

Order Sheet
IN THE HIGH COURT OF SINDH, KARACHI

Misc. Appeal No.08 of 2017,
[M/s Civil Aviation Authority vs. Muhammad Tajamul Gulzar & others]

Date

Order with signature of Judge

Date of hearing & Order: 30.10.2025

Mr. Sanaullah Noor Ghouri, Advocate for the appellant.
Mr. Aaley Maqbool, AAG a/w Ahmed Khan Khaskheli

ARSHAD HUSSAIN KHAN, J. The appellant-Civil Aviation Authority [CAA], through the instant Miscellaneous Appeal, has assailed the order dated **19.01.2017**, whereby Succession Miscellaneous Application [S.M.A] No.44 of 2016, filed by respondent No.1, Muhammad Tajamul Gulzar, under Sections 278 and 372 of the Succession Act, 1925, was allowed by the learned Additional District & Sessions Judge-II, Karachi (Malir).

2. In the present case, despite service of notices, no one has entered appearance on behalf of the private respondents. Since the matter pertains to the year 2017 and has remained pending for a considerable period, this Court deems it appropriate to proceed with the hearing with the assistance of learned counsel for the appellant, on the basis of the material available on record and in light of the relevant law applicable to the case.

3. Concisely, the respondent No.1/(Muhammad Tajamul Gulzar), filed S.M.A. No.44 of 2016 seeking issuance of Succession Certificate and Letter of Administration in respect of movable and immovable properties, service benefits, and insurance claims left behind by his deceased brother, Muhammad Tabassum Gulzar (**the deceased**), an employee of the CAA, who died unmarried and issueless on 04.06.2008 at Karachi. The deceased had nominated and adopted his nephew, Noman Tajamul, as his son in official records. All surviving legal heirs, being siblings of the deceased, filed affidavits of no objection in favour of the petitioner. The CAA opposed the petition, disputing the entitlement of the adopted son to family pension and service benefits. Upon consideration, the learned

Additional District Judge-II, Malir, Karachi, vide order dated **19.01.2017**, allowed the S.M.A. to the extent of properties mentioned in prayer clauses 'A', 'B', and 'G', directing issuance of Letter of Administration and Succession Certificate accordingly, while dismissing the claim for remaining properties as not pressed. The appellant impugned the above said of order in the present proceedings.

4. Learned counsel for the appellant, during the course of arguments, while reiterating the grounds urged in the memorandum of appeal, contended that the impugned order dated **19.01.2017** is not sustainable in law, having been obtained by concealment of material facts. It is submitted that an earlier Succession Miscellaneous Application No.109 of 2014, filed by respondent No.1 in respect of the same estate, had already been dismissed vide order dated **18.09.2015**, which attained finality. However, without disclosure of the said fact and without calling for the previous record, a subsequent petition was entertained and allowed by the learned trial court. Learned counsel further argued that the said petition was barred by limitation under Article 43 of the Limitation Act, 1908, inasmuch as the deceased had passed away in the year 2008, whereas the first succession petition was filed only in 2014, well beyond the prescribed period. It is also contended that the learned trial court failed to appreciate that the respondent was not entitled to claim the service benefits of the deceased employee under the applicable Civil Aviation Authority Service Regulations. The impugned order, therefore, is alleged to be tainted with material irregularity and illegality, and calls for interference by this Court in exercise of its appellate jurisdiction.

5. Conversely, learned Additional Advocate General supported the impugned judgment and submitted that the learned trial court had rightly appreciated the material available on the record. He has stated that the succession proceedings were conducted strictly in accordance with law and that upon due consideration of the nomination form, adoption deed, and other relevant documents. He has further submitted that the impugned order discloses no illegality,

irregularity, or jurisdictional defect warranting interference by this Court.

6. I have heard learned counsel for the appellant as well Additional Advocate General Sindh and perused the record.

Precisely, the arguments advanced by learned counsel for the appellant are threefold: firstly, that the impugned order was obtained by **concealment of material facts** relating to an earlier Succession Miscellaneous Application filed by the respondent; secondly, that the subsequent S.M.A. was **barred by limitation**; and thirdly, that the respondent, **not being a family member within the meaning of the applicable CAA Service Regulations**, was not entitled to claim the service benefits of the deceased, who had died unmarried and issueless.

7. Insofar as the first objection regarding concealment of the earlier Succession Miscellaneous Application is concerned, the record reveals that the respondent had indeed filed S.M.A. No.109 of 2014, which, however, was **dismissed on 18.09.2015**. The relevant portion of the said order, for ease of reference, reads as follows:

“In view of the above facts and circumstances, I am of the humble opinion that as per basic statue relied by learned advocate for petitioner during his arguments make him entitled for relief claimed, but the affidavits of no objection filed by the legal heirs are not in support of the petitioner. From bare reading of S.M.A, it is appeared that it was filed by one of the legal heir viz. brother of deceased, whereas the affidavits are in the favour of mother of the deceased and not in the favour of petitioner specifically. Therefore, S.M.A could not be granted as prayed, however same could be filed in proper form and affidavits of no objection of legal heirs of deceased shall be in favour of petitioner and not in favour of other person.

