

Form No: HCJD/C.

JUDGEMENT SHEET

IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

Case No: Writ Petition No. 4132 of 2016

Muhammad Rahan Khan
Vs.
Federal Government and 2 others

Petitioners by: M/s. G. M. Chaudhary, Ali Hussain Bhatti, Ch. Muhammad Faridun, Ahmed Hassan Cheema, Ch. Muhammad Atif, Kamran Ahmer Ali Hashmat, Kh. Manzoor Ahmed, Muhammad Ahmed Tariq Fani, Muhammad Hanif Bhatti, Muhammad Shabbir Bhutta, Abdul Rehman Sheikh, Ch. Saad Bin Shafiq, Zulfiqar Ahmed Siyal, Muhammad Irshad Chaudhary and Tahir Mahmud, Advocates.

**Respondents by: Raja Khalid Mahmood, Deputy Attorney-General.
Hafiz Muhammad Ishaq, Director (Coord) FEB & GIF.
Nazir Ahmed, Deputy Director, (Coord).**

Date of Hearing: 17.06.2019

AAMER FAROOQ, J.- This judgement shall decide the instant petition as well as the petitions mentioned in the schedule attached herewith as common questions of law and facts are involved.

2. The petitioners are retired employees of various

Organizations and have challenged the vires of Section 19 of the Federal Employees Benevolent Fund and Group Insurance Act, 1969 (the “Act of 1969”). In this behalf grievance of the petitioners is that during the course of employment they paid the premium by way of contribution towards the compulsory insurance as provided under the Act of 1969. However, the sum assured was to be paid back only in case they died during the course of employment. The petitioners feel that they are entitled to receive back the sum paid as premium.

3. Learned counsel for the petitioners *inter alia* contended that the petitioners all their lives have paid sum towards the premium for the compulsory insurance and upon retirement they did not receive back the amount insured. It was also contended that under Section 19 of the Act of 1969 only in case of death of the employee, during the course of employment, his family or nominee is to receive benefits but no benefit accrues in case of retirement of the employee. It was further submitted that this provision is in violation of the Constitution of the Islamic Republic of Pakistan, 1973 (the “Constitution”) and amounts to extortion. It was also pointed out that in other Provinces like KPK and Balochistan law has been amended and now the

retired employees receive said benefit upon their retirement.

4. Learned Deputy Attorney-General as well as learned counsel for the respondents *inter alia* contended that under Section 19 of the Act of 1969 only in case of death of an employee during the course of service, his family or nominee can receive benefit of the insurance and not on retirement. It was further pointed out that Section 19 of the Act of 1969 in its present form does not violate any provision of the Constitution and only in case the law is amended the petitioners can receive the referred benefit.

5. Arguments advanced by the learned counsel for the parties have been heard and the documents placed on record perused with their able assistance.

6. The controversy in hand has been explained with brevity in the paragraphs mentioned hereinabove. Before embarking upon the discussion of law it is appropriate that the relevant provisions be reproduced. The referred provisions are contained in Chapter-IV of the Act of 1969 and read as follows:

“15. Insurance of Employees.— Subject to the provisions of this Act and the rules, in the event of the death of an employee, occurring by whatsoever cause, during the continuance of his employment, the Board shall pay to the family of the deceased employee a sum as may be prescribed.

16. Arrangements with Insurance Company, etc.— *The Board may from time to time arrange for the insurance of the life of the employees in sums as may be prescribed with such insurance company or other insurer and for such period as it deems fit, and where any such arrangement subsists, the liability to pay the said specified sums shall directly devolve upon the insurance company or other insurer.*

17. Federal Employees Insurance Fund.— (1) *There shall be established a fund to be called the Federal Employees Insurance Fund which shall vest in and be held and administered by the Board.*

(2) *All sums received from the employees as premia for the group insurance of the employees and any interest or profit accruing thereon shall be credited to the Insurance Fund.*

(3) *The moneys credited to the Insurance Fund shall be kept in such bank as may be prescribed.*

