

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)



PRESENT:

Mr. Justice Muhammad Ali Mazhar
Mrs. Justice Ayesha A. Malik

CIVIL PETITION NO.616-K OF 2025

[Against order dated 27.02.2025 passed by the High Court of Sindh, Circuit Court, Larkana in CP No.D-226 of 2024]

Province of Sindh through Secretary Government ...Petitioner(s)
of Sindh, Karachi and others

Versus

Mst. Sorath Fatima and another ...Respondent(s)

For the Petitioner(s) : Mr. Sibtain Mehmood,
Additional Advocate General, Sindh (*via video link, Karachi*)

Respondent(s) : N.R

Date of Hearing : 10.07.2025

JUDGMENT

AYESHA A. MALIK, J.- This Civil Petition is directed against order dated 27.02.2025 (**Impugned Order**) passed by the High Court of Sindh, Circuit Court, Larkana (**High Court**) whereby the constitution petition filed by Respondent No.1 (**Respondent**) was disposed of.

2. The basic facts are that the father of the Respondent was an employee of the Road and Transport Department, Government of Sindh who died on 12.02.2002. His pension was originally sanctioned in the name of his widow, who died on 06.12.2012. Thereafter, the Respondent, being the unmarried daughter, sought the family pension of her father, which she received until she got married. The pension was stopped on account of her marriage, however, upon dissolution of the marriage in August 2022, the Respondent sought resumption of her father's pension on the ground that she was the *divorced daughter* of a government employee, hence, entitled to his family pension. The Petitioners denied the Respondent grant of family pension by citing the West Pakistan Civil Services Pension Rules, 1963 (**Rules**) and Circular dated 05.12.2022 issued by the Government of Sindh, Finance

Department (**Circular**)¹, which provides that if the daughter of a deceased pensioner is divorced at the time of death of the pensioner, she is entitled to pension, however, if she gets divorced after the death of the pensioner, then she is not entitled to family pension. The Respondent challenged the refusal of grant of family pension by the Petitioners by way of a constitutional petition before the High Court wherein through the Impugned Order, she was granted the family pension.

3. Mr. Sibtain Mehmood, Additional Advocate General, Sindh (**AAG**) argued that on account of the Rules and the Circular, the Respondent is not entitled to pension as her divorce took place after the death of her father and as per the Circular, since she was divorced after the pensioner's death, she is not entitled to family pension. He argued that as per the Circular, the daughter of a deceased pensioner is entitled to family pension based on her marital status at the time of death of the pensioner. Consequently, if she gets a divorce or becomes widowed after the death of the pensioner, she is not entitled to family pension. While relying on the Rules, he further argued that since the Respondent was originally married and then sought *khula*, she is not entitled to the pension in terms of Rule 4.10(3)(a) as family pension is not payable to an unmarried daughter in the event of her marriage. The basic requirement, he argued, is that she remains unmarried after the death of the pensioner to qualify for family pension as per the Rules. On hearing the arguments, the issue before us is the right of the *unmarried daughter* or *divorced daughter* to claim family pension after the death of her parent being a deceased government servant.

4. We have heard the learned AAG and have examined the record. At the very outset, it is important to emphasize that pension is the right of a government servant who has served the government for a substantive period of time. It is not a charity, bounty, or *ex gratia* payment, but a legal entitlement that is granted in recognition of past service.² It provides financial support in old age and reflects the State's obligation to care for those who have served it. It cannot be reduced or denied arbitrarily, and must be administered strictly in accordance with law. This earned right passes onto the legal heirs of a deceased government servant/pensioner which the legal heirs are entitled to

¹ Circular No. FD(PCDC)3(225)/2022, Finance Department, Government of Sindh dated 5th December, 2022.

² Secretary, Government of Punjab v. M. Ismail Tayer (2014 SCMR 1336).

receive in accordance with law. It is important to note that the flow of entitlement does not extinguish with the death of a pensioner rather it crystalizes in favour of the legal heirs. The objective again being to provide financial support to the family of the deceased civil servant. Delays in the disbursement of pensionary benefits to retired employees, widows, or children are not only unlawful but amount to criminal negligence and dereliction of duty.³ As part of the civil servant's retirement benefits, pension gives rise to a legitimate expectation and cannot be withheld except through lawful means.⁴ This Court has also held that the right of accrued pension is protected under Article 9 of the Constitution of the Islamic Republic of Pakistan, 1973 (**Constitution**) as part of the right to life. It is important to reiterate that the right to life does not merely include existence of the right to pension but includes the access to pension as the means necessary for living with dignity. Therefore, it is the duty of the State and its departments to act with diligence and integrity and to ensure the prompt and fair disbursement of pensionary benefits. Unwarranted delays cause hardship and violate the trust placed in public institutions as retired government servants and their families are left waiting for that which is lawfully due to them on account of bureaucratic negligence. Timely payment of pension is not simply an administrative measure but a constitutional obligation.⁵

