

Syed Arshad Hussain Shah, J – I have had the privilege of reading the short order as well as judgment authored by my learned brother, Mr. Justice Syed Hasan Azhar Rizvi, with which my learned brother, Mr. Justice Rozi Khan Barrech, has concurred. With profound respect, I am unable to persuade myself to agree with the conclusion reached in the judgement as also the short order with regard to C.M.A. No.2812 of 2025. Since my reasons for disagreement are different, I consider it appropriate to record this separate note.

2. The facts and circumstances giving rise to the present matter have been comprehensively narrated in the judgment under reference and, therefore, do not require repetition. In the first instance, I deem it appropriate to record my findings with regard to the maintainability of the instant petition. In my considered opinion, the petition is not maintainable in the eyes of law, for the fundamental reason that it has been instituted against a person who had already expired prior to its institution. It is a well-settled principle of law that judicial proceedings cannot be validly initiated against a deceased person, as a dead person is not a juristic entity capable of being impleaded or subjected to legal proceedings. Consequently, any proceedings instituted against such a person are rendered incompetent and void ab initio, unless the law expressly provides otherwise or the defect is cured in accordance with the applicable legal provisions. Therefore, on this ground alone, the instant petition is liable to be held as not maintainable.

3. The record unequivocally reveals that the respondent expired on 22.09.2021 during the pendency of the constitutional petition before the

High Court, whereas the judgment sought to be assailed was rendered subsequently on 26.10.2022. The factum of the death of the respondent during the pendency of the writ petition has also been duly recorded in the impugned judgment. In this regard, paragraph No.10 of the impugned judgment specifically refers to the said fact. For the sake of convenience and ready reference, the relevant paragraph is reproduced below:-

“10. In the facts and circumstances of the case, this Court finds no justification whatsoever in denying the counting of previous service rendered by the petitioner in Armed Forces as stated above for seniority and other allied benefits. Therefore, as highlighted above, since the petitioner ought to have been given the benefit of Section 9A of Compulsory Services in Armed Forces (Amendment) Ordinance 1978, however, due to delay caused by respondents in awarding the seniority and other ancillary benefits to the petitioner, he suffered and during pendency of lis, he passed away; and now his family has been held to be entitled the service benefit of the petitioner. In such circumstances, the respondents are directed to award service benefits of the petitioner to his family as per entitlements, in terms of Section 9A of Compulsory Services in Armed Forces (Amendment) Ordinance 1978 with consequential monetary benefits. The respondents are directed to complete the said exercise within two weeks from the date of receipt of this order.”.

It is apparent from the record that the petitioners were fully aware of the respondent's demise. Even if, for the sake of argument, it is assumed that the petitioners were unaware of the respondent's death at the time of filing the instant petition., such ignorance could not absolve them of their legal obligation to take immediate corrective measures upon acquiring knowledge of the said fact.

4. The record further demonstrates that the legal heirs of the deceased respondent instituted contempt proceedings before the High Court on 04.05.2023, thereby unequivocally bringing the death of the respondent to the notice of the court. At that stage, it was incumbent upon the petitioners to file an appropriate application seeking substitution of the deceased respondent with his legal heirs so as to cure the inherent defect in the proceedings. However, no such application was ever filed.

5. Furthermore, the legal heirs of the deceased respondent also filed C.M.A. No.2812 of 2025, dated 16.04.2025 with mandatory notice to the petitioners by the learned AOR, which, according to the office record, was registered 21.04.2025. It seems appropriate to reproduce the C.M.A, which reads as under:-

APPLICATION UNDER ORDER XXXIII RULE 6 OF THE SUPREME COURT RULES, 1980 FOR PERMISSION TO BRING ON RECORD THE LR'S OF RESPONDENT.

