

P L D 2023 Sindh 321

Before Nadeem Akhtar, J

Mst. NAZ BIBI through L.Rs. and others---Appellants

Versus

WAHID BUX through L.Rs. and others---Respondents

Second Appeal No. 85 of 2019, decided on 2nd August, 2021.

(a) Islamic law---

---Inheritance---Tarkah---Scope---Legal heirs of a deceased person can inherit only from the estate/tarkah of the deceased---Any property, right or benefit that does not form part of the estate/tarkah, is not inheritable.

(b) Islamic law---

---Inheritance---Tarkah---Scope---Only such property of the deceased person is inheritable and shall form part of his estate/tarkah that was in his ownership at the time of his death, or he had acquired an absolute right in law to claim it during his lifetime.

Wafaqi Hakumat Pakistan v. Awamunnas PLD 1991 SC (Shariat Appellate Bench) 731 rel.

(c) Islamic law---

---Inheritance---Tarkah---Nominee, entitlement of---Scope---Nominee is not entitled to exclusively claim or receive any property or benefit falling in the category of tarkah of the deceased; nomination does not confer any title in favour of the nominee; and, a nominee is merely a trustee and does not become the owner.

Mst. Ameeran Khatoun v. Mst. Shamim Akhtar and others 2005 SCMR 512 and Lt. Muhammad Sohail Anjum Khan and others v. Abdul Rasheed Khan and others 2003 MLD 1095 ref.

(d) Islamic law---

---Inheritance---Tarkah---Service benefits---Scope---Benevolent fund does not fall within the definition of such property of a deceased employee that could be deemed to have been owned by him at the time of his death nor could he claim the same during his lifetime as a matter of right; such grant or donation is payable to the employee after his retirement from service or to his legal heirs upon his death---Forced deduction of certain amount from the salary of the employee as contribution/donation for such fund shall not change the above position as after contributing/donating the fund, such amount does not remain the property of the employee; thus, benevolent fund cannot be treated as tarkah---Said principle shall also apply to group insurance---Family pension and death gratuity, payable by the employer to the family members of its deceased employee as per the applicable

service rules and regulations, are considered as grants/donations, and thus are not inheritable nor do they fall within the definition of tarkah.

Wafaqi Hakumut Pakistan v. Awamunnas PLD 1991 SC (Shariat Appellate Bench) 731 rel.

(e) Islamic law---

---Inheritance---Tarkah---Service benefits---Scope---Any service benefit that an employee is legally entitled to claim from his employer in his lifetime, or has become due and payable to him in his lifetime but has remained unpaid for any reason, shall be treated as his absolute right and thus shall form part of his tarkah and shall be inheritable, according to the personal law of the deceased employee, by all his legal heirs according to their respective shares---Whereas, a service benefit, that had not fallen due to the deceased employee in his lifetime, or is a kind of grant, donation, bounty, concession and/or compensation by the employer, the amount thereof payable after the death of the employee shall be distributed only to those members of his family who are entitled for the same as per the prevailing rules and regulations of service or under the relevant and applicable provision(s) of law---Discretion to make rules and regulations for payment of any grant, donation, bounty, concession or compensation to any particular member or class of members of the family of the deceased employee, vests solely with the employer, provided such rules and regulations must not be inconsistent with or contrary to Shariah or any law for the time being in force.

Wafaqi Hakumut Pakistan v. Awamunnas PLD 1991 SC (Shariat Appellate Bench) 731 rel.

(f) Islamic law---

---Inheritance---Tarkah---Service benefits---Scope---Service benefit falling under any of the categories of grant, donation, bounty, concession or compensation, payable after the death of the employee, shall not form part of his tarkah---Only such beneficiary(ies) or nominee(s) shall be entitled to receive the same who were made beneficiary(ies) or nominee(s) under the prevailing rules and regulations of service or under the relevant and applicable provision(s) of law; and, other legal

heir(s) of the deceased employee, not being beneficiary(ies) or nominee(s) of such service benefits, shall not be entitled to claim any share therein.

Wafaqi Hakumat Pakistan v. Awamunnas PLD 1991 SC (Shariat Appellate Bench) 731 rel.

Arif Ali Bhatti for Appellants.

Muhammad Asif Zai for Respondent No.1.

