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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Reserved on: 14.10.2020

Pronounced on: 06.11.2020

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W.P.(C) 6701/2018 and C.M. Nos.25451/2018, 41307/2019 and
11129/2020

SUMAN KUMARI @ SUMAN SINGH

..... Petitioner

Through: Mr. Rajesh Kumar, Advocate.

versus

NAND KISHOR & ORS

..... Respondents

Through: Mr. Jai Kumar Sinha, Advocate for
R-1 to 3.
Mr. Varun K. Chopra and
Mr. Gurtejpal Singh, Advocates for
R-4.

CORAM:

HON'BLE MS. JUSTICE JYOTI SINGH

JUDGEMENT

1. By way of the present petition the Petitioner seeks directions to Respondent Nos. 4 & 5 to grant compassionate appointment to the Petitioner as well as to release part share of the Gratuity, pension and other terminal dues as well as Insurance fund in her favour which according to her accrues to the Petitioner on the demise of her husband.
2. Petitioner was married to Late Shri Manoj Kumar Singh (hereinafter referred to as Manoj) on 11.06.2015 as per Hindu Rites. The marriage took place after the death of the 1st wife of Manoj, namely, Late Neelam Singh (hereinafter referred to as Neelam), who died on

16.07.2009. Neelam is survived by a daughter namely Ms. Aditi Singh who was born on 16.01.2003 and is a minor. Respondent Nos. 1 & 2 are the father and mother of Manoj and the minor daughter has been impleaded as Respondent No. 3. Respondent Nos. 4 & 5 are the official Respondents i.e. ONGC, the ex-employer of Manoj.

3. It is an undisputed fact that Manoj was working with ONGC and at the time of his untimely demise he was working as Superintendent Engineer (Mechanical) and that he died of Brain Tumor for which he was undergoing treatment at a hospital in Gurgaon.

4. Petitioner made a representation on 11.04.2017 for release of Gratuity, pension and other terminal dues. Getting no response, she sent another application in September, 2017, followed by a reminder on 07.03.2018. Vide the impugned order dated 02.04.2018 ONGC communicated to the Petitioner the rejection of her representations on the ground that the terminal dues of Manoj had been released as per the nomination Forms filled by him in the year 2009 & 2017 and that being an employer, ONGC could not enter into inter-se family disputes of the deceased employee.

5. Contention of learned counsel for the Petitioner is that the Petitioner is one of the Class-I legal heir of Manoj. She was legally wedded to him and the marriage certificate and the requisite information was admittedly available in the records of the ONGC. Petitioner is thus entitled and eligible for compassionate appointment. Respondent Nos. 1 & 2 are senior citizens and Respondent No. 3 is a minor and hence the Petitioner is the only legal heir entitled to be given a job after the death of

her husband. Petitioner is in great financial difficulty without any source of livelihood.

6. It is further contended that being the widow of Manoj and the legal heir, ONGC is bound to release Gratuity and other retiral benefits to the Petitioner including the insurance fund of CSSS as Manoj was the employee of ONGC and died while in service, on account of a medical ailment. Counsel fairly contends that the Petitioner is not demanding that the entire benefits should be disbursed to her, but seeks a direction that share due to her by virtue of being a Class-I heir be released to her. It is contended that the Respondent Nos. 4 & 5 are illegally denying the benefits on the ground that the benefits have to be disbursed in accordance with nomination made by Manoj. The argument is that nominee is only entitled to receive an amount and is not the absolute owner of the fund. The nominee is thus duty bound to distribute and share the amount with all the legal heirs under the personal law of succession. In this regard reliance is placed by the learned counsel on the judgement of a Co-ordinate Bench of this Court in ***Smt. Manjula Verma & Anr. v. Kumari Sarla Verma in CM (M) No. 306/2007 decided on 03.12.2007*** more particularly para 44 which is as follows:-

“para 44... from the aforementioned two decisions, the legal principle which emerges is that the nominee does not acquire any beneficial interest or ownership to the sum in the Provident Fund Account. The nominee merely gets a right to receive the fund. The Division Bench of the Andhra Pradesh High Court in Shaik Dawood’s case (supra) has taken a similar view.”

