


FORM OF ORDER SHEET

Court of _____

Appeal No. 985/2024

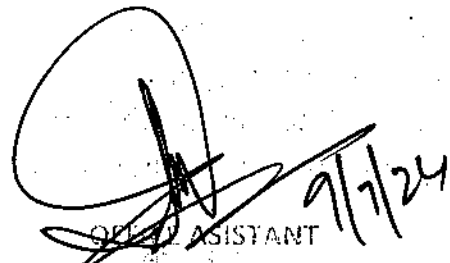
S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	18/07/2024	<p>The appeal of Mst. Nizakat Begum resubmitted today by Mr. Farmanullah Khattak Advocate. It is fixed for preliminary hearing before Single Bench at Peshawar on 22.07.2024. Parcha Peshi given to counsel for the appellant.</p> <p>By the order of Chairman.</p> <p> REGISTRAR</p>

The appeal of Mst. Nizakat Begum received today i.e on 05.07.2024 is incomplete on the following score which is returned to the counsel for the appellant for completion and resubmission within 15 days.

1. According to sub-rule-4 of rule-6 of Khyber Pakhtunkhwa Service Tribunal rules 1974 respondent no. 6 is un-necessary/improper party, in light of the rules ibid and on the written direction of the Worthy Chairman the above mentioned respondent number be deleted/struck out from the list of respondent.
2. Appeal has not been flagged/marked with annexures marks.
3. Annexures of the appeal are unattested.
4. Copy of relevant section of pension law mentioned in para-8 of the memo of appeal (Annexure-F) is not attached with the appeal be placed on it.

No. 312 /Inst./2024/KPST,


Dt. 9/7 /2024.


OFFICE ASSISTANT
SERVICE TRIBUNAL
KHYBER PAKHTUNKHWA
PESHAWAR.

Mr. Farmanullah Khattak Adv.
High Court Peshawar.

- (i) Resp No. 6 has been deleted as per Sub-Rule-4 of R-6 of Khyber Pakhtunkhwa Service Tribunal Act, 1974.
- (ii) Appeal has been flagged/marked with Annexures and objection has been complied.
- (iii) Annexures has been attested to be true copy.
- (iv) Pension Rules has already been annex at Page-12 (Annex- D) but escape notice of your, Honour's

Assistant Registrar
Service Tribunal (KP).


11/07/2024

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL, PESHAWAR**

Service Appeal No. 985 of 2024.

Mst. Nizakat Begum Professor (Rtd.) (BS-20) Govt. College of
Commerce & Management Sciences (Woman) Arbab Road,
Peshawar..... (Appellant).

Versus

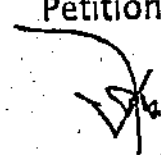
Chief Secretary and others..... (Respondents).

INDEX

S.No.	Description of Documents	Annexure	Pages
1.	Copy of the Service Appeal with Affidavit.		1-8
2.	Copy of Pension Roll of Roohullah Jan.	A	9
3.	Copy of the Notification, September, 21 st , 2021.	B	10
4.	Copy of the Clarification Letter, 23-11-2021 issued by the Finance Department, KP..	C	11
5.	Copy of the Pension Rules, 2021 notification, dated, 6 th September, 2021.	D	12-33
6.	Copy of the C.P. No. 883-L/2020 and C.P. No. 1791-L/2020 reported in 2021 SCMR-730.	E	34-39
7.	Copy of Representation.	F	40
8.	Attested Copy of the W.P. No. 272-P/2022 with attested Copy of Judgment, dated, 4-10-2023.	G & H	41-51
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Petitioner

Through


(Farmanullah Khattak),
Advocate Supreme Court of
Pakistan.
Office: Room No-9, 17-A The Mall
Peshawar Fakhra e Alam Road,
Peshawar Cantt.

1

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL, PESHAWAR**

Service Appeal No. 985 of 2024.

Mst. Nizakat Begum Professor (Rtd.) (BS-20) Govt. College of
Commerce & Management Sciences (Woman) Arbab Road,
Peshawar..... (Appellant).

Versus

1. Chief Secretary Government of Khyber Pakhtunkhwa,
Peshawar.
2. Secretary Higher Education, Archives & Libraries
Department, Government of Khyber Pakhtunkhwa Civil
Secretariat, Peshawar.
3. Secretary Health Govt. of Khyber Pakhtunkhwa through Civil
Secretariat, Peshawar.
4. Govt. of Khyber Pakhtunkhwa through Secretary Finance
Civil Secretariat, Peshawar.
5. Accountant General, Khyber Pakhtunkhwa, Peshawar.
6. District Comptroller of Accounts, Khyber Pakhtunkhwa,
Peshawar.Respondents.

APPEAL UNDER SECTION-04 OF KHYBER
PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974,
VIDE WHICH AMENDMENT HAS BEEN BROUGHT IN
RULES-15 SUB-RULE (10 & 11) OF KHYBER
PAKHTUNKHWA CIVIL SERVANTS PENSION RULES,
2021, WHEREBY, PETITIONER HAS BEEN ASKED TO
GIVE OPTION EITHER TO DRAW FAMILY PENSION
OF HER DECEASED HUSBAND OR TO DRAW THE
PENSION OF HER OWN AND THE SAME MAY
DECLARED ILLEGAL, UN-LAWFUL AND AGAINST
PARENT SECTION-19(2) OF THE GOVT. OF KHYBER
PAKHTUNKHWA CIVIL SERVANTS ACT, 1973 AS
WELL AS THE JUDGMENT LAID DOWN BY THE

1

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL, PESHAWAR**

Service Appeal No. 985 of 2024.

**Mst. Nizakat Begum Professor (Rtd.) (BS-20) Govt. College of
Commerce & Management Sciences (Woman) Arbab Road,
Peshawar..... (Appellant).**

Versus

- 1. Chief Secretary Government of Khyber Pakhtunkhwa,
Peshawar.**
- 2. Secretary Higher Education, Archives & Libraries
Department, Government of Khyber Pakhtunkhwa Civil
Secretariat, Peshawar.**
- 3. Secretary Health Govt. of Khyber Pakhtunkhwa through Civil
Secretariat, Peshawar.**
- 4. Govt. of Khyber Pakhtunkhwa through Secretary Finance
Civil Secretariat, Peshawar.**
- 5. Accountant General, Khyber Pakhtunkhwa, Peshawar.**

.....Respondents.

**APPEAL UNDER SECTION-04 OF KHYBER
PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974,
VIDE WHICH AMENDMENT HAS BEEN BROUGHT IN
RULES-15 SUB-RULE (10 & 11) OF KHYBER
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PAKHTUNKHWA CIVIL SERVANTS ACT, 1973 AS
WELL AS THE JUDGMENT LAID DOWN BY THE**

AUGUST SUPREME COURT OF PAKISTAN IN CP NO.
883-L/2020 AND C.P. NO. 1791-L/2020 RENDERED ON
09-02-2021 ON THE SAME PRINCIPLE OF LAW.

Respectfully Sheweth:

Question of Law

"That the Petitioner solicits the jurisdiction of this Hon'ble Tribunal on a question of law that "in the event of death of a Civil Servant, whether before or after retirement" can Family of such pensioner shall be entitle to such Family pension or not viz-a-viz with his/her own pension after retirement within the purview of Khyber Pakhtunkhwa Civil Servants Pension Rules, 2021 notified on 6th September, 2021".

To answer this question the jurisdiction of this Hon'ble Tribunal has been invoked after dismissal of Writ Petition in limine with the direction that petitioner is at liberty to approach proper forum with the redressal of her grievances, if so advised. That after stoppage of family pension w.e.f January 01, 2024 and thereafter Appellant made proper representation/appeal and even otherwise pensionary benefits is a recurrence cause of action, therefore, Appellant very graciously invoke jurisdiction of this Hon'ble Tribunal and submits her point of view in seriatim form as under:-

1. That husband of Appellant got retired from Health Department on 25-03-2015 as a Medical Superintendent and subsequently died on 30-07-2020. Thereafter the Accountant General Khyber Pakhtunkhwa prepared Family Pension and Appellant regularly receiving Family Pension till date. (Copy of the last Family Pension Slip is herby encsleod as Annex-A).
2. That Appellant also serving as a Professor in Higher Education Department and she got retired from service on 07-12-2021 vide, notification issued on September, 21st, 2021, however, she was regularly receiving Family Pension of her deceased husband. (Copy of the Retirement notification is hereby as encsleod as Annex-B).
3. That on retirement of Appellant, Appellant was asked by the concerned clerk in the Accountant General Office that you will suppose to submit Pension Form-II or Pension Form-III as the case may be for opting one pension which is more

beneficial to you and to this effect the Finance Department issued Clarification, vide, letter, dated, 27-11-2021 is hereby enclosed as **Annex-C**).

4. That Govt. of Khyber Pakhtunkhwa Finance Department, vide, notification dated, 6th September, 2021, in exercise of powers conferred under Section-26 of the KP Civil Servant Act, 1973, notified KP Civil Servants Pension Rules, 2021 in which the said rules came into force at once i.e. 6th September, 2021. Sub-Rule (2) (Definitions) Clause-(c) define "Family" means (i) wife in the case of male civil servant or husband in the case of female civil servant, for life time or till re-marriage. (Copy of the Pension Rules, 2021 is hereby enclosed **Annex-D**).
5. That in the aforesaid rules further define "Family Pension" means a compassionate pension grant paid to the family at the rate of hundred percent (100 %) of the pension. Chapter-V of Rule-15 sub-rule (1) clarify that "In case of death of a civil servant while in service or in case of death of a pensioner, family pension shall be paid to his family, however, in sub Rule(10 & 11) in KP Pension Rules, 2021, put embargo/clog for the first time;-

"A pensioner, who was in receipt of two or more pensions, before, 06-09-2021, shall continue to eligible for the same. However, when a person becomes eligible for two or more pensions after 06-09-2021, he shall opt for one pension which is more beneficial to him as per Rule-15(10&11) of the said rules subject to observance of explanations of Rule (11).
6. That almost similar question of law came-up before Lahore High Court in a number of Writ petitions in which similar interpretation of "Family Pension" as define in definition clause were Question before the Hon'ble High Court, wherein, both parents of petitioner are civil servants and they were entitle to pension under the law. On their passing away, pension of both the parents would form part of family pension as define in the definition clause but herein the same principle family pension already drawing by the wife before 06-09-2021 but after retirement she was asked to opt for one pension more beneficial to her.
7. That Lahore High Court decided the writ petitioner in favour of pensioners drawing two pension of their respective parents instead of opting one and aggrieved from the decision of the

Lahore High Court passed in ICA, Civil Petitions were filed before the August Supreme Court of Pakistan which came up for hearing on 09-02-2021 and the question before the august supreme court was that whether unmarried daughter of deceased civil servant parents can draw the pension of both his/her parents simultaneously, instead entitled to draw the pension of only one of his/her parents. (Copy of the Judgment of the August Supreme Court of Pakistan is hereby enclosed as **Annex-E**).

8. That the august supreme court of Pakistan categorically hold that on passing away of their parent, pension of both the parents formed part of the family pension and similar as the case of Appellant that on passing of her husband she was entitled to the family pension much before promulgation of KP Pension Rules, 2021 as well as para-materia Section-19 of the Civil Servants Act, 1973, which is hereby reproduced for ready reference.

(1)-----

(2) in the event of death of a civil servant, whether before or after retirement, his family shall be entitle to receive such pension, or gratuity or both, as may be prescribed.

