ra

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO.633/2024

AMANDA MAY SALDANHA AND ANR. ⋯ PETITIONERS

Versus

THE DIRECTOR OF EDUCATION, DIRECTORATE OF EDUCATION & 5 ORS. ⋯ RESPONDENTS

Mr Gaurish Agni with Mr Ankur Kumar and Kishan Kavlekar, Advocates for the Petitioners.
Mr S. Samant, AGA for the State (through VC).

CORAM: M. S. KARNIK &
NIVEDITA P. MEHTA, JJ.

DATE: 19th NOVEMBER 2024

ORAL ORDER: (Per M. S. Karnik, J.)

1. Heard Mr Gaurish Agni for the petitioners and Mr S. Samant, learned AGA for the State. This petition is filed under Article 226 of the Constitution of India to consider the request of the petitioners made vide letter dated 02.05.2024 for the disbursement of the family pension and the death gratuity.

2. The facts of the case in brief are that the petitioners are the nieces of late Ms Christine Flavia Dsouza ('the subscriber' for short) who was teaching Science subject in Saraswat Vidyalaya Higher Secondary School since the year 1987. The subscriber was a spinster and therefore out of love and affection towards the petitioners, nominated them as her nominees to

the School PPF and Death Gratuity Fund. The subscriber had two siblings named Dr Oswald Dsouza and Mrs Marina Saldanha. Petitioners are the daughters of Mrs Marina Saldanha.

3. The subscriber nominated the petitioners who are the members/ non-members of a family as defined in the Provident Fund (Central Services) Rules, 1960 to receive the amount that may stand to her credit in the Fund as indicated in the chart below, in the event of her death before the above amount that has become payable or having become payable, has not been paid. The chart reads thus:-

"I, Ms. Christine D'Souza hereby nominate the person(s) mentioned below who is/are members/hon-members of my family as defined in rule 2 of the General Provident Fund (Central Services) Rules, 1960 to receive the amount that may stand to my credit in the Fund as indicated below, in the event of my death before that the amount has become payable or having become payable has not been paid.

Name and full address of the nominee	Relationship with the subscriber	Age of the nominee	Share payable to each nominee	Contingencies on the happening of which the nomination will become invalid	Name, address & relationship of the person(s) if any to whom the right of nominee shall pass in the even of his/her predeceasing the subscriber	If the nominee is not a member of the family as provided in rule 2, indicate the reasons.
1	2	3	4	5	6	7
1) Ms Amanda Saldanha 2) Ms. Aliya Saldanha Next to Satyam Apartments, H.No.B-173-A, Green Circle, Alto Betim – Bardez.	Niece	25 yrs	50% each	On acquiring a family	Marina Saldanha Next to Satyam Apartments, H.No.B-173-A, Green Circle, Alto Betim – Bardez.	Has no family

Dated this 27th day of September dated 2011."

4. During the lifetime of the subscriber the petitioners got married. Petitioner no.1 - Ms Amanda married in the year 2016 and petitioner no.2 - Ms Aliya Saldanha got married in the year 2017. The subscriber passed away in the year 2021.

5. Mr Gaurish Agni, learned counsel for the petitioners submitted that the stand taken by the respondents is opposed to the 1960 Rules. It is submitted that Column 5 of Annexure-II is wrongly interpreted by the respondents to mean that the nomination is invalid on the nominees acquiring a family. It is submitted that the purpose of the nomination is that the money which is due and payable to the subscriber upon her death has to pass on to the nominee and the nominee should not be made to face a long drawn litigation by way of inventory or succession proceedings. It is further submitted that even after the petitioners got married, the subscriber did not change the nomination clearly indicating the intent that she wanted the petitioners to continue as her nominees. Learned counsel for the petitioners invited our attention to the definition of the term "family" in terms of Clause (c) of Rule 2 of the Definitions contained in the Rules of 1960.

6. The respondents have taken a stand that the nomination is invalid as the petitioners have acquired a family during the lifetime of the subscriber.

7. We have carefully perused Annexure-II which provides for the nomination of the petitioners. The said Annexure-II will have to be read together with Rule 5 of the 1960 Rules which provides for nominations. Clause (1) of Rule 5 provides that the subscriber shall, at the time of joining the Fund, send to the Accounts Officer through the Head of Office a nomination conferring on one or more persons the right to receive the amount that may stand to his credit in the Fund in the event of his death,

before that amount has become payable or having become payable has not been paid. Clause (3) of Rule 5 provides that every nomination shall be made in the Form set forth in the First Schedule. Clause (5) ordains that a subscriber may provide in a nomination :

> (a) in respect of any specified nominee, that in the event of his predeceasing the subscriber, the right conferred upon that nominee shall pass to such other person or persons as may be specified in the nomination, provided that such other person or persons shall, if the subscriber has other members of his family, be such other member or members. Where the subscriber confers such a right on more than one person under this clause, he shall specify the amount or share payable to each of such persons in such a manner as to cover the whole of the amount payable to the nominee.
>
> (b) that the nomination shall become invalid in the event of the happening of a contingency specified therein.

8. Thus a reading of Clause (5) of Rule 5 makes it clear that the subscriber may provide in a nomination that the nomination shall become invalid in the event of the happening of a contingency. We find from Annexure-II that the contingency of happening on which the nomination may become invalid is the nominees "acquiring a family". This is a contingency, in our opinion, relatable to the nominees and not to the subscriber as is sought to be contended by the learned counsel for the petitioners. In such view of the matter, in our opinion, the nomination has become invalid on the happening of the contingency viz. the petitioners acquiring a family.

9. We therefore do not find any merit in the petition and the same is hereby dismissed. It is however open to the petitioners to file appropriate

inventory proceedings or for succession as may be permissible to claim the right to receive amounts which stand to the credit of the subscriber. It is made clear that we have not made any observations on merits as to the entitlement of the petitioners to receive the amounts that stand to the credit of the subscriber. The present order is limited only to the claim made by the petitioners to receive the amounts in their capacity as nominees under the provisions of the Provident Fund (Central Services) Rules, 1960. All contentions on merits are therefore kept open which may be raised in the appropriate proceedings.

10. With the above observations, the petition is dismissed. No costs.

NIVEDITA P. MEHTA, J. **M. S. KARNIK, J.**

Signed by: SUCHITRA NANDAN SINGBAL
Designation: Personal Assistant
Date: 20/11/2024 10:41:52