

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

M.A. No.10 of 2018

Fatima ----- Appellant.

VERSUS

Umar Hayat & others ----- Respondents

Dates of Decision: 17.08.2020

Mr. Waqar Ahmed Bhurgari advocate for appellant.
Mr. Allah Bachayo Soomro Additional Advocate General.
Khawar Ali SDO HESCO Tando Allahyar present in person.

ORDER

Adnan-ul-Karim Memon, J. The case of the appellant is that her husband was working as L.M-I in Hyderabad Electric Supply Company (HESCO) at Tando Allahyar. He stood retired from service on 1.12.2014, and was drawing pension. After his death the appellant being widow of deceased approached the office of Sub Divisional Officer HESCO Tando Allahyar for grant of family pension, but the respondent-company refused her monthly pension on the ground that her deceased husband had second wife namely Mst. Asma (respondent No.6) and both were nominees of the pension, however the appellant was directed to obtain Succession Certificate; subsequently the appellant filed Succession Application before the District Court, Tando Allahyar which was dismissed vide order dated 26.2.2018 with observation that deceased Waris Khan during his life time nominated Mst. Asma (respondent No.6) for family pension after his death. Appellant being aggrieved by and dissatisfied with the aforesaid order has filed the present appeal. It is noted that this court issued various notices to be served upon the respondent No.6 through all modes except publication, but she failed to turn up.

Mr. Waqar Ahmed Bhurgari learned counsel for appellant submits that the Trial Court without considering the report of Mukhtiarkar as well as NADRA has dismissed the Succession Application; that except the appellant no any other lady had ever been wife of deceased Waris Khan; that while proceeding with the Succession Application learned Trial Court ordered publication in daily kawish but no any other claimant came forward, hence

the impugned Order is liable to be set-aside. We asked learned counsel as to whether the Family Pension of the Deceased was heritable property; he replied that family pension is/was not heritable property on the premise that it did not constitute tarka of the Deceased, and that its distribution would be governed under the statute/rules that provide for such pension. He added that this much had been settled by the learned Shariat Appellate Bench of the Honorable Supreme Court of Pakistan in the case of WafaqiHakoomat-e-Pakistan v. Awamunnas (PLD 1991 SC 731) wherein it was held that pension did not form part of tarka because on the death of pensioner his entitlement thereto ceases, and if then the relevant statute/rule provides for pension to the deceased pensioner's family, it is in the nature of a grant and payable only to the next-of-kin prescribed by the said statute/rules.

The aforesaid factual as well as legal aspect prima facie brings me to the conclusion that at this stage the status of appellant as widow of deceased Waris Khan is entitled for the Family pension; however I am cognizant of the fact that respondent No.6 claims to be widow of the Deceased. At this stage learned counsel for the appellant prayed for an order for release of entire portion of Family Pension to the appellant whose status as widow of the Deceased was free from doubt. However he submits that if at any stage respondent No.6 appears and proves her claim of family pension of deceased then the appellant undertakes to return her share as per law.

I have also noticed that as per orders of this court SDOHESCOTandoAllahyar has deposited the amount of family pension of deceased Waris Khan.

In view of the foregoing, I dispose of this appeal in the following terms:

- (a) subject to claim of respondent No.6 and her entitlement under the law the appellant is entitled to receive monthly Family Pension of Deceased Waris Khan as widow of Deceased.
- (b) that in the later stage the respondent No.6 succeeds in proving that she is second wife of deceased she would be entitled to recover from the appellant her share in the Family Pension received by her; therefore, learned Additional Registrar of this Court is directed to pay family pension amount to the appellant subject to her furnishing PR bond/ undertaking in the like amount.

JUDGE

