

IN THE PESHAWAR HIGH COURT,
PESHAWAR,
[Judicial Department].

Writ Petition No.1705-P/2021

Mst. Islam Bibi widow of Rehmat Khan,
r/o Central Colony Sadda,
District Kurram.

Petitioner (s)

VERSUS

Government of Pakistan
Through Secretary State and Frontier Regions Division
Islamabad and others.

Respondent (s)

For Petitioner (s) :-	<u>Mr. Jehangir Khan Mohmand, Advocate.</u>
For Respondents :-	<u>M/S Rab Nawaz Khan AAG and Jawad Ali</u> <u>Assistant Attorney General.</u>
Date of hearing:	<u>10.11.2021</u>

JUDGMENT

ROOH-UL-AMIN KHAN, J:-By invoking the constitutional jurisdiction of this court under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973, Mst. Islam Bibi, widow of Rehmat Khan (late), seeks issuance of an appropriate writ to the effect that respondents may be directed to pay her pension and pensionary benefits of her late husband.

2. As per averments in the writ petition, Rehmat Khan (late), husband of the petitioner was appointed as Sepoy in Kurram Levy Force vide order dated 05.08.1982 and after rendering 23 years service, he fell fatally ill due to cancer and died on 24.10.2005. The Deputy Commissioner Kurram/respondent No.3, instead of issuing retirement order of the deceased, issued appointment letter to his son, namely, Amjad

as Sepoy accepting the resignation of the deceased. Petitioner alleged that the deceased had never tendered any resignation during his life time and if any such resignation is attributed to him, the same would be false. The petitioner approached respondent No.4 for grant of pension of her late husband but to no avail, hence, this writ petition.

3. Initially comments of the respondents were called, which were accordingly filed by them. In the comments, the respondents have refuted the stance of the petitioner on various legal and factual grounds.

4. Arguments of learned counsel for the parties heard and record perused with their able assistance.

5. It appears from record that petitioner being widow of Rehmat Khan (late) is his legal heir. The deceased was appointed as Sepoy in Kurram Levy Force vide appointment order dated 05.08.1982 and after rendering 23 years un-blemished service he fell fatally ill due to cancer and died on 24.10.2005. Stance of the respondents is that prior to his demise, the deceased had tendered resignation which was accepted on 14.10.2015, and his son, namely, Amjad Khan was appointed as Levy Sepoy at his place. In support of their stance, no resignation of the petitioner has been annexed with the comments. During the course of arguments learned DAG produced a resignation tendered by the deceased, but the same is a photocopy. Besides, tendering of resignation of the deceased after 23 years long service does not appeal to a prudent mind. Similarly, acceptance of the alleged

resignation on 14.10.2005 i.e. the date of demise of the deceased sepoy also seems dubious. The respondents have not denied 23 years continuous service of the petitioner as Levy Sepoy.

6. In the year 2012, Sepoy (levy personnel) of Kurram Levy Froce, filed appeal before the Federal Service Tribunal, Islamabad, seeking their pension and pensionary benefits which was allowed vide judgment dated 23.09.2015. For the sake of convenience and ready reference, operative part thereof is reproduced below:-

“Putting all the relevant facts together, we are of the view that the appellant and his colleagues of the connected appeals could not be deprived of the pensionary benefits and hence they should be allowed/extended all the pensionary benefits from the date of their retirement. To grant the appellant and others, pensionary benefits, would not be so heavy on the Government exchequer whereas on the other hand, it would be develop the sense of loyalty among all those concerned who live in sensitive areas like Kurram Agency (FATA) bordering Afghanistan from where infiltrators and miscreants very frequently cross over to our side for sabotage. In this view of the matter, we allow this appeal with direction to the respondents to grant pensionary benefits to the appellant and his other colleagues of the connected appeals.”

7. Against the judgment (*supra*), the Secretary States and Frontier Regions Division, Government of Pakistan, Islamabad filed Civil Petitions No.3891 to 3943 of 2015, before the Hon’ble Supreme Court of Pakistan, but the same were dismissed vide

order dated 11.02.2016, operative part of which is reproduced below:-

“In the facts and circumstances of the case, we have not been persuaded with any substantial question of law of public importance arises in these cases so as to justify the exercise of jurisdiction under Article 212(2) of the Constitution of the Islamic Republic of Pakistan, 1973.”

