

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI
SMA No.173 of 2009

DATE ORDER WITH SIGNATURE OF JUDGE

Petitioner: Muhammad Javed Through S. Abrar Ahmed
Bukhari, Advocate

Objectors: Roshan Jahan and others
Through Mr. Abu Bakar Khali alongwith
Ms. Nancy Dean, Advocates.

Mr. Faisal Siddiqui, Learned Amicus
Curiae on Court notice.

For hearing of Main Petition and CMA No.938/2010 (U/S 151 CPC)

Date of Hearing: 29.03.2018 & 13.04.2018.

Date of Order: 10.05.2018

ORDER

Muhammad Junaid Ghaffar J. This Succession Petition has been filed in respect of the estate of deceased Shaheeen Jahan, who expired in Karachi on 11.03.2009. The deceased was working in United Bank Limited (“**UBL**”) Karachi, whereas, she died issueless leaving behind the following legal heirs:-

- | | | |
|------|--------------------|----------|
| i. | Muhammad Javed | Husband. |
| ii. | Mst. Roshan Jahan | Sister. |
| iii. | Mst. Nasreen Jahan | Sister. |
| iv. | Mst. Farah Naz | Sister. |

2. It appears that during pendency of this petition, one legal heir Mst. Nasreen Jahan has also expired. This petition was filed specifically in respect of the amount and movable assets left behind by the deceased, whereas, admittedly she died without leaving any immovable property. The claim of the Petitioner on the basis of Schedule annexed with the Succession Petition was in respect of one bank account and the service

benefits available with the Bank. Subsequently, he moved an application in respect of a Locker, but on inspection, the same was found empty. Thereafter, the other legal heirs came before the Court and they filed their objections to the effect that the Petitioner was not entitled for any share from the estate of the deceased on the ground that deceased had nominated her adopted daughter (**Amina Khan**) as her nominee with UBL to receive all service benefits.

3. Learned Counsel for the Petitioner has contended that as to the legal heirs, there appears to be no dispute that the deceased was issueless and she left behind her husband and three sisters out of which one sister Nasreen Jahan has also expired during pendency of these proceedings, and she was also issueless, therefore, her share would devolve upon two sisters, who are before the Court. According to the learned Counsel UBL vide its letter dated 27.4.2009 had given the details of service benefits available with them under various heads after notice amount of Rs. 4,071,009.32 has been deposited with the Nazir of this Court, which pertains to Group Term Assurance, Insurance, Provident Fund etc. and such amount is to be distributed amongst the legal heirs as above and to that the Petitioner has no objection. He has further contended that insofar as nomination in the record of UBL is concerned; firstly she was a minor at the relevant time and could not have been nominated, and secondly, she is not a legal heir of the deceased but an adopted child, which is not disputed, therefore, per learned Counsel such nomination is meaningless, whereas, it is only the legal heirs, who are entitled for distribution of the estate of deceased. Learned Counsel has specifically referred to Pages 733 and 740 of the case reported as **PLD 1991 SC 731** (*Federal Government of Pakistan v. Public at Large*). He has also relied upon the cases reported as **2005 SCMR 512** (*Mst. Ameeran Khatoon v. Mst. Shamim Akhtar and others*), **PLD 1974 SC 185** (*Mst.*

Amtul Habib and others v. Mst. Musarrat Parveen and others and **PLD 2015 Sindh 360** (*Erum v. Mst. Ameena and 5 others*).

4. On the other hand, learned Counsel for the objectors has adopted the written submissions of the learned Amicus and further contended that all the benefits available with Bank do not form part of "**Tarka**" and as per Rules they are to be given to the Nominee and not to be distributed amongst the legal heirs. Insofar as the submissions of learned Amicus is concerned due to his busy schedule he could not personally argue the case before this Bench; but has given his written synopsis, which would be considered later in this opinion.

5. I have heard both the learned Counsel and perused the record. The facts have been discussed briefly hereinabove, which reflects that though initially this petition was filed in respect of one bank account and other benefits lying with the employer (UBL) and so also in respect of one Locker, but perusal of the record reflects that the dispute presently is only in respect of the benefits available with the Bank, as per their Letter dated 27.04.2009 and it would be appropriate to reproduce the said letter:-

"Mr. Abrar Bukhari,
Advocate High Court,
Masood (Shaikh) Chamber,
Room No.31, 3rd Floor,
Near Light House Centre,
M.A. Jinnah Road,
Karachi.

