

IN THE SUPREME COURT OF PAKISTAN
(APPELLATE JURISDICTION)

PRESENT:

MR. JUSTICE GULZAR AHMED, HCJ
MR. JUSTICE MAZHAR ALAM KHAN MIANKHEL
MR. JUSTICE SAYYED MAZHAR ALI AKBAR NAQVI

CIVIL APPEAL NO. 410 OF 2020

(On appeal against judgment dated 16.10.2018 passed by the Peshawar High Court, Peshawar in Writ Petition No. 1184-R/2017)

The Government of Pakistan through Secretary Establishment Division,
Islamabad

... Appellant

VERSUS

Muhammad Ismail and another

... Respondents

For the Appellant: Ch. Aamir Rehman, Addl. Attorney General
Mr. Sajid ul Hassan, S.O. Establishment

For the Respondent (1): In person

Date of Hearing: 02.06.2021

JUDGMENT

SAYYED MAZHAR ALI AKBAR NAQVI, J.- Through this appeal by leave of the Court under Article 185(3) of the Constitution of Islamic Republic of Pakistan, 1973, the appellant has called in question the judgment dated 16.10.2018 passed by the Peshawar High Court, Peshawar, whereby the writ petition filed by the respondent No. 1 was allowed. While handing down the judgment, the learned High Court directed the appellant department to appoint the respondent No. 1 in pursuance of 'Prime Minister's Assistance Package for Families of Government Employees who die in service' dated 13.06.2006 to be effective from 01.07.2005, which was further amended on 20.10.2014, 04.12.2015 & 09.09.2016.

2. Briefly stated the facts of the matter are that respondent's father while working as Senior Auditor in the office of Accountant General KPK, Peshawar, died on 14.10.1995. On 13.06.2006 the Government of Pakistan issued 'Assistance Package for Families of Government Employees who die in service' according to which son/daughter/widow/widower/family member, as the case may be, of the deceased government servant was made eligible for employment for

posts in BS-01 to BS-15 on two years contract without any advertisement. This package was amended time and again and finally an amendment was made vide Office Memorandum dated 09.09.2016 whereby the two years contract period was enhanced to 5 years and the same was also made extendable till the age of superannuation or regularization. The respondent No. 1 filed an application to the Accountant General KPK, Peshawar, for appointment on the quota of government employee, who died in service, on the basis of afore-referred memorandum dated 09.09.2016 but the same was never responded. The respondent then filed Writ Petition No. 1184-P/2017 before the Peshawar High Court, Peshawar, which has been allowed vide impugned judgment and it has been held that a statute or rule giving right to the citizens always operates retrospectively. Hence, this appeal by leave of the Court.

3. *The crux of the arguments advanced by learned Additional Attorney General is that the father of the respondent died in the year 1995 when there was no policy in vogue for employment of deceased's family member, therefore, the respondent could not have been given retrospective benefit of the policy, which was issued later on with prospective effect. He added that the learned High Court has wrongly interpreted that a statute or rule giving right to the citizens always operates retrospectively and the impugned judgment being not sustainable in the eyes of law may be set aside.*

4. *On the other hand, the respondent No. 1, who appeared in person, mainly stated that he possessed all the requirements/qualification but despite that he was not appointed on the basis of afore-referred office memorandum dated 09.09.2016, which amounts to depriving him from his legal right, which accrued to him in pursuance of the aforesaid Assistance Package.*

5. *We have heard learned Law Officer as also the respondent No. 1 in person and have perused the record.*

6. *It is an admitted fact that respondent's father died in the year 1995 while he was in regular service of Accountant General KPK being Senior Auditor. At that time, there was no scheme/policy in field for induction of family member of deceased civil servant in service. It was on 13.06.2006 when the Government of Pakistan issued 'Assistance Package for Families of Government Employees who die in service', to be made effective from 01.07.2005, wherein employment for*

posts in BS-01 to BS-15 on two years contract without advertisement for the families of deceased servant was surfaced. Thereafter, this package was amended thrice i.e. on 20.10.2014, 04.12.2015 and lastly on 09.09.2016 whereby the two years contract period was enhanced to 5 years and the same was also made extendable till the age of superannuation or regularization. We have perused the Assistance Package and the subsequent amendments but could not find any provision therein which gives it retrospective effect especially when the grievance of respondent was agitated with a lapse of almost 17 years. It is an established principle of interpretation of statutes / notifications / executive / administrative orders that they would operate prospectively unless they expressly provide for retrospective operation. This Court in the case of Hashwani Hotels Ltd. Vs Federation of Pakistan (PLD 1997 SC 315) has acknowledged this fact by observing that "it is a well-settled principle of interpretation of a notification and/or an executive order that the same can operate prospectively and not retrospectively. This principle is equally applicable to a statute in the absence of any express or implied intendment contrary to it." In this view of the matter, when it is clear that afore-referred Assistance Package for legal heirs of deceased government employee was not available at the time when deceased employee died and the same was issued later on with prospective effect, the respondent was not deprived of any right accrued to him at the relevant time by not appointing him. The learned High Court has erroneously presumed that a statute or rule, which gives right to the citizens, always operates retrospectively. If this is accepted, it would tantamount to opening a floodgate for all other similarly placed persons.

7. For what has been discussed above, this appeal is allowed and the impugned judgment is set aside.

CHIEF JUSTICE

JUDGE

JUDGE

Islamabad, the
2nd of June, 2021
Approved For Reporting
Khurram