7. Counter affidavit has been filed on behalf of Respondent Nos. 1 to 3. Counsel for the said Respondents has opposed the petition on the ground that Respondent No. 1 is 75 years of age and Respondent No. 2 is 71 years old and both were living peacefully in the last stage of their life, in a small place in Uttar Pradesh, when they got the information that their son was suffering from Brain Tumor and when they went to Delhi to support the family and meet their son, the Petitioner was extremely rude to them and to the minor daughter. The Petitioner, out of 22 months of marriage hardly lived with her husband and in less than 9 months had left the matrimonial home on 27.09.2016, making complaints against the Respondent Nos. 1 & 2 and the bedridden husband, under the Domestic Violence Act. She never showed any concern or love and affection for the family including her husband and has now filed the petition seeking benefits, which under the law accrue to Respondent Nos. 1 to 3 and are the lifetime savings of Manoj which have been now invested for the future of the minor daughter. Petitioner is not entitled to the benefits as Manoj had consciously nominated his daughter for receiving his benefits in 2009. Even after the marriage with the Petitioner, when Manoj made the nomination in 2017, he had the opportunity to change the nomination in favour of the Petitioner, but he consciously chose not to do so, as the Petitioner had been ill treating him and the minor daughter, even though he was bedridden.

8. A detailed counter affidavit has been filed by Respondent Nos. 4 & 5. Learned counsel for the said Respondents has argued that the present petition is misconceived and ought to be dismissed against the answering Respondents who have no concern with the inter-se family disputes of the

Petitioner with Respondent Nos. 1 to 3. The factum of the marriage of the Petitioner with Manoj on 11.06.2015 is however not disputed. It is argued that ONGC cannot be made a party to the dispute of succession between the family and in case there is any grievance of the Petitioner with regard to the share qua the nominees, the remedy is to file a Civil Suit and the Petitioner cannot take recourse to a writ petition and raise issues of testamentary dispositions or disputed questions of fact.

9. Without prejudice to the said submission, it is submitted that a nomination Form dated 29.09.2009 was executed by Manoj, in presence of two witnesses and he had nominated his daughter in respect of the terminal dues, in the event of his death. On 06.02.2017 Manoj submitted fresh nomination Form, bearing his thumb impressions, executed in presence of two witnesses. Along with the Form he had submitted a medical certificate dated 02.02.2017, issued by the hospital, certifying that on account of progressive disease and weakness of hand he was unable to sign any document. In the second nomination Form, Manoj had nominated his daughter for receiving 100% benefits in respect of CPF, Gratuity, PRBS etc. and 75% benefits in respect of CSSST, in the event of his death. For receiving 25% benefits with respect to CSSST, Manoj had nominated his father i.e. Respondent No. 1.

10. The contention is that as per the prevalent Rules and Regulations of the ONGC, the terminal dues have to be paid to the nominees of the employees in the event of the happening of the contingencies mentioned in the respective Rules. Attention of the Court is drawn to Rules 5(1) & 8(2) of the ONGC Death Retirement and Terminal Gratuity Rules, 1995, with respect to payment of Gratuity on the death of an employee. Rules

18.7 & 20.1 of ONGC Self Contributory Post Retirement and Death in Service Rules, 1991 are referred to with respect to disbursement of benefits under the said Scheme. Likewise Rule 13 of the ONGC Composite Social Security Scheme, 1998 is alluded to for disbursement of benefits under the said Scheme, wherein it is the right of a nominee to receive the cash benefits in the event of death of the Member of the Scheme.

11. Counsel further argues that with respect to the Employees Contributory Fund Benefits every employee on joining the Fund, as a member has to make a nomination and in the event of his death, the benefits can only be released to the nominee in terms of the provisions of Regulation 19 of ONGC Employees Contributory Provident Fund Regulations. The answering Respondents cannot release money/benefits under the Schemes/Regulations to any person other than the nominee and are bound by the provisions.

12. It is further submitted by the counsel for the ONGC that it has released certain amounts as per the nomination Form dated 06.02.2017. The details as set out in the counter affidavit are as follows:-

“12. That following Late Mr. Manoj Kumar Singh's demise, the Respondent No. 4 has released the following amounts as per the nomination form dated 06.02.2017-

a. Gratuity (As per entitlement subject to a maximum of Rs. 20 Lakhs). In the instant case of Late Mr. Manoj Kumar, total Gratuity payable was Rs. 12,40,154. Amount of Rs. 10 Lakh was paid to the nominee in the salary of June 2017 and remaining amount of Rs. 2,40,154 was paid in the month of March 2018.

