

**2024 P L C (C.S.) 796****[Lahore High Court]****Before Shahid Jamil Khan, J****Mst. SUGHRA****Versus****GOVERNOR OF PUNJAB, through Deputy Secretary and 5 others**

Writ Petition No.15158 of 2021, heard on 11th May, 2022.

**Punjab Mineral Development Corporation Act (XXXIII of 1975)---**

---S.5---Constitution of Pakistan---Art. 25---Employees of Punjab Mineral Development Corporation ('PUNJMIN')---Financial assistance for family of deceased employees---Discrimination against family of deceased employees---Petitioner (widow of employee of PUNJMIN) applied for financial benefits under Notification dated 15.08.2017 ('the notification-in-question') after death of her husband on 07.02.2019; but she was declined assistance on the ground that the notification-in-question was applicable from the date of its adoption i.e. 03.10.2019 by the respondent-PUNJMIN and not retrospectively from 22.02.2017, as made effective by the adopted notification whereas the date of PUNJMIN Board meeting was subsequent and that Board had not clearly approved adoption of the policy retrospectively---Plea was that PUNJMIN is a Corporation created by Punjab Mineral Development Corporation Act, 1975 ('Act of 1975') whereas Assistance Package by the Government of Punjab was only meant for the civil servants while the petitioner's husband was never a civil servant but was an employee of the Corporation (PUNJMIN)---Question was whether families of the employees of a statutory Corporation fully owned and controlled by the Government of Punjab and families of a deceased Civil Servants were different classes for the purpose of the Art. 25 of Constitution"---Held, that the respondent's/Government's claim was that power of adopting notification vested in the Board, which had not given it retrospective effect expressly, therefore, it was applicable prospectively---Said submission was an explicit admission that the Board had jurisdiction to apply it retrospectively---Consequent question arose whether Board had exercised its power contrary to the guaranteed fundamental right under Art. 25 of the Constitution---Statutory Corporations are created, by or under the law, for administrative ease of the Provincial Government, deriving competence from the Constitution, and their financial and administrative control is always with the Government, as is discernable from S. 5 of the Act of 1975---Literally, financial terms are determined under the relevant special law, but practically, the financial benefits extended to the family of civil servants are extended to the family of employees of the Corporation, on approval by the Cabinet Division through Finance Department and as a consequence, the competent authority or Board adopts the notification of financial benefit---Financial benefit-in-question, was meant for families of the employees, who died during service---There was no denial that both, employees of the Corporation and Civil Servants were paid from the Provincial Consolidated Fund

after similar procedure for allocation, approval and disbursement---Since employees of the Corporations are not administratively controlled by relevant departments or Ministries, therefore, the procedure of adoption of the notification is applied---Such discrimination would certainly offend the equality clause under the Art. 25 of the Constitution which ensures equal treatment and equal financial protection---Thus, both sets of employees are employees of Government of the Punjab, one is called civil servants and the other employees of the Corporation---If Government of Punjab takes any decision to help the families of deceased employees, through any financial package, it cannot discriminate between families of other employees being paid from the same consolidated fund of the Provincial Government---Family of an employee, who died during service, undergoes similar difficulties, financial or social, while living in similar circumstances, therefore, can not be discriminated against in absence of any extra financial protection to one class, which may be a case for terms and condition and financial terms for an employee of a Corporation and a civil servant---But for financial benefit to the family of a civil servant or to an employee of a Corporation, different treatment only for the reason that the employee died before the date of adoption, amounts to creating another class, even, between the employees of the Corporation---Extension of the same financial benefit to the families of employees of the Corporation, confirms that both the families are equally placed---Procedure of adoption, being a legal requirement, may delay the extension of financial benefit but cannot deprive a family, merely for the reason that the employee died before the date of adoption---High Court directed that impugned order would have no binding effect and the notification of the adoption dated 03.10.2019 shall be deemed to have been issued with retrospective effect i.e. from 22.02.2017---Constitutional petition , filed by widow of employee of Punjab Mineral Development Corporation, allowed, in circumstances.

Allah Nawaz Khosa, M. Irfan Arif Sheikh and Salman Farooq for Petitioner.

Malik Abdul Aziz Awan, Additional Advocate General Punjab for Respondents.

Faheem-ur-Rehman, Advocate/Legal Advisor and Akram Sikandar Gondal, Manager (Admin).

Mrs. Naseem Mushtaq, Advocate/Law Officer, Finance Department.

Date of hearing: 11th May, 2022.

## **JUDGMENT**

**SHAHID JAMIL KHAN, J.**----Petitioner has assailed order dated 15.01.2021 passed by the Governor Punjab, whereby representation of respondent No.5-Project Manager, Punjab Mineral Development Corporation ("PUNJMIN") is accepted by deciding that Notification dated 15.08.2017 by Finance Department, Government of the Punjab for the financial assistance to the family of the deceased employee, shall be applicable from the date of its adoption i.e. 03.10.2019 and not retrospectively from 22.02.2017, as made effective by the adopted notification.