5. The statutory framework is such that Section 20 of the Sindh Civil Servants Act, 1973 (**Act of 1973**) provides that on retirement from service, a civil servant shall be entitled to receive such pension or gratuity as may be prescribed. Subsection (2) thereof provides that in the event of the death of a civil servant, whether before or after retirement, the family shall be entitled to receive such pension, or gratuity, or both, as may be prescribed. Consequently, the statutory right of pension is the right of the civil servant and in the event of death, this right devolves on the family of the deceased civil servant. The Rules prescribe for the mode and manner in which pension is to be granted. Rule 4.10 of the Rules provides for family pension but does not define *family*, which is defined in Rule 4.7(1) which states that *family*, for the purposes of payment of gratuity, includes the wife (or wives) for a male government servant, husband of a female government

³ Muhammad Ismail Memon: In the matter of Criminal Miscellaneous Application No. 226 of 2006 (PLD 2007 SC 35).

⁴ Government of N.-W.F.P. v. Mohammad Said Khan (PLD 1973 SC 514) and I.A. Sharwani v. Government of Pakistan (1991 SCMR 1041).

⁵ Muhammad Yousaf v. Province of Sindh (2024 SCMR 1689).

servant, children of the government servant, the widow (or widows) and children of a deceased son of a government servant and a divorced daughter and sister. As per Rule 4.10(2)(A), family pension is given to the widow or widower of the deceased government servant and where there is no widow or widower, as the case may be, pension is divided equally amongst the surviving sons who should not be older than 21 years of age⁶ and unmarried daughters. In case family pension is not granted under Rule 4.10(2)(A), then it may be granted under Rule 4.10(2)(B) to the father or mother of the deceased government servant, as the case may be, and in the event that neither the father or mother are available, to the divorced daughter. Rule 4.10(3) provides that family pension shall not be payable to an unmarried female member of the deceased pensioner's family in the event of her marriage. The Rules make it clear that family pension is granted to an *unmarried daughter* or a *divorced daughter*. Although both these terms are not defined in the Rules, there is no apparent distinction between them, however, the meaning attributed to the terms *unmarried* and *divorced* by the Petitioners is that an unmarried daughter is one who has never been married and a divorced daughter is one who was married and subsequently divorced. However, we find that this distinction is simply in furtherance of the argument that as per Rule 4.10(3), family pension is not payable to the female member if she gets married.

6. On 05.12.2022, the Secretary to the Government of Sindh, Finance Department, issued the Circular clarifying that in the case of the surviving daughter of a deceased pensioner, she will be entitled for family pension if she is a widow at the time of death of the pensioner, or if she is divorced at the time of death of the pensioner. Accordingly, she is not entitled to pension if she becomes a widow after the death of the pensioner or if she gets divorced after the death of the pensioner. In this context, the Circular clarifies that in the event that the death of the pensioner and of the husband of the daughter occurs on the same day, or similarly the divorce is on the same day as the death of the civil servant, family pension can be transferred to the daughter. Therefore, the emphasis of the Circular is on the marital status of the daughter as on the date of the death of the pensioner. In other words, if the surviving daughter becomes a widow or is divorced after the death of the pensioner, then she is not entitled to family pension. Her

⁶ Circular No. FD(SR-III)3-1165/2022, Finance Department, Government of Sindh dated 7th July, 2022.

entitlement, as per the Circular, is based on whether she is divorced or widowed on the date on which the pensioner dies. The entitlement is the status on the date of death of the pensioner. The Circular conditions entitlement to family pension for a daughter whether widowed or divorced based on her status at the time of the pensioner's death.

7. In terms of the facts of this case, the status of the Respondent at the time of her father's death was that she was unmarried, hence, entitled to and granted family pension which was discontinued on account of her marriage in 2022. After obtaining *khula* in 2022, she reclaimed her father's pension as her status changed from *unmarried daughter* to *divorced daughter*. This was denied to her as she obtained her divorce after her father's death and therefore, she did not qualify as per the Circular. We note that under the Rules, whether the daughter is unmarried or divorced, she is entitled to the pension of the deceased civil servant in this case being the father's family pension. However, the Circular gives a narrow interpretation of Rule 4.10(2)(B)(v)⁷ and (vi)⁸ as it restricts the grant of pension to surviving daughters of pensioners based on their marital status at the time of death of the pensioner. This is contrary to the right prescribed under the Act of 1973 and the Rules which imposes no such condition. In our opinion, the Circular adopts an overly rigid approach making a woman's entitlement to family pension strictly contingent on whether her status as a widow or divorcee was established prior to or at the exact time of the pensioner's death. Even a change in status occurring a single day after the death of the pensioner is treated as a complete bar to family pension. The Circular therefore does not clarify Rule 4.10(2) (A) or (B) but rather it imposes a condition of status at the time of death of the pensioner which is totally beyond the intent of the Act of 1973 and the Rules.