- b. CPF : (Employee + Employer Contribution + accrued Interest). In the instant case as per system details available with the Respondent, amount has not been disbursed by the concerned Trust so far.*
- c. CSSS: Late Mr. Manoj Kumar being an E-4 Level Executive was eligible for Rs. 60 Lakh. In the instant case, initial payment has been released on 28.03.2018 to father i.e. Respondent No. 1 Rs. 7,50,000/- and FD has been made in the name of Respondent No. 3 Aditi Singh, (Minor Daughter) to the tune of Rs. 22,50,000/-.*
- d. PRBS: Entire corpus has been converted into Pension and Rs. 16,765 is remitted as monthly annuity/pension in the Bank Account of daughter of Late Mr. Manoj Kumar i.e. Respondent No. 3.*
- e. Employee Group Leave Encashment Scheme through LIC of India: Rs. 10 Lakh was paid to the nominee on 22.02.2018.*

13. In so far as the grievance of the Petitioner regarding compassionate appointment is concerned, counsel for ONGC argued that a dependent of a deceased employee is eligible for financial assistance under the ONGC Composite Social Security Scheme, in lieu of gainful employment. Manoj was employed as an E-4 Level Executive and was eligible for financial assistance amounting to Rs. 60 Lakh. ONGC has already released an initial payment on 28.03.2018 to Respondent No. 1 to the tune of Rs. 7,50,000/- and a Fixed Deposit has been made in the name of Respondent No. 3 to the tune of Rs. 22,50,000/- and therefore the Petitioner is not eligible for compassionate appointment.

14. I have heard the learned counsels for the respective parties and examined their rival contentions.

15. The legal nodus that arises in the present petition is whether the line of succession governed by the personal law is applicable to the parties or the nomination made by the deceased employee would be the decisive factor for disbursing benefits such as Gratuity, Insurance, Provident Fund, etc. While the contention of the Petitioner is that she is the legally wedded wife of deceased Manoj and entitled to part of the benefits, the contention of the Respondent Nos.1 to 3 is that the nomination made by Manoj would be the governing factor and hence the benefits should be disbursed to the nominee(s).

16. Before advertng to the issue raised it would be relevant to consider the provisions applicable which are as follows :-

“Rule 5 (1) of ONGC Death Retirement & Terminal Gratuity Rules, 1995:-

"5.PAYMENT OF GRATUITY:

(1) Gratuity shall be payable to an employee on the termination of his employment after he has rendered continuous service for not less than five years :-

(a). On his superannuation, or

(b). On his retirement or resignation, or

(c). On his death or disablement due to accident or disease.

Provided that the completion of continuous service of five years shall not be necessary where the termination of the employment of any employee is due to death or disablement.

Provided further that in the case of death of the employee, gratuity payable to him shall be paid to his nominee or, if no nomination has been made, to his heirs, and where any such nominee or heir is a minor, the share of such minor, shall he

deposited with the controlling authority who shall invest the same for the benefit of such minor in such bank or other financial institution, as may be prescribed, until such minor attains majority.

EXPLANATION : For the purposes of this Rule disablement means such disablement as incapacitates an employee for the work which he was capable of performing before the accident or disease resulting in such disablement."

"Rule 8 (2) of ONGC Death Retirement & Terminal Gratuity Rules, 1995:

8. Nomination :

(2). If an employee has a family at the time of making a nomination, the nomination shall be made in favour of one or more members of his family, and any nomination made by such employee in favour of a person who is not a member of his family shall be void."

"Rule 18.7 of ONGC Self Contributory Post Retirement and Death in Service Rules 1991 :

18 BENEFITS

18.7 In case a member who joins this scheme during the service, his/her spouse or legal heir or nominee would be entitled to 40% of the last applicable salary as pension or pension as per Rule 17.1 above whichever is higher. This will also apply to any member of the Scheme who suffers a permanent total disability while in service. Permanent total disablement would be as defined in the Workmen's Compensation Act, 1948."

"Rule 20.1 of ONGC Self Contributory Post Retirement and Death in Service Rules 1991 :

20. NOMINATION :

20.1 An employee may make a nomination conferring on one or more persons the right to receive the amount of superannuation benefit in the event of his death before that amount becomes payable, or having become payable and the amount has not been paid. Such a nomination shall be made in such form as may be prescribed by the Trustees from time to time.”

