

**IN THE HIGH COURT OF SINDH
CIRCUIT COURT, HYDERABAD**

M.A. No.01 of 2017

HESCO through its Executive Engineer ----- Appellant

VERSUS

Muhammad Tanveer & others ----- Respondents

Date of hearing: 07.09.2020

Date of decision: 18.09.2020

Mr. Muhammad Arshad S. Pathan advocate for appellant.
Farooq son of Muhammad Tanveer present in person.
Mr. Allah Bachayo Soomro Additional Advocate General, Sindh.

ORDER

ADNAN-UL-KARIM MEMON, J: - In this Miscellaneous Appeal, the Appellant-Company has prayed for annulment of two orders that is, Order dated 4.8.2016 passed in Succession Application No. 50 of 2016 by learned VIth Additional Sessions Judge, Hyderabad, whereby Succession Application is granted in favour of Respondent No.1 directing, release of Pensionary benefits of deceased employee of Hyderabad Electric Supply company (HESCO) namely Mst. Farzana Shaheen. And, Order dated 25.11.2016 passed in Review Application of appellant-Company 2016 by learned VIth Additional Sessions Judge, Hyderabad.

2. Precisely, the facts of the case are that above said Mst. Farzana Shaheen while in service at HESCO as Commercial Assistant died on 21.5.2015. Resultantly, Respondent No.1 namely Muhammad Tanveer Qureshi claiming to be brother of deceased Mst. Farzana Shaheen filed Succession Application No.50 of 2016 in the Court of learned VIth Additional Sessions Judge, Hyderabad for grant of Succession Certificate in his favour, which was granted vide Order dated 4.8.2016.

3. Mr. Muhammad Arshad S. Pathan, learned counsel for Appellant, argued that all service benefits of deceased available with appellant does not form part of "Tarka". And, as per WAPDA Rules, 1977 they are to be given to the Nominee and not to be distributed amongst the legal heirs of deceased; that the heir-ship certificate produced by Respondent No.1 is a managed document. He further contended that the Succession Petition is

silent with regard to relation of respondent No.1 with deceased Mst. Farzana Shaheen; that Respondent No. 1 has manipulated documents to show himself as brother of deceased Mst. Farzana Shaheen; that Respondent No. 1 is son of one late Muhammad Ishaque and not late Abdullah; that father of Respondent No. 1 (Muhammad Ishaque) has no relation with Late Mst. Farzana Shaheen; that this crucial aspect of the case is ignored by learned Trial Court; that fraud is being committed by Respondent No.1 in order to receive service benefits of deceased. Learned counsel further argued that the matter of succession is based upon the law of inheritance and according to Muhammadan Law the relation and entitlement is to be seen minutely; that in the present case plain reading of Succession Petition proves that there is no relationship between respondent No.1 and deceased Mst. Farzana Shaheen; that the learned trial court failed to take cognizance of the facts and passed illegal, unlawful and unjust order. He prayed for allowing the appeal.

4. We asked Respondent No.1 (present in court) to satisfy the court as to how he is entitled for Family pension of deceased Mst.Farzana Shaheen. He replied that late Mst. Farzana Shaheen died intestate and Respondent No.1 being the only surviving legal heir is entitled to inherit her service benefits under Muhammadan Law; that he is the real brother of deceased and with the consent of all other legal heirs filed Succession Petition for grant of Succession Certificate for service benefits of his deceased sister. He prayed for dismissal of this Appeal.

5. I have heard learned counsel for the appellant as well as respondent No.1 (present in person) and perused the material available on record.

6. Prim-facie, the contention of learned Counsel for the appellant is correct to the effect that in case of benefits which form part of "Tarka", it is the responsibility of the Nominee to collect such amount and distribute the same amongst the legal heirs. And, if the amount or asset is not part of "Tarka" then it must ordinarily go to the Nominee as otherwise it would defeat the purpose / intention of any such nomination.

7. Insofar as the question that whether the amount available with the appellant-company was part of "Tarka" or not is concerned, the law is very clear. Reliance can be placed in the cases reported as PLD 1991 SC 731 (Federal Government v. Public at Large), 2001 MLD 1 (Messrs Pakistan International Airlines Corporation v. Mst. Alia Siddiq and 3 others), 2006 CLC 1589 (Naseem Akhtar alias Lali v. Khuda Bux Pechoho and others), 2010 CLC 219 (Mst. Fauzia Noureen v. Muhammad Asghar), PLD 1994

Karachi 237 (In re: Mst. Shamim Akhtar and others), 1999 PLC (C.S) 793 (Muhammad Mumtaz v. Umra Bevi). Learned Amicus has also referred to some Judgments which are contrary in view and are reported as 2005 SCMR 512 (Mst. Ameeran Khatoon v. Mst. Shamim Akhtar), 1999 YLR 759 (Fatima Bi v. Mehnaar Gul), 2006 YLR 3236 (Zahoor Mehdi Faisal v. Additional District Judge) and PLD 1994 Peshawar 1 (Rukia v. Ghulam Shah).