Respectfully Sheweth;

1. That the respondent has been expired on 22-9-2021 leaving behind the following as their LR's:-

1. Farzana Kalhoro w/o Nusrat Hussain
2. Ambreen D/o Nusrat Hussain
3. Mehreen D/o Nusrat Hussain
4. Tamkeen Fatima D/o Nusrat Hussain
5. Bushra D/o Nusrat Hussain
6. Muhammad Aoun S/o Nusrat Hussain
7. Azain Nusrat S/o Nusrat Hussain
8. Farwa Nusrat D/o Nusrat Hussain
9. Aina Nusrat D/o Nusrat Hussain
10. Shajeha D/o Nusrat Hussain
11. Musna Nusrat D/o Nusrat Hussain

It is stated that the above mentioned are the legitimate legal heirs of the deceased respondent namely Dr. Capt. (Retd) Nusrat

It is stated that during the pendency of the constitutional petition no. D-1850 of 2021 in between parties the respondent expired on 22-9-2021 which is categorically highlighted by the honorable division bench of High Court of the Sindh which is judgment has been impugned before this honorable court.

It is stated that by knowing the respondent being deceased the appellant intentionally and deliberately mention his name as a respondent which is a death person and no legal sanctity to be a party as a respondent before this honorable court which amounts to perjury with the court and entitled for dismissal with special/heavy costs to the leaving behind deceased legal heirs.

It is stated that the answering legal heirs have no other option but to join the proceeding of this honorable court as the notice has already been sent to the death person Dr. Capt. (Retd) Nusrat Hussain deceased to their hometown.

It is stated that due to far flung area of Sindh the legal heirs are unable to join the instant proceeding before the honorable court. Therefore, the above mentioned legal heirs of the deceased namely Dr. Capt. (Retd) Nusrat Hussain executed General Power of Attorney to Muhammad Taqi being one

of the legal heirs of the deceased to pursue the matter. (Copy of General Power of Attorney and copy of CNIC of legal heirs are attached herewith)

It is therefore, respectfully prayed that the legal heirs of the respondent has mentioned in serial 1 to 11 may kindly be brought on record in the best interest of justice.”.

It is astonishing to note that, even at this stage, the petitioners failed to take the necessary steps to correct the record. They did not file any application for bringing on record the legal heirs of the deceased respondent, nor did they submit an amended memo of parties reflecting the substitution. Despite having ample opportunity to rectify this procedural defect, the petitioners remained negligent, allowing the matter to proceed without curing a fundamental defect in the proceedings. On the date of hearing of this C.P.L.A., following order was passed on this C.M.A:-

“Learned AOR for respondent No.1 has filed an application (CMA No.2812/2025) to bring on record the legal heirs of deceased respondent No.2. Order accordingly.

My findings with regard to the above C.M.A. are that it cannot be allowed or even dilated upon as the main petition is not maintainable, therefore, all proceedings, orders, including short order with regard to the C.M.A. are coram-non-judice as any order made, in the suit allowing amendment of the plaint by substituting the legal representative of the deceased as defendant and allowing the suit to proceed against him is also a nullity. Refers Rampratab Brijmobandas vs Gowrishankar Kashiram Hon’ble Mulla J. Further, it is observed that if the above order is construed as allowing the C.M.A., would it not amount to acceptance of following submissions of the legal heirs of the respondent made in the C.M.A:-

“It is stated that by knowing the respondent being deceased the appellant intentionally and deliberately mention his name as a respondent which is a death [dead] person and no legal sanctity to be a party as a respondent before this honourable court which amounts to perjury with the court and entitled for dismissal with special/heavy costs to the leaving behind deceased legal heirs”.

In nutshell despite the lapse of considerable time and repeated opportunities, there is not a single application, document, or other material on record to demonstrate that the petitioners made any attempt whatsoever to bring the legal representatives of the deceased respondent on the record. A perusal of the orders passed by this Court also does not indicate that any request for substitution or any argument in that regard was ever advanced on behalf of the petitioners.

5-A. The primary legal maxim governing this principle is "*Actio personalis moritur cum persona*," which translates to "a personal right of action dies with the person". If a lawsuit is filed *against* someone who is already deceased, the suit is considered a nullity in the eyes of the law and cannot proceed. It is a well-settled principle of law that proceedings instituted against a deceased person are a nullity in the eyes of law, unless the defect is cured in the manner prescribed by law through the substitution of the deceased by his or her legal representatives. In the absence of such substitution, the proceedings remain fundamentally incompetent and cannot be validly continued or adjudicated upon. Since the petitioners failed to take the necessary legal steps despite having ample notice and opportunity, the present petition suffers from an incurable defect affecting its very maintainability. In this regard a reference is made to the dictum laid down in the case reported Muhammad Yar deceased through legal heirs and others versus Muhammad Amin deceased through legal heirs and others (2013 SCMR 464). Paragraph No.3 of this judgment is reproduced below for ready reference:-

