

**2020 C L C 943**

**[Balochistan]**

**Before Nazeer Ahmed Langove, J**

**BIBI KALSOOM ----Petitioner**

**Versus**

**The GENERAL PUBLIC and others----Respondents**

Civil Revision No.307 of 2018, decided on 12th November, 2018.

**Succession Act (XXXIX of 1925)---**

----Ss. 373 & 372---Balochistan Civil Services Pension Rules, 1989, R.4---Government of Balochistan Notification No. FD(R-II)VII-2/98/1719-1819 dated 25.07.1998---Family pension---Pension dues of deceased public servant---Succession Certificate---Eligibility of unmarried daughter above the age of twenty-one---Petitioner impugned order of Civil Court whereby claim of entitlement of petitioner to her deceased father's pension was denied, on ground that she being above the age of twenty-one was not entitled to the same---Validity---In view of Government of Balochistan Notification No.FD(R-II)VII-2/98/1719-1819 dated 25.07.1998, irrespective of age, unmarried female child of deceased was entitled to draw family pension of late father till her marriage---High Court observed that no where in Balochistan Civil Services Pension Rules, 1989 it had been mentioned that after having attained age of twenty-one, unmarried daughter of deceased government servant would be disentitled from family pension---Impugned order was set aside---Revision was allowed, accordingly.

Abdul Zahir Kakar for Petitioner.

Date of hearing: 9th November, 2018.

## **ORDER**

**NAZEER AHMED LANGOVE, J.**----This petition is directed against the order dated 30th August, 2018 passed by learned Judicial Magistrate Khariozai with powers of Civil Judge in Succession Application No.14/2018, whereby; the application filed by petitioner and respondents Nos.2 to 8 (applicants) under section 372 of the Succession Act, 1925, was dismissed to the extent of grant of monthly salary in favour of petitioner (applicant No.8). Assailed in Civil Appeal No.30/2018, which too, was dismissed vide, judgment dated 11th October, 2018, passed by learned District Judge, Pishin, hence; this petition with the following prayer:

"It is therefore, respectfully prayed that keeping in view of the above law points, facts and circumstances of impugned order dated 11-10-2018 passed by District Judge

Pishin and order dated 30-08-2018 passed by Civil Judge Khanozai, may kindly be set aside/modified by way of transferring the pension dues of late father in the name of petitioner being the unmarried daughter of deceased or in alternative by modifying both the orders passed by Courts below, it may kindly be ordered that monthly pension be given to petitioner if law permit so, meaning thereby that release of monthly pension in favour of petitioner be left on the domain of issuing authority of monthly pension, in the interest of justice, equity and fairplay."

2. Facts of the case are that petitioner and respondents Nos.2 to 8 (brothers and sisters inter se) filed an application under section 372 of the Succession Act, 1925 before the Judicial Magistrate, Khanozai with powers of Civil Judge, with the averments that petitioner and respondent Nos.2 to 8 (applicants) are the surviving legal heirs of one Molvi Shamsullah son of Molvi Azam Jan, who expired on 9th June, 2018; at that time, he was serving in Education Department as Junior Arabic Teacher (J.A.T) in Government Boys High School Morgha Zakriazai Tehsil Nana Sahib, District Pishin; leaving the following movable properties behind:

- i. Leave encashment Rs.6,12,840/-;
- ii. Commutation Rs.15,05,642/-;
- iii. Group Insurance Rs.3,12,500/-;
- iv. Financial Assistance Rs.12,00,000/-;
- v. One month salary (from Benevolent Fund) Rs.71,500/-;
- vi. General Provident fund (as per Rules), and;
- vii. Bank Account No.0010023218240015, Rs.1,554/- (Allied Bank Limited, Khanozai Branch.

It was further stated that the respondents Nos.2 to 8 (applicants Nos.1 to 7) are married, whereas; the petitioner (applicant No.8) is unmarried, therefore, as per the rules, she was entitled to receive monthly pension of her late father (Molvi Shamsullah) till her marriage.

3. After fulfillment of legal formalities, General Public was proceeded against exparte and the applicants (petitioner and respondents Nos.2 to 8) were directed to produce exparte evidence; in compliance thereof, they produced two witnesses and statement of petitioner was recorded for herself and as attorney for respondents Nos.2 to 8, in result whereof; they were directed to deposit surety bond amounting to Rs.50,00,000/-. Main claim of the petitioner and respondents Nos.2 to 8, was allowed, however, prayer to the extent of permission to receive pension of her late father by the petitioner was declined vide, order dated 30th August, 2018, passed by Civil Judge, Khanozai, challenged in appeal, but met the same fate vide, judgment dated 11th October, 2018, passed by learned District Judge, Pishin, hence; this petition with the prayer mentioned herein-above.

4. Heard the learned counsel for the petitioner and gone through the record with his assistance, which reflects that after demise of their father the petitioner and respondents Nos.2 to 8 have filed an application against General Public under section 372 of Succession Act, 1925 for dues of their late father, which application was partly allowed to the extent of dues mentioned herein-above. However, claim to the extent of receiving pension amount of late father (Molvi Shamsullah) by the petitioner being unmarried was declined with the verdict that she (petitioner) being above the age of twenty-one year is not entitled to receive the same, which conclusion in my perception was not correct, for the reasons that in view of Notification No.FD(R-III)VII-2/98/1719-1819, dated 25th July, 1998, issued by the Government of Balochistan, Finance Department; irrespective of her age, unmarried female child of deceased is entitled to draw family pension of her father till her marriage. For the sake of convenience, relevant portion therefrom is reproduced as under:

**"FURTHER LIBERALIZATION OF LIBERALIZED PENSION RULES FOR CIVIL SERVANTS-FAMILY PENSION.**

The undersigned is directed to refer to the subject noted above and to say that the Government of Balochistan is pleased to amend the Balochistan Civil Services Pension Rules, 1989 as under with immediate effect: -

**4.10(2)**

Substituted after the word or "to the husband (for life) if the deceased is a female government servant".

- (vii) Substituted with "failing (i) to (vi) the eldest surviving unmarried daughter till her marriage, and if the eldest daughter marries or dies the next eldest daughter till her marriage will draw the family pension".

Nowhere in the Notification (Pension Rules 1989) referred to herein-above, it has been mentioned that after having attained age of twenty-one years, the unmarried daughter of a deceased government servant would not be entitled for Family Pension.

5. The courts below shown to have mis-understood the very purpose of enactment contained in the notification referred to herein-above, which in my perception caused miscarriage of justice to a poor girl, seeking remedy for her right, recognized by the law.

6. In view of what has been discussed above, instant petition filed by the petitioner is allowed. Consequently, the impugned orders dated 30th August, 2018 and 11th October, 2018; passed by Judicial Magistrate, Khanozai with powers of Civil Judge and District Judge, Pishin are set aside, and; the concerned department is directed to proceed with the matter, in accordance with the procedure laid down. Order accordingly.

KMZ/16/Bal.

Order accordingly.