

In the Federal Constitutional Court of Pakistan

(Appellate Jurisdiction)

Present:

Justice Amin-ud-Din Khan, Chief Justice
Justice Syed Arshad Hussain Shah

C.P.L.A. No.4153 of 2022

(On appeal from order of the Peshawar High Court, Abbottabad
Bench dated 3.11.2022 passed in Writ Petition No.941-A of 2021)

Bashir Hussain (deceased) through Mst. Abida Parveen

Petitioner

Versus

Government of Khyber Pakhtunkhwa through Secretary Local
Government & Rural Department, Peshawar, and others

Respondents

Petitioner:

In person

For the respondents:

Mr. Shah Faisal Ilyas, Additional
Advocate General, KP
Mr. Yasir Zahoor Abbasi, ASC
Mr. Kamran Khan Jadoon, Dy. Director

Date of hearing:

06.08.2026

Judgement

Syed Arshad Hussain Shah, J – Through the instant petition, Mst. Abida Parveen, being the widow of late Bashir Hussain, has called into question the order dated 3.11.2022 passed by a Division Bench of the Peshawar High Court, Abbottabad Bench, whereby writ petition filed by her, seeking sanction and release of family pension consequent upon the death of her husband, was dismissed.

2. Succinctly stated, facts of the case are that Bashir Hussain, who is now deceased and is represented through his widow (hereinafter referred to as the petitioner) was appointed as Fireman (BPS-1) in the office of the Municipal Administration Abbottabad vide appointment letter dated 1.10.2011. At the relevant time, the petitioner being at the age of 51 years, was overage by six years, as upper age limit for appointment to the post

was 45 years. The case for relaxation of upper age limit was submitted to the Secretary, Government of Khyber Pakhtunkhwa, Local Government Elections & Rural Development Department, who, being the competent authority, relaxed the upper age limit by six (6) years vide letter dated 7.1.2012. On attaining the age of superannuation, the petitioner stood retired as Chowkidar (BPS-3) with effect from 6.11.2020 vide Office Order dated 19.10.2020 and was paid leave encashment. He applied for grant of pension/pensionary benefits by condoning the deficiency in qualifying service. The matter was submitted to the competent authority for condonation of qualifying service for the purpose of grant of pension/pensionary benefits. The Secretary, Government of Khyber Pakhtunkhwa, Local Government, Elections & Rural Development Department, Local Council Board accorded approval for condonation of 10 months and 25 days for grant of pension/pensionary benefits under SRO 423 (2) (b) vide letter dated 3.2.2021.

3. Notwithstanding the foregoing, pension/pensionary benefits were not granted to the petitioner. Following his demise on 4.6.2021, his widow, being legally entitled beneficiary, pursued the matter before the departmental authorities for the grant of family pension and other consequential benefits but failed. Consequently, she invoked the constitutional jurisdiction of the High Court by filing a writ petition, seeking appropriate directions for grant of family pension. The writ petition was dismissed vide impugned order, hence the instant petition for leave to appeal.

4. The petitioner appeared in person and advanced submissions in support of her claim. She relied upon the relevant documents available on the case file to substantiate her entitlement, contending that the record unequivocally established her lawful claim to the family pension.

5. Conversely, the learned Additional Advocate General vehemently opposed the petition and contended that the benefit envisaged under CSR 423(2)(b) was not available to the deceased employee. It was argued that the concession contemplated by the said provision is applicable only where the competent authority records satisfaction that the employee had rendered meritorious service, a condition precedent, which is lacking in the present case. It was accordingly submitted that the deceased employee's service did not constitute the requisite qualifying service for the grant of pensionary benefits. Therefore, neither he nor his family/widow, could claim any entitlement to pension or family pension under the applicable law and service rules.

6. We have heard the petitioner, learned Additional Advocate General and perused the record as well as the impugned order of the High Court. Record depicts that the Local Council Board had adopted the Pension Rules of the Government of Khyber Pakhtunkhwa vide Notification dated 31.5.1980, para 2 whereof reads as under:-

“Except where express provision has been made in the rules, the Pension Rules as applicable to Government Servants from time to time shall apply *mutatis mutandis* to the servants of Local Councils.”.

