

IN THE SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION
(CIVIL REVISIONAL JURISDICTION)

CIVIL REVISION NO. 5465 of 2022

Khaleda Begum and others

...Petitioners

-Versus-

Tanjia Islam Smrity

....Opposite party

None appears

..... For the petitioners

Mr. Md. Shahjahan Chowdhury, Advocate with

Mr. Md. Hadiul Islam Mollick, Advocate

Mr. Md. Parvez Alam, Advocate

..... For the opposite party

Heard on: 27.11.2023

Judgment on: 28.11.2023

Present:

Mr. Justice Md. Badruzzaman.

This Rule was issued calling upon the opposite party to show cause as to why judgment and order dated 04.09.2022 passed by learned Senior District Judge, Dhaka in Miscellaneous Appeal No. 162 of 2022 dismissing the appeal and affirming judgment and order dated 01.03.2022 passed by learned Joint District Judge, 3rd Court, Dhaka in Succession Suit No. 608 of 2022 dismissing the suit should not be set aside.

At the time of issuance of Rule this Court vide order dated 11.11.2022 directed the parties to maintain *status-quo* in respect of withdrawal of money as mentioned in the schedule of Succession Case No. 608 of 2020 for a period of 06 (six) months which was, subsequently, extended till disposal of the Rule.

Facts, relevant for the purpose of disposal of this Rule, are that the petitioners filed Succession Suit No. 608 of 2022 for obtaining a Succession Certificate due to death of Md. Abdul Khalek in 3rd Court of Joint District Judge, Dhaka. The case of the petitioners was that said Md. Abdul Khalek was serving as Sub-Assistant Engineer under the Department of Housing and Works under the Ministry of Public Works of the Government of Bangladesh and he died while he was in service and on his death, the petitioners as his successors were payable to pension, gratuity and other benefits amounting to total Tk. 46,18,299/-. Petitioner No.1 is the mother and petitioner Nos. 2-4 are two sisters and brother of deceased Md. Abdul Khalek. As per the petitioners they are entitled to the pension and other benefits payable to deceased Md. Abdul Khalek as per Mahomedan Law of Succession.

Opposite party filed written objection stating that the petitioners were not entitled to any pension benefits or other benefit payable to said Md. Abdul Khalek in view of the Pension Scheme of the Government and opposite party is entitled to the benefits being the wife of late Md. Abdul Khalek and as such, the suit is liable to be dismissed.

Learned Joint District Judge, after hearing the parties, by judgment and order dated 01.03.2022 disposed of the suit taking the view that the petitioners are not entitled to pension benefits in view of the Pension Scheme of the Government and the opposite party only as the wife is entitled to the pension benefits. Being aggrieved by said order dated 01.03.2022 the petitioners preferred Miscellaneous Appeal No. 162 of 2022 before the learned District Judge, Dhaka who, after hearing the parties, vide judgment dated

04.09.2022 dismissed the appeal summarily. The petitioners have challenged said order of learned District Judge, Dhaka in this application filed under section 115(1) of the Code of Civil Procedure and obtained the instant Rule and order of *status-quo*, as stated above.

This matter has been appearing for a number of days in the cause list for hearing but the learned Advocate for the petitioners was found absent when the matter was taken up for hearing on 27.11.2023.

However, I have perused the revisional application as well as the grounds stated therein in which the petitioners claimed that they are entitled to the pension benefits under provision of Mahomedan Law of Succession and the Court of appeal committed illegality in affirming the order of the trial Court holding that as per Pension Scheme of the Government the petitioners are not entitled to pension benefits and that the wife of deceased Md. Abdul Khalek (opposite party) is entitled to pension benefits and as such, committed an error of law resulting in an error in the decision occasioning failure of justice.

As against the above contentions of the petitioners Md. Shahjahan Chowdhury appearing for the opposite party by taking me to the Pension Act, 1871, Memorandum being No. 2566(40)-F, Dacca, the 16th April, 1959 issued by the Finance and Revenue Department of the then Government of East Pakistan and সরকারী কর্মচারীগণের পেনশন সহজীকরণ আদেশ, ২০২০ submitted that opposite party as widow/wife is the only person who is entitled to the pension as per the provision of Pension Scheme of the Government and that the pension cannot be treated as assets of the deceased and according to the provisions of

'Pension Scheme' the petitioners are not entitled to pension benefits as per Mahomedan Law of Succession. Learned Advocate further submitted that the learned District Judge, upon consulting the relevant provisions of law, came to proper findings and decision and dismissed the appeal by affirming the order of the trial Court and accordingly, committed no illegality and as such, interference is not called for by this Court.