8. It is settled law that executive clarifications in the form of circulars and administrative directives cannot override, amend or curtail the scope of the statute itself or the rules framed thereunder. In the present case, the Circular modifies Rule 4.10 by imposing a condition which is not authorized by the Act of 1973 or the Rules.

⁷ (v) failing (i) to (v), to the eldest surviving widowed sister*[:] (since omitted by No. FD(SR-III)3-1165/2022, Finance Department, Government of Sindh dated 7th July, 2022).

⁸ [(vi) failing the mother and the father, to the divorced daughter:]

Consequently, two distinct issues arise. The first being that the *point in time* restriction further limits eligibility to family pension with no statutory backing because the Rules grant family pension to unmarried daughters and to divorced daughters, the distinction between the two being technical, possibly to avoid confusion, however the basic issue being that the Rules do not condition this right with the status at a given *point in time* requirement. The Circular places an onerous burden on the unmarried or divorced daughters' right which is beyond the scope of the Act of 1973 and the Rules. The same will apply to the widowed daughter, who as per the Circular, is only entitled to family pension if she was widowed before the pensioners death and not after. The second issue is that the Finance Department has transgressed its authority by issuing a clarification where none was required. It has in fact no authority to issue such a clarification and impose conditions on the grant of pension which are not in the Act of 1973 and the Rules which it seeks to clarify. A similar transgression was in issue in the *Kanwal Rashid* case where this Court affirmed that family pension rights are an extension of the right to life under Article 9 of the Constitution and that any denial of such rights must have a legal basis, not a departmental policy or a circular⁹. While administrative orders or executive instructions may fill in procedural details, they cannot nullify, override or contradict the Rules framed under the parent statute.¹⁰ Consequently, the Finance Department could not impose conditions on who qualifies for family pension, and it cannot restrict or exclude persons from a right given under the law by imposing conditions which are not envisioned under the statute or rules. It has been held by this Court time and again that pension is a legal right and not a favour or benefit that can be changed at will. Furthermore, the right to pension has a constitutional underpinning being the fundamental right to life and dignity.¹¹ We are dismayed to note that, despite this Court having repeatedly clarified the legal position, the law continues to be disregarded.

9. Having said that, we also are of the opinion that in the context of family pension, it is deeply concerning that admissibility of pension to a surviving daughter continues to depend entirely on her marital status. This *dependency model* reveals that there is a

⁹ Province of Punjab v. Kanwal Rashid (2021 SCMR 730).

¹⁰ Muhammad Amin Muhammad Bashir Ltd. V. Government of Pakistan (2015 SCMR 630).

¹¹ Articles 9 and 14 of the Constitution.

systematic bias that treats a daughter as a dependent, with her financial dependency shifting from parent to spouse. This assumption not only perpetuates the stereotypical mindset about women being dependent members within the family structure but also fails to recognize women as individuals or autonomous individuals who may have the capacity to be financially independent. It is also based in the flawed belief that unmarried or divorced women are financially dependent, while married women are financially secure. This mindset fails to account for the fact that married women may also face financial difficulty. It reflects a systematic bias that fails to recognize women as autonomous right-holders and also does not account for the lived realities of women. It assumes, first and foremost that all women are financially dependent within the traditional family unit, from parents to husband and secondly that marriage *per se* ensures financial stability. It totally ignores the hardship and insecurities faced by married women who may be in need of the financial security in the form of pension. Dependency is not a metric for financial stability rather it is an assumption that disregards actual economic need and the lived experiences of many women. The claim of surviving daughters should be based on need and individual assessment rather than a legal framework built on patriarchal assumptions as to what is stereotypically believed to constitute dependency. This form of presumptive exclusion based solely on marital status is unconstitutional, discriminatory and a violation of Articles 14, 25, and 27 of the Constitution. The concept of tying a daughter's eligibility to family pension solely to her marital status results in an unjustifiable distinction.

10. Women are independent right-holders, autonomous and should be entitled to family pension where financial need is established. Pakistan's obligations under international law reinforce the principle that women cannot be denied access to economic entitlements based on marital status alone. As a party to the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), Pakistan is required to abolish discriminatory laws and practices that impair women's enjoyment of rights on an equal footing with men. Article 13 thereof guarantees women equal rights in family benefits, while Article 2(f) obliges States to repeal existing laws and regulations that constitute discrimination.

