

HUSENBASHA
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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 5756 OF 2024

B. Suguna)
W/o B. Sudarshan)
Age: 78 years)
R/A: H. No. 12-11-475,)
Pochamma Temple,)
Warasiguda, Secunderabad,)
Sitaphalmandi, Hyderabad,)
Telangana - 500 061)

...Petitioner

Versus

1. Smt. Bolla Malathi)
W/o Late Bolla Mohan)
R/A: Qtr No. 27/02, DAD)
Complex, Wanowrie Range,)
Pune - 411 040)
 2. Union of India)
Through The Secretary)
Ministry of Defence,)
Government of India,)
South Block,)
New Delhi-110011)
 3. The Principal Controller,)
Defence Accounts (SC))
Having its office at No.1,)
Finance Road, Pune 411 001)
 4. The Controller,)
Defence Accounts (Funds))
Meeru Cantt, Meerut - 250 001)
- ...Respondents

Mr. A.H. Fatangare, Advocate for the Petitioner.

Mr. Akshay Doctor a/w. Mr. Karan Jagtap, Mr. Parag Sawant, Mr. Sangharsha Shakya, Mr. P.R. Shakya, Mr. Aryan Parab and Ms. Priyanka Master, Advocates, i/by PS Chambers, for Respondent No.1.

Mr. Aniruddha A. Garge, Advocate for Respondent No.2.

**CORAM : A.S. CHANDURKAR &
M.M. SATHAYE, JJ.**

RESERVED ON : 16TH JANUARY, 2025

PRONOUNCED ON : 11TH FEBRUARY, 2025

JUDGMENT (Per M.M. Sathaye, J.)

1. Rule. Rule made returnable forthwith. Heard finally by consent of learned counsel for the parties.

2. The Petitioner, a 79 year old mother, is challenging the judgment and order dated 12.10.2023 passed by the learned Member, Central Administrative Tribunal, Mumbai Bench, Mumbai (for short, 'the Tribunal') in Original Application No. 255 of 2022. By the said impugned order, the application of Respondent No.1 (deceased son's widow) is partly allowed directing Respondent Nos.2 to 4 to release the General Provident Fund (GPF) amount in equal shares to the Petitioner and Respondent No.1 i.e. 50% each.

3. Few facts shorn of unnecessary details, are as under. The Petitioner is the mother and the Respondent No.1 is the widow of late Bolla Mohan ('the Deceased' for short). The Deceased was working with the Defence Account Department (employee of the Union of India) and at the time of joining services, he nominated his mother (Petitioner) for GPF, Central Government Employees Group Insurance Scheme (CGEGIS) and for Death cum Retirement Gratuity (DCRG). On 29.02.2000, he submitted the nomination form in accordance with applicable rules. On 20.06.2003, the Deceased married with Respondent No.1 and after marriage, nominated her for CGEGIS and DCRG. It is an admitted fact that the Deceased did not nominate

Respondent No.1 specifically for GPF. On 04.07.2021, the Deceased expired while in service, and the terminal benefits like Encashment of Leave, CGEGIS, DCRG, Medical Reimbursement have been paid to Respondent No.1 (widow) totaling to Rs.60,00,000/-. Respondent No.1 (widow) is also getting monthly Family Pension Rs.55,000/- per month who claimed employment on compassionate ground. On 30.07.2021 Respondent No.1 (widow) applied for receiving GPF amount claiming to be only legitimate family member. By order dated 09-10.08.2021 and 09.09.2021, Respondent Nos.2 to 4 informed the Respondent No.1 (widow) that since the Petitioner (mother) is nominated for GPF, the said amount can be claimed only by the Petitioner. Respondent No.1 was asked to obtain succession to claim the said amount. Respondent No.1 thereafter, again made application for disbursal of GPF amount claiming that nomination of the Petitioner is not valid after the marriage of the Deceased with Respondent No.1. Respondent No.1 therefore filed the said Original Application before the Tribunal in which the impugned judgment/order is passed.

4. Learned counsel for the Petitioner submitted that the applicable rules do not provide for cancellation of the Petitioner's nomination automatically and since the Deceased never changed the Petitioner's nomination for GPF amount, mere event of the Deceased getting married and acquiring family will not invalidate Petitioner's nomination. He has invited the Court's attention to the concerned Nomination Form produced on record as well as Rule 5 about nomination from the General Provident Fund (Central Services) Rules, 1960 (for short, 'the said Rules'). He submits that Rules 5(5) and 5(6) of the said Rules are not properly appreciated by the Tribunal and Respondent No.1 cannot be held entitled for 50% of the GPF amount.