8. It has been held by the Hon’ble Supreme Court of Pakistan in case titled, “**Government of Punjab through Secretary Education Lahore & others Vs Sameena Parveen and others**” (2009 SCMR 1), that:-

“If a Tribunal or the supreme Court decide a point of law relating to the terms and conditions of a civil servant who litigated and there were other civil servants, who may not have taken any legal proceedings, in such a case the dictates of the justice and rule of good governance demand that the benefit of the said decision be extended to the other civil servants also, who may not be parties to that litigation, instead of compelling them to approach the Tribunal or any other legal forum”.

9. In case titled “**Secretary to Govt: of the Punjab, Finance Department Vs M. Ismail Tayer and 269 others**” 2015 PLC (CS) 296, the august Supreme Court of Pakistan was pleased to held that the pensionary benefits is not a bounty or ex-gratia payment but a right acquired in consideration of past service. Such right to pension is conferred by law and cannot be arbitrarily

abridged or reduced except in accordance with such law as it is the vested right and legitimate expectation of retired civil servant.

10. Section 19(2) of the Civil Servants Acts, 1973, in the event of death of a civil servant, whether before or after retirement conferred a right of pension on his/her family who shall be entitled to receive such pension or gratuity or both as prescribed by Rules. It is also undeniable fact that pension and gratuity fall within the ambit of terms and conditions of a civil servant, but a legal question would arise as to whether the legal heirs i.e. family of a deceased civil servant would be competent to agitate his/her/their grievance regarding pension before the Service Tribunal, particularly, when he/she/they do not fall within the definition of Civil Servant. The Service Tribunals have been constituted under Article 212 of the Constitution for dealing with the grievances of civil servants and not for their legal heirs. The question regarding filing of appeal by the legal heirs of deceased's civil servant and jurisdiction of Service Tribunal, cropped up before the Hon'ble Supreme Court in case titled, **“Muhammad Nawaz Special Secretary Cabinet Division through his Legal Heirs Vs Ministry of Finance Government of Pakistan through its Secretary Islamabad” (1991 SCMR 1192)**, which was set at naught in the following words:-

“A ‘civil servant’ has been defined in section 2(b) of the Civil Servants Act, 1973. A right of appeal under the Service Tribunals Act, 1973 has been given to a civil servant

aggrieved by any final order whether original or appellate made by a departmental authority in respect of any of the terms and conditions of his serve. The appellants admittedly are the legal heirs of the deceased civil servant and there being no provision in the service Tribunals Act of 1973 to provide any remedy to the successors-in-interest of a civil servant, the learned Tribunal, in our view, was correct in holding that the appeal before it stood abated and the same is hereby maintained”.

In case titled, **“Rakhshinda Habib Vs Federation of Pakistan and others” (2014 PLC (C.S) 247)**, one Habib ur Rehman Director General in Ministry of Foreign Affairs, aggrieved by his supersession filed appeal before the worthy Service Tribunal, but unfortunately, during pendency of appeal he died, therefore, his appeal before the Federal Service Tribunal Islamabad was abated. Rakhshinda Habib, the widow of deceased then filed constitution petition No.1021 of 2010 before the Islamabad High Court, but the same was dismissed vide judgment dated 13.06.2013, against which she preferred aforesaid appeal before the Hon’ble Supreme Court, which was allowed and it was held by the worthy apex court that:-

“That civil servant could not be promoted after his death, however, pensionary benefits of promotion could be extended to the legal heirs of the deceased employees”.

11. Going through the law on the subject and deriving wisdom from the principles laid down by the Honble apex Court

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in the judgments (*supra*), we are firm in our view that petitioner/legal heir of the deceased employee has locus standi to file the instant petition.

12. Accordingly, this writ petition is allowed and the respondents are directed to grant and pay the pension and pensionary benefit of the deceased to the petitioner (her widow), in accordance with law.

Announced:

10.11.2021

M.Siraj Afridi PS

Senior Puisne Judge

JUDGE

**DB of Mr. Justice Rooh ul Amin Khan Hon'ble Senior Puisne Judge; and
Hon'ble Mr. Justice SM Attique Shah**