“Heard. Attending to the first question, the legal position by now is quite settled and explicit, in that, where a suit/lis is against only one defendant/respondent of the case, undoubtedly it shall be invalidly instituted being against a sole dead person (defendant) and shall be a

nullity in the eyes of the law as a whole; it shall be a still born suit/lis; an altogether dead matter, which cannot be revived; it shall, thus not merely be a defect which can be cured, rather fatal blow to the cause, However, the position shall be different where the lis is initiated against more than one defendants/respondents and out of them only one or few are dead, while the other(s) is/are alive. In such a situation, it shall be a validly initiated suit/lis in respect of the respondent(s), who are alive, but invalid qua those, who are dead. To cater for such a situation, it has been held in Malik Bashir Ahmad Khan and another v. Qasim Ali and 12 others (PLD 2003 Lahore 615):-

"Obviously, if a suit has been filed against the only defendant, who was dead at the time of the institution, such suit shall be still born, non-existent, and a nullity in the eyes of law, therefore, it could not be merely defective and thus, could not be revived by impleading the legal heirs of the deceased defendants. The plaintiff in such a situation, subject to law, may have the option to bring a fresh suit against the heirs on the basis of the same cause of action. But, this rule shall not be applicable in a case, where the suit has been instituted against more than one defendants and one of them was dead at the relevant time. The suit shall not be nullity in totality, but would be validly instituted against the living defendants, however, it would be defective qua the deceased party, which defect shall be curable by the plaintiff bringing on record the heirs of the deceased defendant. To support this view, reliance can be placed on the following judgments:-

Prim Pala Mul-Narain Mal v. Fauja Singh (AIR 1926 Lahore 153).

Roop Chand v. Sardar Khan and others (AIR 1928 Lahore 359). Ghulam Qadir Khan v. Ghulam Hussain and others (AIR 1937 Lahore 794). Nabi Bakhsh v. Malik Muhammad Akram, Settlement Commissioner and others (PLD 1969 Lahore 880), and

The Province of East Pakistan v. Major Nawab Khawaja Hasan Askary and others (PLD 1971 SC 82)"

The above is the apt and correct exposition of law and such judicial opinion of the Lahore High Court is upheld and approved in its letter and spirit and should be taken to be the view of this Court. Therefore, we are constrained to set aside that part of impugned judgment, which is contrary to the law enunciated in the noted dictum (PLD 2003 Lahore 614 supra)."

In the case reported as Hafiz Brothers (Pvt) Ltd. & others versus Messers Pakistan Industrial Credit and Investment Corporation Ltd. (2001 SCMR

1), it was held as under:-

"There is no cavil with the proposition that the institution of legal proceedings against dead person is of no avail to the concerned litigant. The learned High Court rightly came to the conclusion that the suit of PICIC nullity in law. However, the remand of the matter by the High Court to the against deceased-Mst. Inayat Begum was incompetent and, therefore, Tribunal "...with the directions to modify the judgment and decree by deleting the name of Mst. Inayat Begum and to examine whether the heirs of deceased Mst. Inayat Begum were validity joined and a valid decree could be made against them..." takes good case of the petitioners in that behalf."

In the case reported as Mehar Muhammad versus Deputy Settlement Commissioner & others **(1979 SCMR 182)**, it was held that:-

“The learned counsel conceded before us that long before the writ petition was filed in the High Court, Ghulam Muhammad son of Haji Feroz Din had already died. He, therefore, agreed that the petition having been filed against a dead person was incompetent. His grievance, however, is that the learned Judge in the High Court should have refrained from going into the merits of the case and should have dismissed the petition on that short ground. We are afraid this contention seems to us to be technical. It is well established that any order passed against a dead person would be a nullity in law-especially when long before the institution of the proceedings against him he had already died. In this view of the matter, the conclusion recorded by the learned Judge in the High Court, in so far as the merits of the case are concerned, would have no significance as they were recorded against a dead person. On this short ground, therefore, this petition fails and is dismissed.”

