

IN THE FEDERAL SHARIAT COURT.
(ORIGINAL JURISDICTION)

PRESENT

MR.JUSTICE DR.TANZIL-UR-RAHMAN,C.J.
MR.JUSTICE DR.FIDA MUHAMMAD KHAN.
MR.JUSTICE MIR HAZAR KHAN KHOSO.

SHARIAT PETITION NO.52/I OF 1991.

Ch.Irshad Ahmad,
Additional Draftsman,
Ministry of Law & Justice,
Islamabad. ... Petitioner.

Versus

Federation of Pakistan through
Secretary Ministry of Health,
Islamabad. ... Respondent.

Counsel for the Petitioner. ... Nemo.

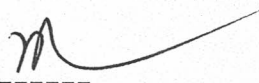
Counsel for the Respondent. ... Mr.Iftikhar Hussain Chaudhry,
Standing Counsel for
Federation.

Date of Institution. ... 29.7.1991.

Date of Admission. ... 8.12.1991.

Date of hearing. ... 11.5.1992.

Date of decision. ... 11.5.1992.



JUDGMENT

DR. TANZIL-UR-RAHMAN, C.J. -- By this petition, the petitioner has challenged Explanation (4) below clause (d) of Rule 2 of the Federal Services Medical Attendance Rules, 1990 on the ground that it is repugnant to the Injunctions of Islam.

The said explanation is reproduced below:-

"In case of more than one wife, the wife nominated by the Government Servant to receive medical attendance and treatment will be entitled to it."

The petitioner contends that the explanation, impugned before us provides that in case a Government Servant has more than one wife, the wife nominated by him is entitled to medical attendance and treatment and not the other wife or wives or as the case may be.

2. The petitioner for the above submission has placed his reliance on the following Verse of Sura Al-Nisa, which reads as under:-

وان خفتم الا تقسطوا في اليتامى فانكحوا ما طاب لكم من النساء مثنى وثلاث ورباع فان خفتم الا تعدلوا فواحدة او ما ملكت ايمانكم ذلك ادنى الا تعولوا (النساء: ٤ : ٣)

The above Verse relates to equal treatment among the wives by the husband.

3. The learned counsel for the Federation submits that the Injunction of the Holy Qur'an relates to the husband who has been permitted ~~upon~~ to take one or more than one wife (upto four) wives) provided he can do justice among them. The duty cast upon by



the Injunction is basically that of the husband in his personal capacity. It is he who is to maintain his wife. He further submits that the medical facilities provided to one wife is an allowance which may or may not be provided by the Institution concerned.

4. Dr. Muhammad Aslam Khaki, a Jurisconsult, in his written note writes that :-

" جو کچھ حقوق اور سہولتیں انکے (حکومت اور ملازم کے) درمیان معاہدہ ملازمت میں طے کر دی گئی ہیں وہ نافذ ہونگی - حکومت بطور آجر کے ان شرائط کی پابند ہے۔ پس اگر میڈیکل رولز میں صرف ایک بیوی کے علاج کی سہولت ہے تو یہ درست ہے۔ اب یہ خاوند پر لازم ہے کہ وہ اپنی دوسری بیوی کا علاج بھی اسی معیار پر کرائے جس معیار پر پہلی بیوی کا حکومت کی طرف سے ہوا ہے۔ جس طرح حکومت ملازم کو ایک مکان مہیا کرتی ہے۔ لیکن فرض کریں کہ ایک ملازم کی دو بیویاں ہیں تو کیا رہائش کیلئے حکومت اس ملازم کو دو مکان الاٹ کریگی؟ کہ وہ بیویوں کے درمیان عدل کر سکے۔ اور کیا اسی طرح دو بیویوں کی صورت میں ملازم کی تنخواہ وغیرہ بھی ڈبل ہوگی - اسلام نے تعداد ازواج کی اجازت تو دی ہے مگر اس کی حوصلہ افزائی نہیں کی۔"

Further
Giving his opinion, he states that :-

" پس راقم کی رائے میں زائد از یک بیوی کی صورت میں انکے خاوند کے اپنے آجر پر حقوق اور مطالبات زیادہ نہیں ہوتے۔ اور نہ ہی ان زائد حقوق کے اخراجات کو عوام الناس کی جیب (قومی خزانہ) پر ڈالا جاسکتا ہے۔"


" پس مذکورہ بالا قانون نمبر ۲ (د) کی تصریح نمبر ۲ آف فیڈرل سروسز میڈیکل

اٹنڈنس رولز مجریہ ۱۹۹۰ قرآن و سنت کے منافی نہ ہیں۔"

5. After hearing the learned counsel, we are of the view that the petition is misconceived. It does not offend the Injunctions of Islam in so far as the relationship between the employer and employee is concerned. It is, in fact, a concession which has been granted under the Service Rules and cannot be stretched to provide medical facilities to more than one wife. Moreover, it will perhaps not be improper to add that the Medical Rules equally apply to Muslims and non-Muslims.

6. We, therefore, find no repugnancy to the Injunctions of Islam as laid down in the Holy Qur'an and Sunnah of the Holy Prophet (صلی اللہ علیہ وسلم). The petition is, therefore, dismissed.


(Dr. Tanzilur-Rahman)
Chief Justice


(Dr. Fida Muhammad Khan)
Judge


(Mir Hazar Khan Khoso)
Judge

Islamabad,
11th May, 1992
Abdul Salam.

Approved for reporting.


C.J.