Dear Sir,

RE PAYMENT OF DUES ON A/C OF LATE
SHAHEEN JAHAN EX-OG-I, EMP.NO.368757 OF
UBL TAIMURIA BRACNH KARACHI.

Reference your letter No:AB/342/9 dated 04.04.2009 on the subject.

In this respect we advise that at the death of above named employees, the following dues are payable to her Nominee/Legal heirs after recovery of Liabilities:

DUES PAYABLE:

Group Term Assurance	Rs.1,200,000.00 (subject to settlement of Insurance company)
Insurance against GPF Balance	Rs.500,000.00
Refund of GPF Balance with interest	Rs.1,878,426.12
Salary for 11 days-March 2009	Rs.19,996.94
25% Gross Pension Commutation	Rs.368,524.23
Total:-	Rs.3,966,947/29

LIABILITIES RECOVERABLE:

General Purpose Finance	Rs.155,418.22
Credit Card	Rs.90,000.00
GLI Premium	Rs. 456.00
	Rs.245,874/22
NET PAYABLE:	----- Rs.3,721,073/07

Her Housing Finance of Rs.324,361/- & Transport Fiancé of Rs.338,298/= respectively are adjustable from its Insurance Claim separately.

Apart from above Monthly Benevolent Grant @ Rs.1,620/- p.m is payable to heirs of deceased for 15 years (Maximum). It will be paid on monthly basis through the account of the beneficiaries with any branch of UBL, where from she/they desire/s.

The minor children are also entitled for monthly Family Pension @ Rs.3,244/= pm from date of death all attaining majority.

It is observed that the deceased had nominated Baby Amina Khan daughter for receipt of all dues after her.

One of the deceased's sister Mrs. Farah Naz, being the real mother of nominee adopted daughter of deceased, Baby Amina Khan called on us and provided photocopy of Adoption Deed alongwith the Court Order and had requested for settlement of all dues of deceased on the basis of Nomination is enclosed herewith for your perusal & record.

Since the nominee adopted daughter is minor and there seems to be some dispute between the legal heirs of deceased, we therefore, request to provide us letter of Administration/Succession Certificate from Competent Court of Law for release of aforesaid dues at the earliest.

A copy of this letter is also being endorsed to the real mother (Mrs Farah Nazi) of nominee adopted daughter and to other sisters of deceased in response of their requests.

Yours faithfully,

KHAWAJ REHAN UDDIN
AVP/MANAGER

GHULAM JILANI
HEAD-ESD"

6. Perusal of the aforesaid Letter reflects that the amount which was available with the Employer is in respect of Group Term Assurance, Insurance against refund of General Provident Fund (G.P.F), Refund of GPF balance with interest, balance salary for 11 days and Pension Commutation. There were some liabilities as well which appears to have been discharged and balance amount of Rs. 3,721,073/07 was left and pursuant to orders of this Court an amount of Rs: 4,071,009.32 has been deposited with the Nazir of this Court. This discrepancy in the amount so stated in the letter of UBL and deposited with the Nazir was not reconcilable despite best efforts of the Court, as unfortunately, no assistance was provided by both the Counsel for the parties, as none had even pointed out this. On this assistance from the office of Nazir was sought which revealed that subsequently, another letter was written by UBL on 31.5.2010, which gave further details of amounts due, which in addition to above, also included arrears of family pension from 12.3.2009 to 30.04.2010 amounting to Rs: 44,265/-, arrears of Benevolent Fund w.e.f. 13.3.2009 to 30.4.2010 Rs: 22,105/- General Provident Fund Rs: 2,071,992.31 (increased from the amount of Rs.1,878,426.12 as stated above), Group Life Insurance after adjustment as mentioned in the letter dated 27.4.2009 Rs: 1,044,582.78, whereas, the amount of pension commutation and 11 days salary remained unaltered. Thus a total of Rs: 4,071,009.32 as principal is available with the Nazir and profit, if any.

Learned Amicus had though earlier assisted various other Benches of this the Court in person; but unfortunately for reasons beyond control, the order could not be finally passed. However, I have had the privilege of going through the written synopsis of the learned Amicus duly supported by case law on the subject. Before proceeding further first I would like to address the objection raised on behalf of the learned Counsel for the Petitioner in respect of Nomination of a person with the employer. It is

the case of the Petitioner that deceased could not have nominated a minor namely Baby Amina Khan, firstly for the reason that in terms of Federal Employees Benevolent Fund and Group Insurance Act, 1969, it is only a family member or legal heir, which can be nominated before the employer for claiming the employees benefits, whereas, such nominee cannot be a minor; and secondly, it is not that such Nominee would be entitled for the entire benefits; rather the nominee has to collect and distribute the same amongst the legal heirs.