2. Learned counsel for the petitioner submitted that petitioner applied for financial benefits under Notification dated 15.08.2017 after death of her husband

on 07.02.2019. The Notification was adopted by the respondent-PUNJMIN on 03.10.2019. Learned counsel has relied on the phrase 'in letter and spirit' used in the Notification dated 03.10.2019, which is reproduced hereunder:-

"Sub: Adoption of Government of the Punjab Orders.

PUNJMIN Board of Directors in its 84th BOD meeting held on 27.06.2019 decided that:-

"The Board was satisfied and approved to adopt the following notifications of Government of Punjab in letter and spirit for implementation in Punjmin.

1. S&GAD letter No.Secy. (Funds) S&GAD/WF/1-1/2016 dated 20.07.2016 (Group Insurance Scheme).
2. Finance Department Letter No.FD-SR-I/3-10/2004 dated 15.08.2017. (financial assistance to the family of deceased employee)
3. Finance Department Letter No.FD-SRI/9-47/2013 dated 01.10.2013 (M.Phil allowance)"

[emphasis supplied]

Further submitted that Notification dated 15.08.2017 was made applicable retrospectively w.e.f. 22.02.2017. Relevant portion of this Notification is also reproduced:-

"In continuation to this Department's letter bearing same number dated 13th November, 2014 on the subject, I am directed to state that the Competent Authority, i.e. Chief Minister, Punjab has been pleased to approve financial assistance package for families of civil servants who die while in service. It shall be applicable w.e.f. 22.02.2017. .."

[emphasis supplied]

3. Learned Additional Advocate General, Punjab assisted by Legal Advisors for respondent-PUNJMIN submitted that Assistance Package is applicable to the employees of respondent-PUNJMIN from 27.06.2019, when the Notification dated 15.08.2017 (reproduced above) by the Finance Department was adopted. It is explained that husband of the petitioner died on 07.02.2019, whereas the date of Board's meeting is subsequent. Also submitted that a clarification was sought from the Finance Department and it is explained vide clarification letter dated 14.10.2020 that Assistance Package shall be applicable from the date of adoption. Relevant excerpt from the letter is reproduced:-

"Subject: CLARIFICATION REGARDING IMPLEMENTATION OF FINANCIAL ASSISTANCE NOTIFICATION.

Will the Section Officer (Estt.) Government of the Punjab, Mines and Minerals Department kindly refer to his letter No. SO(Estt.)513/2017 PUNJMIN(Vol-I)/4847 dated 15.09.2020 on the subject noted above?

2. Administrative Department is advised that the adopted policy will be enforced immediately from the date of Board of Directors approval."

[emphasis supplied]

On Court's query, learned Legal Advisor for respondent-PUNJMIN submitted that respondent is a Corporation created by The Punjab Mineral Development Corporation Act, 1975 ("Act of 1975") and its Section 5 provides composition of the Board. Section 5 is reproduced:-

5. (1) The Board shall consist of a Chairman, a Managing Director and the following Directors:-
  - (i) The Chairman, Planning and Development Board of Government.
  - (ii). Secretary to the Government, Mines and Minerals Department, or his nominee not below the rank of a Deputy Secretary; and
  - (iii) Secretary to the Government, Finance Department, or his nominee not below the rank of a Deputy Secretary.
- (2) The Chairman shall be appointed by Government.
- (3) Government may, be notification in the official Gazette, alter the membership of the Board or increase or decrease the number of Director.

Learned Additional Advocate General is confronted that respondent-PUNJMIN is only an extension of Government of Punjab, therefore, Assistance Package for the employees of Government of Punjab has to be given across the board and without discrimination. In response, he has read opening paragraph from the Notification dated 15.08.2017 (reproduced above) to submit that Assistance Package by the Government of Punjab was only meant for the Civil Servants. Further submitted that petitioner's husband was never a Civil Servant but was an employee of the Corporation (PUNJMIN). The Corporation being autonomous body decided to adopt the Notification dated 15.08.2017 on 27.06.2019, therefore, no point of discrimination between the Civil Servants of Government of Punjab and the employees of Corporation arises, which are distinctly identifiable classes. Also submitted that retrospective affect can only be given to a notification or law if it is expressly made applicable retrospectively. Contended that use of words "in letter and spirit" is only for the benefit to be given under the notification and not for its retrospective application.