I have heard the learned Advocate, perused the revisional application as well as the grounds stated therein and also perused the relevant provisions of Pension Scheme of the Government of Bangladesh.

The main questions involved in this case are whether the service benefits of the deceased were to be granted only to his widow or were liable to be distributed amongst the legal heirs of the deceased.

The provisions of the 'Pension Scheme' provided in Memorandum being No. 2566(40)-F, Dacca, the 16th April, 1959 is being followed by the Government of Bangladesh in pursuance of which the death cum-retirement gratuity and pension benefits are to be paid to his **Family** in respect of services rendered by late Md. Abdul Khalek. As per said Memorandum dated 16.04.1959 '**Family**' for the purpose of payment of death cum-retirement gratuity and pension will include the following relatives of the Government servant:

- (a) Wife or wives in the case of a male Government servant.
- (b) Husband in the case of a female Government servant.
- (c) Children of the Government servant.

(d) Widow or widows and children of a deceased son of the Government servant.

The Memorandum dated 16.4.1959 also stipulates that when the Government servant leaves no **Family** the amount of gratuity and pension shall be payable to the following surviving relatives if any, of the Government servant in equal shares:

- (a) Brothers below the age of 18 years;
- (b) Unmarried and widowed sisters;
- (c) Father and
- (d) Mother.

In view of the Pension Scheme of Bangladesh, so far as the father, mother, brother and sister of a deceased employee are concerned they have not included in the definition of **Family** and accordingly, the petitioners would not be treated as the members of **Family** of late Md. Abdul Khalek.

It is to be noted that similar provisions are being followed in India and Pakistan in distributing pension benefits of a deceased Government servant to his family members and other relatives under Pension Scheme.

It is well settled that the legal heir(s) of a deceased person can inherit only from the estate of the deceased. Accordingly, any other property, right or benefit that does not form part of the estate, is not inheritable. Thus it has to be seen whether or not the service benefits left by a deceased Government servant can be treated as his(her) estate.

In *Violet Issaac (Smt.) vs. Union of India* (1991) 1 SCC 725 after considering the relevant provisions of Hindu Succession Law and Pension scheme, the Supreme Court of India came to the conclusion

that family pension does not form part of the estate of the deceased and therefore, even an employee has no right to dispose of the same in his will by giving a direction that someone other than the one who is entitled to it, should be given the same.

In *Wafaqi Hakumat Pakistan vs. Awamunnas*, PLD 1991 SC (Shariat Appellate Bench) 731, the Shariat Appellate Bench of the Supreme Court of Pakistan in deciding a similar issue, after considering the Mahomedan Law of Succession and Pension Scheme, held, *inter alia*, that 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 estate.

Keeping in view the above principles laid down by the Supreme Court of India and Shariat Appellate Bench of the Supreme Court of Pakistan as well as the Pension Scheme of Bangladesh, it can be safely concluded that family pension and death gratuity, payable by the employer to the family members of its deceased employee as per the applicable Pension Scheme, are considered as grants/ donations, and they do not fall within the definition of estate of the deceased and thus are not inheritable. In other words, gratuity and pension benefits fall under the categories of grant, donation, bounty, concession or compensation, payable after the death of the employee shall not form part of his estate of a deceased employee and as such, only his family or nominee(s) shall be entitled to receive the same under the Pension Scheme and applicable provision(s) of law and, other legal heir(s) of the deceased employee, not being

family or nominee(s) of such service benefit, shall not be entitled to claim any share therein.

A service benefit or pension 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 and the law of succession will not applicable.

Under Pension Scheme of Bangladesh, "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). In the instant case the petitioners, the mother and siblings of the deceased employee, are not included in the above definition of "**Family**" of the deceased under the Scheme. Accordingly, the opposite party wife, as included in the family, alone is entitled to receive the entire pension benefits, and the petitioners have no right to claim the same. But of course, it cannot be disputed that if there are other assets left by late Abdul Malek, the petitioners would get their shares as per Mahomedan Law of Succession.

Given the proposition of law, I am of the view that the Court of appeal did not commit any illegality in dismissing the appeal by the impugned order by affirming the judgment of the trial Court. Accordingly, interference is not called for by this Court.

In that view of the matter, I find no merit in this Rule.

In the result, the Rule is discharged however, without any order as to costs.

The order of *status-quo* granted earlier is vacated.
Communicate at once.

(Md. Badruzzaman, J)