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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ W.P.(C) 9053/2022 & CM APPL. 30251/2023

MS AQSA ASHRAF & ANR. .....Petitioners

Through: Ms. Sana Ansari, Mr. Syed Haseed and Mr. Tanveer Zaki, Advocates.

versus

JAMIA MILLIA ISLAMIA .....Respondent

Through: Mr. Pritish Sabharwal, Standing Counsel with Mr. Sanjeet Kumar and Mr. Sharad Pandey, Advocates.

CORAM:
HON'BLE MS. JUSTICE JYOTI SINGH

<u>O R D E R</u>

% **05.09.2024**

1. This writ petition has been filed on behalf of the Petitioners under Article 226 of the Constitution of India seeking family pension w.e.f. 10.07.2014 on account of death of their father, late Syed Ashraf Ali.

2. Facts to the extent necessary are that father of the Petitioners late Syed Ashraf Ali joined Jamia Millia Islamia University ('JMI')/Respondent on 01.08.1988 and retired after rendering 25 years and 5 months regular service on 14.01.2014. In the meantime, he pronounced triple talaq to his wife on 05.12.2012 and the parties separated. On 09.07.2014, late Syed Ashraf Ali expired.

3. Petitioner No. 1 is the daughter while Petitioner No. 2 is the son of late Syed Ashraf Ali. They applied for issuance of survivorship certificate with Government of NCT of Delhi ('GNCTD') and being unsuccessful in getting a certificate for a long time, Petitioners approached this Court for a

direction to GNCTD to issue the certificate. The writ petition was disposed of by this Court on 08.12.2021 directing GNCTD to issue the survivorship certificate within ten days upon the Petitioners filing a list of surviving members on an affidavit. Department of Revenue, GNCTD issued the certificate on 27.12.2021 which clearly reflects that Petitioners are the legal heirs of late Syed Ashraf Ali. Petitioners approached JMI in 2021 itself for release of family pension with arrears since 2014. A representation dated 28.12.2021 was also made to this effect followed by reminders dated 25.01.2022 and 28.02.2022, however, instead of releasing the family pension, JMI asked Petitioner No. 1 to submit a succession certificate from a Court. Since this was an unnecessary requirement, Petitioners lodged a complaint with CPGRAMS Portal of the Government of India. Assistant Registrar of JMI responded to the Nodal Officer of CPGRAMS on 28.03.2022 stating that succession certificate was required in view of Gazette Notification dated 20.12.2021 issued by DoPT. Challenging letter dated 14.03.2022, whereby JMI has sought a succession certificate to process the case of the Petitioners for family pension, this writ petition has been preferred.

4. Broadly understood, case of the Petitioners is that the requirement of furnishing a succession certificate based on which JMI is not processing the claim for family pension has no basis in law. Reliance on the Gazette Notification dated 20.12.2021 and Rule 49 of CCS (Pension) Rules, 2021 ('2021 Pension Rules') is wholly misplaced inasmuch as a bare reading of Rule 49 would show that it deals with retirement and death gratuity and not family pension. It is argued that family pension is payable under Rule 54 of CCS (Pension) Rules, 1972 ('1972 Pension Rules') and Rule 50 of 2021

Pension Rules and to the extent relevant provides that where the employee dies after retirement from service and was on the date of death in receipt of a pension under the Rules, family of the deceased shall be entitled to family pension from the date following the date of death of the retired employee. It is urged that Petitioners being the daughter and son of late Syed Ashraf Ali are entitled to family pension, being the legal heirs other than their mother Ms. Rukhsana Khatoon, who had divorced their father during his lifetime. However, Ms. Khatoon has written to JMI in 2014 itself that her share of the family pension be released in favour of Petitioner No. 1 and therefore, there is no impediment in release of the family pension to the Petitioners.