“Rule 13 of ONGC Composite Social Security Scheme, 1998

13 NOMINATION :

(a). Every member shall on joining the Scheme make a nomination in prescribed form conferring on one or more persons the right to receive the Cash Benefits under the Scheme in the event of his death before the amount has become payable or having payable has not been paid, provided that :-

i) If at the time of making nomination, the member has a family, the nomination shall not be made in favour any person/persons other than the members of family (as defined in the Scheme). Any nomination made by such member in favour of person/persons not belonging to his/her family shall be invalid, and any nomination made by such employee in favour of a person who is not a member of his family shall be void.

ii) If at the time of making nomination, the member has no family, he shall provide in the nomination that it shall become invalid in the event of his/her subsequently acquiring a family.”

“Regulation 19 of ONGC Employees Contributory Provident Fund Regulations :-

19. NOMINATION :

(a). Every employee shall on joining the Fund make a nomination in Requisite form conferring one or more persons the right to receive the amount that may stand to his credit in the event of his death before the amount has become payable or having payable has not been paid.

Provided that :-

(i). If at the time of making nomination, the employee has a family, the nomination shall not be in favour any person or persons other than the members of his family. Any nomination made by such employee in favour of person not belonging to his family shall be invalid.”

17. Perusal of the Rules and Regulations hardly leaves any doubt that the employee is entitled to appoint a nominee in his lifetime, who would be the recipient of the benefits in the event of the death of the employee. It is uncontroverted that under the Rules, ONGC is required to disburse the benefits of the deceased employee only to the nominee(s). Nomination means “to mention by name” or “to appoint” or “propose”. The purpose of taking a nomination by an employer is to relieve itself of the obligation to pay the benefits, irrespective of the right of a person who is entitled in law to the Fund. Nomination, in law, cannot be construed as a “Will” of the employee and cannot be treated as a testamentary disposition of the deceased employee with an intent to bestow the benefits on the heirs. Every employee has a right in law to decide how his movable assets should be treated and disbursed in the event of his death and nomination cannot circumscribe the legal rights of disposition of the assets. The purpose of nomination is only to benefit a custodian so as to enable him to know how and to whom he has to hand over the assets, protecting him from litigations and multiplicity of cases from different people, claiming to be successors to the interest of the employee. Thus, the liability of the employer / custodian is discharged by disbursing the funds to the ‘nominee’ and thereafter if there is an inter-se disputes between the lawful heirs, they could resort to appropriate remedies for

identification of their shares. The concept of appointing a nominee therefore is only to ensure that the amounts are disbursed at the earliest to the nominee and this becomes significant as there may be occasions where it may take time for the legal heirs to resolve their disputes and in the meantime the trustee / Custodian Company or any other Institution may go into liquidation or any other contingency may arise making it difficult to realize the retiral and other dues.

18. The nominations are thus to be construed on a different pedestal than a testamentary disposition of the deceased employee and this issue is no longer *res integra*. I may at this stage allude to a few, with a caveat that most of them deal with the Provident Fund Act, but the law with regard to the rights of a nominee has been settled therein.

19. In ***Union of Bharat vs. Asha Bi, AIR 1957 MP 79***, a Division Bench of the Madhya Pradesh High Court held that a provision of appointing a nominee merely wipes off all personal and other laws, thus creating right in the nominee to receive money according to the nomination, but does not make the nominee owner of the fund. Court also held that before the death of the subscriber, nominee is not entitled to a beneficiary interest and nomination is in its nature not testamentary and on the death of the subscriber, his legal representatives would be entitled to the property.

20. A full Bench of the Kerala High Court in ***Sarojini Amma vs. Neelakanta, AIR 1961 Ker. 126*** held that nominee only had a right to collect the money under the Policy on the death of the assured but did not become the owner. The purpose was only to discharge the insurance

company, but he remained liable to make over the money to the heirs of the assured.

