

IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR.

Civil Misc. Appeal No. S- 06 of 2022.

Muhammad Hassan Kalhoro. ....Appellant.

**Versus**

Muhammad Yousif  
& others. ....Respondents.

Mr. Ameer Hussain Solangi, Advocate for appellant.  
Mr. Zubair Ahmed Khuhawar, Advocate for respondent No.9.  
Mr. Karim Bux Kubar, A.A.G.

Date of hearing: 11.09.2023.  
Date of Judgment: 01.12.2023.

**Judgment**

**Khadim Hussain Soomro, J-**. The instant Civil Misc appeal is filed by appellant Muhammad Hassan Kalhoro against the order dated 13.04.2022 passed by the learned Additional District Judge, Kandiaro, in Succession Application No.276 of 2021, re; Muhammad Hassan v. Muhammad Yousif and others, whereby his succession application for the grant of a Succession Certificate in respect of service benefits of his deceased brother Muhammad Ibrahim Kalhoro was dismissed.

2. Succinctly, relevant facts are that the appellant Muhammad Hassan filed Succession Application No. 276 of 2021 against respondents No.1 to 9 in the Court of learned District Judge, Naushahro Feroz, stating therein that deceased Muhammad Ibrahim son of Muhammad Umar Kalhoro resident of Dali, Taluka Bhirya, District Naushahro Feroz, was government servant in Education Department as “Workshop Instructor” and he expired issueless on 19.01.2021 due to COVID-19. It was further averred by the appellant that the deceased individual had four brothers, namely the appellant and respondents No.1 to 3. Likewise, there were four sisters, respondents No.4 to 7, as well as a mother, respondent No.8, and a widow, respondent No.9. It is worth noting that the father of the deceased employee had passed away earlier. The deceased left behind debts and securities, i.e. service benefits, which include

Group Insurance, G.P Fund, Gratuity, Pension, etc. The appellant, who claimed to be the deceased employee's biological brother, stated that he approached the relevant department to request the withdrawal of service benefits and pension. However, he was denied and advised to obtain a succession certificate from the Court of Law. Consequently, the appellant filed a succession application before the learned District Judge, Naushahro Feroz, which was transferred to the Court of Additional District Judge, Kandiaro, who registered the case, issued notices to the opponents and called reports from concerned quarters. Pursuant to notices, respondents No.1 to 8 (*the mother, sisters and brothers of the deceased employee*) filed their no objection affidavits to grant a succession certificate in favour of the appellant.

3. However, respondent No.9 (*Mst. Samina, the widow of the deceased*) objected to the grant of succession application in favour of the appellant by filing her objections stating therein that the appellant had filed a succession application with unclean hands in collusion with the rest of the respondents in order to usurp the lawful pensionary benefits of her late husband. It was further mentioned in objections that succession application is not maintainable and barred under rule 4.7 of the Pension Rules, 1963, as in the presence of widow, i.e. respondent No.9, the other relatives of the deceased viz. brothers, sisters and mother are not entitled to receive a pension. It was further mentioned that the applicant and respondent No.1 to 8 had already committed fraud and cheated respondent No.9 in collusion with each other by usurping a lawful amount of pensionary benefits, viz. LPR worth Rs.8,82,756/-, Gratuity benefits of Rs.26,92,061 and family pension of respondent No.9 in respect of her late husband after confining her forcibly and on a show of force of weapons snatched pension book, cheque books, ATM Card and CNIC. Respondent No.9 further mentioned in her objections that the applicant and respondents No.1 to 8 had also withdrawn certain amounts from the National Bank of Pakistan Bhirya Branch through cheques and ATM Card and that they had also usurped her gold ornaments and Corolla car, which were gifted to her by deceased husband. Respondent No.9 stated that the appellant and respondents No.1 to 8 submitted a fake application through respondent No.8 to the District Accounts Officer, Naushahro Feroz, resulting in the termination of her family pension. However, it was subsequently reinstated under her name. Lastly, respondent No.9 asserted that as a widow of the deceased

employee, she is eligible to collect all the pension benefits, including the family pension.

4. Learned counsel for the appellant mainly contended that the impugned order dated 13.05.2022 passed by Additional District Judge Kandiaro is against the law, facts, and equity. The appellant and respondents No.1 to 9 are the legal heirs of the deceased Muhammad Ibrahim, and they are entitled to inherit the pensionary benefits of the deceased in accordance with the distribution mechanism provided under Islamic Law; that appellant, as well as respondents 1 to 8, cannot be deprived of the right of inheritance; that the appellant as well as respondents No.1 to 9 are the legal heirs of the deceased and there is no dispute with regard to the heirship among them. Lastly, he has requested to set aside the impugned order.

5. Conversely, the learned counsel for respondent No.9 has contended that the appellant, as well as respondents No.1 to 8, are not entitled to receive the pensionary benefits as mentioned in para No.2 of the prayer clause; that the insurance, gratuity and G.P Fund comes within the definition of NON-TARKA and these are not determinable or governed by inheritance laws based on Islamic principles; rather, they are adjudicated in accordance with the rules and regulations established by the relevant department.

6. I have heard the arguments of the learned counsels for respective parties and have gone through the material available on the record.

7. The record indicates that the applicant submitted a petition under Section 372 of the Succession Act of 1925, seeking the issuance of a Succession Certificate relating to the posthumous entitlements of the deceased Muhammad Ibrahim, offspring of Muhammad Umar Kalhoro, resident of Dali, Taluka Bhirya, District Naushahro Feroz. The decedent held the position of "Workshop Instructor" within the Education Department as a government employee and succumbed to the effects of COVID-19 on 19.01.2021 without offspring. Nevertheless, the application above was dismissed by Additional District Judge Kandiaro on the ground that the issuance of a succession certificate involves the intricate question of law, which can only be decided after leading evidence.