(4) *All payments made under section 15, the expenses on any arrangement entered into by the Board with any insurance company or other insurer as provided for in section 16 and all expenses on the administration of the Insurance Fund shall be defrayed from the Insurance Fund.*

(5) *Any sums remaining in the Insurance Fund after defraying the expenses referred to in sub-section (4) may be utilized for such purposes connected with the benefit of the employees including retired employees, and their families as the Board may direct.*

18. Payment of premia.— (1) *Every employee shall be liable to pay to the Insurance Fund such sum of money as may be prescribed as premium for the insurance of his life as provided for in this Chapter and the amount of such premium shall as far as possible be deducted at the source from his pay and credited or remitted to the insurance Fund.*

(2) *Where the amount of premium cannot for any reason be deducted from the*

pay of the employee, the employee shall remit to the prescribed officer the sum of premium payable by him and any premia remaining unpaid due to inadvertence or negligence of the employee or otherwise shall be recoverable from him in such a manner as may be prescribed.

(3) Default in the payment of premia either for the reason that the pay of the employee was not drawn or due to his negligence or fault or for any other reason whatsoever shall not affect the right of his family to receive the sum assured in the event of the death of the employee, but the premium remaining unpaid at the time of his death may be recovered from the assured amount.

19. Payment of the sum assured.— *(1) On the death of an employee, the sum assured shall be paid to such member or members of his family as he might have nominated in accordance with the rules in full or in the shares specified by him at the time of making the nomination.”*

7. The petitioners are only aggrieved of Section 19 *ibid* as it provides that sum assured shall be paid to the member of the deceased employee’s family or nominee as the case may be. The scheme of Federal Employees Benevolent and Group Insurance Funds was launched through the promulgation of the Act of 1969. It is a compulsory contribution scheme recouped by nominal subscriptions of the employees. Under Section 2(4) of the Act of 1969, the scheme covers employees of the Federal Government, the Parliament, the Hon’ble Supreme Court of Pakistan and the Election Commission of Pakistan. Moreover, employees of autonomous bodies can also

join the scheme in pursuance of Section 2(4) of the Act of 1969. The fund is governed by a Board of Trustees as defined under Section 4 of the Act *ibid*.

8. The basic character given in the preamble of the Act of 1969 is to provide monthly Benevolent Grant ranging from Rs.4,000/- to Rs.10,100/- in case of death during service or after retirement and invalidation during service and Sum Assured/Lump Sum Grant ranging from Rs.350,000/- to Rs.1,000,000/- and Rs.150,000/- to Rs.390,000/- respectively in case of death/invalidation during service of an employee. Every Federal civil servant is bound to be a member of the funds as per his terms and conditions of service under Civil Servants Act, 1973 (the "Act of 1973"). However, in addition to these core functions, the Federal Employees Benevolent and Group Insurance Fund is also paying seven additional benefits under the provisions of the Act of 1969 and the Federal Employees Benevolent Fund and Group Insurance Rules, 1972 (the "Rules").

9. Section 21 of the Act of 1973 provides that every employee shall be entitled for Benevolent and Group Insurance Funds. The Act of 1969 provides for a monthly benevolent grant to the family of a deceased employee who dies during service or after retirement in pursuance of Section 13(3) of the Act of 1969 which reads as under:

“13(3) Where, on or after the first day of December, 2003, an employee is declared by the prescribed medical authority to have been completely incapacitated physically or mentally to discharge the duties of his employment and for that reason is retired or removed from service, he shall be entitled to receive for life such benevolent grant from the Benevolent Fund as may be prescribed; or where the employee dies during the continuance of his employment, or during retirement before attaining the age of seventy years, his spouse shall be entitled to receive for life such benevolent grant from the Benevolent Fund as may be prescribed.”

10. Under Section 15 of the Act of 1969 sum assured is also paid to the family of an employee who dies during continuance of his service, which reads as under”

“15. Insurance of Employees.— Subject to the provisions of this Act and the rules, in the event of the death of an employee, occurring by whatsoever cause, during the continuance of his employment, the Board shall pay to the family of the deceased employee a sum as may be prescribed.”