21. In Controller of *Estate Duty, Madras vs. Estate of Pitchai Thambi*, (1976) T.L.N.J. 393, while dealing with the effect of nomination under Section 39 of the Insurance Act, 1938, a Division Bench of the Madras High Court held as follows :-

“The effect of nomination is not to clothe the nominee with beneficial interest in the policy or the money payable thereunder, but to clothe him or her only with the power to receive the money under the policy from the insurer without prejudice to the question of title to the money. Consequently it confers on the nominee a bare right to collect the policy money when the money becomes payable and by such nomination and the collection of the money, the nominee does not become the owner of the money payable under the policy and he or she is liable to make it over to whomsoever is entitled to the same under the law. Therefore, the mere use of the word “nominee” or “assignee” in section 14 of the Act does not decide the tide to the money.”

22. In *Ramayee vs. Krishnaveni and ors.*, 1997 (1) LLN 406, a police constable had died in harness. The dispute was between the mother who claimed that she was an heir to the deceased and therefore had a right to his retiral benefits, etc. and the wife of the deceased in whose favour the employee had made a nomination during his lifetime. The Trial Court held that the mother of the deceased was entitled to half share in the retiral benefits as well as the insurance amount payable under the Insurance Policy and a Decree of Declaration was passed. The wife of the deceased filed an appeal and the Appellate Court held that the wife being the nominee was entitled to the insurance amount, to the exclusion of the

mother and also held that the nominee alone will be entitled to receive the benefits such as family pension, gratuity, etc. The mother filed an appeal against the said order before the Madras High Court. The Court framed the following question of law :

“Whether the nomination made by the deceased in relation to the pecuniary benefits gratuity and the family benefit fund which become payable on the death of the deceased will override the right of inheritance available to the legal heirs of the deceased under the personal law?”

23. The Court after examining the issue and following the law laid down by the Supreme Court in ***Sarbati Devi vs. Usha Devi, 1984(1) SCC 424***, observed as follows :-

“All these judicial decisions clearly show that the nominee gets only a right to receive the amount of distribute the same to the heirs of the deceased in accordance with the law of succession governing them. The above said legal position has not been disputed by any of the respondent's counsel. Hence the judgment of the lower appellate court is set aside and the judgment of the trial court is restored, accordingly the second appeal is allowed.”

24. In ***Jodh Singh vs. Union of India, 1980 (4) SCC 306***, the Supreme Court observed as under :-

“Where a certain benefit is admissible on account of status and a status that is acquired on the happening of certain event, namely, on becoming a widow on the death of the husband, such pension by no stretch of imagination could ever form part of the estate of the deceased. It did not form part of the estate of the deceased it could never be the subject matter of testamentary disposition.”

25. In *Shipra Sengupta vs. Mridul Sengupta and Ors., 2009 (10) SCC 680*, the appellant before the Supreme Court was the wife of a deceased employee in a bank in Madhya Pradesh. Prior to his marriage the employee on joining the bank had nominated his mother. He died leaving behind his widow, mother and two brothers. The appellant / widow filed an application for succession under the Succession Act, 1925 claiming her share in the benefits and the ground urged was that after the marriage the prior nomination ceased to exist. It was also her contention that both she and the mother of the deceased were Class-I heirs under the Hindu Succession Act, 1956 and thus entitled to succeed to equal shares in the property. The Trial Court held both entitled to half shares in the amounts under the head of 'retiral benefits' but for certain other benefits the widow was held entitled to the exclusion of the mother. The litigation travelled upto the Supreme Court where the widow questioned the judgment of the High Court. Three questions framed by the Supreme Court are relevant to the present case and are as follows :-

“I. Whether nomination of mother by a member of a Provident fund governed by the Imperial Bank of India Employees' Provident Fund Rules before his marriage confers ownership on the nominee and destroys right of succession of the widow under Succession Act?

II. Whether nomination only indicates the hand which is authorized to receive the amount on the payment of which trustees of the provident fund get a valid discharge?

III. Whether the provident fund can be claimed by the heirs of the member of the provident fund in accordance with the law of succession governing them?”

26. The Court after examining the issues and placing reliance on the earlier judgments of the Supreme Court held as follows :-

“17. The controversy involved in the instant case is no longer res integra. The nominee is entitled to receive the same, but the amount so received is to be distributed according to the law of succession. In terms of the factual foundation laid in this case, the deceased died on 8.11.1990 leaving behind his mother and widow as his only heirs and legal representatives entitled to succeed. Therefore, on the day when the right of succession opened, the appellant, his widow became entitled to one half of the amount of the general provident fund, the other half going to the mother and on her death, the other surviving son getting the same.

