above case laws, it would become that the family pension can be awarded and not refused according to priorities of the members and if there exists special circumstances for the beneficiaries a suitable interpretation should be made. Clause 6 of Rule 4.10 of the Rules *ibid*, is reproduced as under:-

“(6) Government shall have discretion to make such modification in the mode of allotment or conditions of tenure set forth in sub-rules (2) to (5) above as they may consider desirable to suit the special circumstances of the beneficiaries.”

9. In *KHYBER ZAMAN and others versus GOVERNOR, STATE BANK OF PAKISTAN, KARACHI and others* **(2005 SCMR 235)** the word pension was defined in the new Encyclopedia Britannica vol. 9, 15th Edition, according to which it is a source of periodic money

payments to a person who retires from employment because of age, disability or completion of agreed span of service. The payments usually continue for the rest of the natural life of the recipient and sometimes to a widow or other survivor in consideration of the past service or the relinquishment of rights, claims or emoluments. In PAKISTAN

TELECOMMUNICATION EMPLOYEES TRUST (PTET) through M.D., Islamabad and others versus MUHAMMAD ARIF and others **(2015 SCMR 1472)** it was held

that pension is a part of civil servant's retirement benefit and not the bounty or an ex-gratia payment but a valid right acquired in consideration of his past services conferred by law which could not be arbitrarily abridged or reduced by executive except in accordance with law.

10. Now comes to the pivotal question as to whether a child of deceased government servants is entitled to draw two pensions. A son under the age of 21 years and the daughter unless married or until both acquired regular source of

income can draw pensions. The Punjab Civil Services Rules, 1963 permitted the drawal of pension under Rule 4.10 (2A) 1 and 11.

11. The law in Pakistan and the judgments referred above do not show that two pensions cannot be withdrawn by a child of both parents who retired as government servants. However, Rule 54(11) of the Central Civil Servants Pension Rules, 1972 prevalent in India specifically provides that in case both husband and wife were government servants, who died while in service or after retirement, a family pension in respect of the deceased shall become payable to the surviving husband or the wife as the case may be and in the event of death of husband or wife the surviving child or children are entitled to two family pensions according to certain conditions. Rule 54(11) of the Rules *ibid*, is reproduced as under:-

“In case both wife and husband are Government servants and are governed by the provisions of this rule and one of them dies while in service or after retirement, the family pension in respect of the deceased shall become payable to the surviving child or children shall be granted the two family pensions in respect of the deceased parents,

subject to the limits specified below, namely,-

(a) (i) if the surviving child or children is or are eligible to draw two family pensions at the rate mentioned in sub-rule (3), the amount of both the pension shall be limited to 1[two thousand five hundred rupees] per mensem;

(ii) if one of the family pensions cases to be payable at the rate mentioned in sub-rule (3) and in lieu thereof the pension at the rate mentioned in sub-rule (2) becomes payable, the amount of both the pensions shall also be limited to 1[two thousands five hundred rupees] per mensem;

(b) If both the family pensions are payable at the rates mention in sub-rule (2), the amount of two pensions shall be limited to 2[one thousand two hundred and fifty rupees] per mensem.

In Rukmani and Pradeep Kumar Kumawat Versus The Union of India through its Secretary, Ministry of Home Affairs, New Delhi and Others

(211(4)SLR257) Rajasthan High Court

had held that denial of the pension merely on the ground that father of the deceased was getting pension and that two members of family cannot receive family pension simultaneously was not approved in view of the fact that if they qualified to receive pension in their independent right, they cannot be deprived of their valid right. Para 10 is reproduced as under:-

“10 Even sub-rule (11) of Rule 54 of the Central Civil Services (Pension Rules, 1972 provides that in case both wife and husband are Government Servants and are governed by provisions of this rule and one of them dies while in service or after retirement, the family pension in respect of the deceased shall

become payable to the surviving husband or wife and in the event of the death of the husband or wife, the surviving child or children shall be granted two family pensions at a time.....”

12. Last but not least is a reference which will be relevant here of **order dated 06.12.2017 passed in W.P. No. 104972 of 2017 titled *Mst. Saeeda Nasreen versus The Accountant General Punjab*** which was dismissed as withdrawn in view of the report and parawise comments submitted by the Accounts department stating that petitioner therein, was not entitled to payment of family pension as she was already drawing the pension as a regular source of income in form of her own pension. However, it was stated in view of the comments that pension would be re-started and then the writ petition was disposed of.

13. Keeping in view the above discussion, it is clear that drawal of the pension is vested right of the child of a government servant, duly qualified, which cannot be taken away through a notification that too with retrospective effect and that two pensions are independent regardless of the fact that both deceased government servants were related inter-se and that drawal of a pension is not a regular source of income in view of the fact that this entitlement will come to an end after attaining certain change in the status of the daughter.

14. In this view of the mater, this writ petition is **allowed**, impugned notification No. FD-SR-III-4-471/2014 dated 11.09.2015 is set aside declaring that child of deceased parents who were government servants is entitled to two pensions simultaneously according to their eligibility.

(ALI BAQAR NAJAFI)
JUDGE

Approved for reporting.

JUDGE

Shahzad