

*Judgment Sheet*

IN THE PESHAWAR HIGH COURT, PESHAWAR  
JUDICIAL DEPARTMENT

*W.P.No.3111-P of 2020*

**JUDGMENT**

Date of hearing 26.01.2021

Petitioner (s) by Mr. Hafeez-ul-Asad Shangla, Advocate

Respondent (s) by Mr. Ahmad Saleem, Deputy Attorney General

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**MUHAMMAD NASIR MAHFOOZ, J:-.** Through the instant petition under Article 199 of the Constitution of Islamic Republic of Pakistan 1973, petitioner Siraj Muhammad seeks issuance of an appropriate writ thereby directing the respondents to consider the petitioner for his appointment against the quota reserved for deceased employees' sons, by applying the relevant policy for all the employees who died in service instead of employees died after July 2005.

2. In essence, the father of petitioner namely Lal Muhammad was serving as *Teacher* in F.G. Sapper Boys High School, Risalpur Cantt., who died during service on 31.12.2000; upon which his widow(mother of petitioner) was declared entitled for pensionary

benefits of father of petitioner; however petitioner was aged about 9 years at that time. That after obtaining CNIC as well in continuation of his education, he applied to the respondents for his appointment against the quota reserved for deceased employees' sons, which was refused by respondents on the ground that the said policy is only for those people, whose parents have died after 1<sup>st</sup> July 2005, hence, the instant writ petition.

3. In their comments, it is mentioned that Assistance Package Policy, 2005 could not be made applicable to the petitioner because his father retired on 31.12.2000 when the policy was not in the field. Moreover, the prayer of the petitioner has been denied being delayed in filing the instant writ petition after accrual of cause of action in the year, 2005.

4. We have heard arguments of learned counsel for the petitioner as well as learned Deputy Attorney General for the respondents and have perused the documents available on the file.

5. The learned counsel for the petitioner submitted that the petitioner was 09 years old in the year, 2000 when his father died and no right had accrued to him to seek remedy as prayed in the instant writ petition, his several applications before the competent authorities have failed and has been persuaded to file the instant petition. He submitted that being beneficial legislation the said policy, 2005 could be made applicable to him keeping in view the judgment passed by the Hon'ble Supreme Court in Civil Petition No.235 of 2014 decided on 23.02.2015, wherein, the policy guideline of National Bank of Pakistan were held to be in derogation of prohibitory command as contained in Article-25 of the Constitution of Pakistan as they could not discriminate one class of employee by giving them benefit and depriving other class similarly placed.

6. It also requires to be mentioned that such like Prime Minister Assistance Package is meant for benefitting the Ex-employees which is in line with the rules framed for the employees of Government in the

Civil Servant Act of the Provinces. The respondents are also performing duties under the Ministry of Education and those employees who have rendered services under their establishment could not be left high and dry and deprived of such benefits. Of course, they may adopt the requisite criteria/prescribing qualification or experience as required for any post under their command and so the petitioner would also be subject to fulfilling the requisite criteria for any post to be considered commensurate to it.

7. This is in line with the principle for liberal construction of statutes particularly that the mischief is suppressed and remedy granted. It provides that if literal reading of provision does not produce absurdity or anomaly the same would not be construed to be only prospective. When a law is enacted for the benefit of community as a whole, even in the absence of a provision, the statute may be held to retrospective in nature.

In case titled “Government of Pakistan through Secretary Ministry of Commerce, Pak. Secretariat,

Islamabad Vs. Messrs Village Development Organization, V.P.O. Landrwan, District Laki Marwat through (General Attorney) Sher Adam” reported in 2005 SCMR 492, the august Supreme Court of Pakistan has held as under;-

*“As per record, facility/permit to export allowed to the respondent by MINFAL has not yet been withdrawn but is subsisting as such a vested right has accrued in its favour. It is well-settled principle of law that the executive orders or notifications, which confer right and, are beneficial, would be given retrospective effect and those which adversely affect or invade upon vested right cannot be applied with retrospective effect.”*

Likewise, in case of “Messrs Elahi Cotton Mills Ltd and others Vs. Federation of Pakistan through Secretary M/o Finance, Islamabad and 6 others reported in PLD 1997 Supreme Court 582, it was held by the august Supreme Court of Pakistan that:-

*“We may point out that an executive order/notification, which is detrimental or prejudicial to the interest of a person, cannot operate retrospectively. However, a beneficial executive order/*

*notification issued by an executive functionary can be given retrospective effect. In this regard it will suffice to refer to the judgment of this Court in the case of Army Welfare Sugar Mills Ltd. and others v. Federation of Pakistan and others 1992 SCMR 1652. The above written undertaking of the Central Board of Revenue to make this circular applicable retrospectively is in consonance with the aforesaid, judgment of this Court.”*

In case of “Commissioner of income Tax Versus Shah Nawaz Ltd and others” (1993 SCMR 73), the apex

Court has held as under:-

*“But there appears to be considerable confusion in the cases with reference to giving remedial Acts retrospective effect through construction. If the rule of liberal construction is to be applied, as it obviously should then any doubt should be resolved in favour of retrospective operation, if such operation does not destroy or disturb vested rights, impair the obligations of contracts, create new liabilities violate due process of law or contravene some other Constitutional provision, and if such operation will carry out the intention of the legislature as ascertained through the application*

*of the principle of liberal construction. In other words, a statute relating to remedial law may properly, in several instances, be given retrospective operation."*

Similarly in case titled "Commissioner Inland Revenue Zone-II, Regional Tax Office, Multan Vs. Mrs. Ambreen Fawad Co. Pak Arab Fertilizers Limited, Multan reported in 2014 PLD 72 (Lahore), the Hon'ble Lahore High Court, has held as under:-

*"Beneficial legislation" has been explained by Bindral in the following manner: --*

*"A statute which purports to confer a benefit on individuals or a class of persons, by reliving them of onerous obligations under contracts entered into by them or which tend to protect persons against oppressive act from individuals with whom they stand in certain relations, is called a beneficial legislation.....In interpreting such a statute, the principle established is that there is no room for taking a narrow view but that the court is entitled to be generous towards the persons on whom the benefit has been conferred. It is the duty of the court to interpret a provision, especially a beneficial provision, liberally so as to give it a wider*

*meaning rather than a restrictive meaning which would negate the very object of the rule. It is a well-settled canon of construction that in constructing the provision of beneficent enactments, the court should adopt that construction which advances, fulfils, and furthers the object of the Act rather than the one which would defeat the same and render the protection illusory..... Beneficial provisions call for liberal and broad interpretation so that the real purpose, underlying such enactments, is achieved and full effect is given to the principles underlying such legislation."*

We would, therefore, allow the instant writ petition treating the Assistance Package as beneficial legislation to be applied to the petitioner whose cause of action has accrued subsequent to the policy.

Announced  
26.01.2021

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