9. That the august Supreme Court of Pakistan in the ibid Judgment hold that Finance Department had no authority under the law to clarify, interpret, abridge or encroached upon the legislative power under Section-19 of the Act, which entitles the family pension of the deceased Civil Servant to the pension of his/her husband/wife.
10. That similarly it was also hold in the aforesaid judgment referred above, which is also the case of Appellant as well that she was entitle to the family pension of her deceased husband well before the notification of newly notified on 06-09-2021 i.e. Khyber Pakhtunkhwa Pension Rules, 2021 and the said rules cannot operate retrospectively and adversely affects the already accrued rights of petitioner while drawing the family pension of her deceased husband and regularly drawing much before promulgation of newly notified rules i.e. 06-09-2021.
11. That Appellant submitted a representation to the Accountant General Office while endorsing copy to the Finance Department and the Secretary Higher Education while apprising the situation that right to pension has a Constitutional Rights draws its strength from Article-09 of the

Constitution as well as Section-19 Sub-Section (2) of the Civil Servants Act, 1973 of the retirement benefits earned by the petitioner after superannuation on 07-12-2021. (Copy of the Representation is hereby enclosed as **Annex-F**).

12. That thereafter Appellant filed W.P. No. 272-P/2022, in which initially comments were called from the respondents and finally Writ Petition was dismissed in limine with the direction that petitioner is at liberty to approach proper forum with the redressal of her grievances, if so advised. (Attested Copy of the W.P. No. 272-P/2022 & Reply is hereby enclosed as **Annex-G & H**)
13. That after stoppage of family pension w.e.f January 01, 2024, Appellant made proper representation/appeal on May 13, 2024, however, no response has been made so far. (Copy of fresh Appeal with post Office Receipt is hereby enclosed as **Annex-I**).
14. That even otherwise, Pensionary benefits is a recurrence cause of action, therefore, Appellant very graciously invoke jurisdiction of this Hon'ble Tribunal on the ground that Appellant is entitled to her own pension after superannuation and Respondents 4 & 5 i.e. Accountant General Office/Comptroller of Accounts had block/stop the Family Pension, hence, approached to this Hon'ble Tribunal, in order to sought out the remedy within the frame work of Section-19(2) KP Civil Servants Act, 1973 R/W Pension Rules, inter-alia, on the following grounds:-

GROUND:

- a) That impugned Rules-15 (10&11) of the Pension Rules, 2021 is illegal, unlawful against Section-19 (2) of the Civil Servants Act, 1973 as well as sub-Rule-2 (C) as well as Sub Rule (1) (2) of Rule-15 of the KP Pension Rules, 2021.
- b) That petitioner received the Family Pension of her husband (deceased Civil Servant) and still entitled to pension under the law within the meaning of Khyber Pakhtunkhwa Civil Servants Act, 1973.
- c) That even otherwise superior court held time in again that pension is not bounty and it is the right of the every Civil Servant after serving the departments for sufficient long time. The pension received/drawn by the petitioner as a Family Pension are very much conferred by Section-19 of the Civil

Servants Act, 1973 which cannot be abridge and discontinue under the garb of Rule-15 (10&11) of the KP Pension Rules, 2021 notified on 6th September, 2021.

- d) That Section-19 of the Civil Servants would confer entitlement to the Family Pension in the event of death of a civil servant, whether before or after retirement, his family should be entitle to receive such pension, or gratuity or both, as may be prescribed.
- e) That Rule-15 (10&11) KP Pension Rules, 2021, would frame beyond the scope of Section-19 of the parent Act i.e. Section-19 of the Khyber Pakhtunkhwa Civil Servants Act, 1973 and even otherwise the same had no retrospective effect to disentitle petitioner from Family Pension of her deceased husband accrue prior to promulgation of new rules.
- f) That petitioner would be entitle to her own pension after superannuation, irrespective of the facts that she is already drawing Family Pension and the so-called option of only one pension is beyond the scope of Law & rules and may graciously be struck down if at all would create hurdles in the touchstone of the superior court judgments referred ibid for drawing the Family Pension including her own pension earned after superannuation.
- g) That petitioner receiving Family Pension after retirement and after her death, the family is entitle to receive his/ her pension, as prescribed in the Civil Servants Act, 1973 as well Khyber Pakhtunkhwa Pension Rules, 2021 and the petitioner cannot be deprived by the dent of Rules-15 (10&11) of the retirement benefits accrued under the Act as well as Rules. Hence, the impugn Rule (10& 11) would ex-facie encroached upon the parent KP Civil Servants Act, 1973 and also against the other enabling provision of KP Pension Rules, 2021.
- h) That petitioner had suffered grave injustice in shape of Family Pension in the presence of August Supreme Court Judgment Reported in 2021 SCMR-730 and on the same analogy, Appellant will seek permission of this Hon'ble Court to urge additional grounds at the time of argument of this appeal.

It is therefore most humbly prayed that on acceptance of the instant Appeal, this Hon'ble Tribunal may graciously be pleased to allow an appeal by declaring Appellant entitle to the

Family Pension already drawing before promulgation of new rules in the year 2021 and accrued right duly protected by Section-19(2) of the Khyber Pakhtunkhwa Civil Servants Act, 1973 and petitioner would be entitle to her own pension being earn after superannuation and to deprive the petitioner of her husband pension(Family Pension) under misconception of law & rules and wrong interpretation of the Finance Department Khyber Pakhtunkhwa on such invalid & illogical reasons is completely against the Civil Servants Act and the same may graciously be struck down if the same is otherwise against the parent Statute of Khyber Pakhtunkhwa Civil Servants Act, 1973 and the Principle already laid down by the August Supreme Court of Pakistan.

INTERIM RELIEF:-

That meanwhile Respondent No-4 & 5, may graciously be restrained not to block the Family Pension in accordance with the law OR any other remedy deemed proper and appropriate may also be allowed.

Nizakat Begum
—Petitioner

Through

(Farmanullah Khattak)
Advocate Supreme Court
of Pakistan.

Certificate.

That no other Service Appeal on the similar subject has been filed before this Hon'ble Court except this one.

(Signature)
Deponent.

List of Book & Judgments:

1. Constitution of Pakistan, 1973.
2. KP Civil Servants Act, 1973.
3. KP Pension Rules, 2021.

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL, PESHAWAR**

Service Appeal No. _____ of 2024.

Mst. Nizakat Begum Professor (Rtd.) (BS-20) Govt. College of
Commerce & Management Sciences (Woman) Arbab Road,
Peshawar..... (Appellant).

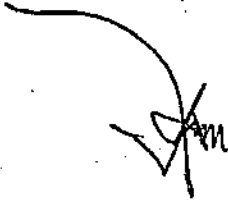
Versus

Chief Secretary Govt. of KP and others..... (Respondents).

AFFIDAVIT

I, Mst. Nizakat Begum Professor (Rtd.) (BS-20) Govt. College
of Commerce & Management Sciences (Woman) Arbab Road,
Peshawar, do hereby solemnly affirm on oath, that the
contents of accompanying Writ Petition are true and correct to
the best of my knowledge and belief and nothing has been
concealed from this Hon'ble Court.

Identified By.



Farman Ullah Khattak)
Advocate Supreme Court
of Pakistan at Peshawar.

Nizakat Begum
Deponent.

PENSION ROLL DATA SHEET & PENSION SLIP

(9)

A
Amir

Date of issue : 03.01.2022
 PO Type : FRESH
 PO Number : 00310327-01
 Pensioner ID : 00310327
 Pension Register No: R-28/2014-15
 Pensioner Name : MST NIZAKAT BEGUM(WIDOW)
 Father / Husband name : ROOHULLAH JAN
 Designation : MEDICAL SUPERINTENDENT
 NIC No.: 1730156659400
 Grade / Scale : 20
 Department.Min: Health
 Pensioner's Type: SPOUSE
 Pension Type: FAMILY PENSION
 Date of Birth : 25.03.1955
 Date of appointment: 26.11.1980
 Date of retirement: 25.03.2015
 Date of Death: 30.07.2020
 Date of commence : 31.07.2020
 Date of Restoration :
 Accounts office ID : PW
 Accounts office Name : AG KP Peshawar
 Federal / Province : Khyber Pakhtunkhwa
 Length of Qualifying Service : 34 years, 3 months, 27 days
 Old PPO Number :
 No. and Date of sanction of pension / Letter No.
 SOH(E-V)2-91/2007/RUHULLAH JAN DT24.4.15
 and the date of the other Audit and Accounts officer authorising
 the Pension/Gratuity/Commutation
 Permanent Address:

Note:
 Age : 66 years
 Last Drawn pay/Emoluments(Rs.): 74850.00
 Gross Pension(Rs.) : 53395.00
 1/4th Surrendered Portion (Rs.) : 18688.25
 Commuted Portion (Rs.) : 0.00
 Net Pension (Rs.) : 0.00
 Net Family Pension (Rs.) : 25543.00
 Amount of Commutation(Rs.) : 0.00
 With Held Amount (Rs.) : 0.00
 Life Time Arrears (Rs.) : 0.00
 Arrears Of Pension (Rs.) : 0.00
 Special Additional Pension (Rs.) : 0.00
 Commutation Percentage : 0.00
 Commutation Table value : 9.52
 Recovery on A/C of :
 Debitable to Govt : Khyber Pakhtunkhwa
 Total Net Share:
 Federal : 0.00 Punjab : 0.00
 Sindh : 0.00 NWFP : 0.00
 Balochistan : 0.00 Military : 0.00
 AJK : 0.00 Autonomous : 0.00

He/She is also entitled to the following increases

Sr. No.	Period	Increase % or amount	Increase Amount	W.E.F.
1	JUL.2018	Rs. 75076.26	75076.26	01.03.2021
2	JUL.2021	10.00 %	10061.93	01.07.2021
3	0.	Rs. 0.00	0.00	
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PENSION SLIP

Month: December
 Year: 2021

Pension roll details

Wage Type	Wage Type Text	Amount
559	Payment	118025.00
0110	Monthly Pension - Family	25543.00
0111	Pension Increases Family	85138.00
1599	Medical Allow - Pensioner	5875.00
1600	Med. All. 2015 Pensioner	1469.00

Bank Details

Bank Account Number : 2001063505
 Bank Branch : UNIVERSITY ROAD PESHAWAR
 UNIVERSITY ROAD PESHAWAR
 Payment Mode :

10

B

GOVERNMENT OF KHYBER PAKHTUNKHWA
HIGHER EDUCATION, ARCHIVES
& LIBRARIES DEPARTMENT

Dated Peshawar the September 21st, 2021

NOTIFICATION

No. 50(CE&MS)HE/1-12/2021/74(1-5). In pursuance of sub-section (2) of section 13(A) of the Khyber Pakhtunkhwa Civil Servants Act, 1973 (Khyber Pakhtunkhwa Act No. XVIII of 1973), read with sub-section (3) thereof, Mst. Nizakat Begum, Professor (BS-20), Govt. College of Commerce & Management Sciences (Women) Arbab Road, Peshawar stands retired from Government Service with effect from 07-12-2021 on attaining sixtieth (60th) year of age, as her date of birth is 08-12-1961.

In terms of provisions of Rules-20 of the Khyber Pakhtunkhwa Civil Servants Revised Leave Rules 1981 and instructions there under issued from time to time sanction is hereby accorded for encashment of leave preparatory to retirement equal to 365-days in favour of the Officer Concerned, of Govt. College of Management Sciences (Women) Arbab Road, Peshawar.

SECRETARY
TO GOVT. KHYBER PAKHTUNKHWA
HIGHER EDUCATION DEPARTMENT

Endst. of even No. & Date.