8. The above quoted judgments have laid down that insofar as the amount of General Provident Fund is concerned, it is to be treated as "Tarka", because the same could have been claimed by deceased employee from the employer at the stage of retirement or even before that. Therefore, this amount is to be distributed amongst the legal heirs and not to be given to the nominee of the deceased.

9. The legal position of the case is that any service benefit which an employee can claim from his employer in his lifetime and the same becomes payable to him in his lifetime but, for any reason remained unpaid then, to such extent only it would become part of his estate and is heritable by all his heirs according to their respective shares. However, a service benefit, which has not fallen due to the deceased employee in his lifetime and is of a nature definable as a grant or concession on the part of the employer, then whatever amount that becomes payable after the death of 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 an employer intends to give to an employee or after employee's death to any member of his family. Thus, benefits such as gratuity, group insurance and family pension being grants and concessions on the part of the employer if payable to the employee after his death cannot be treated as heritable by all heirs of the employee but, are to be distributed to those who are entitled to it under the rules and regulations of employment or under any law for the time being in force.

10. In present case group insurance, family pension and gratuity payable after the death of an employee being a 'grant' or 'concession' on the part of employee cannot be treated as part of inheritance and are to be received by the person entitled to it under the service rules and regulations of the employer.

11. The upshot of the above discussion, to reiterate, is that whatever benefits an employee can claim from its employer during his life time are

to be treated as part of "Tarka" and being inheritable, are to be distributed amongst the legal heirs only according to shariah. And at the same time, the benefits which an employee is not entitled to claim from the employer during his lifetime and are to be matured on his/her death, are not part of the "Tarka" and can be handed over to a nominee, if there is any. I am of the view that Group Term/Life Insurance, Insurance against General Provident Fund (G.P.F), arrears of family pension, and arrears of Benevolent Grant, are not part of the "Tarka" as they could not have been claimed by the deceased in her lifetime, whereas, she could have claimed the amount of General Provident Fund, salary of some days and pension commutation, at least when she was to retire. Therefore, these categories of benefits available are part of "Tarka", hence, to be distributed amongst the legal heirs.

12. Perusal of record reflects that Succession Application No.50/2016 filed before learned VIth Additional District Judge, Hyderabad, was granted in favour of Respondent No.1 on the premise that he being legal heir of deceased Mst. Fazana Shaheen is entitled to pensionary benefits i.e. Rs.2,60,334/- as pension commutation, Rs.600,000/- as GLI, Rs.1,61,880/- 36 days posthumous, Rs.1,400,27/- as GP Fund, a sheet of 4/15 total amount of Rs.11,62,241/- lying in the bank of HESCO.

13. The issue involved in this petition is as to whether the respondent No.1 is real brother of the deceased Mst. Farzana Shaheen and is entitled to the service benefits of deceased in accordance with Pakistan WAPDA Pension Rules, 1977?

14. Prima-facie, it appears that City Mukhtiarkar, Hyderabad, has mentioned in the Heirship Certificate that Respondent No.1 namely Tanveer is the stepson/son of late Abdullah, father of deceased Mst. Farzana Shaheen. On the other hand, the said fact is disputed by the appellant-Company on the ground that firstly, the memo of Succession Petition is silent on the question of relation between Respondent No. 1 and Late Mst. Farzana Shaheen. Secondly, Respondent No. 1 has managed fake documents to show himself as legal heir of late Mst. Farzana Shaheen to fraudulently receive her pension benefits. In such circumstances, I conclude that the very basic fact of the case is disputed which can be ascertained only by recording of evidence by a civil court having jurisdiction.

15. In view of the above, this appeal stands disposed of with direction to Respondent No.1 to approach the competent Civil Court having jurisdiction by filing a civil suit if he intends so. And, in case the Respondent No.1

succeeds in Civil Suit, he may institute appropriate proceedings for disbursement of the service/ pension benefits of deceased Mst. Shaheen which shall be decided in accordance with law. And in case if the Respondent No. 1 fails to prove his case before civil court, the appellant-company shall take decision for management of service benefits of deceased Mst. Shaheen in accordance with law.

16. This appeal stands disposed of in the above terms.

JUDGE

Karar_hussain/PS*