In the case reported as Nasim Akhtar versus Abdul Rashid Khan **(2009 SCMR 12)**, it was held that:-

“There is no cavil with the case-law cited at the Bar on behalf of the appellant to the effect that the record of any case can be corrected by this Court under Rule 6 of the Rules. C.M.A. No.705 of 1997 was allowed on 20-1-1998 subject to all just exceptions and as the objections taken by and on behalf of respondent-Abdul Rashid Khan are quite weighty, we are not inclined to the view that bringing on record of the L.Rs. of the deceased through C.M.A. No.705 of 1997 will tantamount to curing any alleged defect within the contemplation of the Rules.”

In the case reported as Pakistan through Secretary Establishment Division & others versus Ziaul Haq Malik & others **(1997 SCMR 576)**, the Court held as under:-

“8. In the other appeal filed by the Government (C.A. 302/93), it has been pointed out by the learned counsel appearing for Zia-ul-Haq, the respondent in the appeal that the said respondent had died on 24-9-1993 but the Government did not make any application to bring on record his legal representatives within 90 days as prescribed in Order XV, Rule 7 of the Supreme Court Rules, 1980. We find that the Government has not moved any application in this behalf till today. That being so, we dismiss the appeal (C.A. 302/93) as having abated.”

In Mst. Dani & others versus Deputy Settlement Commissioner Vehari **(1990 SCMR 553)**, it was held as under:-

“It is not denied that Badra was impleaded as a party and not his successors-in-interest in the High Court. It is also not denied that Badra had died long before the institution of the Constitution Petition. It is in the Supreme Court that the successor-in-interest of Badra have been impleaded as parties. The High Court was, therefore, justified in rejecting the application and also dismissing the claim against Badra, a dead person. The appellants being resident allottees of the same Chak where

Badra resided and had allotments, could not plead complete ignorance of the fact of his death or the mistaken identity of the person.”.

In *Mohun Chunder Koondoo vs Azeem Gazee Chowkeedar*, Sir Barnes Peacock C. J. who delivered the judgment of the Bench held that *courts have no jurisdiction to decide the suit filed against a dead person and it is a nullity*. This decision was followed by the Madras High Court in *Veerappa Chetty vs Tindal Ponnen* ILR 31 Mad 86 and observed in the Madras case as follows:-

“It does not appear to have ever been suggested that the issue of a writ against a dead man could be anything but a nullity, and we see no reason for regarding the presentation of a plaint, which under our system corresponds to the issue of the writ, as anything more.”.

In *Cuttuck Municipality vs Shyam Sunder Behara*, where court held that *“a suit filed against a dead person is nullity since the beginning.”*

Hon’ble Mulla J. in *Rampratab Brijmobandas vs Gowrishankar Kashiram*, observed thus:

“If he (defendant) dies before the suit and a suit is brought against him in the name in which he carried on business, the suit is against a dead man and it is a nullity from its inception. The suit being a nullity, the writ of summons, issued in the suit by whomsoever, accepted is also a nullity. Similarly, any order made, in the suit allowing amendment of the plaint by substituting the legal representative of the deceased as defendant and allowing the suit to proceed against him is also a nullity. It is immaterial that the suit was brought bona fide and in ignorance of the death of such person.”

In *Mohun Chunder Koondo Vs. Azeem Gazee Chowkeedar*, 12 Suth WR 45; Also See AIR 1961 AP 239 Justice Barnes Peacock and Justice Mitter enunciated a pivotal procedural principle: a suit instituted against a deceased person is null and cannot stand. The ruling delineates the principle in civil proceedings with regard to proceedings initiated against a deceased person: If the individual is already deceased at the time of the institution of a suit, the entire proceeding is ipso facto void. Since a dead