Muhammad Ilyas Dars for Respondent No.2.

Muhammad Humayoon Khan, D.A.G. for Respondents Nos. 3 and 4.

Dates of hearing: 18th January and 22nd February, 2021.

JUDGMENT

NADEEM AKHTAR, J.---Respondent No.1 Wahid Bux, who was the brother of one Abdul Ghani Khaskheli ('the deceased'), filed F.C. Suit No.355/2015 for declaration and mandatory injunction praying that the service benefits and National Saving Certificates left by the deceased be distributed according to Shariah and his share, as the brother of the deceased, be granted to him. The appellant/defendant No.1, who was the widow of the deceased, contested the above Suit which was dismissed by the learned trial Court vide judgment and decree dated 19.07.2019 and 23.07.2019, respectively. Through the impugned judgment and decree dated 08.11.2019 and 14.11.2019, respectively, passed in Civil Appeal No.42/2019 filed by respondent No.1, the judgment and decree of the learned trial Court were set aside by the learned appellate Court and the respondent No.1's above Suit was decreed to the extent of 50% share claimed by him in the service benefits and National Saving Certificates left by the deceased. This second appeal has been filed by the appellant/widow against the above findings of the learned appellate Court. As the appellant and respondent No.1 have passed away, they are now being represented by their respective legal heirs.

2. Relevant facts of the case are that at the time of his death, the deceased was serving as the Assistant Vice President and Manager with the respondent No.2-bank at its Mirpurkhas Branch. After his demise, his brother/respondent No.1 filed Succession Application No.13/2014 in respect of the service benefits and National Saving Certificates left by the deceased, wherein a direction was given to him to approach the Civil Court as there was a dispute with regard to his entitlement. Thereafter, the above Suit was filed by him against the appellant/widow of the deceased and the present respondents 2, 3 and 4 seeking a declaration that the deceased is survived by two legal heirs viz. respondent No.1/ brother and the appellant/widow, and as such both of them were entitled to inherit the service benefits and National Saving Certificates left by the deceased. The Suit was contested by the appellant/widow by denying the claim of respondent No.1 and asserting that she alone was entitled to inherit the service benefits and National Saving Certificates left by the deceased; respondent No.1 did not fall within the definition of "family" as per the service rules and regulations of the respondent No.2-bank; and, the service benefits of the deceased did not form part of the tarkah/ estate left by the deceased and as such could not be inherited by respondent No.1.

The parties led their respective evidence in the above Suit, whereafter it was dismissed by the learned trial Court.

3. In the appeal filed by respondent No.1 against the dismissal of his Suit, the learned appellate Court came to the conclusion that under the service rules of the respondent No.2-bank, the severance grant, gratuity and benevolent fund ought to have been treated as tarkah; and, regarding the National Saving Certificates, it was held that the appellant, being the nominee therein, was entitled only to receive and collect the amount thereof and not to inherit the same. In view of the above findings, it was held by the learned appellate Court that respondent No.1 was entitled to inherit 50% share in the severance grant, gratuity and benevolent fund as well as in the amount of National Saving Certificates. Regarding the other benefits viz. donation by the respondent No.2-bank and death compensation, it was held that the same could not be treated as tarkah of the deceased and as such were to be granted only to the appellant/widow. However, this part of the judgment and decree of the learned appellate Court was not challenged by respondent No.1.

4. By reiterating the grounds urged in this appeal, learned counsel for the appellant submitted that the impugned judgment and decree of the learned appellate Court, being contrary to the law laid down by the Shariat Appellate Bench of the Hon'ble Supreme Court in *Wafaqi Hakumat Pakistan v. Awamunnas* PLD 1991 SC (Shariat Appellate Bench) 731, and also being against the injunctions of Islam, are not sustainable in law. It was contended by him that in view of the above authority, the service benefits of the deceased could not be included in or treated as tarkah of the deceased. In support of his above contention, he also relied upon *Zaheer Abbas v. Pir Asif and 6 others* 2011 CLC 1528. Regarding the National Saving Certificates, he contended that the appellant alone was entitled to inherit the entire amount thereof

as she had been nominated therein to the extent of 100% by the

deceased himself in his lifetime, which fact was not disputed by respondent No.1.