7. Insofar as the role of the Nominee is concerned, the contention of the learned Counsel is partly correct to the effect that in case of benefits which form part of the **“Tarka”**, it is the responsibility of the Nominee to collect such amount and distribute the same amongst the legal heirs, whereas, if the amount or asset which is not part of **“Tarka”** must ordinarily go to the nominee as otherwise, it would defeat the purpose / intention of any such nomination. Therefore, his stance is only correct partly, with the exception as made hereinabove.

8. As to the objections regarding nomination only of a family member is concerned, learned Counsel for the petitioner has relied upon the Judgment of the Shariat Appellate Court in the case of **Federal Government of Pakistan v. Public at Large** (Supra) and has contended that according to the Shariat Appellate Court, the Nominee can only be a legal heir. However, this contention appears to be misconceived inasmuch as the Shariat Appellate Court has not said so specifically. Moreover, the Shariat Appellate Court while passing the said judgment was considering the Federal Employees Benevolent Fund and Group Insurance Act, 1969, whereas, in this matter, the Employer is UBL, who has its own Service Regulations for retirement benefits. In fact this issue also came up earlier before this Court and pursuant to directions dated

22.9.2011; such regulations have been placed on record. It would also be advantageous to refer to the said order which reads as under;

22.9.2011

“On the last date of hearing I had appointed Mr. Faisal Siddiqui, senior counsel, who was sitting in the Court in some other case as Amicus Curiae to give his opinion on the question as to whether the minor who was the daughter of sister of the deceased and had been appointed by her as her nominee in respect of group insurance dues and dues of insurance against general provident fund will be entitled to entire dues under these accounts or will the same be passed on the legal heirs to be divided in accordance with their share as per Sharia.

Mr. Faisal Siddiqui in two days has researched into the subject and has provided his opinion to the Court. His contention has been that it is a settled law as is apparent from the judgment of the Honourable Supreme court and the recent judgment passed by this Court that the amount of group insurance does not pass on to the legal heirs as a part of inheritable asset after the death of the deceased but is the entitlement of the nominee. He, however, referred to the 1969 Federal Ordinance wherein it has been provided that the nominee for collection of any amount on behalf of the deceased has to be a legal heir and if the nominee is not the legal heir, according to the Amicus Curiae a complete procedure has been provided as to how such amount will be distributed amongst the legal heirs. He submitted that the only contrary view has been taken in two judgments by a learned single Judge of this Court in a judgment reported as 1999 YLR 759 and one by the learned Peshawar High Court reported as PLD 1994 Peshawar Page-1. The learned Amicus Curiae then went on to refer to a judgment of this Court reported as PLD 1994 Karachi 237 whereby Justice Nasir Aslam Zahid, judge of this Court as he then was, had held that even the insurance against the provident fund is not an inheritable asset which can be passed on the to the estate of the deceased to be divided amongst the legal heirs after his death and he, therefore, was of the opinion that this amount is also the entitlement of the nominee and does not pass on to the legal heirs after the death of the deceased.

When confronted with the opinion of the learned Amicus Curiae Mr. Abrar Bukhari, learned Counsel for the Petitioner relied on the definition of ‘family’ given in the judgment of the Shariat Bench of the Honourable Supreme Court, titled FEDERAL GOVERNMENT versus PUBLIC AT LARGE, reported in PLD 1991 SC 731 wherein he pointed out that there is no concept of an adopted daughter being a part of the family. He then went on to state that this Bank, which was governed under the Government and has recently been privatized is still following the Rules of the Government and unless the Pension Rules of such Bank is seen it will be unfair for this Court to give any decision.

The learned Counsel for the nominee referred to Page 749 and 750 of the above referred judgment of the Honourable Supreme Court, whereby according to them the Honourable Supreme Court had held that any amount which is not entitlement of the employee during his lifetime, such amount is a beneficial gift and cannot be called the inheritable asset of the employee.

