THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

W.P.No. 25846 OF 2014

ORDER:

R.Munemma, the petitioner herein, filed this Writ Petition challenging the inaction of respondent Nos. 1 and 2 in not releasing pensionary benefits of her husband late R.Ganganna and declare the same as illegal and arbitrary and direct respondent Nos. 1 and 2 to release pensionary benefits of late Ganganna to the petitioner.

The petitioner claims to be the wife of late R.Ganganna, an employee in Department of Posts, who died on 21-05-2013, while working as Sub-Postmaster in Kavthalam Village, leaving behind the petitioner and one son by name Vijay Kumar and two daughters namely Chandrakala and Geetha. After the death of her husband, the petitioner made a representation to the 1st respondent to settle the account of amount payable on account of death of her husband and release pensionary benefits and other benefits. In response to the representation, the 1st respondent, by his letter No. BGT/PEN/1053 dated 18-06-2013, informed that another lady by name Sujatha got issued a legal notice to the office to stop the benefits payable consequent upon the death of Ganganna till decision is pronounced by a competent Court of law. The 3rd respondent is no way concerned with the claim. The 3rd respondent, claiming to be the second wife of late Ganganna, filed S.O.P.No. 1 of 2014 on the file of the Court of Senior Civil Judge, Adoni, Kurnool District, and claimed pensionary benefits and other death benefits of Ganganna. The petitioner, being a nominee, is entitled to claim pensionary benefits of Ganganna and the 3rd respondent is no way concerned with the claim but respondent Nos. 1 and 2 did not release pensionary and other benefits payable consequent upon the death of Ganganna. Therefore, the action of respondent Nos. 1 and 2 is arbitrary and illegal and prayed to allow the Writ petition granting the aforesaid reliefs.

The 3rd respondent filed counter affidavit denying material allegations, more particularly the relationship between the petitioner and Ganganna as wife and husband while contending that the 3rd respondent is the legally wedded wife of Ganganna whose marriage was performed on 23-06-1997 at Tirupati as per the customs prevailing in Hindu religion. Prior to the marriage of the 3rd respondent with Ganganna, he married the petitioner and blessed with three children. However, the said Ganganna filed divorce petition in O.P.No. 5 of 1996 on the file of the Court of Senior Civil Judge, Adoni, under Section 13 (1) (ia) of the Hindu Marriage Act, 1955, and obtained decree on 04-04-1997, whereby the marriage between the petitioner and Ganganna was dissolved. Thus, the relationship between the petitioner and Ganganna was ceased to exist. Therefore, the petitioner is not entitled to claim any share in pensionary and other benefits payable consequent upon the death of Ganganna.

It is specifically contended that after the death of her son, Ganganna started harassing the 3rd respondent and as she was unable to bear the harassment, she lived separately, filed M.C.No. 43 of 2006 on the file of the Court of Judicial Magistrate of I Class, Adoni, claiming maintenance @ Rs.1,500/- per month and obtained an order. Thereafter, the 3rd respondent filed petition for enhancement of maintenance from Rs.1,500/- per month to Rs.5,000/- per month and also initiated proceedings for recovery of arrears of maintenance. During pendency of the petition, Ganganna died. Thus, the marriage between the 3rd respondent and Ganganna was upheld by criminal Court.

The petitioner is not entitled to claim pensionary benefits and other benefits payable consequent upon the death of Ganganna on the basis on nomination and mere nomination does not entitle the petitioner to succeed the estate of the deceased Ganganna. Therefore, the petitioner has no right to claim any amount and if at all the petitioner is interested to claim benefits, she can join as a party in S.O.P.No. 1 of 2014 and prayed for dismissal of the petition.

During the course of argument, learned counsel for the petitioner, while reiterating the contentions urged in the Writ Petition, brought to my notice about pendency of succession original petition filed by the 3rd respondent claiming pensionary and other benefits payable to the legal-heirs of the deceased Ganganna consequent upon his death and it is pending. Pending result of the succession original petition, the petitioner sought for a direction against respondent Nos. 1 and 2 to release amount at least to her share.

Per contra, learned counsel for the 3rd respondent, while denying the subsisting relationship of the petitioner and Ganganna as on the date of his death, brought to the notice of this Court about the decree obtained in O.P.No. 5 of 1996 dissolving the marriage between the petitioner and Ganganna and filing of maintenance case and miscellaneous petitions therein claiming maintenance and for recovery *etc.*, by the 3rd respondent. On the strength of those documents, learned counsel contended that the petitioner is no more a legally wedded wife of Ganganna and not entitled to claim any amount payable consequent upon the death of Ganganna and prayed for dismissal of the petition.

Considering rival contentions and perusing material available on record, the sole point that arises for consideration is as follows:

> *"Whether nomination of the petitioner to receive monetary benefits payable to Ganganna consequent upon his death entitles the petitioner to recover amount and appropriate the same for herself?"*

The undisputed fact is that the petitioner married Ganganna, the deceased employee, who died on 21-05-2013 leaving behind the petitioner. At the same time, the 3rd respondent is claiming that her marriage with Ganganna was performed on 23-06-1997 at Tirupati after obtaining decree from the competent Court in O.P.No. 5 of 1996, whereby the marriage between the petitioner and Ganganna was dissolved. A copy of the decree is placed on record by learned counsel for the 3rd respondent.