Copy forwarded to:-

- 1- The Accountant General of Khyber Pakhtunkhwa Peshawar.
- 2- The Director General, Commerce Education, and Management Sciences, Chankam More, near Govt. Polytechnic Institute, Rano Qadir Peshawar.
- 3- PS to Secretary Higher Education Department, Khyber Pakhtunkhwa.
- 4- Officer concerned.

SECTION OFFICER (PERS.)



GOVERNMENT OF PUNJAB
 FINANCIAL INSTITUTIONS
 REGULATIONS, 1957

11
 C
 Akh

The Accountant-General,
 Khair Pakhtunخوا, Peshawar

10/10/2028

Subject: **KHYBER PAKHTUNخوا CIVIL SERVANTS PENSION RULES 2011**

I am directed to refer to your letter No. 11247/1/2028 dated 10/10/2028 on the subject noted above and to clarify the queries raised by your good office as under:-

Sr. No.	Observations of Accountant General, KP	Reply of Finance Department
1	The pension of the deceased civil servant was Rs. 1000/- per month. The pension of the family was Rs. 1000/- per month. The pension of the family was Rs. 1000/- per month.	As per revised Pension Rules, 2011, the pension of the family shall be 100% of the gross pension of the deceased civil servant. The pension of the family was Rs. 1000/- per month.
2	The pension of the deceased civil servant was Rs. 1000/- per month. The pension of the family was Rs. 1000/- per month. The pension of the family was Rs. 1000/- per month.	As per revised Pension Rules, 2011, the pension of the family shall be 100% of the gross pension of the deceased civil servant. The pension of the family was Rs. 1000/- per month.
3	The pension of the deceased civil servant was Rs. 1000/- per month. The pension of the family was Rs. 1000/- per month. The pension of the family was Rs. 1000/- per month.	As per revised Pension Rules, 2011, the pension of the family shall be 100% of the gross pension of the deceased civil servant. The pension of the family was Rs. 1000/- per month.
4	When the pension of the deceased civil servant was Rs. 1000/- per month. The pension of the family was Rs. 1000/- per month. The pension of the family was Rs. 1000/- per month.	As per revised Pension Rules, 2011, the pension of the family shall be 100% of the gross pension of the deceased civil servant. The pension of the family was Rs. 1000/- per month.
5	The pension of the deceased civil servant was Rs. 1000/- per month. The pension of the family was Rs. 1000/- per month. The pension of the family was Rs. 1000/- per month.	As per revised Pension Rules, 2011, the pension of the family shall be 100% of the gross pension of the deceased civil servant. The pension of the family was Rs. 1000/- per month.

Director's Security
 Assistant
 Director's Security
 Assistant



KHYBER PAKHTUNKHWA

Published by Authority

PESHAWAR, MONDAY, 06th SEPTEMBER, 2021.

GOVERNMENT OF KHYBER PAKHTUNKHWA FINANCE DEPARTMENT

NOTIFICATION

Dated Peshawar, the 06th September, 2021

No. SOSR-II/FD/2-4/2021.---In exercise of the powers conferred by section 26 of the Khyber Pakhtunkhwa Civil Servants Act, 1973 (Khyber Pakhtunkhwa Act No. XVIII of 1973), the Chief Minister of Khyber Pakhtunkhwa is pleased to make the following rules, namely:

KHYBER PAKHTUNKHWA CIVIL SERVANTS PENSION RULES, 2021

Chapter-I Preliminary

1. Short title and commencement--- (1) These rules may be called the Khyber Pakhtunkhwa Civil Servants Pension Rules, 2021.

(2) These rules shall come into force at once.

2. Definitions.---In these rules, unless the context otherwise requires:-

- (a) "Act", means the Khyber Pakhtunkhwa Civil Servants Act, 1973 (Khyber Pakhtunkhwa Act No. XVIII of 1973);
- (b) "Accounts Officer", means an officer, who keeps the accounts of Government and includes the Accountant General, Khyber Pakhtunkhwa, District Comptrollers of Accounts and District Accounts Officers and any other officer, who keeps Government accounts;
- (c) "competent authority" means the authority to appoint civil servants in various basic pay scales respectively;
- (d) "commutation", means the advance payment of 35% of gross pension to the pensioner for the specific period as specified under these rules, which shall be restorable when the paid amount is recovered;

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(c) "family" means-

(i) wife in the case of male civil servant or husband in case of female civil servant, for life time or till re-marriage;

yes (ii) children as per detail given below; who were dependent upon the deceased civil servant or pensioner;

(a) unmarried daughters, life time or till marriage;

(b) disabled and retarded children, for life time and without age limit;

(c) widowed or divorced daughters, for life time or till remarriage;

(d) son(s) upto the age of 21 years; and

(e) in case of non-existence of any of the above family members, to the father or failing the father to the mother subject to the condition that they were wholly dependent upon the deceased civil servant or pensioner and have no other source of income.

(f) "family pension", means a compassionate grant paid to the family at the rate of hundred percent (100%) of the pension;

(g) "gratuity", means the amount as specified by Government and paid to the family of a civil servant who dies while in service;

(h) "gross pension" means the pension before surrender of the amount for commutation of gratuity;

(i) "net pension" means the pension being drawn, minus medical allowance;

(j) "pension" means a periodical payment, made by Government, in consideration of past service, rendered by a civil servant;

(k) "pensioner", means a civil servant retired from service and receiving pension or a member of the family of a deceased civil servant in case of family pension;

(l) "Pension Form" means the Pension Form appended to these rules; and

Chapter-II
Service Qualifying for Pension

3. Conditions of qualification.--(1) The service of a civil servant does not qualify for pension unless it conforms to the following conditions:

- (a) the service shall not be less than ten years;
- (b) the service must be paid by Government from the Provincial Consolidated Fund;
- (c) the service of a probationer who is subsequently confirmed in a permanent post without interruption qualifies for pension;
- (d) the time spent by a civil servant in approved training shall count as service qualifying for pension; however, the period of training before actual appointment to a civil post shall not count for pension;
- (e) all leave, other than extra ordinary leave counts as qualifying service for the purpose of pension;

Explanation: The period of extraordinary leave shall not be treated as qualifying service for pension but only as a bridge between the two periods of qualifying service.

- (f) the period of suspension, followed by reinstatement, shall be deemed to have been the period as qualifying for pension, regardless of the fact whether the civil servant was or was not allowed full pay and allowances for the period of suspension;
- (g) time spent by a civil servant on deputation in another Government or autonomous body working under Government;
- (h) military pensionable service which ceases before a pension has been earned in respect of it, when followed by civil pensionable service, counts as part of such service;
- (i) if a permanent post, on which a civil servant holds a lien, is abolished, under circumstances entitling him to get a compensation pension or gratuity, his service thereafter in a temporary post, under Government, qualifies for pension; and
- (j) for the purpose of grant of pension for the service in an autonomous or semi-autonomous body, the pay drawn and the effective service, rendered by a civil servant in an autonomous or semi-autonomous body, the authorized capital of which is wholly subscribed by the Federal or Government in a post, appointment to which is by law, required to be made and salary of which is required to be fixed by the Federal Government or Government shall be treated as pay rendered in a post in Government

(2) Subject to any special law or rules, for the time being in force, the service of a civil servant begins to qualify for pension, when he takes over charge of the post to which he is first appointed.

(3) The past service of a civil servant, for the purpose of pension, shall not be counted in the following cases:

- (a) resignation of a post unless it is to take up another post or service which counts for pension;
- (b) removal or dismissal from service; and
- (c) absence from duty without leave.

Note: However, the authority which has the powers to sanction leave may commute the absence from duty without leave into extra ordinary leave retrospectively.

(4) The following are deficiencies, which may be condoned:

- (a) a deficiency of six months or less in the qualifying service of a civil servant shall be deemed to have been condoned at any stage up to thirtieth year;
- (b) a deficiency of more than six months but less than a year, may be condoned by the Finance Department of Government; and
- (c) a deficiency of one full year or more shall not be condoned.

(5) The pension sanctioning authority may condone all gaps between periods of qualifying service of a civil servant as per following criteria:

- (a) first criteria: if a civil servant has the following broken spells of temporary or officiating service:
 - (i) ten years and four months, followed by break;
 - (ii) three years and two months followed by break; and
 - (iii) twelve years and six months.

The first and third spells are qualifying for pension and therefore can be counted as twenty two years and ten months qualifying service. The second spell being not qualifying shall not be counted and shall be treated as a gap in between first and third spells of service. The gap between two spells of qualifying service may be condoned;

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(b) second criteria: if a civil servant has the following broken spells of service:

- (i) eight years followed by break;
- (ii) five years followed by break; and
- (iii) six years followed by break.

Since all the periods of service are less than ten years, therefore not qualifying for pension and may not be condoned.

(c) third criteria: if a civil servant has the following broken spells of service:

- (i) twelve years and more followed by break;
- (ii) six years followed by break; and
- (iii) seven years followed by break

Only the first spell is qualifying for pension, while second and third spells are not qualifying, being less than ten years, therefore, neither of two gaps may be condoned.

(d) fourth criteria: if a civil servant has the following broken spells of service

- (i) ten years and three months followed by break;
- (ii) six years followed by break; and
- (iii) three years followed by confirmation.

(6) The second spell is not qualifying. The first and third spells are qualifying for pension; therefore, the gap between them may be condoned as in the case of first criteria.

Chapter-III

Different Kinds of Ordinary Pensions and Conditions for their Grant

4. Superannuation pension. A superannuation pension is granted to a civil servant, who retires from service on the completion of sixty years of his age.

5. Retiring pension-- (1) A retiring pension is granted to a civil servant, who not being eligible for superannuation pension and

- (a) opts to retire after twenty five years qualifying service or attaining the age of fifty-five years, whichever is later; or
- (b) is compulsory retired from service on such date as the competent authority, in public interest, may direct under clause (a) of section 13 of the Act; or
- (c) is compulsory retired from service by the competent authority to remove him from service on grounds of inefficiency, misconduct or

Note-I: The option in clause (a), shall not be available to a civil servant against whom a departmental enquiry is pending.

Note-II: In case an enquiry is not finalized within one year, full pension and commutation shall be sanctioned at the end of the year.

Note-III: On receipt of application under clause (a), the head of the department shall arrange verification of qualifying services by the concerned Accounts Officers within one month from the date of the receipt of the application before orders of retirement are passed.

Note-IV: If a civil servant opts for retirement under clause (a), and later on withdraws his application for retirement or modifies the date of retirement, before its acceptance or in case the application is accepted and communicated, before retirement matures, the application or the date of retirement shall be deemed to have been withdrawn or modified, as the case may be.

Note-V: No direction under clause (b) shall be made until the civil servant has been informed in writing of the grounds on which it is proposed to make the direction and has been given a reasonable opportunity of showing cause against the said direction.

6. **Invalid pension**(1) An invalid pension is awarded to a civil servant on retirement from Government service, before reaching the age of superannuation, who, by bodily or mental infirmity, is permanently incapacitated for further service on production of a Medical Certificate, prescribed at Pension Form -I.

(2) A civil servant, who wishes to retire on invalid pension, shall apply to his head of office or department who shall direct him to present himself before a Standing Medical Board or an Invalidating Committee in case of civil servants of basic pay scale 16 and above and a Medical Superintendent, District Headquarter Hospital or Services Hospital in case of civil servants below basic pay scale 16 for obtaining a medical certificate of incapacity for further service as specified at Pension Form-I.

(3) In case the authority competent to sanction pension did not agree with the contents of the medical certificate, issued under sub-rule (2) of this rule, he may, for the reasons to be recorded in writing within one month of the receipt of said medical certificate request the concerned authorities of Health Department of Government for constitution of a Special Medical Board regarding invalidation of the civil servant concerned.

