

JUDGMENT

FARHAT NIGAR----Appellant

Versus

**The AUDITOR GENERAL OF ISLAMIC REPUBLIC OF PAKISTAN and 3 others----
Respondents**

. I.C.A. No.406 of 2016 in W.P. No.960 of 2015

AAMER FAROOQ, J.--- The facts, leading to the filing of instant Appeal, are that one Tahir Sajjad, who while serving as Additional Director General of Pakistan in the Office of Auditor General of Pakistan, died on 10.07.2007. He left behind two widows i.e. appellant and respondent No.4 as well as four daughters and a son. After his demise, the controversy arose regarding the marriage of the deceased with respondent No.4 and her right of inheritance including that of her minor daughter. In this behalf, civil litigation between the parties ensued however, the issue of validity of marriage of deceased with respondent No.4 as well as legitimacy of the daughter from said wedlock was finally decided and stood settled. Respondent No.4, in her capacity as one of the widows of deceased Tahir Sajjad, filed an application before respondents Nos.1 to 3 for release of pension and other benefits. When no action was taken by the above respondents on the request of responder No.4 she preferred a petition under Article 199 of the Constitution before this Court (W.P. 960-2015), which was allowed by the in Chambers vide the impugned judgment dated 20.07.2016.

2. Raja Rizwan Abbasi, Advocate/learned counsel for the appellant, inter alia, contended that not all the benefits, which accrued on the demise of deceased Tahir Sajjad, fall in 'Tarka' to be distributed amongst all the legal heirs. In this behalf, it was contended that the pensionary benefits, undoubtedly, are to be shared by the two widows equally, however, the amounts paid under different heads including General Provident Fund, Federal Government Benevolent Fund and Group Insurance as well as Assistance Package, do not fall in the definition of 'Tarka' and are to be paid to the nominee. In support of his contentions, learned counsel placed reliance on cases reported as 'Federation of Pakistan v. Public at Large' (PLD 1991 Supreme Court 731), 'Mst. Ameeran Khatoon v. Mst. Shamim Akhtar and others' (2005 SCMR 512), 'In the matter of: Succession of the Assets, Securities, Properties and Accounts of Late Javed Iqbal Ghaznavi (PLD 2010 Karachi 153) and 'Dr. Safdar Hussain and another v. Flt. Lt. Nadia Latif and 5 others' (2014 YLR 1553).

3. Learned counsel for respondent No.4, inter alia, contended that all the benefits which have accrued upon demise of late Tahir Sajjad, fall in the definition of 'Tarka' hence are to be distributed amongst all the legal heirs in accordance with their share of inheritance.

4. The facts, leading to the filing of instant Appeal, have been mentioned with brevity hereinabove therefore need not be reproduced.

5. The sole controversy between the appellant and respondent No.4 is with respect to their entitlement regarding pension and other benefits of the deceased Tahir Sajjad. The Hon'ble Supreme Court of Pakistan in a case reported as 'Federation of Pakistan v. Public at Large' (PLD

1991 SC 731), defined the word 'Tarka'. In this behalf, the word 'Tarka' was explained as follows:-

The said definition was adopted and followed by the august Apex Court in its decision reported as 'Mst. Ameeran Khatoon v. Mst. Shamim Akhtar and others' (2005 SCMR 512) and it was held that the Benevolent Fund and Group Insurance devolve upon legal heirs of the deceased as 'Tarka'. Similar view was taken by the Hon'ble Sindh High Court 'In the matter of: Succession of the Assets, Securities, Properties and Accounts of Late Javed Iqbal Ghaznavi (PLD 2010 Karachi 153), wherein, it was observed as follows: -

"Thus any financial benefit which an employee can claim from his employer in his lifetime and have also become payable in his lifetime is to be treated as an absolute right of the employee and if any benefit or any part of it remain unpaid during his lifetime when the same becomes heritable and is to be distributed amongst all his heirs. However, a service benefit, which has not fallen due to an employee in the lifetime of an employee and being a grant or concession on the part of the employer, then whatever amount that become payable after the death of the employee is to be distributed only to those members of his family who are entitled for the same as per rules and regulations of service. It is the discretion of the employer to make rules and regulations in relation to any grant or concession that is intended to give to an employee or after his death to any member of his family".

6. The above judgments categorically lay down the criteria regarding the benefits which are heritable and inherited by the heirs of the deceased, however, in light of the decision in case reported as (PLD 2010 Karachi 153) supra, the grant or concession do not fall in the heritable category.

7. In view of above facts and law, respondent No.4 and her daughter, have inherited the pensionary benefits and similar payments including Group Insurance and Benevolent Fund, which she along with her daughter is entitled and share with the appellant other heirs.

8. For the foregoing reasons, instant appeal is allowed and the impugned judgment is set aside; consequently, petition under Article 199 of the Constitution, filed by respondent No.4, shall stand disposed of with direction to respondents Nos.1 to 3 to make payments of the benefits and claims of the deceased Tahir Sajjad in light of law laid down above, which have been inherited by the appellant and respondent No.4 along with other heirs. In case, any payment has been received by the appellant in excess of her share along with shares of three daughters and a son born out of wedlock between the appellant the deceased Tahir Sajjad, which she was not entitled exclusively, respondents Nos.1 to 3 shall recover the same for payment to respondent No.4 and her minor daughter.

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