

Stereo. H C J D A-38.
JUDGMENT SHEET
IN THE LAHORE HIGH COURT, LAHORE
JUDICIAL DEPARTMENT

Writ Petition No.63374 of 2020

Asad Imran & another
Versus
Inspector General of Police, Punjab, Lahore & others

J U D G M E N T

Date of hearing: 20.10.2021.
Petitioners by: Muhammad Ibrahim Goraya, Advocate.
Respondents by: Barrister Ameer Abbas Ali Khan, Assistant Advocate General along with Mian Tanveer Ahmad, DSP (Legal), CPO Office, Khuda Yar, Inspector (Legal), I.G.P. Office, Lahore and M. Hassan, S.I. / I.O. Police Station Defence-A, Lahore.
Hafiz Tariq Nasim, Advocate / *Amicus Curiae*.
Research by: M/s. Muhammad Imran Sheikh, Additional District Judge / Senior Research Officer and Ahmad Zia Ch., Civil Judge / Research Officer, LHCRC.

MUHAMMAD SAJID MEHMOOD SETHI, J.: Through instant petition, petitioners have challenged vires of order dated 06.10.2020, passed by the District Scrutiny Committee comprising of respondents No.5 to 8, whereby request of petitioners for grant of due incentives to family of deceased Azeem Akhtar, A.S.I. as per notification dated 30.05.2015, by declaring him as ‘murdered during duty (*Shaheed*)’ was not acceded to.

2. Brief facts of the case are that deceased Azeem Akhtar, A.S.I. (paternal uncle of petitioner No.1 and husband of petitioner No.2) while posted at Police Station Defence-A, Lahore, during his duty while wearing proper uniform in the said Police Station, was martyred by some culprits. Allegedly, Police got conducted post mortem examination and occurrence was determined as suicide. Petitioner No.1 submitted an application for exhumation of the deceased, which was allowed by learned Area Magistrate, Narowal

and second post mortem examination was got conducted. Subsequently, report of Punjab Forensic Science Agency dated 24.11.2015 was also received which differed from the previous report. Consequently, case FIR No.241 of 2016 was registered against unknown culprits. The accused persons remained un-traced and matter was consigned to record room. Petitioner No.1 approached the respondents claiming dues of the deceased but needful was not done, which constrained petitioner to file **W.P.No.77230 of 2017** before this Court. This Court, vide order dated 09.10.2017, directed the respondents to redress petitioner's grievance within 30-days, but the direction was not complied with by respondents in its letter and spirit. He then approached this Court by filing **Crl.Org.No.110991-W of 2017**. Subsequently, he filed **W.P. No.253182 of 2018** and then **W.P. No.30569 of 2019** for redressal of his grievance regarding award of due incentives to the family of deceased as per notification dated 30.05.2015 by declaring him as 'murdered during duty (*Shaheed*)', which were disposed of vide single order dated 14.01.2020 with direction to redress petitioner's grievance qua sanctioning of incentives as per notification dated 30.05.2015 in accordance with law. However, petitioners were again constrained to file **Crl. Org. No.41077-W of 2020**, whereupon respondent No.3 / C.C.P.O., Lahore constituted the District Scrutiny Committee consisting of respondents No.5 to 8, who vide impugned order dated 06.10.2020 rather proposed five categories to be considered as *Shaheed*, thereby excluding the case of deceased Azeem Akhtar, A.S.I. Hence, instant petition.

3. Learned counsel for petitioners submits that deceased Azeem Akhtar, A.S.I. died while performing official duties and is *Shaheed* within the contemplation of law, thus, impugned inaction on part of respondents in releasing due benefits is without any lawful justification, especially in presence of second post mortem report after exhumation, orders passed by this Court and report of Punjab Forensic Science Agency. He adds that despite repeated directions

of this Court in previous rounds of litigation, grievance of petitioners relating to payment of pensionary benefits under “*Shaheed Package*” is not being redressed. In the end, he submits that impugned order, being absolutely illegal and without lawful authority, is unsustainable in the eye of law.

4. Learned *Amicus Curiae* appointed for resolution of this specific issue regarding declaration of deceased Azeem Akhtar, A.S.I. as *Shaheed*, while relying upon various esteemed judgments of Hon’ble superior Court, has concluded that respondents are under lawful obligation to follow the instructions contained in notification dated 30.05.2015 and that the conduct of respondents for not granting emoluments / benefits of aforesaid notification to the widow / legal heirs of deceased is contemptuous. He opines that respondents have ignored the miseries of the family of deceased employee, who was admittedly murdered in the Police Station while performing his duties.

5. On the other hand, learned Assistant Advocate General defends the impugned order by contending that the case of deceased does not fall in either of the five categories specified for declaration as *Shaheed*.

6. Arguments heard. Available record perused.

7. Perusal of record shows that after exhumation of deceased Azeem Akhtar, A.S.I. on 24.11.2015, second autopsy was conducted on the application of petitioner No.1 through Dr. Qaiser Waseem, which was entirely different from the previous report of suicide. Petitioner No.1 approached concerned authorities and claimed dues of deceased on account of his murder during duty in the premises of Police Station while wearing official uniform, but the concerned authorities reduced the dues of deceased and did not extend the benefits of “*Shaheed Package*” to the family of deceased, despite the fact that during previous rounds of litigation, this Court directed the respondent-authorities to redress petitioners’ grievance keeping in view the post-mortem report dated

24.11.2015, order dated 17.11.2015, passed by leaned Magistrate Section-30, Narowal and report of Punjab Forensic Science Agency. However, this time, the District Scrutiny Committee comprising of respondents No.5 to 8, vide order dated 06.10.2020, declined the request of petitioners for grant of due incentives to the family of deceased as per notification dated 30.05.2015, by declaring him as ‘murdered during duty (*Shaheed*)’, and proposed following categories to be considered as “*Shaheed*”:-

- i. Killed in Encounters.
- ii. Bomb Blast.
- iii. Death in Riots.
- iv. Death during watch & ward duty.
- v. Terrorist activities leading to death of official.

