

2023 C L C 977
[Balochistan]
Before Abdullah Baloch, J
ABDUL RAZAQ and others ----Appellants
Versus
HOOR JAN and others ----Respondents
Succession Appeals Nos.03 and 04 of 2021, decided on 29th October, 2021.

JUDGMENT

ABDULLAH BALOCH, J. ----Since common point is involved in both the appeals, therefore, this common judgment disposes of both appeals, the Succession Appeal No.03 of 2021 filed by the appellants against the order dated 7th September 2021 ("the impugned order") passed by the learned District Judge, Mastung ("the trial Court") whereby the application for grant of Succession Certificate filed by the respondent No. 1 was allowed.

Whereas the Succession Appeal No.04 of 2021 filed by the appellants against the order dated 31st August 2021 ("the impugned order") passed by the learned District Judge, Mastung ("the trial Court") whereby application under Section 372 of the Succession Act, 1925 filed by the appellants was dismissed.

2. Brief facts of the appeal No.3 of 2021 are that the respondent No.1/applicant filed Succession Application under Section 372 of Succession Act, 1925 for grant of Succession Certificate in the trial Court with the averments that she is widow of late Abdul Khaliq, who was performing his duty as Valve Man in Public Health Engineering Department (PHE) Mastung and also maintained a Bank Account in Muslim Commercial Bank Ltd., Mastung branch, however, the said Abdul Khaliq was passed away on 6th October 2020 due to natural death. The respondent No.2/applicant prayed for recovery of following outstanding dues:

S.No. Particular Amount

- 1 365 days encashment of leave. Rs.266640/ -
- 2 Commutation pension Rs.531854/ -
- 3 Group Insurance Rs.340,000/ -
- 4 Financial Assistance Rs.600,000/ -
- 5 B.P Fund Rs.500,000/ -
- 6 Arrear bill Rs.42753/ -
- 7 G.P Fund As per rule
- 8 Bank Balance MCB Mostung A/C
No.0056302010024372 Rs.11026.58/ -

3. Meanwhile, publication was made against General Public in "Daily Inthekhab Quetta", for inviting objections from General Public, however, the appellants contested the application by means of filing rejoinder through their attorney; however, they were proceeded against ex -parte.

4. The learned trial Court allowed the application of respondent No. 1 /applicant and issued Succession Certificate in her favour, vide impugned order as mentioned hereinabove in para No. 1.

5. While, concise facts of the Succession Appeal No.04 of 2021 are that the appellants filed a Succession Application for grant of Succession Certificate in the learned trial Court with the averments that Mst. Noor Khatoon (late) was paternal aunt of deceased and appellants Nos.1 to 7 are real cousins of deceased Abdul Khaliq son of Gul Muhammad, besides, their father Molvi Abdul Aziz was real cousin of Gul Muhammad (father of late Abdul Khaliq), while respondent No.2 (Hoor Jan) is the widow of late Abdul Khaliq, the said late Abdul Khaliq was performing his duty as Chowkidar BPS -04 in PHE Department, Mastung and also maintained bank account in MCB, who passed away issueless during the service on 6th October 2020 due to natural death at Mastung. The appellants requested for recovery of departmental and Bank dues as mentioned hereinabove in Para No.2.

6. The application was contested by the respondent Nos.2 by filing rejoinder to the application.

7. After hearing the parties the application of the appellants was dismissed as mentioned hereinabove in sub para No. 1.

8. Heard learned counsel for the parties and perused the record minutely. The moot question in between the parties is that one Abdul Khaliq, who was performing his duties as Valve Man in PHE Department, Mastung and also maintaining Bank Account in MCB Mastung Branch. He was passed away on 6th October 2020 issueless and left behind his pension and pensionary benefits, thus both the parties have filed separate applications under Section 372 of Succession Act, 1925 for grant of Succession Certificate being the legal heirs of deceased Abdul Khaliq and both the applications were proceeded side by side by the learned trial Court and the application filed by the appellants was dismissed, vide order dated 31st August 2021, while the application filed by the respondent (Hoor Jan) being widow of late Abdul Khaliq was allowed and Succession Certificate was

issued in her favour being entitled to receive the pension and other benefits of deceased's service i.e. parts of pension, group insurance, leave encashment, B.P. Fund, Arrear Bills, G.P. Fund as stated hereinabove in tabular form.

9. It is pertinent to mention here that the appellants claimed to be great distant legal

heirs of the late Abdul Khaliq, thus they are entitled to receive their due shares in accordance with Sharia law from the legacy of deceased Abdul Khaliq. Now question remains that whether the pension and pensionary benefits in lieu of service so granted to the deceased falls within the purview of heritage/Tarka or otherwise. In this regard reliance is placed by the learned counsel for respondent No.2 on the case of "Mrs. Hina Mumtaz Soomro and others v. Abdul Sami Soomro and others" PLD 2018 Sindh 671; wherein it was held that:

"(a) Islamic law --

----Inheretance---Tarka ---Pension ---Pension of a deceased was not heritable property

i.e. it did not constitute 'tarka' of the deceased, and its distribution would be governed under the statute/rules that provided for such pension."

In the said judgment the Hon'ble Sindh High Court has also placed reliance on the

land mark judgment of Hon'ble Shariat Appellate Bench of the Supreme Court of Pakistan passed in the case of "Wafaqi Hakoomat -e-Pakistan v. Awamunnas, PLD 1991 SC 731",

wherein it was held that:

"pension did not form part of tarka because on the death of the pensioner his entitlement thereto ceases, and if then the relevant statute/rule provides for pension to the deceased pensioner's family, it is in the nature of a grant and payable only to the next-of-kin prescribed by the said statute/rules. Likewise, the same view was taken by the Hon'ble Lahore High Court in the case of

"Dr. Safdar Hussain and another v. Flt. Lt. Nadia Latif and others, 2014 YLR 1553", wherein

it was held as under:

"8. Tarka/estate of the deceased consists of the immovable or movable properties, moneys and all other articles which he owned and over which he had complete control and dominion so as to enter into the transaction of sale, exchange, transfer, gift in respect of such immovable and movable properties, moneys and other goods/articles. In the light of above, it is settled that an amount which has accrued to an employee during his lifetime, whether he has received the same or not before his death, shall become part of the estate of the deceased and such amount had to be distributed among the legal heirs of the employee, as per the Personnel Law of the employee, after his death. In case an

amount has accrued after his death then it is required to be seen, in the light of interpretation given by the Shariat Appellate Bench of the Hon'ble Supreme Court, whether the said amount falls in the category of Tarka/estate of the deceased or not. If the amount accrued is a "grant" or "concession" then the same will be payable to the nominee of the deceased, irrespective of the fact that the Personnel Law of the deceased states otherwise.

9. The amount of Group Welfare Scheme could not be claimed by the deceased during his lifetime nor the deceased could ask respondent No. 6 for payment under the said head which would go to establish that deceased had power or authority to possess or claim any amount under the aforesaid head during his lifetime. This amount would have become due and payable to the deceased only after his death."

Thus, in the light of above judgments passed by superior Courts, the appellants are not entitled to receive any share from the pension and pensionary benefits of deceased.

For the above reasons, the impugned orders passed by the learned trial Court do not suffer from any material illegality or irregularity to warrant interference by this Court. The learned counsel for the appellants has failed to cite any law point to interfere in the findings recorded by the learned trial Court.

Thus, appeals being devoid of merits are dismissed with no order as to cost.

SA/34/Bal. Appeals dismissed.