18. In view of the clear legal position, it is made abundantly clear that the amount in any head can be received by the nominee, but the amount can be claimed by the heirs of the deceased in accordance with law of succession governing them. In other words, nomination does not confer any beneficial interest on the nominee. In the instant case amounts so received are to be distributed according to the Hindu Succession Act, 1956.”

27. In **M.V. Krishnamoorthy vs. Tmt. Anandallakshmi, 1980 (2) MLJ 321**, the High Court of Madras dealing with a similar issue held as follows :-

“8. R. 22 before 1972 amendment, provided that all nominations must be in writing and must be registered with the trustees. R. 23 deals with payment to nominee and is to the effect that on the death of a member, the full amount shall be paid to the nominee, and such payment shall be a good discharge to the Trustees and to the Corporation...against all claims whatsoever in respect of the Fund by whomsoever claiming through the said member. These two rules go to show that the main purpose of taking nomination is for the trustees of

the fund to relieve themselves of their obligation in paying the provident fund amount, irrespective of the persons who may be entitled to the fund. Whenever provident fund amount is disbursed the custodian of the fund is anxious to have a good discharge against all claims from whomsoever claiming through the member. The Rules nowhere provide that the nomination is to be construed as a will by the member. If a nomination is to be taken as a final disposition made by the member as to how it should be taken by his heir on his death, it would lead to anomalies, because till the member dies, the nominee acquires no right to claim the amount. The legal right of a member to decide from time to time as to how his assets should be taken consequent to his death, cannot be frozen by a nomination given, as part of his service conditions. His legal rights about disposition of his assets cannot be circumscribed by such nomination, 11 he is to execute a "Will" later on, contrary to the nomination that has been made earlier, the terms and conditions of the 'will' alone can prevail, and so far as the trustees of the fund are concerned, their obligation will be fully discharged by paying it to the nominee, who will in turn be liable to hand over the funds to the persons entitled to as per the 'Will'. In case of intestate succession, the nominee is bound to hand over the amounts to the heirs of the deceased. The main purpose of nomination is intended to benefit the custodians-trustees of the fund to know as to how or to whom they should hand over the amounts and need not make themselves answerable to multiplicity of claims from different persons claiming to succeed to the interests of the deceased member. If there is no nomination, the custodian of the fund cannot decide as to who are the lawful heirs to succeed and they will have to wait for a Court order to be produced, and unless finality is reached, therein, the disbursement of the fund will be delayed Funds, like the provident fund, in the case of State or other public institutions, may be sufficiently safe-guarded even if there is to be a delay in disbursement. But in cases of other institutions, if the amounts are not immediately disbursed on the basis of nomination, and before proceedings in Court are over, if for any reasons, the Companies or institutions are

liquidated, the contributions made by a member of such bodies, will not enure to the benefit of the legal heirs till finality is reached in Court proceedings unless the amount is deposited in Court at the earliest stage. The concept of nomination has been thought of to achieve the disbursement of the amounts at the earliest point of time to the nominee, who will be answerable to claims made by those who are entitled to the amount lawfully. Nomination means 'to mention by name'; to appoint, to propose formally.'

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18. Most of the decisions above referred to arose under the Provident Funds Act and even then subsequent to amendments it has been held that the nominee does not acquire absolute interest in the funds. The provision for nomination is made for the benefit of discharging the liability of the custodians of the fund, which aspect I have dealt with at length in the earlier part of this Judgment, and unless a specific provision is made in the relevant Act or even in the nomination a direction of bequeathing the amount is given to the effect that except the nominee, none of the legal heirs would acquire rights and such directions is not varied later on, the right of a nominee cannot be anything more than being the sole person entitled to draw out the amount and he would be doing so in the capacity of a trustee of the funds answerable to the claims of the lawful heirs of the deceased member. The use of the word 'nomination which means only appointment to receive the amount, cannot be construed as to confer any absolute right in the funds to the exclusion of the rights of the lawful heirs, because even a stranger may be nominated in whom the nominator may have trust. If the intendment is to make the nominee as the absolute owner, there can be no difficulty in incorporating the necessary recitals to the effect that he has got, on the date of nomination, his legal heirs and in spite of it, he bequeathes the amount only to the nominee to take the funds to the exclusion of the other heirs. When such an unequivocal expression is not present in a nomination, it would not be proper to hold that such a

nomination would result in absolute conferment of rights in the nominee to take the amount for himself.”