In order to pass a fair judgment, I am issuing directions to the employer, United Bank Limited Bank, to provide a copy of their Pension Rules, which specify as to the appointment of a Nominee for the purpose of group insurance and insurance against the general provident fund. Since this Bench has a very short time left, therefore, a copy of this order may be handed over to the learned Counsel for the Nominee, who will inform the Bank that this order has been issued to them and they should comply with it and provide them a copy of this order so that the Pension Rules can be provided to this Court by tomorrow morning. If such Pension Rules have been handed over to the learned Counsel for the Nominee then the same may be presented before this Court by tomorrow

morning at 08.30 A.M. so that a just and fair order can be passed in this matter. For this purpose adjourned to 23.09.2011.

The Court would like to pass its gratitude and appreciation to Mr. Faisal Siddiqui, learned Amicus Curiae, who on a very short notice researched into the subject and provided a comprehensive opinion to this Court."

In the given circumstances, therefore, it is only the Regulations of UBL which would govern this issue of Nomination. The relevant part of the Retirement and End Servicing Benefits (Chapter-8) pertains to the issue of nomination for beneficiary and reads as under:-

"Nomination for Beneficiary

On commencement of employment an employee will be required to nominate a beneficiary (**one of his/her dependents**) to receive the **provident fund, gratuity and other terminal benefits** in the event of his/her death. **Nomination of a minor is to be avoided.** Nomination of the beneficiary will be obtained by HR on the prescribed form. The employee may change such nomination at any time after giving notice to the Bank."

9. This provision provides that on commencement of employment an employee may nominate a beneficiary **which could** be one of his or her dependent to receive the Provident Fund and Gratuity and other terminal benefits in the event of his/her death. It further provides that nomination of a minor is to be avoided. Whereas, the Nomination has to be placed on record and the employee is at liberty to even change such nomination. Perusal of these regulations reflect that it is in fact, in pith and substance distinguishable from the provisions of Federal Employees Benevolent Fund and Group Insurance Act, 1969, which provides the definition of family as under:-

"(a) In the case of a male employee, the wife or wives and in the case of a female employee, the husband of the employee; and

(b) The legitimate children, parents, minor brothers, unmarried, divorced or widowed sisters of the employees residing with and wholly dependent upon him."

10. The Regulations of UBL provides that a Nominee may be a dependent and not necessarily a family member or legal heir. It has come

on record that the nominee in this case namely Baby Amina Khan was an adopted child pursuant to grant of declaration to that effect by the Guardian & Ward Court vide Order dated 26.03.2007. In fact she is daughter of one of the legal heirs namely; Farah Naz who after separation with her husband had given her custody to the deceased who was also issueless. Such custody was an outcome of an order passed by the Guardian & Wards Court (IInd Civil / Family Judge), Karachi Central in Application No.1089/2006. Therefore, to that effect there appears to be no dispute, that though the nominee was not a legal heir, but was a dependent. Insofar as the Nomination of a minor is concerned, there appears to be no restriction or prohibition of such Nomination and it is only that it should be avoided. In the instant matter, a minor was nominated and such Nomination was accepted, therefore, it cannot be said that the Rules did not permit Nomination of a minor and mere avoidance cannot be equated with restriction or prohibition. This is also the view of the learned Amicus. The same is not barred and or prohibited; therefore, this objection is also not sustainable.

11. Insofar as, the question that the whether the amount available with the Bank was part of the **“Tarka”** or not is concerned learned Amicus has relied upon 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. Mehnar Gul*), **2006 YLR 3236** (*Zahoor*

Mehdi Faisal v. Additional District Judge) & PLD 1994 Peshawar 1 (Rukia v. Ghulam Shah).

12. The learned Counsel for the petitioner has not assisted the Court on the question that as to whether all financial benefits in this matter would fall within the definition of **“Tarka”** or not, and has mainly contended and made his submissions in respect of ineligibility of a minor from being nominated; hence, the entire amount is to be distributed amongst the legal heirs. However, the matter is not that simple, rather its two fold. One, that what benefits will form part of **“Tarka”** and the other, about nomination of a minor and it being permissible or not. In the case reported as ***Federal Government of Pakistan v. Public at Large*** the Shariat Appellate Court while discussing the entitlement of Benevolent Fund has held that if the employee reaches his age of superannuation and thereafter dies, nothing could have become payable from the benevolent fund and therefore such a benefit, which does not translate into a debt of the deceased employee against the employer, cannot form part of the estate of the deceased and so as to become distributable amongst all his heirs. In the instant matter, UBL has not deposited any amount under the head of Benevolent Fund; hence, to this extent no further adjudication is required from the Court.