5. On the other hand, it was argued by learned counsel for respondent No.1 that the appellant, being merely a nominee and only one of the legal heirs of the deceased, was not entitled to inherit the entire amount of the National Saving Certificate; and, she was entitled only to collect the said amount and was bound to give the respondent No.1's share to him. In support of this contention, he relied upon *Mst. Ameeran Khatoon v. Mst. Shamim Akhtar and others* 2005 SCMR 512 and *Lt. Muhammad Sohail Anjum Khan and others v. Abdul Rasheed Khan and others* 2003 MLD 1095. Regarding the service benefits of the deceased, it was contended by him that as the deceased was issueless, respondent No.1, being his real brother, was entitled to inherit therefrom according to his share. It was urged by him that the impugned judgment and decree of the learned appellate Court do not suffer from any illegality or infirmity and as such do not require any interference by this Court.

6. I have heard learned counsel for the parties at length and have also examined the material available on record and the law cited by them at the bar. The main questions involved in this case are whether the service benefits of the deceased were to be granted only to his widow/appellant, or were liable to be distributed amongst his legal heirs; and, whether the appellant/widow of the deceased, being

the nominee to the extent of 100%, was entitled to receive the entire amount of the National Saving Certificates or the said amount was also to be distributed amongst the legal heirs of the deceased. There is no dispute between the parties that both of them were the only surviving legal heirs of the deceased. It is well-settled that the legal heirs of a deceased person can inherit only from the estate/tarkah of the deceased, and any property, right or benefit that does not form part of the estate/tarkah, is not inheritable. Thus, it has to be seen whether or not the service benefits and National Saving Certificates left by the deceased could be treated as his estate/tarkah. In this context, the law has been authoritatively laid down by the Shariat Appellate Bench of the Hon'ble Supreme Court in Wafaqi Hakumut Pakistan (supra) by holding that only such property of a deceased person is inheritable and shall form part of his estate/tarkah that was in his ownership at the time of his death, or he had acquired an absolute right in law to claim it during his lifetime.

7. I shall first take up the claim of respondent No.1 in respect of the National Saving Certificates left by the deceased. The said certificates were admittedly owned by the deceased and were in his name at the time of his death, and as such he could claim the amount thereof at any time, even before their maturity, during his lifetime. In view of the above principle laid down by the Shariat Appellate Bench of the Hon'ble Supreme Court in Wafaqi Hakumut Pakistan (supra), the said certificates shall form part of his estate/tarkah and are thus inheritable. Despite the fact that it is not disputed that the appellant was nominated in respect of the said certificates to the extent of 100% by the deceased himself during his lifetime, such nomination shall not affect the right of inheritance of other legal heir(s), who is respondent No.1 in the present case. It is well-settled that a nominee is not entitled to exclusively claim or receive any property or benefit falling in the category of tarkah of the deceased; nomination does not confer any title in favour of the nominee; and, a nominee is merely a trustee and does not become the owner. The above view is supported by Mst. Ameeran Khatoon (supra) and Lt. Muhammad Sohail Anjum Khan (supra) relied upon by learned counsel for respondent No.1. In view of the above, respondent No.1 was entitled to inherit, according to his share, the amount of the National Saving Certificates left by the deceased as well as the profit accrued thereon, and thus the finding of the learned appellate Court is correct to this extent.

8. Regarding the service benefits of the deceased, it may be noted that the finding of the learned appellate Court that the donation by the respondent No.2-bank and the death compensation of the deceased were to be granted only to his widow (the appellant herein), was accepted by respondent No.1 as he did not challenge the same any further. Therefore, the claim of respondent No.1 remains only to the extent of the remaining service benefits of the deceased viz. severance grant, gratuity and benevolent fund, wherein he has been granted 50% share by the learned appellate Court, which has been impugned in the instant appeal by the widow/appellant.

9. For deciding the claim of respondent No.1 in respect of severance grant, gratuity and benevolent fund, it shall have to be first determined whether or not the above fall within the definition of tarkah of the deceased. In Wafaqi Hakumut Pakistan (supra) the Shariat Appellate Bench of the Hon'ble Supreme Court was pleased to hold, inter alia, that benevolent fund does not fall within the definition of such property of a deceased employee that could be deemed to have been owned by

him at the time of his death nor could he claim the same during his lifetime as a matter of right; such grant or donation is payable to the employee after his retirement from service or to his legal heirs upon his death; forced deduction of certain amount from the salary of the employee as contribution/donation for such fund shall not change the above position as after contributing/donating for the fund, such amount does not remain the property of the employee; thus, benevolent fund cannot be treated as tarkah; the above principle shall also apply to group insurance; and, family pension and death gratuity, payable by the employer to the family members of its deceased employee as per the applicable service rules and regulations, are considered as grants/ donations, and thus are not inheritable nor do they fall within the definition of tarkah.

