

IN THE SUPREME COURT OF PAKISTAN  
(Review Jurisdiction)

CIVIL REVIEW PETITION NO. 36 /2018

IN

CPLA No. 11-P/2017

Government of Khyber Pakhtunkhwa through Chief Secretary Civil  
Secretariat, Peshawar & Others

Petitioners

VERSUS

Fida Muhammad Durrani, Retd Superintendent, Education  
Department, Peshawar & Others

RESPONDENTS

*Appeal from  
Counsel for Petitioner  
Instituted by*

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:  
:  
*Supreme Court of Pakistan.  
Advocate General, KPK, Peshawar  
Mian Saadullah Jandoli, AOR*

CIVIL REVIEW PETITION ON BEHALF OF  
PETITIONERS UNDER ARTICLE 188 OF THE  
CONSTITUTION OF THE ISLAMIC REPUBLIC OF  
PAKISTAN 1973 READ WITH ORDER XXVI RULE I  
OF SUPREME COURT ORDERS & RULES 1980 FOR  
REVIEW OF THE JUDGMENT AND ORDER DATED  
15/02/2018 PASSED BY THIS AUGUST COURT IN  
CPLA NO.11-P/2017

RESPECTFULLY SHEWETH:-

PRAYER

That this august Court may graciously be pleased to review its judgment dated 15/02/2018 in CPLA No.11-P/2017 against the judgment and order of Hon'ble Peshawar High Court, Peshawar dated 03/11/2016 in WP NO.1355-P/2013.

FACTS:-

Facts in brief of the subject matter are as under:-

1. That the government introduced a scheme known as Group Insurance Scheme under the Khyber Pakhtunkhwa Government employees Welfare Funds Ordinance 1969, whereby deduction of Group Insurance was made from every employee in his salary the payment of which was made to the employee who died during service and not to retired.
2. That the respondents/retired employees filed writ petition No.1355-P/2013 before the Hon'ble Peshawar High Court, Peshawar wherein comments was called from the petitioner's which were filed accordingly.



3. That the Hon'ble Peshawar High Court, Peshawar accepted and allowed the writ petition of respondents vides order dated 3/11/2016 in WP NO.1355-P/2013.
4. That the petitioners challenged the judgment and order of the Hon'ble Peshawar High Court, Peshawar dated 3/11/2016 of WP NO.1355-P/2013 in CPLA No.11-P/2017 which was dismissed vide order dated 15/2/2018.
5. That this august Court while dismissing the CPLA No.11-P/2017 vide judgment and order dated 15/2/2018 has not adverted to the impugned points in review.
6. That the petitioners seek indulgence of this august Court for review of its judgment and order dated 15/2/2018 in CPLA No.11-P/2017 on the following grounds.

GROUND:-

1. That the Apex Court while upholding the impugned judgment of the Hon'ble Peshawar High Court Peshawar not given weight to the legal aspect of the case that respondent, alleged claim for entitlement, exclusively based on WP employees welfare fund Ordinance 1969 (herein after referred as Ordinance) which they referred in their writ petition but Hon'ble High Court Peshawar, instead of dealing with their claim in light of above referred Ordinance, allowed writ petition and granted relief under the "Khyber Pakhtunkhwa Civil Servant Retirement Benefit, Death Compensation Act, 2014 read with Amended Act, 2016, which is neither applicable nor any nexus with the case of respondent, as they got retired from service much prior to the enforcement of act.
2. That keeping in view this legal aspect and position in view this apex Court while hearing above cited CPLA given notice to the respondent....."in such situation, as the matter was covered by

would have no retrospective effect, even if it is considered to be beneficial legislation. Issue notice to the respondent." Despite taking cognizance of their legal and factual position, apex Court with great regard neither discussed nor determined the same in its judgment.