5. It is urged that it is clearly stated in the Handbook on Family Pension under 1972 Pension Rules that family pension under Rule 54 is in the nature of a welfare scheme framed to provide relief to widowed spouse and children of a deceased employee or pensioner and is not the property of the deceased pensioner and thus, entitlement for family pension cannot be decided on the basis of a succession certificate. Learned counsel places reliance on the judgments of the Supreme Court in ***Smt Violet Issaac and Others v. Union of India and Others, (1991) 1 SCC 725,*** where the Supreme Court held that family pension scheme is to provide relief to the widow and children by way of compensation for the untimely death of the deceased employee and no person other than those designated under the Rules are entitled to receive the same and since it is not part of the estate of the deceased pensioner, it cannot be disposed of by testamentary disposition and therefore even in a case where a Will is executed depriving the persons entitled under the scheme of family pension, the right to receive pension by designated persons cannot be taken away. Reliance is also placed on the

judgments of the Division Bench of this Court in ***Tripta Gupta v. Union of India and Others, 2022 SCC OnLine Del 1653*** and ***Soma Bhattacharjya v. University of Delhi & Anr., LPA 726/2023 decided on 06.11.2023,*** for the same proposition.

6. Mr. Pritish Sabharwal appearing for JMI fairly submits that he cannot dispute the settled legal propositions in the judgments relied upon by the Petitioners. He, however, submits that a succession certificate is required by virtue of the Gazette Notification dated 20.12.2021 issued by DoPT and Rule 49 of 2021 Pension Rules. It is not disputed that late Syed Ashraf Ali has no other legal heirs except for the Petitioners as also that Ms. Khatoon had written a letter to the Registrar, JMI relinquishing her share in the family pension in favour of Petitioner No. 1 i.e. her daughter. Mr. Sabharwal submits that in case the Court is inclined to grant family pension, Petitioners be directed to furnish an indemnity bond so that in future if any legal issue arises on account of which the Petitioners are found not entitled to the pension, they will indemnify JMI with respect to the amounts they will receive under family pension.

7. Heard learned counsels for the parties and examined their respective submissions.

8. It is not disputed by JMI that CCS (Pension) Rules are applicable to the University and regulate the grant of family pension. At this stage, it is not even disputed that Petitioners are the daughter and son of late Syed Ashraf Ali who worked with JMI for 25 years and 5 months as a regular employee before he retired on 14.01.2014 and was in receipt of pension at the time of his demise on 09.07.2014. The legal heirs of late Syed Ashraf Ali are therefore entitled to family pension in accordance with Rule 54 of 1972

Pension Rules which is now Rule 50 under 2021 Pension Rules. The only impediment according to JMI in release of family pension to the Petitioners is a Gazette Notification dated 20.12.2021 issued by DoPT and Rule 49 of 2021 Pension Rules, as also non-furnishing of the succession certificate.

9. Insofar as Gazette Notification dated 20.12.2021 is concerned, paragraph 50 is a verbatim copy of Rule 50 of 2021 Pension Rules and this Court is unable to see any provision which impedes the grant of family pension to the Petitioners. Rule 49 has been wrongly relied on for grant of family pension as plainly read it deals with lapse of retirement and death gratuity. Insofar as succession certificate is concerned, in my view, this objection of JMI is legally untenable and more so in view of the fact that it is nobody's case that Petitioners are not the legal heirs of late Syed Ashraf Ali and his ex-wife has already relinquished her share in favour of Petitioner No. 1 which is evident from the letter written to JMI, which is filed on record. It has been held by the Supreme Court in ***Smt Violet Issaac (supra)*** that family pension schemes are designed to provide relief to the widow and children as a compensation for untimely death of a deceased employee. There is no requirement of any nomination for a family pension and instead the Rules themselves designate persons who are entitled to receive the same and no person except the designated person is entitled for family pension. It is further held that family pension scheme confers monetary benefit on the wife and children of the deceased employee but employee has no title to it and no control over the pension as he is not required to make any contribution to it. Since the deceased employee has no title over the pension, it does not form part of his estate enabling him to dispose of the same by testamentary disposition. The Supreme Court placed reliance on an earlier

decision of the Supreme Court in ***Jodh Singh v. Union of India and Another, (1980) 4 SCC 306,*** wherein also the Supreme Court held that family pension is admissible on account of the status of the widow and not on account of the fact that there was some estate of the deceased which devolved on his death to the widow. In the case of ***Smt Violet Issaac (supra),*** the Supreme Court held the widow of the deceased railway employee entitled to receive family pension notwithstanding the Will allegedly executed by the deceased in favour of his brother. Relevant paragraphs are as follows:-