(4) On receipt of the medical certificate of incapacity for further service, the civil servant shall be invalidated from service within thirty days, or if he is on leave or is granted leave as a special case, on the expiry of such leave, whichever may be later.

(5) If a civil servant before completion of ten years service is unable to work and retire on account of invalidation due to illness, accident, earthquake or terrorism

- (d) one increment of the relevant pay scale in case of retirement on or after first day of June of a year;
- (e) increment accrued during leave preparatory to retirement; and
- (f) any other amount which may be specifically classed as pay or emoluments, by the Finance Department of Government for the purpose of calculation of pension.

Note-I: The term "pay" does not include the pay drawn by a civil servant in foreign service or additional pay for performance of additional duties of another post.

Note-II: The benefit of one increment as specified in clause (d), shall equally be admissible in the cases of civil servants who die while in service.

Note-III: The benefit of clause (d) above, shall also be admissible to those who exhausted the relevant pay scale. They shall be allowed the amount equivalent to an increment beyond the scope of existing pay scale.

Note-IV: The benefit of clause (d), shall also be admissible to those who are enjoying the benefit of personal pay beyond the maximum of relevant pay scale.

12. **Medical allowance.** A pensioner shall be entitled for medical allowance at the rates specified by Government.

13. **Commutation:** (1) Commutation up to thirty five percent (35%) of gross pension shall be admissible at the option of the pensioner.

(2) If a civil servant, who retires after completing ten years or more service, so wishes, he may, draw the full gross pension i.e. commutation of pension shall not be necessary.

(3) The lump sum payable on commutation shall be calculated in accordance with the table of present value given below:

TABLE FOR CALCULATING THE COMMUTED VALUE OF PENSION

AGE NEXT BIRTHDAY	NO. OF YEARS PURCHASED	AGE NEXT BIRTHDAY	NO. OF YEARS PURCHASED.
20	40.5043	51	17.6526
21	39.7341	52	17.0050
22	38.9653	53	16.3710
23	38.1974	54	15.7517
24	37.4307	55	15.1478
25	36.6651	56	14.5602
26	35.9006	57	13.9888
27	35.1372	58	13.4340
28	34.3750	59	12.8953
29	33.6143	60	12.3719
30	32.8071	61	11.8632
31	32.0974	62	11.3684
32	31.3412	63	10.8872
33	30.5869	64	10.4191
34	29.8343	65	9.9639
35	29.0841	66	9.5214
36	28.3362	67	9.0914
37	27.5908	68	8.6742
38	26.8482	69	8.2697
39	26.1009	70	7.8778
40	25.3728	71	7.4983
41	24.6406	72	7.1314
42	23.9126	73	6.7766
43	23.1840	74	6.4342
44	22.4713	75	6.1039

45	21.7592	76	5.7858
46	21.0538	77	5.4797
47	20.3555	78	5.1854
48	19.6653	79	4.9030
49	18.9841	80	4.6321
50	18.3129		

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(4) For pensioners who retire on superannuation, the commutation value shall be calculated on the basis of sixty years, instead of the age of sixty one years, i.e. on next birthday, if he applies for commutation while in service.

(5) The pension sanctioning authority may sanction the commutation for lump sum payment.

(6) In case of death of a civil servant who is retired and could not sign his pension papers due to death, his family shall also be entitled for the commuted value of pension, subject to fulfillment of other conditions, if any.

14. Restoration of commutation: (1) A pensioner shall be entitled to the benefit of restoration of portion of pension in lieu of commutation or gratuity after outliving the period for which commutation or gratuity, as the case may be was availed.

(2) In restoring the amount of commutation shall be divided by number of years purchased. Fraction of a year which is less than six months shall be ignored and that of six months and more shall be counted as one year.

Explanation-I: In case, the commutation was granted at the age of sixty years, on superannuation and the period for which the commutation purchased was 12.3719 years, say 12 years and four months, the commutation shall be restored on completion of twelve years of retirement.

Explanation-II: In case the commutation was granted before superannuation and the next birthday of the pensioner was fifty eight years and the period for which the commutation purchased was 13.4340 years, say thirteen years and five months, the restoration shall be allowed on completion of thirteen years of retirement.

(3) Restoration of commutation shall also be admissible in case of family pension.

(4) The benefit of periodical increases on surrendered portion of commuted value of pension after restoration shall also be allowed to the pensioners.

Chapter-V
Family Pension

15. Family pension--- (1) In case of death of a civil servant while in service and eligible for pension or in case of death of a pensioner, family pension shall be paid to his family.

(2) Where a civil servant or pensioner has one wife and children, the amount of pension shall be divided equally among wife and children.

Note: In case of a female civil servant or pensioner, the amount of family pension shall be divided equally among her surviving husband and eligible children;

(3) Where a civil servant or pensioner had more than one wife, the amount of pension shall be divided viz; each surviving widow shall get one fourth ($1/4^{\text{th}}$) of the pension and the balance shall be divided equally among the surviving eligible children.

(4) In the case of a female civil servant leaving behind children from former marriage in addition to her husband and children by her surviving husband, the amount of pension shall be divided equally among the husband and all eligible children.

(5) In case the total number of beneficiaries exceeds four, the husband shall be allowed one fourth ($1/4^{\text{th}}$) of the pension and the remaining amount distributed equally among the eligible children.

(6) In case a surviving child on attaining the age of eighteen years demands his share separately, he shall be entitled to receive his share of family pension.

Note: A child means a legitimate child or an "adopted child" if under the personal law of the civil servant concerned, adoption is legally recognized as conferring the status of a natural child. The age of the child at the time of adoption shall be less than fourteen (14) years. The civil servant concerned shall provide the adoption deed executed between the parents or guardian of the child and the civil servant duly registered with the Sub-Registrar. Adoption shall have been at least ten years before the completion of twenty five years' service qualifying for retiring pension and subject to reporting to the head of office or department concerned and recording an entry in the service book or personnel file in this behalf.

(7) Disabled child shall be entitled for family pension under these rules.

Explanation-I: Disability means that the earning capacity of the disabled child impaired due to disability and includes:

- (a). total loss of eye-sight;
- (b). total loss of functions of both the hands;
- (c). total loss of functions of both the legs and feet;

- (e). total loss of hearing of both ears;
- (f). total loss of speech; and
- (g). any other disease impairing the earning capacity.

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Explanation-II: The Standing Medical Board shall be the competent forum to issue a disability certificate.

Explanation-III: In case the pension sanctioning authority, did not agree with the contents of the medical certificate issued by the Standing Medical Board, he may for the reasons to be recorded in writing, within one month of the receipt of said medical certificate, may request the concerned authorities of Health Department of Government for constitution of a Special Medical Board regarding invalidation of the concerned child.

Explanation-IV: The disabled child of a deceased civil servant or a pensioner shall have the special CNIC issued by NADRA for disabled persons.

(8) Family pension shall not be admissible to a family member or a relative of the deceased civil servant or pensioner, if he holds a pensionable post, paid from the Provincial Consolidated Fund or is in receipt of any kind of other pension from Provincial Consolidated Fund.

(9) The husband in the case of a female civil servant or pensioner shall only be entitled to receive the family pension, when he has no source of income and was wholly dependent upon his wife.

Explanation: In case of a female civil servant, if the wife intimates in writing to the Accounts Officer or head of the office or department that her husband shall not be included as a member of the family, then he shall no longer be considered a member of the family unless subsequently she cancels in writing her intimation excluding him.

(10) In case a civil servant during his service against a pensionable post, becomes eligible for another pension, he shall opt for the pension which is more beneficial to him, i.e. either to draw his own pension at the time of retirement or the other pension for which he becomes eligible; provided the other pension if opted shall however be admissible when he ceases to be a civil servant. The option once exercised shall be final.

(11) In case a pensioner is drawing his own pension or a family pension, becomes eligible for another pension, he shall opt for one pension which is more beneficial to him as prescribed at Pension Form-II or Pension Form-III, as the case maybe. The option once exercised shall be final.

Explanation-I: For payment of pension under sub-rule (8) and (9), the recipient shall guarantee through affidavit, prescribed at Pension Form -IV and Pension



Explanation-II: The condition of not drawing more than one pension shall not be applicable, in case the pensioner is in receipt of other pension as guardian.

(12) If a civil servant dies while in service, his family shall be entitled for gratuity in lieu of twenty five (25%) of family pension. In such cases the rate of gratuity shall be determined on the basis of age next birthday of the deceased civil servant in accordance with the commutation table under sub-rule (3) of rule 13 of these rules.

(13) The family of a deceased civil servant who after having retired, could not sign his pension papers due to death, shall be entitled for the commuted value of pension henceforth subject to fulfillment of all other conditions.

(14) No family pension shall be payable by Government after the death of a civil servant or pensioner if he does not have a family or an eligible dependent relative as defined in clause (e) of rule 2 of these rules.

(15) Future good conduct of the recipient is an implied condition of every grant of a family pension.

(16) The pension sanctioning authority has reserve to themselves the right of recovery of the pension and commutation or gratuity paid; if at any stage it has been found that the recipient was not eligible for pension.

(17) The rules which apply to the grant of ordinary pension to a civil servant shall also apply in respect of commutation or gratuity and pension that may be sanctioned in favor of their families.

(18) The pension sanctioning authority may allow the payment of family pension and or share of commutation admissible to minor children of a deceased civil servant or pensioner, to their mother. In case the mother is not alive or was judicially separated from the civil servant or pensioner in his life time, the pension sanctioning authority may nominate any suitable person to be the guardian of such minor children for the purpose of receiving payment of pension or share of commutation on their behalf.

(19) In case the deceased civil servant was a female, the pension sanctioning authority may under similar circumstances allow the payment of pension and or shares of commutation of minor children of the deceased to their father, or if the father be not alive, to such guardian as may be appointed by the pension sanctioning authority.

(20) For appointing a guardian by the pension sanctioning authority, there shall be no need of succession certificate from the Court of competent jurisdiction.

(21) In case a member of family withdraws his right to receive his share in family pension or of becoming in-eligible to receive a family pension for any reason, his share shall be distributed amongst other eligible members.

Explanation: In case of refusal to receive family pension, the pension sanctioning authority before accepting the refusal shall satisfy himself that the refusal was

(22) If a civil servant eligible for pension remains missing or un-heard for a period of twelve (12) months or more, to the satisfaction of the department concerned, family pension may be allowed to his family as admissible under the rules, provided that:

- (a) the family member claiming to be entitled to the pensionary benefits of the missing person shall, before such benefits are paid, guarantee through affidavit or as the pension sanctioning authority may require, the repayment of pensionary benefits to the missing person if subsequently he appears and makes any claim thereto; and
- (b) The pension sanction authority shall not be responsible for repayment of any pensionary benefits to the missing civil servant, which has already been paid to his family members who shall personally be responsible for satisfaction thereof on appearance of the missing civil servant.

Chapter-VI
Conditions for Pension

16. Date of commencement of pension Apart from special orders, an ordinary pension is payable from the date on which the pensioner ceases to be in service. A commutation shall be paid in a single sum.

17. Place of payment.- A pension is payable through bank account in a scheduled bank, at any place in Pakistan.

18. Payment of pension in foreign currency: A pensioner is entitled to draw his pension in foreign currency during the period he resides outside Pakistan, at the official rate of exchange of that country prevalent on the date of payment.

