JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

W.P.No.3628 of 2017
Nasreen Akhtar
Versus
Director General Special Education and others

Dates of Hearing:	17.02.2021 &16.03.2021
Petitioner by:	Mirza Muhammad Afzal, Advocate
Respondents by:	Mr. Muhammad Nadeem Khan Khakwani, learned Assistant Attorney-General Mr. Muhammad Jabbar, A.A.O., A.G.P.R.

MIANGUL HASSAN AURANGZEB, J:- Through the instant writ petition, the petitioner, Nasreen Akhtar, who is the widow of a government servant, who died in service, seeks the grant of pensionary benefits to which her late husband was entitled.

2. The record shows that vide office order dated 03.07.1994, the petitioner's late husband, Tariq Mahmood Khan, was appointed as a Driver (BPS-04) on contract basis in the Vocational Rehabilitation and Employment of Disabled Persons, Ministry of Social Welfare and Special Education for a period of one year. Paragraph 3 of the said office order provides that the period of contract could be extended subject to the continuity of the post as well as the satisfactory performance of the incumbent. Vide office orders dated 21.08.1995 and 21.08.1996 issued by the Ministry of Social Welfare and Special Education, Tariq Mahmood's contract period was extended to 03.07.1995 and 04.07.1996, respectively.

3. Vide letter dated 16.11.1996 issued by the said Ministry, Tariq Mahmood's contractual appointment was terminated. After the promulgation of the Sacked Employees (Reinstatement) Ordinance, 2009 **("the 2009 Ordinance")**, the said Ministry issued memorandum dated 18.04.2009 whereby Tariq Mahmood was reinstated in service on contract basis for a period of six months and fifteen days with effect from the date of joining the newly created supernumerary post of Driver (BPS-04). Subsequently, vide office order dated 24.06.2009 issued by the said Ministry, Tariq Mahmood was stated to have been reinstated to the said post on contract basis for a period of six months

and fifteen days with effect from 09.04.2009. The said reinstatement was in terms of Section 6(2) of the 2009 Ordinance.

4. Vide office order dated 18.01.2011 issued by the said Ministry, the petitioner's husband was reinstated in service on regular basis with effect from 08.12.2010 in terms of Section 4(b) of the Sacked Employees (Reinstatement) Act, 2010 **("the 2010 Act")**. On 05.03.2013, Tariq Mahmood died while still in service.

5. On 02.08.2016, the petitioner applied for the grant of her deceased husband's pensionary benefits to the Directorate General of Special Education Vocational Rehabilitation and Employment of Disabled Persons. The petitioner's application was forwarded to the office of the Accountant General Pakistan Revenues **("AGPR")**. The AGPR, vide letter dated 12.05.2014, turned down the request for the payment of pension to the petitioner on the ground that Tariq Mahmood had served in the said Directorate for a period of two years, two months and twenty seven days (i.e., from 08.12.2010 to 05.03.2013), and therefore was not entitled to any pensionary benefits under Article 474-B of the Civil Service Regulations **("C.S.R.")**.

6. On 17.10.2017, the petitioner filed the instant writ petition seeking a declaration to the effect that the petitioner was entitled to be given her late husband's pensionary benefits.

7. Learned counsel for the petitioner, after narrating the facts leading to the filing of the instant petition, submitted that the period between 16.11.1996 (when Tariq Mahmood's contractual services were terminated) and 08.12.2010 (when he was reinstated as a regular employee under the provisions of the 2010 Act), should be counted towards Tariq Mahmood's service; that the petitioner was entitled to her late husband's pensionary benefits under the Assistance Package for Families of Government Employees who Die in Service set out in Establishment Division's Office Memorandum **("O.M.")** dated 20.10.2014, which is effective from 15.06.2013; and that a similarly placed employee namely Abdul Qayyum of the Directorate General of Special Education Vocational Rehabilitation and Employment of Disabled Persons had been granted pensionary benefits by treating the period prior to his reinstatement in service as

part of his regular service. Learned counsel for the petitioner prayed for the writ to be allowed in terms of the relief sought therein.

8. On the other hand, learned Assistant Attorney-General submitted that the petitioner's late husband had not completed the pensionable service of five years as indicated in the AGPR's letter dated 12.05.2014; that Tariq Mahmood had served as a regular employee of the Directorate General of Special Education Vocational Rehabilitation and Employment of Disabled Persons only for a period of two years, two months and twenty seven days and therefore was not entitled to any pensionary benefits; and that there was no provision in the 2010 Act which provides that the period between an employee's termination from service before 30.11.1996 and his reinstatement under the provisions of the said Act should be counted towards his regular service for calculating his pensionary benefits. Learned Assistant Attorney-General prayed for the writ petition to be dismissed.