8. The parties in the present appeal unanimously agreed to the status of being the legitimate heirs of the deceased Muhammad Ibrahim. However, the main issue under consideration relates to identifying the rightful recipient(s) of the amounts in question, including benefits related to the deceased's service. This matter does not entail a complicated legal inquiry as observed by the learned Additional District Judge, Kandiaro; rather, legal precedent has clearly established clarity on this specific aspect under dispute, and the parties cannot be deprived of their rights due to certain technicalities.

9. The assets and possessions owned by the deceased and any claims and entitlements he had during his lifetime can be dispersed to the lawful heirs under Islamic Law. The term 'TARKA' refers to the assets left by the deceased, which all the legal heirs can inherit according to their prescribed share provided in Islamic Law. However, it does not include things that are a 'concession', 'grant', or 'compensation', particularly in circumstances where such entitlements become due after the demise of an employee. Another criterion for distinguishing between the allocations of 'TARKA' designated for legal heirs and other outstanding dues is whether the deceased, during their lifetime, could have asserted a claim for the same. Was the deceased qualified for such entitlements at the time of his demise? If affirmatively answered, these matters would be considered part of the 'TARKA' and eligible for distribution among the legal heirs. Conversely, if the response is negative, disbursement would adhere to the stipulated terms for allocating such 'concession,' 'grant,' or 'compensation' would come under the definition of NON-TARKA, and the claim or question regarding the entitlement of the legal heirs would be irrelevant for such a sum. It is important to note that one should always consider another distinction between 'TARKA' and those that fall under the terms of 'concession', 'grant, or 'compensation'. The former refers to the belongings that belonged solely to the deceased and are subject to the deceased's inheritance laws. The latter, on the other hand, does not belong to the deceased but was acquired by someone else (such as an employer) after the person's death. Therefore, if the giver wishes to give this latter item to only one out of a hundred legal heirs of the deceased, the other heirs would not have legal grounds to object. This is because such a "concession," "grant," or "compensation" should be handled according to the giver's wishes. Therefore, the provider (employer, etc.) has the authority to determine who is eligible to

receive the amount provided by them (employer, etc.). There are a plethora of case laws on the aforementioned point, and few of them are relied on and referred to as under:-

Federal Government of Pakistan v. Public at large and others PLD 1991 SC 731; Erum v. Mst. Aameena and 5 others PLD 2015 Sindh 360; Zaheer Abbas v. Pir Asif and 6 others 2011 PLC (C.S.) 1288; Shabaz Wali Khan and others v. Government of Pakistan, Establishment Division Regional Board Federal Employees 2019 PLC (C.S.) 1467; Mst. Riffat Yasmeen v. Hassan Din and another 2014 CLC 126; Muhammad Javed and another v. Mst. Roshan Jahan and 2 others PLD 2019 Sindh 1 and Dr. Nasar Ullah v. Abdul Majeed Soomro and others 2009 PLC (C.S.) 263 rel.

10. The G.P. Fund, leave salary, leave encashment, and gratuity, which are considered inheritable, will be given to the legal heirs of the deceased. On the other hand, group insurance, financial assistance, and benevolent funds are not considered inheritable but rather as grants and the grantee is empowered to distribute the same as per the Rules and Regulations of Service or any provision of law. In this regard, reliance can be placed on Mst. Riffat Yasmeen v. Hassan Din and another 2014 CLC 126. Further reliance can be placed on the famous case of Government of Pakistan v. Public-at-large, reported as PLD 1991 SC 731.

11. The Pension, Gratuity, Group Insurance and financial assistance/aid were declared "not inheritable." The appellant respondents being, brothers, sisters and mother are totally excluded from receiving the pension due to the survival of the wife of the deceased; the respondents do not fall into any category of persons as prescribed by West Pakistan Civil Servants Pension Rules, 1963 for receiving a pension of deceased. ), The reliance can be placed on the case of Dr Nasar Ullah v. Abdul Majeed Soomro and others (2009 PLC (C.S.) 263).

12 During the pendency of the appeal, comments have been filed by the M Amjad Mughal District Account Officer Naushahro Feroz on 23-08-2023, wherein it transpires that the encashment of LPR amounting to rupees 882,752, Gratuity 2,692,060 have been disbursed, whereas GPF amounting to

rupees 583,683, Benevolent Fund, Group Insurance have not been given to the legal heirs and still outstanding.

13. As far as the contention raised by learned counsel for respondent No.9 that the appellant and respondents No.1 to 8 have usurped certain valuable properties, regarding which civil suit being F.C Suit No.130/2021, has already been filed by respondent No.9 against the appellant as well as respondents No.1 to 8, which is pending adjudication in the court of Senior Civil Judge, Kandiaro, let the Civil Court decide in accordance with the law.

14. In the light of the above facts, circumstances, and the case laws discussed supra, the impugned order is set aside, and this Succession Petition is granted only to the extent of General Provident Fund, amounting to rupees 583,683. The Accountant of District Court Naushahro Feroz is directed to distribute this amount to all the legal heirs of the deceased in question as per their share according to Sharia, whereas the rest of the pensionary benefits such as Benevolent Fund, Group Insurance as well as monthly pension and other grants and concessions shall be entitled by the respondent no 09 only. The Accountant of District Court Naushahro Feroz is further directed to collect the rest of the pensionary benefits such as Benevolent Fund, Group Insurance and other grants and concessions and hand over the same to respondent no 09. This exercise shall be completed within two months after receipt of this order with the compliance report to the Additional Registrar of this court.

15. With above observations the instant appeal is disposed of.

JUDGE