28. Having gone through the various judgments as referred to above, I am of the view that the law on the right of a nominee is well settled. The effect of nomination is not to clothe the nominee with a beneficial interest but is only a pointer to the person who is authorized to receive the amount and subsequently the amounts so received would have to be distributed according to the law of succession. It is crystal clear that Nomination cannot override the law of succession as applicable to the parties in question. Therefore, once there is a claim by the heirs of the deceased to his benefits or assets, the same shall devolve on the heirs in accordance with the governing law of succession. There is no right in a nominee to claim ownership to the property in question.

29. Learned counsel for the Petitioner is thus right in his contention that a widow of a deceased employee is a Class-I heir under the Succession Act and would be entitled to a proportionate share in the benefits that accrue out of employment. Learned counsel has rightly relied on the judgment of a Co-ordinate Bench of this Court in ***Smt. Manjula Verma (supra)*** where the Court after analysing the historical rhetoric of the Provident Fund Act and its Amendments, concluded that the nominee does not acquire any beneficial interest or ownership to the sum in the Provident Fund Account and merely gets a right to receive the fund.

30. The question that next arises in the present petition is the relief that can be granted to the Petitioner. The prayers made in the present petition need to be looked into in this regard and are as under :-

“(a). Issue of a writ of mandamus or any other appropriate writ or order or direction to the respondent no.4 & 5 to grant compassionate appointment to the petitioner.

(b). Direct the Respondent no.4 and 5 to provide the release Gratuity, pension, terminal dues, insurance fund which accrued due to death of Late Sh. Manoj Kumar Singh and other monetary benefits of late Manoj Kumar Singh to the petitioner and other legal heirs as per law.

(c). Direct the Respondent No.1 to 3 to pay the amount, if received from the Respondent No.4 and 5 qua gratuity, pension, terminal dues and other monetary benefits of late Manoj Kumar Singh, to the Petitioner regarding her share.”

31. It is evident from the prayers that the Petitioner has claimed reliefs against Respondent Nos. 4 and 5 to release the retiral and other monetary benefits accruing due to the death of Manoj claiming to be a Class-I legal heir, as per law. Petitioner has also sought a direction against Respondent Nos.1 to 3 to disburse to her the share to which she is entitled as a Class-I heir of her deceased husband. Petitioner has also sought compassionate appointment with Respondent Nos.4 and 5.

32. In so far as compassionate appointment is concerned, ONGC has brought out that under the Rules applicable to ONGC, a dependent of the deceased employee is eligible for financial assistance in lieu of gainful employment under the ONGC Composite Social Security Scheme. Being an E-4 level Executive, Manoj was entitled to Rs.60 Lakh under the Scheme. Out of the said amount, Rs.7,50,000/- have been released to

Respondent No.1 on 28.03.2018 and Rs.22,50,000/- have been placed in a fixed deposit in the name of the minor daughter Aditi. The stand of ONGC, in my opinion, cannot be faulted as the action has been taken in terms of the provisions of the Scheme, whereby compassionate appointment or financial assistance are alternatives to one another. In any case, during the course of arguments, the relief was not pressed by the counsel for the Petitioner.

33. In so far as direction to the ONGC to release the retiral and other monetary benefits to the Petitioner is concerned, it is a settled law that the employer / trustee / custodian is discharged in its obligation and liability once the benefits of the deceased are disbursed in favour of a nominee. As noticed above, the Courts have repeatedly affirmed that the purpose of nomination is to discharge the trustee of his liability to release the money as soon as the person nominating expires and it is thereafter for the nominee to take steps to disburse the amount in case there is a claim by the other legal heirs of the deceased.

34. In the present case it is undisputed that Manoj had nominated his minor daughter as a nominee to receive the benefits under various Heads and for a certain percentage of share under one of the Schemes nomination was made in favour of Respondent No.1. ONGC followed the Rules applicable to the deceased employee and released some of the amounts in favour of the nominees. Once the nomination was made as per the Rules, which have been referred to above, no infirmity or illegality can be found with the action of the ONGC or their stand that they are obliged to release the benefits as per the nomination made by the deceased employee.

