

SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:
Justice Amin-ud-Din Khan
Justice Jamal Khan Mandokhail

Civil Petition No. 256-Q of 2020
(Against the judgment of the High Court of
Balochistan, Quetta dated 28.09.2020
passed in Civil Revision No. 199 of 2020)

Mst. Anita Anam *...Petitioner(s)*
Versus

General Public and another *...Respondent(s)*

For the Petitioner(s)	: Mr. Manzoor Ahmed Shah, ASC Mr. Gohar Yaqoob Yousafzai, AOR along with petitioner
For Petitioner in CMA 185-Q of 2024	Mr. Muhammad Riaz Akhtar Tareen, ASC
For Respondent No.1	: Mr. Muhammad Ali Rakhshani, Addl. AG Balochistan Mr. Muhammad Ayub Tareen, Asstt. AG Balochistan Noor Hussain Baloch, Addl. Secy S&GAD Haji Muhammad Naeem, Addl. Secy, S&GAD (PAY) Rehmat Ullah Kakar, Dy. Secretary Finance Abdul Wajid, Representative, AG, Balochistan
For Respondent No.2	Mr. Muhammad Mehmood Sadiq, ASC
Date of Hearing	: 15.08.2024

ORDER

Jamal Khan Mandokhail, J.- Facts in brief are that father of the
petitioner, who was a District Health Officer, Health Department,
Government of Balochistan, after retirement from his service, died

in the year 2008. The petitioner filed an application for the grant of a succession certificate ('**Certificate**'), in the court of Civil Judge/Judicial Magistrate IX Quetta, alleging that her father had left behind him the following legal heirs:

1. Mst. Anwar Sultana (first wife)
2. Abu Asar Bilal (son)
3. Anjuman Ara (daughter)
4. Shazia (daughter)
5. Mst. Hameeda Akhtar (second wife, deceased)
6. Muhammad Abu Tahir (son)
7. Sabia Sahar (daughter)
8. Anita Anam (daughter, present petitioner).

2. The petitioner claimed that being an unmarried eldest daughter of the deceased, she is entitled for her share in the monthly family pension, as provided by the Balochistan Civil Services Pension Rules, 1989 ('**the Rules**'). The respondents contested the application and it was dismissed up to the High Court of Balochistan, hence, this petition for leave to appeal.

3. The learned counsel for the petitioner stated that pursuant to the amendment made in the Rules, *vide* notification dated 16 February 1999, the petitioner being the eldest unmarried daughter of the deceased, is entitled to the extent of her share in the monthly family pension, till her marriage. The learned counsel submitted that the High Court did not consider the amended Rules, instead, relied upon the previous unamended Rules, hence, reached at a wrong conclusion.

4. The learned counsel for the respondent opposed the contention and stated that the application of the petitioner was not

maintainable in view of the fact that earlier in the year 2009, she had filed an application for the grant of a Certificate only in respect of an amount left by the deceased in his bank account, and had omitted to claim her right out of the monthly family pension. He contended that once a certificate was granted by the Trial Court to the petitioner, her second application to seek her omitted claim, was not maintainable, in view of bar contained in Order II Rule 2 of the Code of Civil Procedure, 1908 ('CPC'). Besides, the learned counsel added that the petitioner is otherwise not entitled for the family pension as she by concealment of facts, has already received an amount of Rs.11,00,000/-, therefore, the present application based on *mala fide* intention, has rightly been dismissed concurrently by the *fora* below.

5. Arguments heard and have perused the record. So far as the legal objection raised by the respondent with regard to maintainability of the application is concerned, it is important to mention here that the issuance of a certificate is governed by the Succession Act, 1925 ('the Act'), being a special law. Section 373 of the Act provides a simplified procedure for the Trial Court to be followed, while granting or refusing to grant a certificate. The procedure is summary in nature, only to determine a *prima facie* entitlement of an applicant, to receive the property of a deceased and to distribute the same amongst all those, who are legally entitled to receive their respective share. The object of summary trial provided by the Act, is to shorten the course of trial in order to ensure that justice is delivered swiftly, so as to facilitate an