Record further depicts that, on the application of the deceased employee, the case for condonation of deficiency in service of the deceased employee, insofar as it relates to qualifying service for the grant of pension/pensionary benefits, was initiated/recommended by the Regional Municipal Officer, Hazara Region, Abbottabad vide letter dated 17.12.2020. Relevant portion whereof reads as under:-

“Moreover the said employee got retired on 06/11/2020 after completing satisfactory service and emoluments admissible under the rule subject to entitlement i.e 365 days encashment was paid but monthly pension wasn't allowed as having 10 Months short of Qualifying service. Now Mr. Bashir Hussain has submitted an application regarding grant of monthly pension under the "Condonation of deficiency of more than 06 Months & less than 01 year" rules **for having meritorious service.**”.

In view of above, being the competent authority instant matter is forwarded to your good office for favorable consideration and further advice please.”.

On the above recommendation, the competent authority i.e. Secretary, Government of Khyber Pakhtunkhwa, Local Government Elections & Rural Development, Local Council Board condoned the deficiency in qualifying service vide letter dated 3.2.2021, which reads as under:-

“I am directed to refer to your letter NO. 6268/TMA, dated 15/12/2020 on the subject noted above and to communicate that competent authority is pleased to accord approval for condonation of 10-months & 25-days in respect of Mr. Bashir Hussain, Chowkidar TMA, Abbottabad for pension benefits as per Article [Regulation] 423 Sub-section (2) Civil Service Regulations”.

For a proper understanding of the issue and to appreciate the legal effect of such condonation, CSR 423 is reproduced hereunder for ready reference:-

“423. (1) A deficiency of a period not exceeding six months in the qualifying service of an officer shall be deemed to have been condoned automatically.

(2) The authority competent to sanction pension may condone a deficiency of more than six months but less than a year subject to the following conditions, namely:-

(a) The officer has died while in service, or has retired under circumstances beyond his control, such as on invalidation or the abolition of his post, and would have completed another year of service if he had not died or retired.

(b) **The service rendered by him had been meritorious.”.**

Accordingly, after condonation of deficiency in qualifying service by the competent authority the case was submitted for release of pension. The Resident Deputy Director (Audit), Abbottabad returned the matter to the Tehsil Municipal Officer, TMA, Abbottabad vide letter dated 21.3.2021, with the following observation/objection:-

“4. The article [Regulation] 423 sub-section (2) of Civil Service Regulation referred in the Local Council Board (LCB) letter No.AO.IV/I.CB/1-16/TMA Abbottabad/2020 dated 03.02.2021 is not applicable on the provincial Civil Servants of Government of Khyber Pakhtunkhwa rather it is applicable on Federal Government employees. Please justify.”

The above objection/observation was clarified by Administrator/TMO, TMA, Abbottabad vide letter No.2.3.2021, paragraph No.3 whereof reads as under:-

“3- Local Council Board approved condonation in favour of official vide No.AO.IV/L.CB/1-16/TMA Abbottabad/2020 dated 03/02/2021 under

Article [Regulation] 423 sub section (2). Further collaboration made in Sub Section (2) **that the service rendered by the Government Servant was meritorious.** Instant case deal under the above mentioned standard/deficiencies of condonation.”

It is observed with great concern that, notwithstanding the foregoing, the pension was not released. In our considered view, in light of the “Best Performance Certificate” available at page 52 of the case file awarded to the deceased employee, the adoption of the Government’s Pension Rules by the Local Council Board, the applicability of CSR 423(2)(b) and the lawful exercise of the competent authority’s power to condone deficiency in the qualifying service for the purpose of pensionary/pension benefits, it is abundantly clear that all requisite conditions for the grant of pensionary benefits stood fulfilled. Accordingly, there appears to be no lawful justification for withholding or non-release of the pensionary benefits, including family pension and any denial thereof would be contrary to law and the settled principles governing pensionary rights.