> *"4. The dispute between the parties relates to gratuity, provident fund, family pension and other allowances, but this Court while issuing notice to the respondents confined the dispute only to family pension. We would therefore deal with the question of family pension only. Family Pension Rules, 1964 provide for the sanction of family pension to the survivors of a Railway employee. Rule 801 provides that family pension shall be granted to the widow/widower and where there is no widow/widower to the minor children of a Railway servant who may have died while in service. Under the Rules son of the deceased is entitled to family pension until he attains the age of 25 years, an unmarried daughter is also entitled to family pension till she attains the age of 25 years or gets married, whichever is earlier. The Rules do not provide for payment of family pension to brother or any other family member or relation of the deceased Railway employee. The Family Pension Scheme under the Rules is designed to provide relief to the widow and children by way of compensation for the untimely death of the deceased employee. The Rules do not provide for any nomination with regard to family pension, instead the Rules designate the persons who are entitled to receive the family pension. Thus, no other person except those designated under the Rules are entitled to receive family pension. The Family Pension Scheme confers monetary benefit on the wife and children of the deceased Railway employee, but the employee has no title to it. The employee has no control over the family pension as he is not required to make any contribution to it. The family pension scheme is in the nature of a welfare scheme framed by the Railway administration to provide relief to the widow and minor children of the deceased employee. Since, the Rules do not provide for nomination of any person by the deceased employee during his lifetime for the payment of family pension, he has no title to the same. Therefore, it does not form part of his estate enabling him to dispose of the same by testamentary disposition.*

5. In Jodh Singh v. Union of India [(1980) 4 SCC 306 : 1980 SCC (L&S) 549] , this Court on an elaborate discussion held that family pension is admissible on account of the status of a widow and not on account of the fact that there was some estate of the deceased which devolved on his death to the widow. The court observed: (SCC p. 310, para 10)

> *"Where a certain benefit is admissible on account of status and a status that is acquired on the happening of certain event, namely, on becoming a widow on the death of the husband, such pension by no stretch of imagination could ever form part of the estate of the deceased. If it did not form part of the estate of the deceased it could never be the subject matter of testamentary disposition."*

The court further held that what was not payable during the lifetime of the deceased over which he had no power of disposition could not form part of his estate. Since the qualifying event occurs on the death of the deceased for the payment of family pension, monetary benefit of family pension cannot form part of the estate of the deceased entitling him to dispose of the same by testamentary disposition.

6. We, accordingly hold that Mrs Violet Issac the widow of the deceased Railway employee is entitled to receive the family pension, notwithstanding the will alleged to have been executed by the deceased on September 9, 1984 in favour of his brother Elic Alfred. As regards appellants 2 to 6 are concerned, it has been stated on behalf of the Railway administration that they are not minors, therefore, under the Rules they are not entitled to any family pension. We, accordingly allow the appeal, set aside the order of the Tribunal and direct the respondent Railway administration to sanction family pension in accordance with the Rules to appellant 1 and to pay the arrears within two months. The respondent's suit, so far as it relates to the family pension cannot proceed but we do not express any opinion with regard to other claims raised therein."

10. In this context, I may also refer to the judgment of the Supreme Court in ***Nitu v. Sheela Rani and Others, (2016) 16 SCC 229*** and judgments of the Division Benches as referred to above as well as the judgment of the Kerala High Court in ***Salma Beevi V.A. v. Administrative Officer Cochin Port Trust and Others, 2014:KER:25744.*** Therefore, in my considered view, Petitioners are entitled for grant of family pension w.e.f. 10.07.2014. Petitioners shall furnish an indemnity bond in the requisite format to JMI after which their case for release of family pension will be processed.

Payment of family pension will commence as soon as necessary formalities are completed by the necessary parties. Arrears of family pension will be released within four months from the date of completion of all formalities.

11. Writ petition stands disposed of in the aforesaid terms along with pending application.

JYOTI SINGH, J

SEPTEMBER 5, 2024

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