IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.06.2023

CORAM:

THE HONOURABLE MR. JUSTICE M.S. RAMESH

W.P.No.17058 of 2023

K.Pachaiyammal ...Petitioner

Vs

1.The Principal Accountant General,
Office of the Accountant General,
No.361, Anna Salai,
Chennai - 600 018.

2.The Zonal Joint Director of
Animal Husbandry,
Kancheepuram,
Kancheepuram District.

3.The Assistant Joint Director of
Animal Husbandry,
Kancheepuram,
Kancheepuram District.

4.The Tashildar,
Uthiramerur,
Kancheepuram District. ...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Mandamus directing the 1st respondent to disburse the petitioner husband's terminal benefits and consequential monthly pension based on the petitioner's representation dated 20.04.2023.

For Petitioner	:	Mr.R.Jayaprathap
For R1	:	Mrs.Hema Muralikrishnan, Senior Standing Counsel
For R2 to R4	:	Mr.P.Baladhandayutham Special Government Pleader

ORDER

With the consent of both the parties, this Writ Petition is taken up for final disposal.

2. The petitioner herein claims to be the wife of one kuppusamy, who died on 05.03.1990. Since her claim for the death benefits of her late husband has not been considered, she has preferred the present Writ Petition.

3. The learned counsel for the petitioner submitted that after the death of the petitioner's husband, she had not re-married and has also

obtained a certificate from the concerned Tahsildar on 08.12.2022. He also placed reliance on the proceedings of the Tahsildar dated 16.03.2022, which states that the petitioner had not re-married after the death of her husband and that the name of one Suseela, which is found in the service records of the late employee, is his sister.

4. The learned Senior Standing Counsel appearing for the first respondent would submit that the status of the nominee, namely Suseela, is not established in the records and therefore, they are not in a position to process the pension proposal.

5. The Hon'ble Supreme Court, in the case of ***Sarbati Devi Vs. Usha Devi*** reported in ***(1984) 1 SCC 424***, as well as in other decisions, which have been relied upon by me in the case of ***S.Ramayee Vs. The Principal Comptroller of Defence (Accounts) and others*** passed in ***W.P.(MD) No.18544 of 2016, dated 17.02.2020,*** has held that the counter claim by a nominee overlooking the legal heirs for receiving the pensionary and terminal benefits is not permissible in law. The

consequential legal position would be that, even if a third party has been nominated in the service records of a Government servant, the legal heir of the deceased employee would be entitled for such claims. The relevant portion of the order reads as follows:-

> *"4.In the case of **SARBATI DEVI V. USHA DEVI(1984) 1 SCC 424**, the Hon'ble Supreme Court had held that the principle of law is to the effect that the nomination would not confer any beneficial interest on the nominee and is only an authorization to the nominee to receive the insurance amount, which is subject to disbursement among the legal heirs, as per the Law of Succession. The following decision in **SHIPRA SENGUPTA VS. MRIDUL SENGUPTA AND OTHERS** reported in **(2009) 10 Supreme Court Cases 680**, had reiterated this preposition of law in the following manner,*
>
> > *"13.The appellant submitted that according to the settled legal position crystallised by Sarbati Devi, 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.*
> >
> > *14.In Sarbati Devi 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.Kanchandani v. Vidya Lachmandas Khanchandani, wherein this Court held that:(SCC pp.734-35, para 13)

"13.....the law laid down by this Court in Sarbati Devi holds the fields 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 Aggarawala v. Delhi Admn. This case related to the Delhi Cooperative Societies Act. The High Court while following Sarbati Devi case 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 08.11.1990 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."

*5.The aforesaid decision came to be adopted by a learned Judge of this Court in the case of **P.PANCHALI V. THE CHIEF ENGINEER, MADURAI REGION, TAMIL NADU GENERATION AND DISTRIBUTION CORPORATION LTD., K.PUDUR, MADURAI-7, AND OTHERS** in **W.P. (MD).No.10748 of 2016** and in the order dated 08.09.2016, the learned Judge had held as follows:*

"5.After elaborately discussing those judgments, the Supreme Court has concluded as under:

"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.

18.In terms of the factual foundation laid in this case, the deceased died on 08.11.1990 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 song getting the same.

19.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. The State Bank of India is directed to release half of the amount of general provident fund to the appellant now within two months from today along with interest."

6.This decision of the Hon'ble Supreme Court is applicable to the facts of this case and unhesitatingly, this Court holds that the petitioner as mother is entitled to receive 50% of the terminal benefits of the deceased even though the 6th respondent/wife is the nominee.

7.As there is no cordiality prevailing between the petitioner and the 6th respondent, *permitting the 6th respondent to receive the same and directing the 6th respondent to disburse 50% to the petitioner could only lead to multiplicity of the proceedings, involving expenditure in terms of time, money and energy. Therefore, the petitioner is permitted to receive 50% of the terminal benefits.*

8.In the result, this Writ Petition is allowed and the impugned order of the 3rd respondent dated 05.05.2016 passed in Ka.No:Se.Po/KiKo/UNiA/NiPi/Nir.U.1/A.No.74 5/20 6 is set aside. Either the 3rd or the 2nd respondent, whomsoever is competent is directed to disburse the terminal benefits of the deceased employee in equal proportion to the petitioner as well as to the 6th respondent within a period of two weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petitions are closed."

6.Thus, the legal decision stands cleared to the effect that though the wife alone is nominated to the benefits of the insurance scheme, the proceeds of the scheme requires to be distributed among the legal heirs of the insurer in accordance with the Law of Succession. While that being so, the objection raised by the fourth respondent that the petitioner is disentitled to receive the part of the insurance amount, in view of her nomination, cannot be legally sustained."

6. Thus, when the Tahsildar himself has certified that the nominee is only a sister of the deceased employee and has also further certified that the petitioner had not re-married after the death of her husband, it would be appropriate to direct the first respondent to process the pension proposals in favour of the petitioner herein, rather than the nominee.

7. In the light of the above observations, there shall be a direction to the first respondent to pass appropriate orders on the petitioner's representation, in the light of the findings rendered by this Court, and disburse the terminal and pensionary benefits to the petitioner, within a period of 6 weeks from the date of receipt of a copy of this order.

8. Accordingly, the Writ Petition stands allowed. No costs.

19.06.2023

Index:Yes
Neutral Citation:Yes
Speaking order
hvk

M.S.RAMESH,J.

hvk

To

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