

IN THE HIGH COURT OF SINDH AT KARACHI

MA No. 39 of 2016

Liaquat Ali	-----	Appellant
	Versus	
Mst. Huma Faiz & another	-----	Respondent

Date of Hearing: 21.11.2017

Appellant: Through Mr. Muhammad Ramzan Advocate

Respondent No.1: Through Sajjad Hussain, Advocate

Respondent No.2: Through Ms. Naheed Parveen Deputy
Attorney General

J U D G M E N T

Muhammad Shafi Siddiqui, J: This miscellaneous appeal impugns an order passed in Succession Miscellaneous Application No.66/2016 dated 08.8.2016. The appellant being real brother of the deceased filed a succession application under section 372 of the Succession Act claiming right of inheritance in respect of :-

- i. Provided Fund
- ii. Gratuity
- iii. Group insurance
- iv. Salary dues (two days salary)
- v. Leave encashment
- vi. Benevolent Fund
- vii. Welfare Grant

The deceased was survived by the following legal heirs:

S.NO.	N A M E S	R E L A T I O N	A G E
1.	Mst. Huma Faiz	widow	46 years
2.	Mst. Ghulam Bibi	sister	70 years

3.	Ashiq Ali	brother	60 years
4.	Mst. Nairan Bibi	sister	59 years
5.	Liaquat Ali	Brother	43 years

The succession application was contested by the widow of the deceased i.e. Mst. Huma Faiz as she claimed to be the only beneficiary of the amounts mentioned above.

After hearing the Counsels appearing for the parties, the impugned order was passed by the District Judge whereby the succession certificate was granted in favour of Mst. Huma Faiz being widow and nominee of the deceased.

I have heard the learned Counsels and perused the material available on record.

The prime question that needs to be determined is whether the subject financial heads as referred above formed assets of the deceased at the time of his sad demise. In the case of Federal Government vs. Public at Large reported in PLD 1991 SC 731 the Shariat Appellate Bench gave detailed findings and reasoning as to those funds which were due during lifetime of the deceased and the funds which could not have been claimed during his lifetime. The District Judge while considering all these financial heads within the same definition discarded the claim of the appellant and granted succession certificate in favour of the widow of deceased. The Shariat Appellate Bench in the aforesaid judgment defined most of the heads as not assets of the deceased. Such funds include benevolent fund, group insurance, gratuity, pension payable to the family as it is payable after the sad demise to the family members. The family members are also defined under the law. Federal Employees' Benevolent Fund and Group Insurance Act, 1969 also provides 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.”

I have perused the contents of the succession application which included different heads as mentioned above and I found only salary dues and leave encashment as amounts which could have been claimed by the deceased during his lifetime. None of the heads which include provident funds, gratuity, group insurance, welfare grant, benevolent fund are such funds which could have been claimed by the deceased during his life time so as to bring it within the definition of assets left by the deceased.

The subject succession application was filed by one of the brothers of deceased. The District Judge, Malir was convinced that none of the funds referred above formed assets of the deceased and as such he declined to grant succession certificate in favour of brother of the deceased. In such a situation, how then a succession certificate for such funds was granted in favour of a widow of the deceased when she was otherwise entitled as being nominee. Succession Certificate could have been granted only in respect of assets left by the deceased either in favour of widow or any of the brothers of deceased as deem fit and proper and the purpose of granting succession certificate was the distribution of assets amongst the legal heirs, which is not the case here at least for these financial heads which does not form assets of deceased.

In the case of deceased late Javed Iqbal Ghaznavi reported in PLD 2010 Karachi 153 the Bench held as under:-

“9. *In the case* reported in 2005 SCMR 512 the Division Bench of the Honourable Supreme Court while recognizing the principle laid down by the five member bench of the Shariat Appellate Bench of the Supreme Court in the case of Federal Government of Pakistan v. Public-at-Large reported in PLD 1991 Supreme Court 731, mistakenly interpreted it conversely which appears to be typographical error as service benefits granted towards Benevolent Fund or Group Insurance were not treated as heritable benefits in terms of the principle laid down in PLD 1991 Supreme Court 731.

10.-----

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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 when 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 regulation 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.--- ”

I therefore, agree with the partial conclusion of the District Judge that the appellant was not entitled for succession certificate however, I do not find any reason or occasion for the grant of succession certificate in favour of widow of the deceased on the ground that these funds were never considered as assets of the deceased for which succession certificate could be granted and the grant of succession certificate in favour of widow means the assets are liable to be distributed amongst all the legal heirs which would be incorrect.

Widow being nominee is entitled for such funds i.e. provident fund, gratuity, group insurance, welfare funds and benevolent fund without having any recourse of obtaining any succession certificate. However as far as salary dues = Rs.3,791/- and E/leave encashment = Rs.2,41,259/- are concerned, the succession certificate be granted for its distribution to legal heirs. The amount of Rs.3,791/- and Rs.2,41,259/- be deposited with the Nazir of this Court who may distribute the same to the legal heirs as per their entitlement.

As far as rest of the amount is concerned i.e. provident fund, gratuity, group insurance, welfare funds and benevolent fund, the concerned authority

of Pakistan Steel may release such funds to the respondent No.1 as required under the law after due verification and satisfaction as a succession certificate for the release of the amount to the respondent is not required.

This Miscellaneous Appeal is disposed of in the above terms.

The R&P of the case be sent back to the trial Court.

Dated:

Judge