applicant, in order to get a certificate at the earliest, without compromising on the principles of natural justice and fair trial. Every trial under the Act shall be conducted as expeditiously as possible. The certificate is granted for a limited purpose and for a limited sphere, therefore, it is not a final and conclusive decision between the parties or those who are entitled to get their share from the left-over property of a deceased. The court is bound to decide the application by adopting a procedure provided by section 323 of the Act while granting a certificate to an applicant, provided he makes out a prima facie title to the subject matter of the certificate. While doing so, the Judge should try to confine himself to the issue of "right to the certificate". However, where the Court considers that a question of title is involved which cannot be disposed summarily, on the basis of available material, it may refuse to grant a certificate and allow the parties to establish their right by filing a regular suit before a competent court of law.

6. The Legislature appears to have left the matter to the discretion of the Courts with an unfettered power under the Act to do complete justice in a matter. A Judge is empowered to issue more than one certificates, as provided by sub-section (3) of section 372 and sub-sections (3) and (4) of section 373 of the Act. The Act place no limitation upon the right of the parties in filing more than one application, therefore, any decision made under Part-X upon any question of right between the parties, shall not bar the trial of the same or related question in any subsequent proceedings under this Act or in any suit or other proceedings between the same

parties. The Act does not restrict a person from filing application in respect of a portion of claim which he omits while filing earlier application. What is to be underlined is that the provisions of CPC cannot be applied to the matters falling under the Act, in view of the fact that being a special law, a specific procedure is provided, therefore, the provisions of Order II, Rule 2 CPC do not attract in the matters under the Act. However, where the Act is silent on matters relating to procedure for the trial of the case, the procedure provided by the CPC may be adopted to regulate the proceedings. Admittedly, the earlier certificate issued to the petitioner was in respect of the amount left by her late father in his bank account, whereas, through the second application, she is claiming her share in the monthly family pension. As discussed herein that there is no bar under the Act in filing successive applications for the grant of a certificate, no limitation can be imposed upon filing second application for the grant of a certificate. However, any person aggrieved from the order granting an earlier certificate, has a right to avail his remedy provided by law, subject to all just exceptions. The findings of the High Court, by non-suiting the petitioner on the ground that her second application was barred by Order II Rule 2 of the CPC, are contrary to the provisions of the Act, therefore, the impugned judgment is not sustainable.

Merits:

7. The claim of the petitioner is based upon rule 4.10(2) of the Rules, as amended, which is reproduced herein below:

"4.10(2)

(i) ---

(ii) *Substituted with "failing (i) to (iii) the eldest surviving unmarried daughter till her marriage, and if the eldest daughter marries or dies the next eldest daughter till her marriage will draw the family pension."*

After amendment in the Rules in the year 1999, an eldest unmarried daughter of a deceased Govt. Officer is made entitled to draw her share in a monthly family pension, till her marriage. The Rules further provide that, in case, the eldest daughter marries or dies, the next eldest unmarried daughter of the deceased will become entitled to draw her share out of the family pension, till her marriage. The petitioner is claiming to be an eldest unmarried daughter of late Dr. Muhammad Abu Amar. Though the respondent did not rebut her such status either before the *fora* below or even before this Court, but there is no finding to such extent. The High Court's decision is based upon the unamended Rules. It seems that the amended Rules have escaped the notice of the High Court, hence, it reached to a wrong conclusion, which is an illegality. Under such circumstances, the impugned judgments are not sustainable.

Thus, in view of the above, the petition is converted into an appeal and is allowed. The judgments dated 28.05.2019, 15.07.2020 and 28.09.2020 of the Trial Court, the Appellate Court and that of the High Court, respectively are set aside. In order to determine the status, entitlement and share of the petitioner in the family monthly pension, the matter is remanded back to the Trial

Court to conduct summary proceedings, as provided by section 373 of the Act, keeping in view the rights of the remaining surviving legal heirs. The Trial Court should proceed with the matter expeditiously and to decide the same preferably within a period of sixty days, after service of notices upon the parties.

Judge

Judge

Announced in Open Court on _____
at Islamabad

Judge

Islamabad
8th of May 2024
K.anees & Waqas Ahmad L.C.

Approved for Reporting