19. Conduct of pensioner.- Good conduct of pensioner is an implied condition of every kind of pension. The pension sanctioning authority may withhold or withdraw a pension or any part of it, if the pensioner be convicted of serious crime or be found to have been guilty of grave misconduct either during or after the completion of his service; provided that before any order to this effect is issued, the pensioner shall be informed in writing.

20. Recovery from pension. (1) The pension sanctioning authority reserve to himself the right of recovery from the pension of pensioner on account of losses found in judicial or departmental proceedings to have been caused to Government by the negligence or fraud of such a pensioner during his service; provided that such departmental proceedings shall not be instituted after more than a year from the date of retirement of the civil servant.

(2) In case the amount of pension, granted to a pensioner be after wards found to be in excess of that to which he is entitled under these rules, he shall be called upon to

21. Taking part in politics and election: A pensioner who has been in the service of Government or of any statutory body or anybody which is owned or controlled by Government or in which the Government has a controlling share or interest, shall not, within a period of two years from the date he ceased to be in such service, take part in any election or engaged in political activity of any kind.

22. Inquiries pending against civil servant. - (1) A civil servant under enquiry be excluded from the enquiry proceedings under the efficiency and discipline rules, for the time being in force, after attaining the age of superannuation and he may be allowed full pensionary benefits as provided under these rules. However, if some pecuniary loss, caused to the Government, is likely to be proved against the civil servant who superannuates before decision of the case against him, an FIR shall be lodged against him for judicial proceedings, immediately after the date of superannuation and exclusion of his name from the departmental enquiry.

(2) If a civil servant is likely to be dismissed or it is expected that some recovery has to be made for loss caused to Government, then pension and commutation shall not be sanctioned for a period of one year, during which the pension sanctioning authority, shall ensure that enquiry is finalized.

(3) If a civil servant is not likely to be dismissed or removed as a result of the enquiry and only recovery of some financial loss is involved, then a decision shall be taken as regards the amount of loss involved. If the amount can be recovered from the commutation admissible under these rules then pension may be sanctioned, withholding the commutation. If the amount involved is more than the commutation, then only eighty percent (80%) or less of the pension shall be allowed so as to ensure that Government loss in full could be recovered from the balance.

(4) In no case shall an enquiry be allowed to linger on for more than one year. On conclusion of the enquiry, the whole case shall be re-assessed and pension or commutation shall be finally sanctioned in light of the result of the enquiry. In case an enquiry is not finalized within one year, full pension and commutation shall be sanctioned at the end of the year, even if the enquiry is not completed.

Chapter-VII

APPLICATION FOR GRANT OF PENSION

23. Application-- (1) A civil servant, likely to be retired, shall submit his pension application as specified in Pension Form-VI, six months in advance of the date of retirement.

(2) A civil servant, who intends to retire before attaining the age of superannuation, shall, at least six months before the date on which he intends to retire, submit a written intimation to the authority which appointed him, indicating the date on which he intends to retire.

(4) The responsibility for initiation and completion of pension papers is that of the head of department or attached department in the case of civil servants of basic pay scale-16 and above and of the head of office concerned in the case of civil servants of basic pay scale-15 and below.

(5) The action shall be initiated one year before a civil servant is due to retire, so that pension may be sanctioned a month before the date of his retirement.

(6) The authorities dealing with applications of pensions shall ensure that a civil servant begins to receive his pension on the date on which it becomes due.

(7) The head of department or attached department or office concerned shall certify under Pension Form-VI, whether the character, conduct and past services of the civil servant concerned are such as to entitle him to the favorable consideration of pension sanctioning authority. He shall also record there his own opinion whether the service claimed has been established and shall be admitted or not.

(8) Orders, sanctioning the pension, may be issued not more than one month in advance of the due date of retirement of such civil servant.

(9) All periods of leave, suspension, etc., which are not reckoned as service qualifying for pension shall be carefully recorded on the Pension Form-VI.

(10) If the application is for an invalid pension, the requisite medical certificate shall be attached to the application.

(11) The service of a civil servant, mentioned in Pension Form-VI, shall be verified by the head of office concerned from official records, i.e. service book or service roll; pay bills, acquaintance rolls etc.

(12) If it be found impossible to verify the service otherwise a written statement of the retiring civil servant shall be taken on plain paper, and such collateral evidence as may be procurable shall be collected, for instance, certificate given by an officer to a subordinate on his leaving the office and testimony of contemporary civil servants.

(13) The powers to admit service verified may be exercised by the pension sanctioning authority.

(14) After completing the application at Pension Form VI in the manner specified in the preceding rule, it shall be forwarded along with the necessary documents to the Accounts Officer through Pension Sanctioning Authority.

(15) On receipt of the pension papers, the Accounts Officer shall apply the requisite checks and may issue the pension payment order not more than a fortnight in advance thereof to the concerned bank for crediting the amount in the account of the pensioner, wherefrom the pensioner shall receive the pension.

(16) Finalization of pension cases shall not be held up for want of No Demand Certificate. The pension payment order shall be issued for payment of pension, subject to production of an undertaking by pensioner or his family at the time of first payment of pension, commutation or gratuity that any demand coming to the notice shall be recovered from pension within a period of one year after the issue of pension payment order.

(17) In case a retiring civil servant has not been provided Government accommodation, a No Demand Certificate from Estate Officer or allotting authority shall not be necessary.

Note: With a view to ensure expeditious preparation of family pension papers, the concerned representative of the department or office shall visit the house of the deceased civil servant soon after the death of the civil servant and get the pension papers completed without delay. Finalization of the pension papers of the family of a deceased civil servant shall be an exclusive responsibility of the concerned official of a department and he shall be answerable for any delay.

24. Leave salary and pension contribution. (1) If a civil servant is proceeded on foreign service within or outside Pakistan, pension contribution at 33-1/3 % of the mean of minimum and maximum of the pay scale held by the civil servant concerned at the time of proceeding on foreign service, plus other emoluments, reckonable for pension, which shall have been admissible to him had he not been deputed on foreign service.

(2) The pension contribution shall be payable by the foreign employer.

(3) No leave salary contribution shall be recovered from the foreign employers but leave and leave salary shall be sanctioned and paid during the period of foreign service by the foreign employers. The civil servants sent on deputation to foreign service are granted leave and paid leave salary by the foreign employers, shall not count the period spent on foreign service for earning leave under Government.

(4) The leave, earned by a civil servant, but not availed or allowed during the period of his foreign service in Pakistan, shall be credited to his leave account on reversion to Government Department.

Explanation-I: For the purpose of this, the autonomous bodies and corporations shall maintain proper leave accounts of the civil servant on deputation with them and shall furnish a certificate to the lending department that the deputationist did not avail any leave during his period of deputation.

Explanation-II: Encashment of leave shall not be admissible in the case of civil servants on deputation to foreign service in Pakistan on the basis of the rules or regulations of the autonomous bodies or corporations.

25. Employees of autonomous bodies appointed in Government Departments: In case of an employee of the autonomous or semi-autonomous organization, who joins service in a Government Department through proper channel, the concerned autonomous or semi-autonomous organization shall make payment of pension contribution to Government at the specified rate as indicated in sub-rule (1) of rule-24 of these rules.

- (a). the appointment of the individual concerned in the Government (Department) was made with the consent of the head of the autonomous organization and with the approval of the competent authority in Government Department concerned, in accordance with the normal procedure for making such appointment;
- (b). the regular employees of the autonomous or semi-autonomous organization concerned are entitled under specific rules of the organization for the purpose to the same benefits of pension or gratuity as are admissible to the civil servants of the Government and the employee concerned had rendered qualifying service for pension or gratuity in his parent organization before his appointment in Government Department concerned; and
- (c). such appointments under Government, shall be treated as fresh appointments and incumbents shall be allowed the benefit of previous service rendered in the autonomous or semi-autonomous organization, for the purpose of pension only. The seniority shall be reckoned from the date of appointment under Government Department concerned.

Chapter-VIII
Miscellaneous

26. Pension Sanctioning Authorities.--The following authorities shall have the powers to sanction pension, commutation and gratuity to a retiring civil servant or family of a deceased civil servant or pensioner, as the case may be, except the compassionate allowance which shall be sanctioned by the Finance Department of Government:

- (a). appointing authorities for the civil servants to whom they are competent to appoint;
- (b). in the Education Department and Health Department of Government, the District Officers of the respective district, besides the civil servants to whom they are competent to appoint, for the officers upto basic pay scale-18, who are or have been working under their administrative control immediately before retirement;
- (c). in other departments, the heads of attached departments, besides the civil servants to whom they are competent to appoint, for the officers upto basic pay scale-18, who are or have been working under their administrative control immediately before retirement;
- (d). Secretary of the department concerned for the civil servants in basic pay scale-19 and basic pay scale -20, who are or have been working under his administrative control, immediately before retirement; and

27. **Apportionment of pension.**--- The 'rule of proportion' and other associated rules and accounting instructions shall continue to be operative and the apportionment of pensionary liability between the various departments and Federal Government or Government, as the case may be, shall be made by the Accounts Officer issuing a pension payment order. Finalization of pension cases shall not be held up on this account. If there is any dispute with regard to the apportionment of pensionary liability, the matter shall be sorted out by the Accounts Officers involved.

28. **Anticipatory pension.**--- (1) If for any reason it is apprehended that the pension payment order to a retiring civil servant or in case of his death, to the family, cannot be issued within one month, a provisional order, authorizing payment of eighty percent (80%) of the admissible pension shall be issued by the pension sanctioning authority.

(2) The pension sanctioning authority may sanction an anticipatory pension.

(3) Any over payment on such provisional payment shall be adjusted against the amount of pension as payable to such civil servant or his family.

29. **Pay on re-employment.** (1) If a pensioner is re-employed under Government, he may for the services rendered, be allowed to draw the minimum of the pay scale sanctioned for the post or as allowed by the appointing authority. He shall also earn the usual annual increments.

(2) In addition to emoluments for the services rendered, full pension shall be admissible to the re-employed pensioner in respect of his previous service.

(3) The services rendered on re-employment by a pensioner shall not qualify for pension.

30. **Pensioner's verification.** A pensioner drawing his own pension or family pension, shall present himself before the concerned Accounts Officer or any other officer or authority, authorized by the Finance Department of Government, once in life, for verification of his particulars electronically.

Explanation: In case a pensioner is unable to present himself for verification of his particulars electronically, for the reason of illness, he shall inform the concerned Accounts Officer or the authorized officer in writing and the concerned authority shall make the arrangements for verification by deputing an official at the residence of the pensioner.

31. **Un-drawn pension arrears.** A pension remaining un-drawn shall be allowed to be paid by the disbursing officer or the bank without any reference to the Accounts Officer or the pension sanctioning authority; provided that in the case of pension remaining un-drawn for more than one year, the pension shall not be paid without the authority of Accounts Officer concerned.



32. Existing orders and instructions-All orders and instructions, issued from time to time shall continue to be enforced if otherwise not inconsistent with these rules.

33. Relaxation of rules- Any of these rules may for reasons to be recorded in writing be relaxed in individual hardship cases by the Finance Department of Government, if it is satisfied that strict application of the rules shall cause hardship to the individual.

34. Repeal and savings-(1)The Khyber Pakhtunkhwa Pension Rules, 1955 are hereby repealed.

(2) Notwithstanding the repeal of the Khyber Pakhtunkhwa Pension Rules, 1955, the orders, instructions, issued before commencement of these rules and not inconsistent to the provision of these rules shall be deemed to be valid within the meanings of these rules.