In addition to the above, the committee, without referring to any law/ rules / policy, itself proposed that even murder of a police officer while on duty is not covered under the *Shaheed* Package 2015, if the same has been committed for personal motives and not in consequence of performance of his duty. *Ex facie*, this finding has been given just to target the case of present petitioners. However, if this is considered to be the threshold in instant case, then too the case of petitioners needs consideration as no personal motive has been found in murder of deceased Azeem Akhtar, A.S.I., rather he was murdered while performing his duties in his office.

8. It is well-settled principle of law that if the rules are capable of bearing a reasonable interpretation, favorable to the employee, then that interpretation should be preferred. When a law requires a thing to be done in a particular manner, it must be done in that manner alone and not otherwise. Reference is made to *Muhammad Akram v. Mst. Zainab Bibi (2007 SCMR 1086)*, *Government of the Punjab, Food Department through Secretary Food and another v. Messrs United Sugar Mills Ltd. and another (2008 SCMR 1148)*

and Secretary Finance Division, Islamabad v. Muhammad Zaman, Ex-Inspector, I.B., Islamabad and others (2009 SCMR 769).

In the case of Muhammad Zaman supra, the Hon'ble Supreme Court ruled as under:-

"3. ... In the case of Postmaster-General, Eastern Circle (E.P.) Dacca and another v. Muhammad Hashim PLD 1978 SC 61, it was held that if the Rules were capable of bearing a reasonable interpretation favourable to the employee then that interpretation should be preferred. We do not find any legal infirmity in the judgment of the Service Tribunal. This is not a fit case for grant of leave to appeal."

9. Needless to say that the word "law" is not only confined only to the codified law, but the judgments of the superior Courts also fall within the ambit of law. Reliance is placed upon Pakistan Defence Officers' Housing Authority and others v. Lt. Col. Syed Jawaid Ahmed (2013 SCMR 1707). In the present case, notification dated 30.05.2015 has otherwise force of rule / law as held in a number of cases that instructions issued by the competent authority have force of law, thus, same cannot be deviated and respondents are under obligation to follow the instructions contained therein. Reference is made to Federation of Pakistan v. Azam Ali and others (1985 SCMR 386) Muhammad Yousaf and 4 others v. Abdul Rashid and others (1996 SCMR 1297), Muhammad Ismail v. District Coordination Officer and 3 others [2018 PLC (C.S.) Note 49] and Firdous Shafiq v. Inspector General of Police and others [2020 PLC (C.S.) 505].

In the case of Muhammad Yousaf supra, the Hon'ble Supreme Court ruled as under:-

"15. ...

By virtue of subsection (2) of section 25 (ibid), all existing rules, orders or instructions in respect of any terms and conditions of service of civil servant duly made or issued by a competent Authority, in so far it is not inconsistent with the provisions of the Act are saved and are to be treated as rules made under the Act. The validity of the General Principles of Seniority issued by Establishment Division on 31-12-1970 was examined in the light of provisions of the

Act in Azam Ali's case (supra) and it was held that these guidelines not being in conflict with any of the provisions of the Act, acquired the force of rules on the strength of the language of section 25(2) of the Act. The precise observation of this Court in this regard in Azim Ali's case (supra), are as follows:--

"As the contents of the Circular of December, 1970 are not found to be inconsistent with any provision of the Act, they acquire force of rules under the Act on the strength of section 25, subsection (2) of the Act which provides:

'Any rules, orders or instructions in respect of any terms and conditions of service of civil servants duly made or issued by any authority competent to make them and enforced immediately before the commencement of this Act, shall, in so far as such rules, orders or instructions are not inconsistent with the provisions of this Act be deemed to be Rules under the Act. "

10. The conduct of respondents for not granting the emoluments / benefits of notification dated 30.05.2015 to the widow / legal heirs of deceased, despite repeated directions to redress petitioners' grievance, is deplorable, inviting initiation of contempt of the Court proceedings, as the matter of pensionary benefits has been resolved once for all by the Hon'ble Apex Court in the case of Haji Muhammad Ismail Memon, Advocate (PLD 2007 Supreme Court 35), whereas the departmental authorities are adamant to disregard the law referred supra, particularly ignoring the miseries of the family of deceased, who was admittedly murdered in Police Station while performing his duty. However, while exercising judicial restraint, this Court is inclined to confine itself to the matter in hand and not proceeding against respondent-authorities providing them another opportunity to redress petitioners' grievance in the light of afore-referred observations.

11. Resultantly, instant petition is allowed and impugned order is declared to be illegal and without lawful authority. Consequently, deceased Azeem Akhtar, A.S.I. is declared as "*Shaheed*", thus, his legal heirs / petitioners are held entitled to the consequential benefits according to the notification dated 30.05.2015, which shall

be paid within a period of **thirty days** from the date of receipt of certified copy of this judgment.

(Muhammad Sajid Mehmood Sethi)
Judge

A.H.S.