7. There is a plethora of judgments of the superior judiciary consistently holding that the right to pension is not merely a concession, privilege or bounty granted at the discretion of the employer or the State; rather, it constitutes a vested and legally enforceable right of an employee. The superior judiciary has repeatedly emphasized that pensionary benefits constitute a form of social security and are intended to secure the post-retirement livelihood and dignity of a retired employee. Accordingly, the right to receive pension, once accrued in accordance with law, cannot be withheld, denied or curtailed. Such right, being intrinsically connected with the right to livelihood, dignity attracts constitutional protection and cannot be defeated through arbitrary, unreasonable or unjustified administrative action. Here a reference is made to the case reported as 2026 SCMR 449, in which it has been held that *pension is not a matter of bounty, charity, or benevolence - it is a right protected under Articles 9 and 14 of the Constitution of the Islamic Republic of Pakistan, 1973 (Constitution)*

and inseparably linked with the right to life, dignity and livelihood, for without sustenance in old age, these rights ring hollow. It should be taken more seriously for those public servants for whom it is a crystallized return on years of faithful service, a form of deferred wages earned through the sweat, labour, and loyalty of an employee. It embodies the principle that those who serve must not be cast aside in their twilight years. To deny or withhold pension is to strip a person of the security they have justly earned, leaving them exposed to indignity, vulnerability, and want. Therefore, this right must be protected in the shape of the grant of pension that is not only adequate but also predictable. Moreover, an element of respect and empathy is to be maintained while granting pension which would be in consonance with the values that our Constitution espouses with dignity as the highest constitutional value. The law itself stands as a shield to protect the rights of such employees, ensuring that long-earned entitlements are not eroded by institutional caprice. ----- To trifle with pension is, therefore, to trifle with constitutional justice itself.

8. So far as interpretation of rules is concerned, it may be noted that where *two interpretations are indeed possible in the premises. Normally, where the Court has decided to accept one of the two possible interpretations, the fact that the other interpretation was also possible does not furnish a ground for review. But in this case the other principle namely that in a contest between two possible interpretations, one favouring the rights and interests of the servant and the other favourable to the State, the interpretation favourable to and more beneficial to the servant should be adopted.* 1990 SCMR 1685 refers.

9. This Court has recently considered an identical question of law in C.P.L.A. No. 2793-L of 2022, wherein the legal principles governing the entitlement to pensionary benefits were comprehensively examined. After an elaborate consideration of the constitutional provisions, the

applicable statutory framework and the settled jurisprudence on the subject, this Court authoritatively held as under:

“We hold that pensionary benefits constitute a vested, enforceable, legal and fundamental right of a retired employee and cannot be withheld except by the order of a Court of competent jurisdiction in accordance with law. Consequently, any unnecessary, arbitrary, or unexplained delay in the release of pensionary benefits, or their withholding without any lawful justification or a specific order of a Court of competent jurisdiction, amounts to a willful disregard of the law declared by the superior judiciary. Such conduct not only violates the legal rights of the pensioner but also undermines the authority of the Court, and would amount to contempt of Court.”.

10. Adverting to the impugned order, it is observed that the High Court, while deciding the writ petition, failed to properly appreciate and consider the material available on the record. In particular, the High Court did not examine or adjudicate upon the issue relating to the condonation of deficiency in service for the purpose of qualifying service for pension by the competent authority as well as the applicability and true import of CSR 423(2)(b). Consequently, the findings recorded by the High Court suffer from non-consideration of the relevant statutory provisions and the material available on the record. Hence, the impugned order cannot be sustained in law.

11. As a sequel to the above, this petition is converted into appeal and allowed. Consequently, it is held that the petitioner is legally entitled to receive all pensionary benefits admissible under the relevant law, including pension, family pension, gratuity, commutation, arrears and all other consequential and ancillary retirement benefits, together with any revisions or increases lawfully accruing from time to time. The respondents are directed to immediately process, finalize, and release the petitioner's pension/pensionary benefits/family pension after completing all necessary formalities.

Chief Justice

Judge

Islamabad
6th August, 2026
Approved for reporting
Riaz