3. That under section 8(1) of retirement benefit and death compensation Act, 2014 "Every civil servant shall be liable to pay to the fund such sum of money as prescribed in the schedule or may be determined by the board from time to time as contribution and amount of such contribution shall as far as possible be deducted at the source from his pay and credited or remitted to the fund." Since the petitioners have not contributed according to the rates prescribed by retirement benefit and death compensation Act, 2014 recovery and rates of recovery regarding group Insurance from civil employees who retired prior to 06/11/2014 is not possible. It is pertinent to submit that all of the respondents retired much prior to the enforcement of act which included even of 1999, 2000, 2004 etc this legal and factual position which is candidly depicted from the relevant provisions of both the laws i.e. Ordinance 1969 and retirement benefit and death compensation Act, 2014 but neither discussed nor determined in judgment under review.
4. That it is pertinent to submit that under sections 4&5 of ordinance read with notification dated 16/6/2014 and 04/08/2008 Group Insurance Schemes was managed through an agreement between provincial welfare boards (Gazetted and non-Gazetted) and State Life Insurance Corporation of Pakistan in quarterly installments after sanction of Finance Department, sum assured was paid in case of death during service or within five years after retirement and permanently disability. All the claims settled down through state life insurance corporation of Pakistan prior to 06/11/2014.



This legal and factual position also not taken into consideration in judgment under review.

- 5. That while upholding the impugned judgment of Peshawar High Court Peshawar which is based also on alleged discrimination of not treating the respondents in similar manner as employees of other province i.e. Balochistan (Enjoying their benefit of Group Insurance) not considered this admitted fact that finding of the Hon'ble High Court is against the dictum of Hon'ble Supreme Court of Pakistan reported in SCMR 2013 page 3013.

PRAYER

It is, therefore, respectfully prayed that on acceptance of this review petition the impugned judgment in review petition of this august Court dated 15/2/2018 in CPLA No.11-P/2017 from the judgment and order of Hon'ble Peshawar High Court, Peshawar dated 3/11/2016 in WP NO.1355-P/2013 may graciously be reviewed and modified in the light of the above mentioned points/grounds.

Field by

(Mian Saadullah Jandoli)  
Advocate-on-Record  
Supreme Court of Pakistan  
For Government

Learned Advocate General, KPK/ Addl. AG /State Counsel shall appear at the time of hearing of this review petition.

ADDRESS  
Office of the Advocate General, KPK, High Court Building, Peshawar. (Telephone No.091-9210119, Fax No.091-9210270)

CERTIFICATE  
Certified that no such review petition has earlier been filed by Petitioners/ Government against the impugned judgment mentioned above.

Advocate-On-Record

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**Before supreme court of Pakistan**  
(Review Jurisdiction)

Civil Review Petition No. \_\_\_\_\_ 2018

IN

Civil Petition No. 11-P/2017

Govt of KPK through Chief Secretary Peshawar & others

...Petitioner(s)

VERSUS

Fida Muhammad Durrani & others

...Respondent(s)

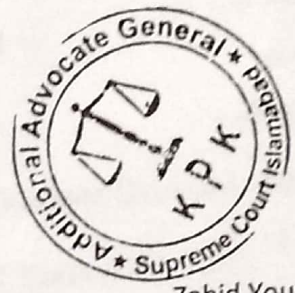
**CERTIFICATE UNDER PART-IV, ORDER XXVI, RULE 4 OF THE SUPREME COURT OF  
PAKISTAN RULES 1980**

I, Zahid Yousaf Qureshi, Additional Advocate General, KPK have read the available record, Peshawar High Court Judgment and Judgment of the Apex Court dated 15-02-2018 and I am of the opinion that the captioned case is fit for filing of Review Petition on the following grounds.

1. That Apex Court while upholding the Impugned Judgment of Peshawar High Court Peshawar not given weight to the legal aspect of the case that respondent, alleged claim for entitlement, exclusively based on W.P employees welfare fund ordinance 1961 (herein after referred as ordinance) which they referred in their Writ Petition but Honorable High Court Peshawar, instead of dealing with their claim in light of above referred ordinance, allowed Writ Petition and granted relief under the "Khyber Pakhtunkhwa Civil Servant Retirement Benefit, Death Compensation Act, 2014 read with Amended Act 2016, which is neither applicable nor any nexus with the case of Respondent, as they got retired from service much prior to the Enforcement of Act.
2. That keeping in view this legal aspect & position in view this Apex Court, while hearing above cited C.P.L.A given Notice to the Respondent..... "In such situation, as the matter was covered by rule of past and closed transaction. The subsequent change in law would have no retrospective effect, even if it is considered to be beneficial legislation. Issue notice to the respondent." Despite taking cognizance of their legal and factual position, Apex Court with great regard neither discussed nor determined the same in its Judgment.
3. That under section 8 (1) of Retirement Benefit and Death Compensation Act, 2014 "Every civil servant shall be liable to pay to the Fund such sum of money as prescribed in the schedule or may be determined by the board from time to time as contribution and amount of such contribution shall as far as possible be deducted at the source from his pay and credited or remitted to the Fund." Since the petitioners have not contributed according to the rates prescribed by Retirement Benefit and Death Compensation Act, 2014 as they retired much prior to the promulgation of Act. Moreover, as per provision of Act, recovery and rates of recovery regarding Group Insurance from civil employees who retired prior to 06-11-2014 is not possible. It is pertinent to submit that all of the respondents retired much prior to the enforcement of Act which included even of 1999, 2000, 2004 e.t.c. this legal and factual position which is candidly depicted from the relevant provisions of both the laws i.e. ordinance 1960 and Retirement Benefit and Death Compensation Act, 2014 but neither discussed nor determined in Judgment under review.



