

6<sup>th</sup> December, 2021  
(D/L No.13)  
(SKB)

**W.P.A. 1041 of 2019**  
(Via Video Conference)

Nilima Samaddar  
Versus  
The University of Calcutta and others

Mr. Krishnendu Bera,  
Ms. Debolina Chakraborty  
... for the petitioner.

Ms. Nandini Mitra  
... for the University.

The affidavit-in-reply of the petitioner to the opposition filed by the private respondent is kept on record. The direction on the University to file supplementary affidavit has been dispensed with since a copy of the Succession Certificate has been handed over in court today.

The prayer in the writ petition is for a direction on the respondents to pay an amount of Rs.30,603/- as the Group Savings Linked Insurance Scheme of the petitioner's late husband one Biswanath Samadder to the petitioner.

The case sought to be made out by learned counsel appearing for the petitioner is that on the marriage of the petitioner to her husband, the nomination made in favour of the petitioner's mother-in-law and brother-in-law became invalidated and that the petitioner should now receive the full amount i.e. 100% of the Provident Fund and other insurance

benefits which accrued to the petitioner's husband. The petitioner's husband nominated his mother and brother at the time of joining the University in 1981. Counsel places reliance on a Notification of the Finance Department of the Government of West Bengal dated 22<sup>nd</sup> November, 1985 and the Note therein which provides that a nomination shall become invalid in case of a subscriber, who had no family at the time of nomination, subsequently acquires a family. Counsel also relies on a Memorandum of the State Education Department dated 27<sup>th</sup> December, 1991 and the definition of "family" thereunder which includes brothers below the age of 18 years and unmarried or widowed sister. Reliance is also placed on a decision of the Supreme Court reported in (2009)10 SCC 680: *Shipra Sengupta Vs. Mridul Sengupta and others*. Counsel also relies on Section 6(4) of The Payment of Gratuity Act, 1972 in respect of the order of nomination.

Learned counsel appearing for the University of Calcutta hands up a succession certificate as on 1<sup>st</sup> December, 2004 which shows that the petitioner has already received an amount of Rs.1, 91,381.45/- in relation to provident fund, gratuity, group insurance and other allowances to which the petitioner's husband was entitled. Counsel also places document of 14<sup>th</sup> December, 2018 issued by the University of Calcutta to the petitioner also showing that the petitioner has

already received 50% of death gratuity together with provident fund amounts as on 25<sup>th</sup> April, 2005. The 14 years delay in coming to the court can be explained in part by the petitioner by filing an earlier writ petition which was disposed of on 27<sup>th</sup> August, 2018 with a direction on the University to consider the case of the petitioner.

Upon hearing learned counsel appearing for the parties, the dates in the present matter are relevant for considering the claim of the petitioner. The petitioner became the wife of late Biswanath Samadder sometime in 1998. The petitioner's husband joined the University of Calcutta in 1981 and died in 2003. The Succession Certificate of December, 2004, which has been produced in court today, indicates that the petitioner received 50% of the death Gratuity, Provident Fund and other amounts in 2004/05.

The aforesaid dates show that between 1997 and 2003 i.e. when the petitioner was married to late Biswanath Samadder and the time of which the petitioner's husband died, the petitioner's husband had enough time and opportunity to change the nomination which had been made in favour of the petitioner's mother-in-law and brother-in-law. This was not done.

The second fact which is of significance is that after having received 50% of the Provident Fund and Gratuity dues of her late husband in 2004/05, the

petitioner filed the present writ petition in 2019 for claiming 100% of the Provident Fund and other dues which her late husband was entitled to. It is an admitted fact that petitioner's brother-in-law received the gratuity and other amounts in 2005. Even if the petitioner filed an earlier writ petition in 2014, the said writ petition was disposed of in 2019, the petitioner has no explanation for the delay from 2005 to 2014.

The note in the memorandum dated 23<sup>rd</sup> November, 1985 provides for invalidation of a nomination once the person making the nominee acquires the family subsequently. It does not contemplate the situation where the person making the nominee already has a family at the time of making the nomination but marries at a subsequent date.

Section 6(4) of The Payment of Gratuity Act, 1972 makes it clear that a nomination made earlier can only become invalid subject to the employee making a fresh nomination in favour of one or more members of the family within the prescribed time limits. *Shipra Sengupta* (supra) is an authority for the proposition that a mere nomination does not have the effect of conferring to the nominee any beneficial interest in the amount payable under the life insurance policy, on death of the insurer. In that decision the Supreme Court held that nomination only indicates the hand which was authorized to receive the amount on payment of which the insurer got a valid discharge of

its liability under the policy. In fact, in that case, the widow who was the appellant before the Supreme Court was found to be entitled to one half of the amount of the general provident fund and the other half going to the mother and on the mother's death on the surviving son.

It is also arguable whether, the University of Calcutta being an autonomous body would be governed by this Memo.

The Memorandum, notification and the decision hence do not assess the case of the petitioner.

As stated above, the conduct of the petitioner is suspect. It is quite evident that the petitioner after her husband died in 2003 claimed 100% of her late husband's retirement benefits and sought to deprive her brother-in-law who was the nominee of the petitioner's husband way back in 1981. The petitioner's husband took no steps to change or invalid the nomination after he got married to the petitioner and even before he died in 2003.

In view of the above, this court finds no merit in the prayer of the petitioner.

W.P.A.1041 of 2019 is dismissed in terms of the above.

There shall be no order as to costs.

**(Moushumi Bhattacharya, J.)**