person lacks legal personality, no valid legal action can be taken against him, rendering any decree or judgment obtained in such a suit a nullity. This judgment forms the foundation for subsequent jurisprudence on this subject in India, where courts have consistently maintained that proceedings against a dead person lack legal efficacy. In *Vishvanath Dnyanoba Vs. Lallu Kabla and others* 4 IND. CAS.137. The Bombay High Court unequivocally stated that a court lacks jurisdiction to render a decree either 'in favour of' or 'against' a deceased person. The Patna High Court followed this principle in *Ram Khelawan Choudhury Vs. Ramudar Choudhury* AIR 1939 Patna 534. The Supreme Court reinforced this principle in *Mohammad Sulaiman Vs. Muhammad Ismail* AIR 1966 SC 792. The Court held that a decree passed against a deceased person without bringing his legal heirs to record is void ab initio and unenforceable. In *V. Uthirapathi Vs. Ashrab* (2002) 2 SCC 640 the Court reaffirmed that the object of this doctrine is to protect the fairness and transparency of the judicial process, as a deceased party can neither defend itself nor suffer legal consequences. In *Kishori Jena and others Vs. Rupa Jena & others* AIR 1953 Ori 285; *Jagan Nath Vs. Jaswant Singh* (1954) AIR 210, SC and *Kiran Singh Vs. Chaman Paswan* (1954) AIR 340, SC. The Supreme Court emphasized that proceedings suffering from jurisdictional defects—such as involving a deceased party—are inherently void. The full bench in *Kiran Singh* held: “It is a fundamental principle well-established that a decree passed by a Court without jurisdiction is a nullity, and that its invalidity could be set up whenever and wherever it is sought to be enforced or relied upon, even at the execution stage and even in collateral proceedings...” This

judicial stance ensures that no burdens—whether obligations or liabilities—are imposed on a legal non-entity.

In *Kishun (Dead) through Lrs. Vs. Bihari (D) by Lrs* AIR 2005 SSC 3799; (2005) 6 SCC300 the Supreme Court annulled the decree passed against and in favour of the deceased parties, holding its nullity.

In *Sumtibai & others Vs. Paras Finance Co. M.P. & others* AIR 2007 SC 3166. The Court reiterated that proceedings against a deceased person, without substitution, are void and non-revivable.

In *Budh Ram & others Vs. Bansi & Others* (2010) 11 SCC 476. Supreme Court held that a decree against a dead person is a legal nullity and hence cannot enforce it.

6. In the foregoing circumstances, I am of the considered view that the instant petition, having been instituted and prosecuted against a person who had already expired, without impleading or substituting his legal heirs and legal representatives in accordance with law, is not maintainable. The petition suffers from an incurable legal defect which goes to the very root of the proceedings and renders the same incompetent. Consequently, the petition is dismissed on this ground alone. As a necessary corollary, all proceedings undertaken in pursuance thereof, including orders passed from the very inception rendered during the pendency of the proceedings against the deceased person, are without lawful authority, coram non iudice, and constitute a nullity in the eye of law. Such proceedings, having been conducted against a dead person, are void ab initio, confer no legal rights, create no enforceable obligations, and are of no legal effect whatsoever.

7. Adverting to the merits of the controversy, the principal question requiring determination is whether the respondent is legally entitled to the benefit envisaged under Section 9A of the Compulsory Service in the Armed Forces Ordinance, 1971 (hereinafter referred to as "the Ordinance of 1971"), and whether such entitlement can be defeated on the grounds of waiver, estoppel, delay, or by reason of the conversion of the Oil and Gas Development Corporation (OGDC) into the Oil and Gas Development Company Limited (OGDCL). The resolution of the controversy necessarily depends upon the true scope and legal effect of Section 9A, read in the context of the statutory scheme governing compulsory military service and the obligations cast upon the employer thereunder.

8. Section 9A commences with the expression, "Notwithstanding anything contained in any other law for the time being in force." The incorporation of a non-obstante clause is a recognized legislative device employed to confer overriding effect upon a statutory provision and to ensure that, in the event of any inconsistency or conflict with any other law, the provision containing such clause prevails. The legislative intent is manifest that the rights created by Section 9A are to operate with full vigour notwithstanding any contrary administrative practice, executive instruction or statutory provision. Equally significant is the use of the mandatory expression "shall be entitled", which leaves no discretion with the employer. Once an employee satisfies the conditions prescribed by the statute, the employer is under a corresponding statutory obligation to extend the benefit contemplated by Section 9A. Any omission, refusal or failure on the part of the employer cannot defeat or curtail a right which the legislature has expressly conferred.

9. The respondent, while serving in the erstwhile OGDC, approached the competent authority as early as 07.08.1994 seeking the benefit available under Section 9A. The statutory obligation to examine and extend such benefit, thus, lies upon the employer. The failure of the employer to discharge its statutory obligation cannot, in law, extinguish or diminish the respondent's vested statutory right. A statutory obligation cannot be avoided merely because the authority entrusted with its implementation failed to perform its duty within the prescribed time.