13. Insofar as the reliance by the learned Counsel for the Petitioner on the case reported as ***Mst. Ameeran Khatoon (supra)*** is concerned, it may be observed that the learned two Member Bench of the Hon’ble Supreme Court while recognizing the principle laid down by the Five Member Bench of the Shairat Appellate Court in the case of ***Federal Government of Pakistan v. Public at Large (supra)***, had perhaps drawn a wrong inference of the said Judgment and mistakenly interpreted it conversely, which appears to be some typographical error as service benefits granted towards the Benevolent Fund or Group Insurance were not treated as

heritable benefits in the case reported as ***Federal Government of Pakistan v. Public at Large (supra)***. This point was also noted by a learned Single Judge of this Court in the case of ***Late Javed Iqbal Ghaznavi*** reported as **PLD 2010 Karachi 153**, therefore, the principle settled is that if an employee during his life time is entitled to withdraw or get the financial benefits from an employer, then all such benefits could be termed as **“Tarka”**, whereas, financial benefits offered by the employee, which only mature or are to be given after his death, then those financial benefits will not form part of **“Tarka”**. The learned Single of this Court in the case of ***Late Javed Iqbal Ghaznavi*** (supra) has been pleased to hold as under:-

“12. Thus any financial benefit which an employee can claim from his employer in his lifetime and have also become payable in his lifetime is to be treated as an absolute right of the employee and if any benefit or any part of it remain unpaid during his lifetime then the same becomes heritable and is to be distributed amongst all his heirs. **However, a service benefit, which has not fallen due to an employee in the lifetime of an employee and being a grant or concession on the part of the employer, then whatever amount that become payable after the death of the 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 is intended to give to an employee or after his death to any member of his family.**”

13. Thus benefits such as special retirement benefits, special, compensation group insurance under term insurance policy and group insurance under provident fund policy benefits definable as grant and concession on the part of employee and payable after the death of the employee 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 regulation of service provided by the employer. Let the service benefits be distributed in terms of this order.”

14. This Judgment as above was impugned before a learned Division Bench of this Court through High Court Appeal No.28/2010 and was upheld with certain modifications in respect of the special retirement benefits of the deceased, which according to the learned Division Bench formed part of the **“Tarka”** of the deceased as they pertain to his

retirement benefits. There was special mention of General Provident Fund Balance and Special Retirement Benefits and according to the learned Division Bench at Para 8 & 9 of the judgment, these were benefits which could have been claimed if deceased had retired or separated from service during his lifetime. The learned Bench has been pleased to hold as under;

8. From the above definition of Tarka given in the above judgment [*Federal Government of Pakistan v. Public at Large*] it is clear that only those benefits are heritable which the deceased could have claimed in his life time and those benefits which the deceased could not claim in his life time are not heritable and have to be passed on to the person who has been named as beneficiary/ nominee for the purpose of these benefits.

9. When we review the payments made in the light of the definition given in those judgments and in the light of the revised compensation package available on page 43 of this file we see that ***General Provident Fund Balance and Special Retirement benefits*** were part of the package of the deceased and could have been claimed even if he had retired or separate from the service during his lifetime as they are included in the revised package. Therefore, in accordance with the above judgment of the Honourable Supreme Court we are of the considered view that Special Retirement Benefits amounting to Rs.26,34,464/- fail within the definition of heritable assets and in our opinion the learned Single Judge was not correct by ordering that this Special Retirement Benefits will not be heritable by the heirs of deceased employee but are to be distributed amongst the heirs who are entitled to it. However so far as Special Compensation amounting to Rs.400,000/- and Group Insurance Death Claim amounting to Rs.1,900,000/- (total amounting to Rs.2300,00/-) are concerned we are of the view that the deceased was not entitled to these payments during his lifetime which were to be paid to his nominees/entitled persons only in case he dies during service and therefore the learned Single Judge has rightly held that these benefits are not heritable and will have to be distributed only amongst the persons who are entitled to it and the decision of the learned Single Judge on this point is unexceptionable and no interference is called by this Court."

From the above, and for the present issue in hand, it is to be noted that insofar as the amount of *General Provident Fund* is concerned, it is to be treated as **"Tarka"** as it could have been claimed by the 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.

