

RESEARCH NOTE IN S.P.NO.8/1/94

The petitioner has filed this petition under Article 203-D of the Constitution for declaring to the effect that clause II of the Office Memorandum No.F.5(17)-Gaz.Imp (1)/73 dated 20-11-1974 and 1st portion of Office Memorandum No.F.2(i)-R.5/91 dated 25-8-1991 issued by Government of Pakistan (Finance Division) is repugnant to the Injunctions of Islam. The clause II of the said memorandum is as under:-

"ii) If both husband and wife being Government servants are residing together at the same station in a Government residence allotted to one of them, house rent allowance shall not be admissible to the other even if the station is specified one."

2. Finance Division's Office Memorandum dated 25.8.1991 further clarifies the position as under:-

"The undersigned is directed to say that the question of grant of house rent allowance to husband/wife serving in Government and posted at the same station.(i) if accommodation is provided to one of them by Government, has been duly considered. It has been decided that if both the husband and wife are living together in residential accommodation provided by the Government at the same station, no house rent allowance shall be allowed to either of them.(ii) If, however, the spouse is living separately from husband/wife, the house rent allowance shall be admissible to one of them, who does not reside in Government accommodation."

3. The petitioner has prayed that in Islam a spouse can continue to retain his/her separate entity even after marriage. He/she can retain property and other individual rights etc. In support of his plea the petitioner has referred verse 32 of Sura IV of the Holy Qur'an which is read as under:-

للرجال نصيب مما اكتسبوا وللنساء  
نصيب مما اكتسبن .

"To men is allotted what they earn  
and to women what they earn".

4. After looking into the matter thoroughly from Islamic point of view it is clear that the House Rent is a service entitlement/benefit to one who serves institution. None can be deprived of his/her service benefit on unfounded reasons as mentioned in the impugned office Memoranda. A husband and wife both serve their departments in their individual capacity. They render their services to the maximum of their potential and are in principle, eligible for all benefits of their service.

5. A serving woman sacrifices her numerous domestic comforts and faces severe problematic positions in her family as well as outside the house. So much so she is forced to neglect her petty kids at the cost of her service. Her kids look forward wistfully towards her motherly affection which they are being deprived due to preoccupation of their working mother. It is she who pockets all these difficult situations.

6. Islam is a religions of Nature. It provides a complete Code of human life. It safeguards every right and benefit of human beings in the Socio-economic activities. It emphasizes that none in the society should be deprived arbitrarily of his/her rights.

7. Almighty Allah has ordained in the Holy Quran:

ان الله يأمر بالعدل والاحسان .

God commands justice, the doing  
Of good, and liberality to kith

(Al-Nahal, XVI:90)

8. Auf-bin-Malik (R.A) narrates that whenever some "Mal-e-Ghunemat" (booty) was received, the Holy Prophet (S.A.W) distributed it among the deserving persons in such a way that the married people got double share against the bachelor ones. Hazrat Sufian bin Wahab Kholani narrates that once Hazrat Umar (R.A) also distributed the Mal-e-Ghanemat (booty) among the people in the same manner. He gave full share to the married and half to the non-married people. Hazrat Sulba bin Malik (R.A) narrates that once Hazrat Umar (R.A) distributed some veils (Chaddars) among the women of Madina and one remained undistributed. Some companions of the pious Caliph proposed that the said chaddar be given to the daughter of Holy Prophet Hazrat Umme Kulsoom. Hazrat Umar preferred to give that chaddar to Hazrat Umme Saleet in recognition of her services during the battle of Uhad. (Kitabul Amwal Urdu Tr.by Abdul Rahman Tahirsorti, p.362).

9. In the light of incidents mentioned above it can easily be viewed that Islam has always encouraged the serving women which ultimately helps in soothing the human society. While on the other hand the Finance Division of the Islamic Republic of Pakistan has deprived the working women of their legitimate right.

10. Another weighty point worth consideration is that in case of Government accommodation has not been allotted to any of the spouses house rent allowance is paid to both without any let and hinderance. It means that majority of the spouses continue to benefit even from the existing rules as a very few couples serving in the Government service have been allotted accommodation. The application of this rule is extremely limited.

11. In view of position mentioned above the impugned memoranda issued by the Finance Division seem to be a clear discrimination against the working women and also contrary to the Holy Qur'an and Sunnah of the Holy Prophet (S.A.W).



( Atta-ur-Rahman )  
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