- 4. That it is pertinent to submit that under sections 4 & 5 of ordinance read with Notification dated 16-06-2014 and 04-08-2008 Group Insurance Schemes was managed through an agreement between Provincial Welfare Boards (Gazetted & Non-Gazetted) and State Life Insurance Corporation of Pakistan. Deduction was made from the salaries of employees & premium was paid to the State Life Insurance Corporation of Pakistan in quarterly installments after sanction of Finance Department, sum assured was paid in case of death during service or within five years after retirement and permanently disability. All the claims settled down through State Life Insurance Corporation of Pakistan prior to 06-11-2014. This legal & factual position also not taken in to consideration in Judgment under review.
  
- 5. That while upholding the Impugned Judgment of Peshawar High Court, Peshawar which is based also on alleged discrimination of not treating the Respondents in similar manner as employees of other provinces i.e. Balochistan (Enjoying their benefit of Group Insurance), not considered this admitted fact that finding of the Honorable High Court is against the dictum of Honorable Supreme Court of Pakistan reported in SCMR 2013 page 3013.



*Zahid*

Zahid Yousaf Qureshi  
Add. Advocate General  
Khyber Pakhtunkhwa  
Supreme Court of Pakistan

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**IN THE SUPREME COURT OF PAKISTAN**  
**(APPELLATE JURISDICTION)**

**PRESENT:** MR. JUSTICE MIAN SAQIB NISAR, HCJ  
MR. JUSTICE UMAR ATA BANDIAL  
MR. JUSTICE IJAZ UL AHSAN

**CIVIL PETITION NO. 11-P OF 2017**  
*(on appeal against the judgment dated 03.11.2016 of the Peshawar High Court, Peshawar passed in W.P. No.1355-P/2013)*

Govt of KPK through Chief Secretary Peshawar  
& others

...Petitioner(s)

**VERSUS**

Fida Muhammad Durrani & others

...Respondent(s)

For the Petitioner(s): Mr. Zahid Yousaf Qureshi, Addl. AG.

For the Respondent(s): Mr. M. Asif Yousafzai, ASC.

Date of Hearing: 15.02.2018

**ORDER**

**MIAN SAQIB NISAR, CJ.**— Having heard the learned Additional Advocate General, Khyber Pakhtunkhwa as well as the learned counsel for the respondents, we do not find any illegality in the impugned judgment calling for interference. Dismissed accordingly.

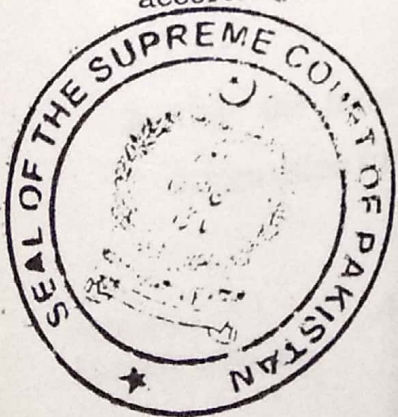
Sd/-, HCJ

Sd/-, J

Sd/-, J

Certified to be True Copy

*[Signature]*  
21/2/18  
Court Associate  
Supreme Court of Pakistan  
Islamabad



ISLAMABAD.  
15<sup>th</sup> February, 2018.  
Not approved for reporting  
Mudassar/

*[Handwritten signature]*  
21/2/18