15. In the case reported as ***Messrs Pakistan International Airlines Corporation (Supra)***, a learned Single Judge of this Court has been pleased to hold that amount of *Group Insurance* could not form an estate

and/or **Tarka** of the deceased, whereas, the payment of such amount was correctly made by the employer to the Nominee of the deceased; and other legal heirs had no right to challenge and compel the employer to pay such amount to them.

16. Another learned Single Judge of this Court in the case reported as **Naseem Akhtar alias Lali (supra)** had the occasion of deciding an issue in respect of various financial benefits, including Benevolent Fund, Group Insurance and General Provident Fund and so also the salary dues. The learned Single Judge came to the conclusion that insofar as Benevolent Fund and Group Insurance are concerned they are to be paid to the husband of the deceased, whereas, the General Provident Fund was the amount deposited by the employee, and he was entitled to receive that amount on retirement, therefore, this would fall within the purview of **“Tarka”** to be inherited by the legal heirs. As to the amount of salary outstanding in favour of the deceased, again that was to be treated as the estate of the deceased employee and was also to be distributed along with General Provident Fund to the legal heirs.

17. In another case reported as **Mst. Fauzia Noureen (supra)** a learned Single Judge of the Lahore High Court has been pleased to hold that the amount of Group Insurance is not to be treated as part of the estate of the deceased, and such amount is to be exclusively paid to the person, who is duly nominated by the deceased.

18. In the case reported as **In re: Mst. Shamim Akhtar and others (supra)**, a learned Single Judge of this Court has been pleased to hold that the amount payable as Group Insurance would not form part of the estate of the deceased, whereas, the Death Claim Insurance against Provident Fund was also not part of the estate of the deceased, and therefore, such amounts were **payable to the Nominees of the**

deceased, who alone would be entitled to it and no legal heir of deceased, other than the nominee would be entitled to such amount. The observations of the learned Judge which are relevant for the present purposes are as under;

There was no dispute as regards the first three items mentioned above, that is, Miscellaneous Heads, Pension, and Provident Fund Dues that these amounts formed part-of the estate of the deceased which devolves on all the legal heirs according to the Muslim Law of Inheritance. However, there was some difference of opinion as regards the other two items, namely, Death Claim Insurance against Provident Fund and Group Insurance. By order dated 28-3-1993, after hearing learned counsel for the parties, it was held that the amount payable as Group Insurance does not form part of the estate of the deceased and is to be paid according to rules and instructions of PIA in that behalf. It was also noted that as Mst. Kaniz Fatima, the first widow, was the nominee of the deceased, she was-entitled to receive the said amount payable as Group Insurance and she may apply to PIA for payment of the said amount and for such payment production of any Succession Certificate was not required to be produced by the nominee. It may be observed here that according to the copy of the Nomination Form dated 16-8-1977, signed by deceased Muhammad Tufail, the first nominee was shown as mother of the deceased who had died earlier; the second nominee was shown as Mst. Kaniz Fatima, first widow, and the third nominee was shown as Chiraghdin, father of the deceased, who had also died earlier.

The question of **Death Claim Insurance against Provident Fund** was left to be determined later. I have heard learned counsel on the question whether the said amount forms part of the estate of the deceased or not and I have come to the conclusion that the said amount, that is, the amount payable as Death Claim Insurance against Provident Fund, is not part of the estate of the deceased. Such amount is not payable to the deceased during his lifetime. If he had retired or left service, he would have been entitled to the Provident Fund including the contribution of the employer plus profits/interest in his Provident Fund Account. In case, an employee dies before he retires on reaching the age of superannuation or for any other reason, he cannot claim the amount payable as Death Claim Insurance against Provident Fund. The employee has, therefore, no control over such amount in so far as its disbursement is concerned during his lifetime. The amounts become payable only on the death of the employee and according to the rules and scheme of PIA., such amount is payable to the nominee of the deceased. I am, therefore, of the view that the amount payable as Death Claim Insurance against Provident Fund, is payable to the nominee who can claim the same from PIA, and for collection of such amount, production of a Succession Certificate by the nominee is not required.

19. A learned Single Judge of this Court in the case of ***Fatima Bi v. Mehnar Gul (supra)*** has though drawn a final conclusion which does not appear to be in line with the settled law that the amount which is outside

the definition of **Tarka** is also to be paid to the legal heirs and not to the nominee, but while saying so, the said learned Judge has been pleased to hold that the *Provident Fund* and *Pension dues* fall under the scope of **“Tarka”**, whereas, the *Death Claim Insurance* and *Group Insurance* are outside the scope of **“Tarka”** and are to be distributed accordingly.