4. Heard, record perused.

5. Operative part of the impugned order by the Governor Punjab is reproduced:-

"8. Keeping in view the aforementioned facts of the case, it can safely be inferred that the Representationist Agency, being an autonomous body, is empowered to adopt the policies/instructions issued by Government of the Punjab through approval granted by its Board of Directors (BODs) established under the Punjab Mineral Development Corporation Act, 1975. The available record shows that an amount of Rs.28,60,851/- has already been paid to the legal heirs of the deceased on account of four month salary, LPR, Gratuity and C.P. Fund. As regard applicability of the Notification dated 03.10.2019, issued by the Representationist Agency, on the Respondent's case, it is clear that neither the Board has approved adoption

of the Finance Department's circular dated 15.08.2017 with retrospective effect, nor the same has been reflected anywhere in the subsequent notification dated 03.10.2019 issued by the Representationist Agency. Hence, this fact has not been appreciated in the instant case by the Ombudsman that the Board was empowered to adopt the said policy either retrospectively or from the date of its approval. Since, the Board has not clearly approved adoption of the policy retrospectively, it should have been construed to be adopted from the date of approval granted by the Board as clarified by Finance Department vide letter dated 14.10.2020. Using the words "Letter and Spirit" for adoption and implementation of a policy, by no means, qualifies it to have a retrospective effect. Therefore, there is merit in the instant representation and order passed by the Ombudsman Punjab warrants interference.

9. For what has been stated above, this representation stands accepted and Order passed by the Ombudsman Punjab is set aside. Parties to the case be informed accordingly."

[emphasis supplied]

Without delving into legal and technical issues regarding jurisdiction and competence of the officers of Ombudsman, this Court intends to address the issue on touchstone of fundamental right under Article 25 of the Constitution of the Islamic Republic of Pakistan, 1973 ("the Constitution"). The respondent-Corporation is pleading that employees of the statutory body, admittedly, owned and controlled by Government of the Punjab, is distinctly identifiable class from the Civil Servants, therefore, there is no discrimination. It is claimed that power of adopting notification vests in the Board, which has not given it retrospective effect expressly, therefore, it is applicable prospectively. This submission is an explicit admission that the Board has jurisdiction to apply it retrospectively.

6. The consequent question arises whether Board has exercised its power contrary to the guaranteed fundamental right under the Article 25.

The moot question, needs to be examined under facts and circumstances of this case is:-

"Whether families of the employees of a statutory Corporation are fully owned and controlled by the Government of the Punjab and families of a deceased Civil Servants are different classes for the purpose of the Article 25."

The statutory Corporations are created, by or under the law, for administrative ease of the Provincial Government, deriving competence from the Constitution, financial and administrative control of which is always with the Government, as is discernable from Section 5 of the Act of 1975. The Members of the Board are either existing officers of the Government ex-officio, or are appointed by the Government, like its Chairman.

7. For financial control of the Corporation, clarification dated 14.10.2020 by the Finance Department is sufficient proof of its financial control of the Provincial Government.

The Civil Servants are defined and dealt with by The Punjab Civil Servants Act, 1974 ("Act of 1974"). Terms and Conditions of Civil Servants are mentioned in the Act of 1974 read with Article 240 of the Constitution, whereas terms and conditions of the employees of statutory corporation are governed under relevant statute like Act of 1975 in the case. It is not respondent department's case that posts of employees of the Corporation are not in connection with the affairs of the Province.

Literally, financial terms are determined under the relevant special law, but practically the financial benefits extended to the family of Civil Servants, are extended to the family of employees of the Corporation, on approval by the Cabinet Division through Finance Department and as a consequence, the competent Authority or Board adopted the notification of financial benefit. The financial benefit, in question, is meant for families of the employees, who died during service. There is no denial that both, employees of the Corporation and Civil Servants are paid from the Provincial Consolidated Fund after similar procedure for allocation, approval and disbursement. Since employees of the Corporations are not administratively controlled by relevant departments or Ministry, therefore, the procedure of adoption of the notification is applied. Such discrimination would certainly offend the equality clause under the Article 25 ensuring equal treatment and equal financial protection.

8. In pith and substance, both are employees of Government of the Punjab, one is called Civil Servant and the other employees of the Corporation. If Government of the Punjab takes any decision to help the families of deceased employees, through any financial package, it cannot discriminate between families of other employees being paid from the same consolidated fund of the Provincial Government. Family of an employee, who died during service, undergoes similar difficulties, financial or social, while living in similar circumstances, therefore, cannot be discriminated, in absence of any extra financial protection to one class, which might be a case for terms and condition and financial terms for an employee of a Corporation and a Civil Servant. But for financial benefit to the family of a Civil Servant or to an employee of a Corporation, different treatment only for the reason that the employee died before the date of adoption, amounts to create another class, even, between the employee of the Corporation. Extension of the same financial benefit to the families of employees of the Corporation, confirms that both the families are equally placed.

The procedure of adoption, being a legal requirement, might delay the extension of financial benefit but cannot deprive a family, merely for the reason that the employee died before the date of adoption.

9. For the reasons noted above, the petition is allowed. The impugned order will have no binding effect and the notification of the adoption dated 03.10.2019 shall deemed to have been issued with retrospective effect i.e. from 22.02.2017.

MQ/S-61/L Petition allowed.

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