10. Keeping in view the above principle laid down by the Shariat Appellate Bench of the Hon'ble Supreme Court, it can be safely concluded that any service benefit that an employee is legally entitled to claim from his employer in his lifetime, or has become due and payable to him in his lifetime but has remained unpaid for any reason, shall be treated as his absolute right and thus shall form part of his tarkah and shall be heritable, according to the personal law of the deceased employee, by all his legal heirs according to their respective shares; whereas, a service benefit, that had not fallen due to a deceased employee in his lifetime, or is a kind of grant, donation, bounty, concession and/or compensation by the employer, the amount thereof payable after the death of the employee shall be distributed only to those members of his family who are entitled for the same as per the prevailing rules and regulations of service or under the relevant and applicable provision(s) of law. The discretion to make rules and regulations for payment of any grant, donation, bounty, concession or compensation to any particular member or class of members of the family of the deceased employee, vests solely with the employer, provided such rules and regulations must not be inconsistent with or contrary to Shariah or any law for the time being in force. It is also clear in view of the law laid down by the Shariat Appellate Bench of the Hon'ble Supreme Court that a service benefit falling under any of the said categories of grant, donation, bounty, concession or compensation, payable after the death of the employee, shall not form part of his tarkah; only such beneficiary(ies) or nominee(s) shall be entitled to receive the same who were made beneficiary(ies) or nominee(s) under the prevailing rules and regulations of service or under the relevant and applicable provision(s) of law; and, other legal heir(s) of the deceased employee, not being beneficiary(ies) or nominee(s) of such service benefits, shall not be entitled to claim any share therein.

11. Coming back to the instant case, the claim of respondent No.1 in respect of the severance grant, gratuity and benevolent fund was not justified in view of the law enunciated by the Shariat Appellate Bench of the Hon'ble Supreme Court in Wafaqi Hakumat Pakistan (supra) as the deceased did not acquire any absolute right in respect thereof in his lifetime nor had any of the above fallen due in his lifetime. Thus, the above benefits, not being heritable, could not be treated as part of the estate/tarkah of the deceased, and the amount thereof payable after the death of the deceased shall be distributed only to such member(s) of his family who is/are entitled for the same as per the prevailing rules and regulations of service of the respondent No.2-bank. Learned counsel for the respondent No.2-bank relied upon Rule 23 of the Agricultural Development Bank Employees Pension and Gratuity Regulations, 1981, and submitted that the said Rule is followed by the respondent No.2-bank for payment of gratuity as well as all other grants, donations, concessions and compensations after the death of their employees. This Rule

provides payment of death-cum-retirement gratuity to the "family" of the deceased employee. Under this Rule, "family" of a deceased employee shall include his/her wife/wives or husband, as the case may be, children, and widow(s) and children of deceased son(s). As siblings of the deceased employee are not included in the above definition of "family", the appellant/widow alone is entitled to receive the entire amount of the above benefits, and respondent No.1 has no right to claim any of the above.

12. As a result of the above discussion, the impugned judgment and decree of the learned appellate Court are maintained to the extent of entitlement of respondent No.1 in respect of the amount of the National Savings Certificates left by the deceased along with profit thereon, however, according to his share as per Shariah; and, the impugned judgment and decree are set aside to the extent of grant of 50% share to respondent No.1 in the severance grant, gratuity and benevolent fund of the deceased, which shall be paid expeditiously to the legal heirs of the appellant/widow as per the service rules and regulations of the respondent No.2-bank. Needless to say the above payments shall be in addition to the donation by the respondent No.2-bank and the death compensation of the deceased granted to the appellant/widow by the learned appellate Court which, having not been challenged by respondent No.1, has attained finality. This appeal is partly allowed in the above terms with no order as to costs.

SA/N-15/Sindh Order accordingly.