Pursuant to the above discussion, the SMA stands dismissed ”

[emphasis supplied]

A careful perusal of the above order demonstrates that S.M.A. No.109 of 2014 was **not dismissed on merits** but merely on a **technical ground**, owing to certain irregularities in the affidavits of no objection filed by the legal heirs. The learned court had, in fact, observed that the petitioner could file a **fresh petition after rectifying** the said deficiency. Furthermore, the record of S.M.A. No.44 of 2016 clearly shows that the respondent had **expressly**

disclosed the fact of filing and dismissal of the earlier S.M.A. and had appended relevant details in the subsequent petition. Hence, there is no material concealment of fact. The plea that the impugned order was obtained through suppression or concealment of the earlier proceedings is, therefore, misconceived and without substance.

8. Insofar as the second objection regarding limitation in respect of the earlier and subsequent Succession Miscellaneous Applications is concerned, it is a well-settled principle of law that **no limitation applies in matters of inheritance**. The right of inheritance accrues immediately upon the death of the deceased, and such right remains continuous and enforceable until the estate is duly distributed among the legal heirs.

In the case of Zohra Bibi and another v. Haji Sultan Mahmood and others [2018 SCMR 762], the Supreme Court of Pakistan held as under:

“The cardinal principle of Mohammadan Law is that the inheritance of a person opens the moment he dies and all the legal heirs become owners to the extent of their respective shares there and then by the dint of settled law. Sanction of inheritance mutation, issuance of succession certificate, etc., are procedural matters regulated by procedural laws just to make the records in order and also for fiscal purposes.”

Moreover, the Supreme Court has consistently reiterated that the question of limitation does not arise in matters of inheritance, as the right to inherit is a perpetual and continuing right. Reference in this regard may also be made to the cases of *Ghulam Ali and others v. Mst. Ghulam Sarwar Naqvi* [PLD 1990 SC 1], *Muhammad Qasim Khan and others v. Mst. Mehbooba and others* [1991 SCMR 515], and *Muhammad Anwar and others v. Khuda Yar and others* [2008 SCMR 905]. Accordingly, the objection raised by the appellant on the ground of limitation is devoid of force; hence untenable in law.

9. Insofar as the objection raised by the appellant regarding the respondent's entitlement to the service benefits of the deceased is concerned, the record reflects that the respondent had filed the Succession Miscellaneous Application seeking, inter alia, the service dues of the deceased lying with the Civil Aviation Authority (CAA), including gratuity, pension, benevolent fund, provident fund, arrears

of pay and allowances, G.P. fund, and other related amounts. In this respect, the entitlement of the respondent to each category of service dues requires determination.

It is well-settled by now that all amounts, which represent the employee's own savings or accrued entitlements (such as **gratuity, arrears of pay and allowances, contributory and general provident funds**) form part of the *tarka* [estate]; whereas ex-gratia, compassionate, or statutory benefits (such as **pension, family pension, benevolent fund and group insurance**) are payable only to the dependents or nominees as per statutory rules and do not form part of the estate, since such benefits become payable only after the death of the employee. Consequently, these amounts cannot be treated as heritable by all legal heirs, but are to be released exclusively to those persons duly nominated or recognized under the applicable service regulations. Reliance may be placed upon the cases of *Wafaqi Hakumat Pakistan v. Awamunas* [PLD 1991 SC (Shariat Appellate Bench) 731], *Muhammad Javed and another v. Mst. Roshan Jahan and 2 other* [PLD 2019 Sindh 1], *Pakistan International Airlines Corporation v. Alia Siddiqua* [2001 MLD 1], *In the matter of : Late Javed Iqbal Ghaznavi* [PLD 2010 Kar. 153], *Naseem Akhtar alias Lali v. Khuda Bux Pechoho and others* [2006 CLC 1589] and *Mst. Nusrat Fareed v. Haji Ahmed Mujahid and 2 others* [PLD 2024 Sindh 89].

In view of the above discussion and settled principles of law, it is held that, for the purposes of a Succession Certificate (S.M.A.), only those amounts which constitute the vested and accrued entitlements of the deceased, such as gratuity, contributory provident fund, G.P. fund, and arrears of salary or allowances, form part of the *tarka* and may lawfully be included within the scope of a succession certificate. These benefits are in the nature of deferred earnings or savings of the deceased and, therefore, devolve upon all legal heirs under the law of inheritance. Conversely, pension, family pension, benevolent fund, group insurance and other compassionate or statutory grants are not part of the estate, as these benefits accrue only after the death of the employee and are payable strictly to the dependents or nominees under the relevant service regulations. The

disbursement of such benefits does not require the production of a succession certificate, as the entitlement flows from the statutory framework and not from inheritance rights.

Accordingly, in view of the principles discussed hereinabove, the aforementioned third objection is partly sustained. Pension, family pension, benevolent fund, group insurance and other post-death compassionate grants do not form part of the estate and are, therefore, excluded from the succession certificate. These amounts shall be disbursed directly to the nominee/dependent in accordance with the applicable CAA Service Regulations. In the circumstances, the impugned order is modified to this extent only. The appeal stands disposed of with the above modification, along with all pending applications.

JUDGE

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