9. I have heard the contentions of the learned counsel for the petitioner as well as the learned Assistant Attorney-General and have perused the record with their able assistance. The facts leading to the filing of the instant petition have been set out in sufficient detail in paragraphs 2 to 6 above, and need not be recapitulated.

10. The vital question that needs to be answered is whether the petitioner's husband (late Tariq Mahmood) would have been entitled to pensionary benefits had he been alive. As mentioned above, Tariq Mahmood's contractual services as a Driver (BPS-04) in the Directorate General of Special Education Vocational Rehabilitation and Employment of Disabled Persons were terminated on 16.11.1996. He was reinstated in service with effect from 09.04.2009 under the provisions of the 2009 Ordinance. From 09.04.2009 until the issuance of office order dated 18.01.2011, Tariq Mahmood served as a contractual employee. It was by virtue of office order dated 18.01.2011 that he was reinstated on regular basis with effect from 08.12.2010 under the provisions of the 2010 Act. Therefore, Tariq Mahmood served as a regular employee of the said Directorate from 08.12.2010 until his death on 05.03.2013.

11. As a regular employee, Tariq Mahmood served for two years, two months and twenty seven days. This period falls short of pensionable service in accordance with Article 474-B(a) of the C.S.R. which provides *inter alia* that *"after a service of five years or more but less than ten years, a gratuity not exceeding one month's emoluments for each completed year of service, if, however, retirement is due to invalidation, or if a civil servant dies in service, the rate shall be one and a half month's emoluments for each completed year of service."* Under Article 474-B(b) of the C.S.R., pension is not payable where qualifying service is less than ten years.

12. Under Section 4(b) of the 2010 Act, an employee terminated from service before 30.11.1996 is to be reinstated and regularized against a regular post on the same scale, grade, cadre, group, post or designation, whatever the case may be, in regular service of the employer. It was by virtue of the said provision that Tariq Mahmood was reinstated as a regular employee of the said Directorate with effect from 08.12.2010. This was done through office order dated 18.01.2011 issued by the Ministry of Social Welfare and Special Education. There is no provision in the 2010 Act under which Tariq Mahmood's contractual service after his reinstatement under the 2009 Ordinance or the period between 16.11.1996 (when Tariq Mahmood's contractual services were terminated) and 08.12.2010 (when he was reinstated as a regular employee under the provisions of the 2010 Act) could be treated as regular service or pensionable service.

13. Even if Tariq Mahmood is to be considered as the regular employee of the said Directorate with effect from the date of the enactment of the 2010 Act i.e., 06.12.2010, he cannot be said to have completed the qualifying length of service for the purpose of pensionary benefits.

14. It ought to be borne in mind that between 03.07.1994 (when Tariq Mahmood was appointed as a Driver (BPS-04) on contract basis) and 16.11.1996 (when his employment contract was terminated), he had not served as a regular employee. His reinstatement as a regular employee with effect from 08.12.2010 (as provided in the office order dated 18.01.2011) was by operation of Section 4(b) of the 2010 Act.

Therefore, the period prior to his reinstatement as a regular employee cannot be treated as service qualifying for pensionary benefits.

15. In the Finance Division's O.M. dated 02.03.2015, it has been clarified that *"the employees who were appointed on contract basis between 01.11.1993 to 30.11.1996, their services would not be counted for pension purpose because contract service does not count for pension purpose in terms of Articles 361 and 365 of C.S.R."* Furthermore, the said O.M. provides that *"the intervening period would also not count for pension in terms of Article 369 of C.S.R."*

16. The petitioner had placed reliance on the Establishment Division's O.M. dated 28.12.2016 which incorporates the opinion dated 15.12.2016 from the Law Division, in support of her case that the intervening period is to be treated as though her husband was on duty without any break in service. The said O.M. does not distinguish between employees who were appointed between 01.11.1993 and 30.11.1996 on contract basis and those that had been appointed in the said period on regular basis. Since Tariq Mahmood had been initially appointed on contract basis on 03.07.1994, the period after his termination of his contract on 16.11.1996 and his reinstatement on regular basis with effect from 08.12.2010 cannot be treated as regular service for the purposes of pension. The period between 18.04.2009 and 08.12.2010 when he served as a contractual employee after his reinstatement on contract basis can also not be counted towards regular service.

17. In view of the above, I do not find any merit in this petition which is accordingly dismissed with no order as to costs.

(MIANGUL HASSAN AURANGZEB)
JUDGE

ANNOUNCED IN AN OPEN COURT ON 24/03/2021

(JUDGE)

*Qamar Khan**