Article 5(a) requires the elimination of prejudices based on stereotyped gender roles, and Article 16(1)(c) recognises equal rights and responsibilities within marriage and at its dissolution. Rules that deny women pension benefits based solely on marital status contradict these obligations and reinforce assumptions that women must remain financially dependent and lack financial autonomy. In addition, Pakistan is bound by the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR), both of which prohibit sex-based discrimination and require equal access to legal and social protections, including pensions. Goal 5 of the Sustainable Development Goals (SDGs) on gender further reinforce the obligation to eliminate legal and economic barriers to women's empowerment. Pakistan has also ratified Convention No.111 of the International Labour Organization (ILO), which prohibits discrimination in employment and related benefits, reinforcing the requirement that pensions be granted on equal terms, irrespective of sex or marital status. Despite the fact that the Government claims its commitment under its international treaties and conventions, Pakistan's standing in the Global Gender Gap Index (GGI) illustrates a different picture. The 2025 GGI ranks Pakistan at 148 out of 148 countries globally and 143 out of 148 countries in economic participation and opportunity. Indicators such as wage equality, labour force participation, and estimated earned income show persistent and wide disparities. Legal provisions that condition pension access on status rather than need entrench these inequalities and contribute to the structural barriers women face in achieving financial security. A surviving daughter's claim should be assessed on actual need and individual financial circumstances, not marital status. This is the only way to ensure substantive equality so that we can finally look beyond formal categories like *married* or *unmarried* and instead consider the real-life impact of such classifications on women's financial security. In contrast, India takes a more flexible approach based on financial need. Daughters are granted pension based on need and not marital status. In fact, India also allows children with disabilities to receive family pension for life based on their financial need. Similar initiatives can be seen in Bangladesh through the use of social security schemes. It now allows pensions for widowed or divorced daughters, and sometimes even for grandchildren who

depend on the pensioner.¹² However, despite such development surrounding pensionary frameworks in the Global South, the framework in Pakistan still remains rigid based on a deeply rooted patriarchal mindset.

11. Upon a review of comparative jurisprudence, courts across various jurisdictions have consistently held that pension is a legal entitlement and must be administered in accordance with principles of equality and rational classification. Indian Courts have clarified that the expression *unmarried daughter* must be interpreted broadly to include widowed and divorced daughters, and that such beneficiaries cannot be denied family pension solely on account of a change in marital status.¹³ It has been repeatedly reinforced that pension is a legal entitlement, not a discretionary benefit that can be withheld arbitrarily by the executive.¹⁴ The Indian Supreme Court has further held that pension is not solely a statutory right but the fulfilment of a constitutional promise to the widow and dependents of a government servant. The rules governing such pensionary benefits exist to give effect to this constitutional mandate.¹⁵ Similarly, in *Carson v. United Kingdom*, the European Court of Human Rights recognized that social security benefits must be distributed in a manner that is proportionate and non-discriminatory.¹⁶ These decisions further clarify that pension entitlements must be grounded in need and legal entitlement rather than formal status or stereotypical assumptions.

12. In view of the foregoing, it is important to revisit the law surrounding pension. The Rules should be reconsidered to remove marital status as a condition for entitlement. What we require is a need based and dignity affirming framework. This approach would better align with constitutional guarantees of equality and Pakistan's international obligations to eliminate discrimination in access to social protection. The existing framework is grounded in patriarchal assumptions and fails to treat women as autonomous rights-holders. By tying a daughter's right to pension to her marital status at the time of the pensioner's death, the legal framework contemplates a criterion that bears no rational connection to actual dependency. A shift to a

¹² Widow, Deserted and Destitute Women Allowance (WDDWA), Universal Pension Scheme (UPS) and National Social Security Strategy (NSSS) of Bangladesh.

¹³ *Khajani Devi v. Union of India and Ors* 2016 (4) RCR (Civil) 158.

¹⁴ *Deokinandan Prasad v. State of Bihar*, (1971) 2 SCC 330 and *Bhagwanti v. Union of India* (AIR 1989 SC 2088).

¹⁵ *Poonamal v. Union* (AIR 1985 SC 1196).

¹⁶ *Carson and Others v. The United Kingdom* [2010] ECHR 338.

merit-based system grounded in substantive equality ensures that the constitutional and international obligations are being complied with. Given Pakistan's consistently low ranking in the GGI, the need is not for cosmetic adjustments but for a fundamental change in mindset that affirms dignity and corrects systemic bias. We find that the Circular, which imposes restrictions unsupported by the Act or the Rules, is void *ab initio*, unconstitutional, and of no legal effect. The timing of the pensioner's death cannot lawfully be used to extinguish a surviving daughter's right to claim pension. Accordingly, this civil petition, having no force, is dismissed and leave refused.

JUDGE

JUDGE

Islamabad
10.07.2025
'APPROVED FOR REPORTING'
*Azmat/ Nurayn Qasim**