35. At this stage it is pertinent to mention that after some of the benefits had been released by ONGC as per the Nomination Form and as mentioned by them in para 12 of the Counter Affidavit, this Court had passed an interim order on 27.06.2018, relevant part of which is as follows :-

“Having considered the submissions of the learned counsel for the petitioner, I am of the view that the petitioner has been able to make out a prima facie case and balance of convenience is also in her favour. Grave and irreparable loss would be caused to the petitioner, in case, during the pendency of the present petition, all the retiral dues of late Shri Manoj Kumar Singh are released to the respondent nos.1 to 3.

Accordingly, till the next date of hearing, the respondent no.4 is restrained from releasing more than 50 per cent of the retiral dues of late Shri Manoj Kumar Singh to any of the respondent nos.1 to 3.”

36. The position therefore that emerges is that some portions of the amounts towards retiral / terminal benefits have been disbursed in favour of Respondent Nos.1 and 3 while some are lying with the ONGC, due to the interim order passed by the Court.

37. Ordinarily, this Court would have relegated the Petitioner to civil remedies, but in view of the fact that the marriage of Petitioner with deceased Manoj is not disputed and the marriage certificate has been placed on record, directions are being issued in the present petition. In somewhat similar circumstances, the High Court of Kerala in ***Kaveri S. vs. Deputy Inspector General of Police CRPF and Ors. 2015 SCC OnLine Ker 33849*** entertained the writ petition and passed the following directions:-

“3. It is trite that a nominee does not get a right to the estate of the deceased and in the event of the same being confined to a money claim, the right is only to get disbursement of the same; which the nominee would hold in trust for the other legal heirs. Hence, even if the amounts are disbursed to the 4th respondent, the 4th respondent cannot claim any right, as such, over the entire amounts.

4. Admittedly, the son of the 4th respondent had entered into a marriage with the petitioner just two months prior to his death. The same is evidenced by Ext.P1 certificate. A child is said to have been born to the petitioner in the wedlock. Hence, the petitioner and the child along with the mother of the deceased are Class-I heirs, as per the Hindu Succession Act, 1955. Hence, it may not be necessary for this Court to relegate the petitioner to the Civil Court especially since the disbursement of the retirement benefits has not been made till now.

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7. In such circumstance, the following directions are issued:

(i) The petitioner shall appear before the 1st respondent with the original of Ext.P1 certificate as also the birth certificate of the child born to the petitioner. The 1st respondent shall, on production of such original certificates, verify the same and sanction 1/3 of the retirement benefits to the petitioner herein; 1/3 of the benefits shall be issued by way of cheque in the name of the child, a minor, and the cheque handed over to the 2nd respondent. The balance 1/3 shall be disbursed to the 4th respondent.

(ii) The pension, going by the C.C.S. Pension Rules, shall be the entitlement of the petitioner and the same shall be computed and Pension Payment Order, for family pension, if eligible, issued in the name of the petitioner and all arrears paid as expeditiously as possible. The petitioner's claim for compassionate appointment, in accordance with the rules, as applicable to the C.R.P.F., shall be kept open.”

38. In view of the law enunciated by various courts, it is held that the Petitioner being a Class-I heir of Manoj, is entitled to stake a claim over

the proportionate share in the retiral / terminal benefits of Manoj, in accordance with the Hindu Succession Act and her right cannot be defeated by the nominations. As Respondent No.2 being the mother and Respondent No.3 being the minor daughter are also Class-I heirs, Petitioner is entitled only to 1/3rd share in the retiral / terminal benefits. It has come on record that prior to the passing of the interim order, amounts under certain Heads, as noted in the earlier part of the judgement, were already disbursed in favour of the nominees. However, on account of the interim order certain amounts are lying deposited with the ONGC, although the exact figures have not been disclosed in the Counter Affidavit.

39. ONGC is thus directed to disburse to the Petitioner her proportionate share under the various Heads, as claimed, from the amounts presently lying in the various Funds / Trust with the ONGC. Needless to state that if the amounts disbursed by the ONGC to the Petitioner fall short of the 1/3rd share in the total entitlement, on account of the fact that amounts towards certain benefits have already been disbursed to Respondent Nos. 1 to 3, it shall be open to the Petitioner to resort to appropriate Civil remedies, in accordance with law, to recover the said amounts from Respondent Nos. 1 to 3.

40. Petition is partly allowed. All pending applications stand disposed of.

JYOTI SINGH, J

NOVEMBER 6th, 2020/ yo/yg