Pension Form -II
[see rule 15 (11)]

OPTION FOR PENSION

(in case of eligibility for a second pension of a pensioner receiving his own pension)

I, _____ son of/daughter of/wife of _____ retired
as _____ (designation with BPS) on _____ (date of retirement)
from the _____ (department), and drawing pension, of Rs.
_____ Per month from _____ (Name of Bank) _____ (Name of
Branch) _____ (Account No), become eligible for family pension in
respect of my deceased Husband/wife/father/mother _____ (give
relationship) who died on _____. At the time of death, he was working/retired
as _____ (designation with BPS) from _____ (department).

I, therefore, opt to draw the family pension of my
Husband/wife/father/mother _____ Mr. /Ms. _____ and not to
receive my own pension.

It is certified that I am not drawing any kind of other pension

Date _____
Name _____
CNIC No. _____

Address _____ (Signature)

Pension Form - III
[see rule 15(11)]


OPTION FOR PENSION

(In case of eligibility for a second pension of a pensioner already receiving a family pension)

I, _____ son of /daughter of/wife of _____ states that I am receiving family pension of my deceased _____ (give relationship), who was retired as _____ (designation with BPS) from the _____ (department) and died _____. I, become eligible for another family pension of my deceased _____ (give relationship) Mr. Ms. _____ (give name), who has been working/retired as _____ (give designation with BPS) from the _____ (name of department) and died on _____.

I, therefore, opt to receive the pension of my deceased _____ (give relationship) Mr. Ms. _____ (give name).

It is certified that I am not drawing any kind of other pension.



Date _____

(Signature)

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Amher

IN THE SUPREME COURT OF PAKISTAN

(Appellate Jurisdiction)

Present:

Mr. Justice Manzoor Ahmad Malik
Mr. Justice Syed Mansoor Ali Shah

C.P.883-L/2020 and C.P.1791-L/2020

(Against the judgment of Lahore High Court, Lahore dated 27.01.2020, passed in ICA No.50253/2019 and order dated 07.09.2020 passed in W.P. No.13125/2020)

The Province of Punjab through Secretary, Finance Department, Government of the Punjab, Lahore, etc. (In both cases)

.....Petitioner(s)

Versus

Kanwal Rashid (In CP 883-L/2020)
Mst. Mizna, etc. (In CP 179-L/2020)

.....Respondent(s)

For the petitioner(s): Mr. M. Shan Gull, Addl. A.G., Pb.
(In both cases) Rana Shamshad Khan, Addl. A.G.
Jawad Yaqoob, Addl. A.G.
Abdul Rauf, Deputy Secretary
Nasir Mahmood, Law Officer

For the respondent(s): Rana Asad Ullah Khan, ASC
(In CP-883-L/2020)
N.R. (In C.P. 1791-L/2020)

Date of hearing: 09.02.2021

ORDER

Syed Mansoor Ali Shah, J.:- The question of law before us is whether an unmarried daughter of deceased civil servant parents can draw the pension of both her parents simultaneously or instead, entitled to draw the pension of only one of her parents?

2. Brief facts of the case are that both the parents of the respondent were civil servants and entitled to pension under the law. On their passing away, pension of both the parents, formed part of the family pension and passed on to the respondent under the law. Being unmarried, the respondent was continuously drawing the family pension after the passing away of her parents till she was informed vide letter dated 10.08.2016 issued by the Accountant General, Punjab, that she could not draw the pension of

both the parents simultaneously and could only draw the pension of one parent. Thereafter vide notice dated 11.11.2016, the respondent was asked to deposit a sum of Rs.1,941,631/- into the Government treasury on account of the pension unduly received by her of one of her parent. The background and the basis for the issuance of the aforesaid letter and notice to the respondent was the clarification issued by the Finance Department, Government of the Punjab dated 11.09.2015 whereby Punjab Civil Services Pension Rules, 1963 ("Rules") were clarified.

3. We have heard the learned counsel for the parties and have examined the record, the law on the subject and the impugned judgments of both the benches of the High Court in detail. The right to pension of a civil servant is recognized under section 18 of the Punjab Civil Servants Act, 1974 ("Act") which provides as follows:

18. Pension and gratuity. - (1) On retirement from service, a civil servant shall be entitled to receive such pension or gratuity as may be prescribed.

(2) In the event of death of a civil servant, whether before or after retirement, his family shall be entitled to receive such pension, or gratuity, or both, as may be prescribed.

A civil servant after retirement and after his or her death, the family is entitled to receive his or her pension, as prescribed in the rules.² Under section 23, the Governor or any person authorized in this behalf shall make rules for carrying out the purposes of the Act. Rule 4.10 of the Punjab Civil Services Pension Rules, 1963 ("Rules")³ deals with "Family Pension" and provides that family pension in case of widow's death will be admissible to the dependent sons until they attain the age of 24 years or till they are gainfully employed,

¹ As amended till 22.07.1989

² Section 2(g).

³ As amended on 22.07.1989

which ever is earlier and to unmarried daughters till their marriage or they acquiring regular source of income which ever is earlier. Therefore, as per the Rule, an unmarried daughter is disentitled from drawing family pension after marriage or on acquiring a regular source of income. The entitlement under consideration is of Family Pension, which may comprise of pension from one parent or both the parents. The distinction between pension from one parent or both is not recognized under the Act or the Rules and is collectively referred to as Family Pension under the Rules. The son or the daughter of the deceased civil servants have a right to draw Family Pension unless they are disentitled due to the disqualification mentioned in the Rules. The disentitlement is based on the independent acts of the children or their age. Pension itself, however, cannot amount to be a disentitlement, as discussed and explained hereunder.

4. The Finance Department, Government of the Punjab interpreting the Rules issued a clarification dated 11.09.2015 to the effect if in case of two pensions (of both the parents) drawn by the unmarried daughter, one pension constitutes her regular income hence it disentitles her from drawing the other pension. As a result she is only entitled to one pension. The clarification issued by the Finance Department is as follows;

No.FD-SR-III-4-471/2014
GOVERNMENT OF THE PUNJAB
FINANCE DEPARTMENT
Dated Lahore the 11th September, 2015

Subject: LIBERALIZATION OF PENSION RULES-
CLARIFICATION.

I am directed to refer to Para-1 of this Department's letter No.FD-SR-III-4-11/89 Dated 22nd July, 1989 and to state that a question has arisen as to whether an un-married daughter can draw family pension of her father and mother simultaneously. The matter has been examined and it is observed that a monthly family pension being received by a person is construed as regular

source of income. Therefore, such person is not entitled to receive another family pension.

Sd/-

(M. NAWAZ KHALID ARBI)
DEPUTY SECRETARY (SR)

5. The above clarification suffers from multiple constitutional and legal defects as discussed hereunder:

- (i) The Finance Department has no authority under the law to clarify, interpret, abridge or extend the right of pension provided under Section 18(2) of the Punjab Civil Servants Act, 1974 and further regulated by the Punjab Civil Services Pension Rules, 1963 promulgated by the Governor. The impugned clarification issued by the Finance Department dated 11.09.2015 has usurped the rule making power of the Governor by interpreting, clarifying and modifying Rule 4.10. Finance Department has also encroached upon the legislative power under section 18 of the Act, which entitles the family of the deceased civil servant to pension in the manner prescribed;
- (ii) Without prejudice to the above, impugned clarification in the year 2015 cannot operate retrospectively and adversely affect the right to family pension that had accrued to the respondent on the death of her mother in the year 2006 and the family pension she has regularly drawn since then;
- (iii) We have noticed that in case of a son, he can draw the family pension (comprising of both the parents) till he attains the age of 24 or is gainfully employed. Before the son attains the age of 24 he is entitled to draw the family pension (comprising of both the parents) as one of the pension does not amount to being

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"gainfully employed" in order to disentitle him of the second pension. So while the son can draw family pension of both the parents, the unmarried daughter is treated differently as one of the two pensions in her case is considered to be her regular source of income, disentitling her of the second pension. This is discriminatory and offensive to Article 25 of the Constitution and a gender insensitive act of the Finance Department;

(v) "Acquiring a regular source of income" under the Rules means that the unmarried daughter on her own, irrespective of the source of pension, has acquired a regular source of income. The word "acquire" under the Black's Law Dictionary⁴, supplied by the learned AAG means: "to gain by any means, usually by one's own exertions; to obtain by search, endeavor, practice or purchase." Acquire signifies gain by one's own effort. Entitlement to family pension by virtue of the death of the parents does not constitute acquisition of a regular source of income. It is also not "regular" as the unmarried daughter is disentitled to receive family pension the minute she is married. Both these conditions must be met by her own self irrespective of the pension. She must acquire a regular income of her own expertise and efforts. The disqualification mentioned in the amendment brought about in the Rules, must be independent of the family pension and pension itself cannot constitute a ground for disqualification;

(vi) The right to pension has a constitutional significance. It draws its strength from the right to life or the right to livelihood under Article 9 of

⁴ revised 4th edition, p.41.

the Constitution. It is important to appreciate that both the parents of the respondent(s) gave the best years of their lives to government service with the expectation to receive pension upon retirement and to leave a family pension for their children upon their death, subject to the lawful disentitlements under the Rules. Depriving the children of civil servants of their family pension on the basis of an unauthorized and unlawful clarification by the Finance Department, offends the right to dignity of the deceased civil servants who were assured under the law that they and their children will enjoy the security of pension upon retirement.

Reference to the Income Tax Ordinance, 2000 ("Ordinance") by the learned AAG is of little significance. Even if pension is considered to be an income under the Ordinance it is neither an income "acquired" by the respondent nor is it "regular" income as envisaged under the Rules.

6. In this background we see no reason to interfere in the well reasoned concurrent findings of the High Court. The pension of the respondent shall continue strictly in accordance with the Act and the Rules, while the impugned clarification dated 11.09.2015 is struck down as being illegal and unconstitutional. The respondent will, however, be disentitled from drawing pension, when she is married or acquires a regular source of income on her own, regardless of the family pension received by her.

7. Leave is, therefore, declined and these petitions are dismissed.

Lahore,
9th February, 2021.
Approved for reporting
Iqbal

Judge

Judge

(40)

(F)

Amma.

To

The Secretary Finance Department,
Govt: of Khyber Pakhtunkhwa Peshawar

17-1-22

Through Proper Channel

Subject APPEAL

Dear Sir,

It is submitted that I have been receiving family pension after the death of my husband since 1st August 2020.

But now after my retirement on 07th December 2021, I have come to know vide letter No. SOSR-II/FD/2-4/2021 Dated 06th September 2021. issued by the finance department that I would be deprived of my family pension and would be entitled for my own pension only.

Whereas it is my due right to receive family pension as my husband had given the best years of his life to government service with the expectation to receive pension upon retirement and leave a family pension for his family after his death, so depriving me from family pension on the basis of unauthorized and unlawful clarification by the finance department the right of the deceased civil servants who were assured that they would get the security of pension upon their retirement and family pension upon their deaths.

So it is therefore requested that my family pension should be continued like all other pensioners who have been receiving two pensions for decades before 06.09.2021 and even after the implementation of new notification of the finance Department, they are still entitled to receive two pensions.

I shall be highly obliged for this act of kindness.

Yours sincerely,

Nizakat Begum.
NIZAKAT BEGUM
Retired Principal Govt: Girls
Commerce College Arbab
Road, Peshawar

O/C

Copy to

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02

The Secretary Higher Education Khyber Pakhtunkhwa.
The Accountant General Khyber Pakhtunkhwa Peshawar.

17/1/22

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Amra

**BEFORE THE PESHAWAR HIGH COURT,
PESHAWAR**

W.P. No. _____ of 2022.



