THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

WRIT PETITION No.25613 OF 2014

ORDER:

This Writ Petition, under Article 226 of the Constitution of India, is filed to declare that the inaction of the respondents in considering the representation, dated 15.07.2014, submitted by the petitioner for incorporation of her name in the Service Record and Pension record of her husband i.e., the 4th respondent herein, as arbitrary and illegal and consequently to direct the respondents to incorporate the name of the petitioner in the Service Record and Pension Record.

2. It is the case of the petitioner that the marriage of the petitioner with the 4th respondent was performed long ago and they were blessed with a son and daughter. The 4th respondent was working as Senior Hindu Pandit in 3rd respondent's school. The 4th respondent without the consent of petitioner, married another woman by name Manemma and residing with her illegally, totally ignoring the children and the petitioner herein, nominated the said Manemma to receive the death benefits and other benefits, in the service record in the event of his death. The 4th respondent was likely to be retired from service (now retired), therefore, she made a request to the 3rd respondent to incorporate her name in the Service Register, so as to enable her to receive any benefits payable to the 4th respondent in the event of his death.

3. The 4th respondent filed counter affidavit admitting nomination of Manemma to receive death benefits of 4th respondent in the event of his death; that this Court has no jurisdiction to entertain the Writ Petition; that the respondent worked in Zilla Parishad High School and retired from service; that the 4th respondent is still alive and it is his choice to enter a person of his choice and that the petitioner has no right to ask any relief

and prayed to dismiss the Writ Petition.

4. It is an admitted case of the petitioner that the 4th respondent married Manemma without her consent. There is a rival claim between the petitioner, who is the alleged first wife of 4th respondent, and Manemma to receive the death benefits in the event of death of the 4th respondent. But the 4th respondent is still alive and as per the Rules, the employee alone is entitled to nominate a person of his choice to receive the benefits, if any, in the event of his death and it is not the choice of a third party to claim nomination.

5. Rule 49 of the Andhra Pradesh Revised Pension Rules, 1980 deals with nominations, enabling one or two persons to receive the retirement gratuity by nomination of any of his family members, even to cancel the nomination and enter any person by the employee alone not by the employer. Therefore, the petitioner has no right to seek incorporation of her name as nominee of the 4th respondent to receive benefits in the event of his death, like Family pension etc.

6. It is a settled law that nomination is only permitting the person to receive benefits of an employee or it is only an authorization given to a particular person to receive the claim in the event of death. Section 39 of the Insurance Act deals with nomination, The said issue was decided by the Hon'ble Supreme Court in **Smt. Sarbati Devi and another V. Smt.Usha Devi**[1], though it is not relevant for the purpose of effect of nomination, relevant paragraphs 5, 8 and 12 reads as under:

> "The summary of the relevant provisions of Section 39 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. If 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 is not capable of altering the course of succession under law.
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> A mere nomination made under Section 39 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, the nominee is entitled to receive the amount and the legal heirs are entitled to claim share according to the law of succession which the parties governed. It will not disinherit the legal heirs to claim any share in the claim amount received by nominee and it would not confer exclusive right to the nominee. The role is only to receive the amount as an agent of all the legal heirs of the deceased. Therefore, the legal heirs of the deceased are entitled to claim share as per the law of succession.

7. Similar view is expressed by the Division Bench of this Court in **K.Suramma V. K.Ramayyamma and others**[2]**.** The above judgment is pertaining to claim as a nominee to receive APGLI amount. The principle laid down by Apex Court and this Court is that nominee is entitled to receive the benefits and amount shall be distributed among the legal heirs as per the Succession. Therefore, even if Manemma or the petitioner is nominated to receive benefits in the event of death of 4th respondent, they are not entitled to claim exclusive right over the amount and it shall be distributed among the legal heirs. However, this Court while exercising the power of judicial review under Article 226 of the Constitution of India cannot issue a direction to incorporate the name of the petitioner as a nominee to receive the benefits in the event of death of the 4th respondent payable by the Department-1st respondent, since, it is a prerogative of

employee to enter nomination of his choice authorizing to receive the benefits, if any, payable consequent upon death of said employee in the prescribed form under A.P. Revised Pension Rules.

8. Therefore, I find no ground to issue any direction to the respondents to incorporate the name of the petitioner in the Service Register and Pension book as nominee of 4th respondent. In view of my foregoing discussion in the above mentioned paras, since the 4th respondent retired from service and is still alive, the contention with regard to maintainability of the Writ Petition need not be examined. I find no ground to issue any direction as claimed by the petitioner.

9. Accordingly, the Writ Petition is dismissed. However, the parties are at liberty to claim their respective rights as per law in appropriate proceedings in the event of death of 4th respondent. There shall be no order as to costs. Miscellaneous petitions, if any, pending shall stand closed.

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M.SATYANARAYANA MURTHY, J

APRIL 19, 2016
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THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

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WRIT PETITION No.25613 OF 2014

Date: 19.04.2016

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[1] AIR 1984 SC 346

[2] 2002 (2) ALT 65