Payment of pensionary benefits and other benefits are governed by Central Civil Services (Pension) Rules, 1972 (for short, '1972 Rules'). Rule 53 of 1972 Rules is the relevant Rule which deals with nominations. According to Rule 53 (1) of 1972 Rules, a Government servant shall, on his initial confirmation in a service or post, make a nomination in Form 1 or 2, as may be, as appropriate in the circumstances of the case, conferring on one or more persons the right to receive the retirement gratuity/death gratuity payable under Rule 50 subject to two conditions. At the same time, Rule 53 (2) of 1972 Rules says that if a Government servant nominates more than one person under sub-rule (1), he shall specify in the nomination the amount of share payable to each of the nominees, in such manner as to cover the entire amount of gratuity. Sub-rule (4) of Rule 53 further says that the nomination made by a Government servant who has no family at the time of making it, or the nomination made by Government servant under the second proviso to clause (i) of sub-rule (3) where he has only one member in his family shall become invalid in the event of the Government servant subsequently acquiring a family, or an additional member in the family, as the case may be. Thus, the person, who is nominated under Rule 53 of 1972 Rules, is entitled to receive benefits, more particularly death cum retirement gratuity payable under Rule 50. Here, the claim is for pension and other monetary benefits payable consequent upon the death of Ganganna.

Undisputedly, both the petitioner and the 3rd respondent are pursuing their remedy in civil Court by filing succession original petition to declare them as legal-heirs entitling to receive death benefits of the deceased Ganganna. The basis for claiming the relief in the petition is the nomination under Rule 53 of 1972 Rules. Nomination is only an authorization given to a particular person to receive claim in the event of death. So, the petitioner is entitled to receive the benefits payable consequent upon the death of the employee Ganganna but it will not override the order of succession. In ***Smt. Sarabati Devi and another Vs. Smt. Usha Devi***[1], the Apex Court held as follows:

> *"The summary of the relevant provisions of Section 39 of the Insurance Act, 1938, establishes clearly that the policy holder continues to hold interest in the policy during his lifetime and the nominee acquires no sort of interest in the policy during the lifetime of the policy holder. It that is so, on the death of the policy holder the amount payable under the policy becomes part of his estate which is governed by the law of succession applicable to him. Such succession may be testamentary or intestate. There is no warrant for the position that Section 39 of the Act operates as a third kind of succession which is styled as a 'statutory testament'. The provision in Sub-section (6) of Section 39 which says that the amount shall be payable to the nominee or nominees does not mean that the amount shall belong to the nominee or nominees. The language of Section 39 of the Act is not capable of altering the course of succession under law. A mere nomination made under Section 39 of the Act does not have the effect of conferring on the nominee any beneficial interest in the amount payable under the life insurance policy on the death of the assured. The nomination only indicates the hand which is authorized to receive the amount, on the payment of which the insurer gets a valid discharge of its liability under the policy. The amount, however, can be claimed by the heirs of the assured in accordance with the law of succession governing them."*

As seen from the principle laid down by the Apex Court, nominee is entitled to receive amount and legal-heirs are competent to claim share according to law of succession. The role of nominee is only to receive amount as an agent of all the legal-heirs of a deceased. Therefore, legal-heirs of the deceased are entitled to claim share as per law of succession.

In ***K.Suramma Vs. K.Ramayyamma and others***[2], a Division Bench of this Court in para No. 10 held as under:

> *"Coming to the nomination made by the deceased of the 1st respondent as the person entitled to receive amounts under A.P.G.L.I. policy, nomination by itself does not create a right in favour of the 1st respondent to have the benefit of the entire amount received by her under that policy. It is well settled that the nominee receives the amount from the insurer for and on behalf of all the heirs of the insured, and the amount received by the*

nominee is liable to be distributed among all the heirs of the deceased insured as per their share entitlement. Since amount due under the A.P.G.L.I. being contributed by the deceased, was paid to the 1st respondent as per the nomination, it is open to the appellant to recover her share of the amount therefrom as per law, if so advised."

In view of the law declared by the Apex Court and a Division Bench of this Court, at best, the petitioner, being the nominee prior to the alleged dissolution of her marriage with Ganganna, is entitled to recover amount but the amount shall go to the legal-heirs and she is not entitled to claim any exclusive right being the nominee. Therefore, on the strength of the nomination under Rule 53 of 1972 Rules, the petitioner cannot be permitted to claim exclusive right over the amount payable consequent upon the death of Ganganna.

Dissolution of marriage between Ganganna and the petitioner is a question of fact to be decided in the pending succession original petition and this Court, while exercising power of judicial review, need not decide the disputed question of fact regarding dissolution of marriage. It is left open to the parties to challenge any factual issues before the competent Court where the succession original petition is pending.

As discussed above, the petitioner, being the nominee, is not entitled to claim exclusive right over the death benefits payable consequent upon the death of Ganganna and she is entitled to share, if any, subject to the law governing succession of the petitioner and subject to proof of her relationship with the deceased Ganganna as on the date of his death. Hence, the petitioner is not entitled to claim any exclusive right over the death benefits payable by respondent Nos. 1 and 2 consequent upon the death of Ganganna and, therefore, the Writ Petition is devoid of merits and deserves to be dismissed.

With the above observation, the Writ Petition is dismissed. Pending miscellaneous petitions, if any, in this Writ Petition shall stand dismissed in consequence. No order as to costs.

M.SATYANARAYANA MURTHY, J.

Date: 13-04-2016.

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[1] AIR 1984 SC 346

[2] 2002 (2) ALT 65