21.06.2022
Court No.13
Item No.39
AP

WPA 15419 of 2019

Sri Monoranjan Maity and Anr.
Vs.
The State of West Bengal and Ors.

Mr. Satyajit Mondal
Mr. Amar Nath Sen
Mr. Malay Dhar
Mr. Amit Bikram Mahata
... For the Petitioner.

Mr. Bhaskar Prosad Vaisya, AGP
Mr. Suman Dey
... For the State.

Mr. P. Deb
Mr. P. Bose
Mr. A. Goswami
... For the Respondent No.7.

The respondent No.7, widow of the deceased is represented.

Despite service, no one appears on behalf of the school.

It appears from the facts of the case that the deceased was an Assistant Teacher who died on 08.04.2018. The respondent No.7 is stated to have received compassionate appointment. She has also claimed pension and is entitled to receive family pension. The parents/writ petitioners have no share in such pension as of now. The parents have received a share of the gratuity that has been paid on account of the service of the deceased employee. The parents have received 25 percent of share of gratuity each. The balance having gone to the respondent No.7 widow and the minor son.

On the question of share of provident fund, counsel for the petitioners relies upon a decision of the Supreme Court in the case of ***Shipra Sengupta Vs. Mridul Sengupta & Ors.*** reported in ***(2009) 10 SCC 680***. In the said decision the Hon'ble Supreme Court had framed issues at paragraph 12 and had answer the issues of provident fund entitlement of father and mother of a deceased at paragraphs 17 and 18. Paragraphs 12 to 18 are set out hereinbelow:-

> **"12.** The appellant, aggrieved by the impugned judgment of the High Court, preferred this appeal. The following questions have been raised by the appellant in this appeal:
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> "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 the right of succession of the widow under the Succession Act?
>
> II. Whether nomination only indicates the hand which is authorised 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?
>
> IV. Whether it was proper for the High Court to rely upon a forged and fabricated will which was not even signed by Niharbala?
>
> V. Whether it was proper for the High Court to accept the alleged will on record in its revisional jurisdiction, in the absence of any application to that effect?
>
> VI. Whether the High Court was entitled to take the will on record without giving fresh opportunity to lead evidence on it?
>
> VII. Whether the High Court was right in interpreting and relying upon Section 3(2) of the Provident Funds Act, 1925?"
>
> **13.** The appellant submitted that according to the settled legal position crystallised by *Sarbati Devi* [(1984) 1 SCC 424 : 1984 SCC (Tax) 59] , the principle of law is that the nomination is only the hand which accepts the amount and a nomination does not confer any beneficial interest in the nominee.
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> **14.** In *Sarbati Devi* [(1984) 1 SCC 424 : 1984 SCC (Tax) 59] this Court has laid down 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. The nomination only indicates the hand which is authorised to receive the amount on 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.

15. The appellant also placed reliance on the judgment of this Court in *Vishin N. Khanchandani* v. *Vidya Lachmandas Khanchandani* [(2000) 6 SCC 724] , wherein this Court held that: (SCC pp. 734-35, para 13)

> "*13.* … the law laid down by this Court in *Sarbati Devi* [(1984) 1 SCC 424 : 1984 SCC (Tax) 59] holds the field and is equally applicable to the nominee becoming entitled to the payment of the amount on account of National Savings Certificates received by him under Section 6 read with Section 7 of the Act who in turn is liable to return the amount to those in whose favour the law creates a beneficial interest, subject to the provisions of sub-section (2) of Section 8 of the Act."

16. Learned counsel for the appellant also placed reliance on a Division Bench judgment of the Delhi High Court in *Ashok Chand Aggarwala* v. *Delhi Admn.* [(1998) 7 AD 639 (Del)] This case related to the Delhi Cooperative Societies Act. The High Court while following *Sarbati Devi case* [(1984) 1 SCC 424 : 1984 SCC (Tax) 59] held that it is well settled that mere nomination made in favour of a particular person does not have the effect of conferring on the nominee any beneficial interest in property after the death of the person concerned. The nomination indicates the hand which is authorised to receive the amount or manage the property. The property or the amount, as the case may be, can be claimed by the heirs of the deceased, in accordance with the law of succession governing them.

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 the present 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 under any head can be received by the nominee, but the amount can be claimed by the heirs of the deceased in accordance with the law of succession governing them. In other words, nomination does not confer any beneficial interest on the nominee. In the instant case the amounts so received are to be distributed according to the Hindu Succession Act, 1956."

In view of the clear legal position, it is abundantly clear that the petitioner's father and mother are legal heirs of the deceased Assistant Teacher and are entitled to 25 percent share each of the provident fund payable on account of the service of the deceased.

In that view of the matter, the Head Master, Gobindapur Rajnagar High School (HS) at Gobindapur, District Murshidabad shall calculate the entire provident fund payable on account of the deceased employee Indranil Maity and make over 25 percent each of such total amount to each of the two petitioners. The balance 50 percent shall be paid over to the respondent No.7 and the minor son in equal share.

In the event, there is any leave encashment i.e. allowed to the deceased employee towards any un-availed leave the amounts in connection therewith shall be distributed one fourth each to each of the petitioners, the respondent No.7 and the minor son.

In so far as the claim of the petitioners on the pension, the same may be agitated, if at all sustainable, in accordance with law.

In the event, concerned District Inspector of Schools has any role to play in the above process, he shall facilitate the compliance of the aforesaid order with expedition and urgency.

With the aforesaid directions, the writ petition is disposed of.

There shall be no order as to costs.

All parties shall act on the server copy of this order duly downloaded from the official website of this Court.

(Rajasekhar Mantha, J.)