10. The contention founded upon waiver or estoppel is equally devoid of substance. It is by now a settled principle of law that there can be no estoppel against a statute. A statutory right created in public interest cannot be defeated by acquiescence, omission, delay, consent or any alleged waiver on the part of the beneficiary. Once the legislature has conferred a right and simultaneously imposed a corresponding obligation upon the employer, the latter remains duty-bound to discharge such obligation irrespective of any omission on the part of the employee. The respondent, therefore, cannot be deprived of the benefit conferred by Section 9A merely because the employer failed to honour its statutory responsibility.

11. The plea of laches is equally misconceived. The record demonstrates that the respondent consistently pursued his claim before the competent authorities and each rejection of his representation furnished a fresh cause of action. The last rejection culminated on 29.04.2011, whereafter the constitutional petition was instituted without undue delay. Besides, Section 23 of the Limitation Act, 1908 expressly recognizes the concept of a continuing wrong by providing that where the breach or wrong continues, a fresh period of limitation commences at every moment during

which the breach subsists. The continuing denial of a statutory benefit gives rise to a recurring cause of action, and therefore the claim cannot be rejected on the ground of delay. The distinction between a continuing wrong and the continuing consequences of a completed act is well recognized, and the present case clearly falls within the former category. Reference may also be made to the dictum laid down in the case reported as 2021 SCMR 678, wherein it was authoritatively held that omission to claim a statutory right for a considerable period does not amount to its waiver, nor can the doctrine of estoppel be invoked to defeat rights expressly conferred by law. The superior courts have consistently maintained that statutory rights cannot be rendered nugatory by the inaction of either the beneficiary or the authority charged with implementing the statute.

12. The next question requiring determination is whether OGDCL, after conversion from the erstwhile OGDC, is legally answerable for the liabilities incurred by its predecessor. The answer is furnished by Section 4(1)(c) read with Section 5 of the Oil and Gas Development Company Limited (Conversion) Ordinance, 2001. The statutory language unequivocally provides that OGDCL shall be deemed to have taken over all contractual rights, licences, concessions, liabilities and obligations of the Corporation. The assumption of liabilities is automatic and takes effect by operation of law. Consequently, once it is established that the respondent possessed an enforceable claim against the erstwhile OGDC under Section 9A of the Ordinance of 1971, the corresponding liability automatically stood transferred to OGDCL. Being the statutory successor, OGDCL cannot evade liabilities lawfully accrued against its predecessor and remains legally bound to discharge the same in accordance with law.

13. The cumulative effect of the foregoing discussion is that the respondent's entitlement under Section 9A constitutes a statutory right carrying corresponding statutory obligations upon the employer. Such right cannot be defeated by waiver, estoppel, acquiescence or delay, nor it can be extinguished because of the conversion of the OGDC into OGDCL. The continued denial of the benefit amounts to a continuing wrong, thereby giving rise to a recurring cause of action until the statutory obligation is duly discharged.

14. Accordingly, it is held that the instant petition, having been instituted and prosecuted against a person who had already expired, without impleading or substituting his legal heirs and legal representatives in accordance with law, is not maintainable. Thus, the petition suffers from an incurable legal defect which goes to the very root of the proceedings and renders the same incompetent. Consequently, the petition is dismissed on this ground alone. As a necessary corollary, all proceedings undertaken in pursuance thereof, including orders passed from the very inception rendered during the pendency of the proceedings against the deceased person, are without lawful authority, coram non judice, and constitute a nullity in the eye of law. Such proceedings, having been conducted against a dead person, are void ab initio, confer no legal rights, create no enforceable obligations, and are of no legal effect whatsoever. Even on merits, for the reasons recorded in paragraphs 7 to 13 ante, the respondent is entitled to the benefits flowing from Section 9A of the Ordinance of 1971, and OGDCL, being the statutory successor of OGDC, is under a legal obligation to honour and satisfy such entitlement in accordance with law.

Resultantly, this petition stands dismissed and judgement of the High Court, being well reasoned and in accordance with law, is upheld.

Judge

Islamabad

10th June, 2026

Approved for reporting

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