

**JUDGMENT SHEET
IN THE PESHAWAR HIGH COURT,
MINGORA BENCH (DAR-UL-QAZA), SWAT**
(Judicial Department)

C.R No. 606-M/2013

JUDGMENT

Date of hearing: **04.5.2015**

Petitioners: (Dawa Khan & one other)
By Mr. Naeem-ud-Din, Advocate.

Respondents: (Government of Pakistan & others)
By M/S Mian Hussain Ali, Deputy
Attorney General, Sabir Shah AAG, and
Abdul Ghaffar, Advocate.

HAIDER ALI KHAN, J. – Petitioners have moved the instant revision petition under section 115 C.P.C against the judgment and decree dated 14.9.2013 of the learned District Judge/ Zillaq Qazi, Malakand at Batkhela, whereby appeal of the petitioners against the judgment and decree dated 03.6.2013 of the learned Civil Judge/Illaqa Qazi, Malakand at Batkhela, has been dismissed.

2. Brief but necessary facts of the case are that petitioners/plaintiffs filed a suit for declaration against the respondents/defendants to the effect that they are entitled to their *Shari* shares in

legacy/amounts, detail of which is annexed with the plaint, left by late Hassan Khan. The suit was contested by the respondents No. 1 & 12 by filing their written statement whereas respondents No. 14 & 15 also contested the same through their separate written statement. The trial Court framed necessary issues on the basis of divergent pleadings of the parties whereon the parties to the suit produced their respective evidence. After hearing the arguments, the trial Court dismissed suit of the petitioners/plaintiff vide judgment and decree dated 03.6.2013. Being aggrieved, the petitioner preferred appeal against the judgment and decree of the trial Court which was also dismissed by the appellate Court vide judgment and decree dated 14.9.2013. Hence, the instant revision petition.

3. Mr. Naeem Uddin, Advocate, appearing on behalf of the petitioners contended that the petitioners and respondents No. 14 & 15 are the legal heirs of late Hassan Khan who was a Levy Official and embraced martyrdom on 28.5.2009 while performing duty at Levy Post Alla Dhand. The

learned counsel argued that the Guardian Judge has issued Succession Certificate in the names of the petitioners and respondents No.14 & 15 with regard to legacy of the deceased, thus the petitioners are entitled to their *Shari* shares in the Shuhada Package and other amount left by the deceased. The learned counsel produced a copy of guidelines drafted by Shuhada Cell W & R Directorate, G.H.Q Rawalpindi under the heading **لواحقین شہدائیلئے واجبات** **و مراعات** and contended that as per the referred guidelines, the petitioners are entitled to their *Shari* share in the Shuhada Package and other packages announced by the Government for heirs of *Shuhada*. He also produced copies of bank cheques issued in respect of another package for legal heirs of the *shaheed* and contended that issuance of the bank cheques in the names of the petitioners clearly shows that they are entitled to get their respective shares in all the packages.

4. Mr. Mian Hussain Ali, learned Deputy Attorney General appearing on behalf of official respondents No. 1 & 2 referred to Rules 4.7 and 4.10 of the West Pakistan Civil Servants Pension Rules, 1963 and contended that only wife and children of

the deceased civil servants are deserved for pension and gratuity.

5. Mr. Sabir Shah, the learned A.A.G. appearing on behalf of official respondents No. 3 to 12 contended that the disputed amount is in the shape of grants which have been awarded after the death of the *shaheed* employee. He further contended that the amount of packages and grants were not the ownership of the employee during his life, therefore, the same cannot be treated as heritable by all heirs of the employee. Reliance was placed on **PLD 1991 SC 731 and 2014 CLC Peshawar 126.**

6. Mr. Abdul Ghaffar, Advocate appearing on behalf of private respondents No. 14 & 15 contended that Shuhada Package has not been challenged by the petitioners in their plaint, therefore, they are not entitled to receive any share therein. He prayed that the instant revision petition be dismissed.

7. I have heard arguments of learned counsel for the parties and perused the record.

8. According to pleadings and facts of the case, subject matter of the present controversy is the

amounts on account of Shaheed Package, G.P Fund and Pension. Record shows that the petitioners have received their respective shares per Succession Certificate in the remaining *Tarka* i.e amount deposited by the deceased in Banks. From the arguments of learned counsel for official and private respondents and the case law produced by them, it is crystal clear that the amount in the shape of Shaheed Package, G.P. Fund and Pension are not the legacy of the deceased employee as he was not the owner of the same amount during his life and only his widow and children are entitled to the same. The question involved in the present case is purely of legal nature and this Court has to determine whether the Package, G.F. Fund and Pension of the deceased is *Tarka* of the deceased or not. Admittedly, the Shaheed Package is the service benefit and was not due to the deceased during his life which is in the nature of grant and is payable after his death, therefore, could not be treated as heritable by all his heirs. No doubt, widow and the minor are the nearest beneficiaries who depended mainly on the deceased and keeping in view their such status, they deserve to receive the same benefit to the exclusion of other legal heirs of the deceased. Reliance in this

regard can be placed on **2011 CLC 1528**. So far share of the petitioners in the pension and G.F. Fund is concerned, suffice it to say that in Pension-cum-Graduity Scheme, 1954 the word Family has been defined for the purpose of payment of Graduity and Pension, according to which husband, widows and children constitute the family and they are entitled to graduity and pension in case of death of the employee. In the present case, as widow and minor exist, therefore, the parents are excluded and they are not entitled to get any share in the pension and graduity.

9. The concurrent findings of both the Courts below are well reasoned and the learned counsel for the petitioners was unable to point out any illegality, infirmity, misreading or non-reading therein. Therefore, this revision petition, being devoid of merit, is hereby dismissed.

Announced.
Dt: 04.5.2015

JUDGE