**Mst. Nizakat Begum Professor (Rtd.) (BS-20) Govt.
College of Commerce & Management Sciences (Woman)
Arbab Road, Peshawar..... (Petitioner).**

Versus

1. **Secretary Higher Education, Archives & Libraries
Department, Government of Khyber Pakhtunkhwa Civil
Secretariat, Peshawar.**
2. **Secretary Health Govt. of Khyber Pakhtunkhwa through
Civil Secretariat, Peshawar.**
3. **Govt. of Khyber Pakhtunkhwa through Secretary Finance
Civil Secretariat, Peshawar.**
4. **Accountant General, Khyber Pakhtunkhwa, Peshawar.**
5. **District Comptroller of Accounts, Khyber Pakhtunkhwa,
Peshawar. Respondents.**

**WRIT PETITION UNDER ARTICLE-199 OF THE ISLAMIC
REPUBLIC OF PAKISTAN, 1973, VIDE WHICH
AMENDMENT HAS BEEN BROUGHT IN RULES-15 SUB-
RULE (10 & 11) OF KHYBER PAKHTUNKHWA CIVIL
SERVANTS PENSION RULES, 2021, WHEREBY,
PETITIONER HAS BEEN ASKED TO GIVE OPTION
EITHER TO DRAW FAMILY PENSION OF HER
DECEASED HUSBAND OR TO DRAW THE PENSION OF
HER OWN AND THE SAME MAY BE DECLARED ILLEGAL,
UN-LAWFUL AND AGAINST SECTION-19 OF
THE GOVT. OF KHYBER PAKHTUNKHWA CIVIL
SERVANTS ACT, 1973 AS WELL AS THE JUDGMENT
LAID DOWN BY THE AUGUST SUPREME COURT OF
PAKISTAN IN CP NO. 883-L/2020 AND C.P. NO. 1791-
L/2020 RENDERED ON 09-02-2021 ON THE SAME
PRINCIPLE OF LAW.**

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EXAMINER
Peshawar High Court

(2)

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Respectfully Sheweth:

Question of Law

"That the Petitioner solicits the Constitutional jurisdiction of this Hon'ble Court on a question of law that "in the event of death of a Civil Servant, whether before or after retirement" can Family of such pensioner shall be entitle to such Family pension or not viz-a-viz with his/her own pension after retirement within the purview of Khyber Pakhtunkhwa Civil Servants Pension Rules, 2021 notified on 6th September, 2021".

To answer this question the jurisdiction of this Hon'ble Court has been invoked and petitioner very graciously invokes the writ jurisdiction of this Hon'ble Court and submits her point of vlew in seriatim as under:-

1. That husband of petitioner got retired from Health Department on 25-03-2015 as a Medical Superintendent and subsequently died on 30-07-2020. Thereafter the Accountant General Khyber Pakhtunkhwa prepared Family Pension and petitioner regularly receiving Family Pension till date. (Copy of the last Family Pension Slip is herby encsleod as Annex-A).
2. That petitioner also serving as a Professor in Higher Education Department and she got retired from service on 07-12-2021 vide, notification issued on September, 21st, 2021, however, she was regularly receiving Family Pension of her deceased husband. (Copy of the Retirement notification is hereby as encsleod as Annex-B).
3. That on retirement of petioner, petioner was asked by the concerned clerk in the Accountant General Office that you will suppose to submit Pension Form-II or Pension Form-III as the case may be for opting one pension which is more beneficial to you and to this effect the Finance Department issued Clarification, vide, letter, dated, 27-11-2021 is herby enclosed as Annex-C).

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Peshawar High Court

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4. That Govt. of Khyber Pakhtunkhwa Finance Department, vide, notification dated, 6th September, 2021, in exercise of powers conferred under Section-26 of the KP Civil Servant Act, 1973, notified KP Civil Servants Pension Rules, 2021 in which the said rules came into force at once i.e. 6th September, 2021. Sub-Rule (2) (Definitions) Clause-(c) define "Family" means (l) wife in the case of male civil servant or husband in the case of female civil servant, for life time or till re-marriage. (Copy of the Pension Rules, 2021 is herby enclosed Annex-D).

5. That in the aforesaid rules further define "Family Pension" means a compassionate pension grant paid to the family at the rate of hundred percent (100 %) of the pension. Chapter-V of Rule-15 sub-rule (1) clarify that "In case of death of a civil servant while in service or in case of death of a pensioner, family pension shall be paid to his family, however, in sub Rule(10 & 11) in KP Pension Rules, 2021, put embargo/clog for the first time:-

"A pensioner, who was in receipt of two or more pensions, before, 06-09-2021, shall continue to eligible for the same. However, when a person becomes eligible for two or more pensions after 06-09-2021, he shall opt for one pension which is more beneficial to him as per Rule-15(10&11) of the said rules subject to observance of explanations of Rule (11).

6. That similar principle of law came before Lahore High Court in a number of Writ petitions in which similar interpretation of "Family Pension" as define in definition clause were Question before the Hon'ble High Court, wherein, both parents were civil servants and were entitle to pension under the law and on their passing away, pension of both the parents would formed pension to the their family as define in the definition clause but herein the same principle family pension already drawing by the wife before 06-09-2021 but after retirement she was asked to opt for one pension more beneficial to her.

7. That Lahore High Court decided the writ petitioner in favour of pensioners drawing two pension of their respective parents instead of opting one and aggrieved from the decision of the Lahore High Court passed in ICA, Civil Petitions were filed before the August Supreme Court

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WP272 2022 MST NIZAKAT BEGUM VS SECRETARY HIGHER CF

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Peshawar High Court

of Pakistan which came up for hearing on 09-02-2021 and the question before the august supreme court was that whether unmarried daughter of deceased civil servant parents can draw the pension of both his/her parents simultaneously, instead entitled to draw the pension of only one of his/her parents. (Copy of the Judgment of the August Supreme Court of Pakistan is hereby enclosed as Annex-E).

8. That the august supreme court of Pakistan categorically hold that on passing away of their parent, pension of both the parents formed part of the family pension and similar as the case of petitioner that on passing of her husband she was entitled to the family pension much before promulgation of KP Pension Rules, 2021 as well as para-materia Section-19 of the Civil Servants Act, 1973, which is hereby reproduced for ready reference.

(1)-----

(2) in the event of death of a civil servant, whether before or after retirement, his family shall be entitle to receive such pension, or gratuity or both, as may be prescribed. (Copy of the Relevant Section of Law is hereby Annex-F).

9. That the august Supreme Court of Pakistan in the ibid Judgment hold that Finance Department had no authority under the law to clarify, Interpret, abridge or encroached upon the legislative power under Section-19 of the Act, which entitles the family pension of the deceased Civil Servant to the pension of his/her husband/wife.

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10. That similarly it was also hold in the aforesaid judgment referred above, which is also the case of petitioner as well that she was entitle to the family pension of her deceased husband well before the notification of newly notified on 06-09-2021 i.e Khyber Pakhtunkhwa Pension Rules, 2021 and the said rules cannot operate retrospectively and adversely affects the already accrued rights of petitioner while drawing the family pension of her husband and regularly drawing much before promulgation of newly notified rules i.e. 06-09-2021.

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Peshawar High Court

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11. That petitioner submitted a representation to the Accountant General Office while endorsing copy to the Finance Department and the Secretary Higher Education while apprising the situation that right to pension has a Constitutional Rights draws its strength from Article-09 of the Constitution as well as Section-19 Sub-Section (2) of the Civil Servants Act, 1973 of the retirement benefits earned by the petitioner after superannuation on 07-12-2021. (Copy of the Representation is hereby enclosed as Annex-F)

12. That since petitioner is entitled to her own pension after superannuation and Respondents No. 4 & 5 i.e. Accountant General Office/Comptroller of Accounts had block the Family Pension and demanding option from the petitioner while processing the pension case of petitioner within the meaning of Rule-15(10&11) to opt one pension and left the accrued Family pension, hence, approached to this Hon'ble Court has been made, in order to sought out within the frame work of Constitutional Jurisdiction having no other remedy as prayed for hereinafter, inter-alia, on the following grounds:-

GROUND:

a) That impugned Rules-15 (10&11) of the Pension Rules, 2021 is illegal, unlawful against Section-19 (2) of the Civil Servants Act, 1973 as well as sub-Rule-2 (C) as well as Sub Rule (1) (2) of Rule-15 of the KP Pension Rules, 2021.

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22 JAN 2022

b) That petitioner received the Family Pension of her husband (deceased Civil Servant) and still entitled to pension under the law within the meaning of Khyber Pakhtunkhwa Civil Servants Act, 1973.

c) That even otherwise superior court held time in again that pension is not bounty and it is the right of the every Civil Servant after serving the departments for sufficient long time. The pension received/drawn by the petitioner as a Family Pension are very much conferred by Section-19 of the Civil Servants Act, 1973 which cannot be abridge and discontinued under the garb of Rule-15 (10&11) of the KP Pension Rules, 2021 notified on 6th September, 2021.

- d) That Section-19 of the Civil Servants would confer entitlement to the Family Pension in the event of death of a civil servant, whether before or after retirement, his family should be entitle to receive such pension, or gratuity or both, as may be prescribed.
- e) That Rule-15 (10&11) KP Pension Rules, 2021, would frame beyond the scope of Section-19 of the parent Act i.e. Section-19 of the Khyber Pakhtunkhwa Civil Servants Act, 1973 and even otherwise the same had no retrospective effect to disentitle petitioner from Family Pension of her deceased husband accrue prior to promulgation of new rules.
- f) That petitioner would be entitle to her own pension after superannuation, irrespective of the facts that she is already drawing Family Pension and the so-called option of only one pension is beyond the scope of Law & rules and may graciously be struck down if at all would create hurdles in the touchstone of the superior court judgments referred ibid for drawing the Family Pension including her own pension earned after superannuation.
- g) That petitioner receiving Family Pension after retirement and after her death, the family is entitle to receive his/ her pension, as prescribed in the Civil Servants Act, 1973 as well Khyber Pakhtunkhwa Pension Rules, 2021 and the petitioner cannot be deprived by the dent of Rules-15 (10&11) of the retirement benefits accrued under the Act as well as Rules. Hence, the impugn Rule (10 & 11) would ex-facie encroached upon the parent KP Civil Servants Act, 1973 and also against the other enabling provision of KP Pension Rules, 2021.
- h) That petitioner had suffered grave injustice in shape of Family Pension in the presence of August Supreme Court Judgment on the same analogy and petitioner will seek permission of this Hon'ble Court to urge additional grounds at the time of argument of this appeal.

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It is therefore most humbly prayed that on acceptance of the instant Writ Petition, this Hon'ble Court may graciously be pleased to issue appropriate Writ by declaring petitioner

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 Peshawar High Court

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Handwritten initials 'AH' and signature 'Amir'.

PESHAWAR HIGH COURT, PESHAWAR

FORM OF ORDER SHEET



Date of Order of Proceedings	Order or other Proceedings with Signature of Judge.
1	2
04.10.2023	<p><u>W.P No. 272-P/2022 with IR</u></p> <p>Present: Mr. Farman Ullah Khattak, Advocate for petitioner.</p> <p>Mr. Aamir Javed, Advocate General alongwith Naeem Ahmad Kundi, Assistant Director (Litigation) for respondents.</p> <p style="text-align: center;">***</p> <p><u>MOHAMMAD IBRAHIM KHAN, CJ:</u></p> <p>Through this petitioner under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973, the petitioner Mst. Nizakat Begum has prayed:</p> <p style="text-align: center;"><i>"It is therefore, most humbly prayed that on acceptance of this writ petition, this Hon'ble Court may graciously be pleased to issue appropriate writ by declaring petitioner entitled to the family pension as of now drawing and accrued right duly protected by the Khyber Pakhtunkhwa Civil Servants Act, 1973 and petitioner would be entitled to her own pension being earn after</i></p>

ATTESTED
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superannuation and to deprive the petitioner of her husband pension (Family Pension) under misconception of law & rules and wrong interpretation of the Finance Department Khyber Pakhtunkhwa on such invalid & illogical reasons is completely based on mala fide and the same may graciously be struck down if the same was otherwise against the parent statute of Khyber Pakhtunkhwa Civil Servants Act, 1973 and the principle already laid down by the august Supreme Court of Pakistan (reliance is placed on (Province of Punjab through Secretary Finance vs Kanwal Rashid) and State of Pakistan vs M/S Faisal Spinning Mills 1997 SCMR-1244) and Messrs Army Welfare Sugar Mills vs. Federation of Pakistan 1992 SCMR 1652.