5. *Per contra*, learned counsel for Respondent No.1 (widow) submitted that the nomination form itself provides in the column of 'contingency' that on acquiring family, the nomination shall become invalid and therefore on the marriage of Respondent No.1, the nomination in favour of the Petitioner has authentically come to an end and therefore Respondent No. 1 is entitled to the amount of GPF, being only family. He has relied upon Rule 33 of the said Rules along with its proviso.

6. On 22.04.2024, the co-ordinate bench of this Court directed the entire amount of GPF of the Deceased to be deposited in this Court. However, we are informed by learned counsel for Respondent Nos.2 to 4, by referring to the affidavit-in-rely dated 30.12.2024, that 50% of the GPF amount has been already released in favour of Respondent No.1 to avoid contempt of the impugned Order and the remaining 50% has been deposited in this Court. Be that as it may.

7. We have considered rival submissions and perused the record.

8. The Tribunal has considered sub rule 5(a), 5(b) along with its proviso and sub-rule (6) of Rule 5 of the said Rules and has come to the conclusion that the nomination made by the Deceased in favour of the Petitioner is not *void-ab-initio*, since the Deceased has not formally made a fresh nomination. Despite holding this, the Tribunal has held that Respondent No.1 is entitled to 50% of the GPF amount relying on Rule 33 of the said Rules.

9. It would be appropriate to consider the applicable rules first. Rules 5(5) and 5(6) of the said Rules read as under :

“ Rule 5: NOMINATION

X

X

(5) 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:

Provided that if at the time of making the nomination the subscriber has only one member of the family, he shall provide in the nomination that the right conferred upon the alternate nominee under Clause (a) shall become invalid in the event of his subsequently acquiring other member or members in his family.

(6) Immediately on the death of a nominee in respect of whom no special provision has been made in the nomination under Clause (a) of sub-rule (5) or on the occurrence of any event by reason of which the nomination becomes invalid in pursuance of Clause (b) of sub-rule (5) or the proviso thereto, the subscriber shall send to the Accounts Officer a notice in writing cancelling the nomination, together with a fresh nomination made in accordance with the provisions of this rule.”

[Emphasis supplied]

Rule 33 of the said Rules reads as under :

“ RULE 33 PROCEDURE ON DEATH OF A SUBSCRIBER

On the death of a subscriber before the amount standing to his credit has become payable, or where the amount has become payable, before payment has been made:

(i) When the subscriber leaves a family-

(a) if a nomination made by the subscriber in accordance with the provisions of Rule 5 in favour of a member or

members of his family subsists, the amount standing to his credit in the Fund or the part thereof to which the nomination relates shall become payable to his nominee or nominees in the proportion specified in the nomination:

- (b) if no such nomination in favour of a member or members of the family of the subscriber subsists, or if such nomination relates only to a part of the amount standing to his credit in the Fund, the whole amount or the part thereof to which the nomination does not relate, as the case may be, shall, notwithstanding any nomination purporting to be in favour of any person or persons other than a member or members of his family, become payable to the members of his family in equal shares:

Provided that no share shall be payable to-

- (1) sons who have attained majority;
- (2) Sons of a deceased son who have attained majority;
- (3) married daughters whose husbands are alive;
- (4) married daughters of a deceased son whose husbands are alive,

if there is any member of the family other than those specified in Clauses (1), (2), (3) and 4:

Provided further that the widow or widows and the child or children of a deceased son shall receive between them in equal parts only the share which that son would have received if he had survived the subscriber and had been exempted from the provisions of Clause (1) of the first proviso.

- (ii) When the subscriber leaves no family, if a nomination made by him in accordance with the provisions of Rule 5 in favour of any person or persons subsists, the amount standing to his credit in the Fund or the part thereof to which the nomination relates, shall become payable to his nominee or nominees in the proportion specified in the nomination.”