20. The learned Single Judge who had authored the judgment in the case of **Late Javed Iqbal Ghaznavi** (supra), also had the occasion to deal with similar issue subsequently, and that case is reported as **Zaheer Abbas v Pir Asif (2011 CLC 1528)**, wherein, the dispute amongst the legal heirs was again in respect of service benefits of the deceased and its distribution. The service benefits in that case included payment of gratuity, family pension, leave encashment, group insurance and General Provident Fund. The learned Judge concluded by holding that insofar as group insurance, family pension and gratuity is concerned, the same was payable after death of the employee being grant or concession on the part of the employer and 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. The relevant observations are as under;

Whether an employee dies while in service or dies after retirement, in both the situations there can be an occasion where he may not have received certain service benefit from his employer that had already become due for payment in his lifetime. Such unpaid service benefits shall invariably become part of the estate of the deceased employee and are to be distributed among all his heirs according to the personal law of the deceased employee. It matters not whether any of those service benefits fall under any of the two categories of benefits defined by Shariat Appellate Bench of the Hon'ble Supreme Court in PLD 1991 SC 731. The reason being that any of the two categories of service benefit upon their becoming due for payment in the lifetime of an employee but remained unpaid to him becomes part of his inheritance and thus inheritable by all his heirs according to their respective share in the estate left by the deceased. However, the service benefits that have accrued i.e. become due for payment after the death of the deceased employee need to be first classified on the basis of interpretation given in the case reported in PLD 1991 SC 731. If a service benefit is definable under the category of a 'grant' or 'concession' on the part of the employer and have accrued

for payment after the death of the employee, then the same cannot be treated as part of the estate of the deceased employee. They can only be paid to such persons who are made beneficiaries of such grant or concession under the rules and regulations of service or under any law. Any heir of the deceased employee, not being beneficiary of such grant or concession cannot claim any share in such benefits merely because he is also an heir of the deceased employee.

The upshot of the above discussion is that any service benefit which an employee can claim from his employer in his lifetime and have also become payable to him in his lifetime but for any reason remained unpaid then to such extent only would become part of his estate and become heritable by all his heirs according to their respective shares. However, a service benefit, which has not fallen due to a 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 the employee under such benefit is to be distributed only to those members of his family who are entitled for the same as per rules and regulations of service or under any provision of law. 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. In the present case therefore group insurance, family pension and gratuity payable after the death of an employee being a 'grant' or 'concession' on the part of the employer 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.

21. 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. There were in all seven different heads under which the dues of the present deceased were payable and have been deposited with

the Nazir of this Court as stated by UBL in its letter as reproduced at Para 5 read with letter dated 31.5.2010 available with the Nazir of this Court. These are **Group Term / Life Insurance, Insurance against General Provident Fund (G.P.F), General Provident Fund, salary for 11 days, arrears of family pension, arrears of Benevolent Grant,** and **Pension Commutation**. Out of these as per the dicta already laid down and as discussed hereinabove, 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 11 days** and **pension commutation,** at least when she was to retire, therefore, these categories of benefits available are part of the **“Tarka”**, hence, to be distributed amongst the legal heirs.

22. Accordingly the objections are partly sustained and this Succession Petition is granted only to the extent of General Provident Fund (**Rs: 2,071,992.31**), salary of 11 days (**Rs: 19,996.00**), and pension commutation (**Rs: 368,524.23**). The Nazir of this Court is directed to distribute these three amounts to the legal heirs of the deceased in question along with proportionate profit earned till date as per their share according to Sharia, whereas, the amount in respect of Group Life Insurance (**Rs: 1,044,582.78**), Insurance against General Provident Fund (**Rs: 500,000.00**), arrears of family pension (**Rs: 44,265.00**) and arrears of Benevolent Grant (**Rs: 22,105.00**) again with proportionate profits shall be paid to the nominee namely Amina Khan. He is further directed to communicate to UBL in response to their letter dated 31.5.2010, that the amount of family pension and monthly Benevolent Grant lying and accrued with them after issuance of letter

dated 31.5.2010 shall be paid to the nominee Amina Khan, whereas, such dues, if accrued in future as well shall also be paid accordingly.

23. This Succession Petition stands partly allowed / disposed of along with pending application(s), if any, in the above terms.

Dated: 10.05.2018

Judge

Ayaz