11. The preamble to the Act of 1969 and the provisions thereof make it abundantly clear that no provision exists for payment of the sum assured in case of retirement of a civil servant/Government employee. The petitioners claim discrimination and extortion and in this behalf reference was made to the judgment of the Hon’ble Peshawar High Court passed in case titled *Fida Muhammad Durrani and others v. the Government of KPK through Chief Secretary, Peshawar and others* (W.P. No.1355-P of 2013). The bare perusal of the above

judgment shows that the matter was disposed of by the Division Bench of the Hon'ble Peshawar High Court on the basis that the Government of KPK amended the law and enacted the Khyber Pakhtunkhwa Civil Servants Retirement Benefits and Death Compensation Act, 2014 (the "Act of 2014") alongwith the Khyber Pakhtunkhwa Civil Servants Retirement Benefits and Death Compensation (Amendment) Act, 2016 which provides for payment of the benefits in case of retirement of the civil servant under certain conditions. The judgment handed down by the Hon'ble Peshawar High Court was affirmed by the Hon'ble Supreme Court of Pakistan in case titled *Government of KPK through Chief Secretary, Peshawar and others v. Fida Muhammad Durrani and others* (C.P. No.11-P of 2017). As noted above the sole basis for passing of the judgment by the Hon'ble Peshawar High Court was the amendment made in the law.

12. The bare reading of Section 19 and other related provisions of the Act of 1969 show that it does not amount to any extortion. Insurance policy is for the benefit of the civil servants/Government employees and the sum assured shall be paid only in case of their death. The sum assured is greater to the contribution made and same is paid even if the entire contribution is not made

during the course of employment and in case of early death of the civil servant/Government employee same is still paid to the family of the deceased. Likewise, no discrimination can be claimed by the petitioners inasmuch as it is only under the law that the Provinces of KPK and Balochistan has amended the laws and there is no harmony of the law across Pakistan. Learned counsel for the petitioners failed to point out any precise provision of the Constitution on the basis of which they attack the vires of Section 19 *ibid* and only a vague attack was made under Articles 8, 9 & 25 of the Constitution. The Hon'ble Supreme Court of Pakistan in case titled **Lahore Development Authority through DG and others v. Ms. Imrana Tiwana and others (2015 SCMR 1739)** laid down principles for striking down any provision of law if the same is found against the Constitution. The said principles read as follows:

“I. There is a presumption in favour of constitutionality and a law must not be declared unconstitutional unless the statute is placed next to the Constitution and no way can be found in reconciling the two;

II. Where more than one interpretation is possible, one of which would make the law valid and the other void, the Court must prefer the interpretation which favours validity;

III. A statute must never be declared unconstitutional unless its invalidity is

beyond reasonable doubt. A reasonable doubt must be resolved in favour of the statute being valid;

IV. If a case can be decided on other or narrower grounds, the Court will abstain from deciding the constitutional question;

V. The Court will not decide a larger constitutional question than is necessary for the determination of the case;

VI. The Court will not declare a statute unconstitutional on the ground that it violates the spirit of the Constitution unless it also violates the letter of the Constitution;

VII. The Court is not concerned with the wisdom or prudence of the legislation but only with its constitutionality;

VIII. The Court will not strike down statutes on principles of republican or democratic government unless those principles are placed beyond legislative encroachment by the Constitution;

IX. Mala fides will not be attributed to the Legislature.”

13. The principles mentioned hereinabove are not attracted in the facts and circumstances of the instant case; hence, no justification exists for striking down Section 19 of the Act of 1969. However, it is expected that the Federal Government shall consider the plea raised in the instant petition as well as the connected petitions sympathetically so as to bring the law in harmony with the ones in other Provinces and also provide same benefits for the contribution made by the retired Government servant/employee.

14. For the reasons mentioned hereinabove, the instant petition as well as the petitions mentioned in the schedule attached with this judgment are without merit and are accordingly dismissed.

(AAMER FAROO)
JUDGE

Announced in open Court on the *13th* day of September 2019

JUDGE

M.Naveed

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