2. Amongst the respondents, respondent No. 3 has filed comments wherein the stance of petitioner has been negated in light of the notification dated 06.09.2021 issued revised Pension Rules i.e. Khyber Pakhtunkhwa Civil Servants Pensions Rules, 2021.

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3. Arguments heard and available record gone through.

4. Learned counsel for petitioner relied upon the judgment cited as 2013 SCMR 642 Zarai Taraqiati Bank Limited & others vs Said Rehman & others and unreported judgment of this court passed in W.P No. 1265-P/2021 titled *Hafeez Ullah Khan vs The Government of Pakistan through Chief Secretary Khyber Pakhtunkhwa, Peshawar* and prayed for acceptance of this writ petition.

5. Inversely, learned Advocate General relied upon judgments reported as PLD 2004 Supreme Court 317 Government of the Punjab & others vs Muhammad Zaffar Bhatti & Others, PLD 2022 Lahore 197 Rida Fatima vs Pakistan Medical Commission & others, 2002 CLC 1819 Mizaffar Khan & others vs Evacuee Trust Property through Deputy Administrator, PLD 1993 Supreme Court 210 Karachi Building Control Authority & 3 others vs Hashwani Sales and Services Limited & 3 others, 1998 PLC (C.S) 1255 Muhammad Shafeeq vs Government of the Punjab Lahore Finance Department

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 Peshawar High Court

through Secretary & 3 others, 2017 PLC (C.S) 995 Irfan Aman Yousafzai & 3 others vs Federation of Pakistan through Secretary Establishment Division and 3 others 2018 PLC (C.S) 116 Muhammad Zafar Ali & 10 others vs Federation of Pakistan through Secretary Establishment Islamabad and 6 others, 2002 SCMR 312 Zanjan Cement Company Pvt Ltd vs Central Board of Revenue & others, 2014 PLC (C.S) 244 Muhammad Khan Ranjha and another vs Secretary Government of Punjab, Irrigation Department, Lahore and 5 others, 2007 SCMR 54 Peer Muhammad vs Government of Baluchistan through Chief Secretary & others, 2007 SCMR 1313 Federation of Pakistan through Establishment Division vs Brig. (Retd) Zulfiqar Ahmad Khan and others, 2020 SCMR 1629 Provincial of Khyber Pakhtunkhwa through Chief Secretary, Peshawar & others vs Farashatullah & others and 2014 PLC (CS) 244 Muhammad Khan Ranjha & another vs Secretary, Government of Punjab, Irrigation Department, Lahore & 5 others and at the close of his arguments, he prayed for

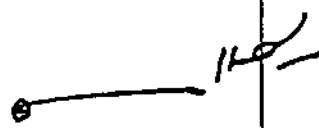
ATTESTED
EXAMINER
Peshawar High Court


dismissal of this petition as this court has got no jurisdiction.

6. Record transpires that the petitioner is a civil servant and the relief sought in this petition comes under the terms and conditions of her service, for which the competent forum is the Khyber Pakhtunkhwa Services Tribunal as under Article 212 of the Constitution of Islamic Republic of Pakistan 1973, the jurisdiction of all courts including High Court is specifically barred in the matter of terms & conditions of civil servants therefore, this court cannot entertain the instant petition.

7. In view of above, this writ petition, being not maintainable before this Court, stands dismissed in limine. The petitioner is at liberty to approach proper forum for the redressal of her grievances, if so advised.

Announced
04.10.2023


 Chief Justice


 JUDGE

Muhammad Faz *D.D.* Hon'ble Mr. Justice Mohammad Ibrahim Khan, CJ
 Hon'ble Mr. Justice Waqar Ahmad, J

13246

Date of Presentation of Application... 12-10-23

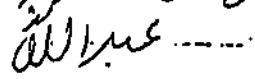
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EXAMINER
 Peshawar High Court, Peshawar
 Authorized Under Article 6, 7 of
 the Oath-taking and Shuhadat Act 1984

12 OCT 2023

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Annex

The Hon'ble Secretary Finance Department,
Govt. of Khyber Pakhtunkhwa,
Peshawar.

Subject: Appeal/Representation against stoppage of Family Pension w.e.f. January 01, 2024 of her deceased husband which she was withdrawing before enactment of Khyber Pakhtunkhwa Civil Servants Pension Rules, 2021, however, after decision of W.P. No. 272-P/2022, Appellant has been awarded her personal pension as well as monthly pension.

Respected Sir,

With profound respect, I beg to submit few lines against discontinuation of Family Pension w.e.f. January 01, 2024, which I was already withdrawing before enactment of Khyber Pakhtunkhwa Civil Servants Pension Rules, 2021 on the following grounds:-

1. That the applicant was receiving Family Pension after the death of my husband since 1st August, 2020.
 2. That the Govt. of Khyber Pakhtunkhwa in exercise of power conferred under Section-26 of the Civil Servants Act, 1973, frame rules called Civil Servants Pension Rules, 2021 in which for the first time amendment has been brought in Rules-15 sub-Rule (10 & 11) of Khyber Pakhtunkhwa Civil Servants Pension Rules, 2021, whereby, every retiring pensioner has been asked to give option either to draw family pension of her deceased husband or to draw the pension of her own totally against spirit of parent section-19 of the govt. of Khyber Pakhtunkhwa Civil Servants Act, 1973.
 3. That consequent upon death of my deceased husband in the year 2020, appellant was entitle to the Family Pension as per Section-19(2), being the only beneficiary left i.e. Widow of the deceased Government Servant. Therefore, I am also entitle to the Family Pension, after subsequent enactment of Khyber Pakhtunkhwa Civil Servants Pension Rules, 2021.
 4. That I earn her own pension after retirement and also entitle to my Family Pension as well of my deceased husband which I was already withdrawing, as my husband had give the best of years of his life to Government Service with the expectation to receive pension upon retirement and leave Family Pension for his family after his death. So depriving me from the Family Pension on the basis of newly promulgated Pension Rules which had no retrospective effect cannot deprive me from Family Pension which already accrue to me.
-

5. That Khyber Pakhtunkhwa Civil Servants Pension Rules, 2021, is against Section-19(2) of the Govt. of Khyber Pakhtunkhwa Civil Servants Act, 1973 and the Judgment Reported in 2021 SCMR-730. Even, otherwise the Rules are also subservient to the Act; hence, on this analogy the Rules cannot be stretched to the Family Pension which I was already withdrawing as per original Section-19(2) of the KP Civil Servants Act, 1973.
6. That I already challenge Rule-15 Sub-Rule- (10 & 11) of Khyber Pakhtunkhwa Civil Servants Pension Rules, 2021 in W.P. No. 272-P/2022, which was finally dismissed on the ground that Petitioner being a Civil Servant and the Relief sought in the petition is related to the terms and condition of her Service for which the Competent forum is the Khyber Pakhtunkhwa Service within the meaning of Article-212 of the Constitution of the Islamic Republic of Pakistan, 1973.
7. That appellant/Applicant is only claiming Family Pension which has been discontinued w.e.f January, 2024 and after enactment of Rule-15 Sub-Rule- (10 & 11) of Khyber Pakhtunkhwa Civil Servants Pension Rules, 2021, it has also nexus with the pension of the Applicant, therefore the instant Appeal/Representation has been filed.
8. That even otherwise pensionary benefits are recurring cause of action, therefore, no limitation or laches would run against the applicant. That even at the disposal of the Writ Petition, the Hon'ble High Court held in the concluding para that petitioner is at liberty to approach proper forum for the redressal of here grievances, if so advised.

It is therefore requested that Family Pension may should be continued which has been discontinued w.e.f January, 2024, because the Appellant/Applicant was already receiving Family Pension before enactment of Rule-15 Sub-Rule- (10 & 11) of Khyber Pakhtunkhwa Civil Servants Pension Rules, 2021 and are still entitle to continue the same unless and until Section-19(2) has suitable been amended by the Provincial Legislature.

Yours Sincerely,

Nizakat Begum
(Nizakat Begum)

Widow of Roohullah Jan Rtd. Medical Superintendent

Copy to:

1. The Secretary Higher Education Govt. of Khyber Pakhtunkhwa.
2. Accountant General Govt. of Khyber Pakhtunkhwa.
3. District Controller of Accounts, Govt. of Khyber Pakhtunkhwa.

تاریخ: 30/10/2022	39754	پشاور بار ایسوسی ایشن، خیبر پختونخواہ
ایڈوکیٹ: حرمان اللہ صاحب	بار کونسل ایسوسی ایشن نمبر: 60-10-7589	PESHAWAR BAR ASSOCIATION
رابطہ نمبر: 0333-912157		

بعدالت جناب: خیبر پختونخواہ سروس ٹریڈنگ لیمیٹڈ

منجانب:	دعویٰ:
شمسہ نرگس بیگم	علت نمبر:
لیف سلیٹر، ڈیپارٹمنٹ	موضوع:
	جرم:
	تھانہ:

باعت تحریر آنکہ

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی کا روایتی متعلقہ طور پر
آن مقام سروس ٹریڈنگ لیمیٹڈ حرمان اللہ صاحب، شہر خیبر پختونخواہ کے لیے

کر کے اقرار کیا جاتا ہے کہ صاحب موصوف کو مقدمہ کی کل کاروائی کا کامل اختیار ہوگا، نیز وکیل صاحب کو
راضی نامہ کرنے و تقررات و فیصلہ برحلف دینے جواب دعویٰ اقبال دعویٰ اور درجہ خواست ازہر قسم کی تصدیق
زریں پر دستخط کرنے کا اختیار ہوگا، نیز بصورت عدم پیروی یا ڈگری کیلئے یا اپیل کی برآمدگی اور منسوخی، نیز
دائر کرنے اپیل نگرانی و نظر ثانی و پیروی کرنے کا اختیار ہوگا اور بصورت ضرورت مقدمہ مذکورہ کے کل یا جزوی
کاروائی کے واسطے اور وکیل یا مختار قانونی کو اپنے ہمراہ یا اپنے بجائے تقرر کا اختیار ہوگا اور صاحب
مقرر شدہ کو وہی جملہ مذکورہ بالا اختیارات حاصل ہوں گے اور اس کا ساختہ برداشتہ منظور و قبول ہوگا
دوران مقدمہ میں جو خرچہ ہر جانبہ التوائے مقدمہ کے سبب سے ہوگا۔ کوئی تاریخ پیشی مقام دورہ یا حد سے
باہر ہو تو وکیل صاحب پابند نہ ہوں گے کہ پیروی مذکورہ کریں، لہذا وکالت نامہ لکھ دیا تاکہ سندر ہے

Accepted Head

الرقوم: 07/10/2022

العبد العبد العبد

مقام

Nizakat Begum

17301-5665940-0