10. For the sake of convenience, the concerned portion of Nomination Form is also reproduced below, which is also reproduced in the impugned order :

Name of nominee in the event of subscriber death.	Relationship with the subscriber	Age	Contingencies on the happening of which the nomination shall become invalid	Name, address & relationship of person(s) If any ... the right of the nominee shall pass in the event of his death before the subscriber.
B. SUGUNA H.NO.12-11-475, WAR ASIGUDA SECUNDERABAD - 61(A-D)	MOTHER	57	On acquiring family	(Brother) B. SUGUNA H.NO.12-11-475, WAR ASIGUDA SECUNDERABAD - 61

11. In the present case, ‘a subscriber’ is the Deceased and ‘specified nominee’ is the Petitioner (mother). From the above facts, it is clear that this is not a case of a specified nominee predeceasing the subscriber. The Petitioner (mother) is still alive. Therefore situation contemplated in Rule 5(5)(a) has not arisen and it will not apply. Rule 5(5)(b) provides that the nomination shall become invalid in the event of the happening of a contingency which is specified by the subscriber. In the present case, such a contingency is provided by the Deceased as “on acquiring family”. Rule 5(6) provides that on the occurrence of any event by reason of which nomination becomes invalid in pursuance of clause 5(5)(b) or proviso thereto, the subscriber shall send to the Accounts Officer a notice in writing canceling the nomination, together with a fresh nomination made in accordance with the provisions of this rule. Therefore in our considered opinion, combined reading of Rules 5(5) and 5(6) does not contemplate or provide for auto-cancellation of the nomination in the event of contingency provided. In the present case admittedly, the Deceased has neither sent a notice in writing canceling the Petitioner’s nomination nor fresh nomination is made in favour of Respondent No.1 in accordance with Rule 5 for GPF amount. Therefore it will not result in auto-cancellation of the Petitioner’s nomination on deceased acquiring family by virtue of getting married to

Respondent No.1.

12. Rule 33(i)(a) of the said Rules also operates clearly in favour of the Petitioner, she being a valid sole nominee. The provision of distributing the GPF amount into shares, as contemplated under Rule 33(i)(b) will not come into play. Since the Deceased has left behind family, the situation provided in Rule 33(ii) also will not apply; but assuming that Rule 33(ii) is to be applied, in our view, it will operate in favour of the Petitioner, she being a valid sole nominee.

13. In light of what is observed above, when the impugned order is perused, it is seen that the Tribunal has not interpreted Rule 33 of the said Rules in proper prospective and therefore needs interference. It is also settled law that 'nomination only indicates the hand which is to receive the benefits' but the benefits have to be distributed in accordance with the law of succession. The judgment relied upon by Respondent No.1 in the case of **Shipra Sengupta Vs. Mridul Sengupta and Ors.**¹ reiterate this position. However, it cannot be countenanced that the Tribunal considered succession claim of Respondent No.1 directly for being entitled for 50% share of GPF amount, without considering that all other terminal benefits of the Deceased have been exclusively received by Respondent No.1, such as leave encashment, CGEGIS, DCRG, medical reimbursement etc. Firstly, the Tribunal can not enter this dispute in view of the Civil Court's exclusive jurisdiction for such disputed questions of facts. The Petitioner and Respondent No.1 may have their contentious issues about entitlement to all the property left behind by the Deceased, including GPF and other terminal benefits. But, if the succession is to be considered, the Tribunal could not have considered the same only for GPF amount without other

¹ (2009) 10 SCC 680

property of the Deceased taken into consideration. In our view, the amount of GPF will have to be paid to the Petitioner alone as per rules and Respondent No.1 may then claim her share in appropriate proceedings as provided under the law. The Respondent No. 1 is at liberty to do so. If such proceedings are filed, all the property of the Deceased, including presently disputed GPF amount and other terminal benefits already received by Respondent No.1, will be considered.

14. Therefore, the Petition succeeds and it is allowed in the following terms :

- (a) The impugned order dated 12.10.2023 passed by learned Member, Central Administrative Tribunal, Mumbai Bench, Mumbai in Original Application No. 255 of 2022 is quashed and set aside. The Petitioner is held entitled to receive the entire GPF amount as nominee of the deceased subject to the succession rights of the Respondent No.1.
- (b) Consequently, the Petitioner is at liberty to withdraw the 50% amount deposited in this Court pursuant to the order dated 22.04.2024, along with accrued interest.
- (c) Further consequently, the Respondent No.1 is directed to pay to the Petitioner the amount of 50% of the GPF amount already received by her, within a period of eight weeks from today.
- (d) Rule is made absolute in above terms. No order as to costs.

15. All concerned to act on duly authenticated or digitally signed copy of this order.

(M.M. SATHAYE, J.)

(A.S. CHANDURKAR, J.)