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W.A.No.2014 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

JUDGMENT RESERVED ON : 08 / 10 / 2025

JUDGMENT DELIVERED ON: 29 / 10 / 2025

CORAM:

**THE HONOURABLE MR. JUSTICE M.S.RAMESH
AND
THE HONOURABLE MR. JUSTICE R.SAKTHIVEL**

**W.A.NO.2014 OF 2021
AND
CMP NO.12887 OF 2021**

R.Banumathi

... Appellant /
Petitioner

Versus

- 1.The Chief Educational Officer,
Vellore District,
Vellore Collectorate Office,
Tamil Nadu House Board,
Vellore – 632 012.
- 2.The District Educational Officer,
Arakkonam Taluk,
Vellore District.
- 3.Block Level Educational Officer,
Nemili Taluk,
Vellore District.
- 4.Lakshmipriya



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5.Minor V.L.Harshadha,
(Represented by her Mother/Natural
guardian -Lakshmipriya, the fourth
respondent herein)

... Respondents/
Respondents

PRAYER : Writ Appeal filed under Clause 15 of the Letters Patent, praying to set aside the Order dated June 10, 2021 of the learned Single Judge of this Court made in W.P. No.12565 of 2021 by allowing the writ appeal.

For Appellant	:	Mr.Maheswaran Prabakaran for Mr.M.A.Gowthaman
For Respondents 1 to 3	:	Mr.K.H.Ravikumar Government Advocate
For Respondents 4 & 5	:	Mr.R.T.Vishnu

J U D G M E N T

R.SAKTHIVEL, J.

The appellant filed the writ petition in W.P. No.12565 of 2021 on April 26, 2021, praying this Court to issue a writ of mandamus directing the respondents to issue a separate and individual cheque / demand draft for her 1/3 share in Contributory Pension Scheme (CPS), Employees Family Security Fund and other service benefits of her son - late

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S.Vijayakumar, who had joined the service on December 9, 2005 and was working as a Secondary Grade Teacher in Panchayat Union Elementary School [P.U.E. School], Chitteri before his demise on January 30, 2021.

2. Upon hearing either side, the learned Single Judge of this Court dismissed the writ petition vide Order dated June 10, 2021. The main reasons for the dismissal are captured in Paragraph Nos.3 and 5 of the said Order and they read thus:

"3. Under the Pension Schemes/Rules, the spouse of the Government employee is entitled to get family pension. As far as the terminal benefits are concerned, if there is any specific nomination in the service records of the Government employee, then the nominee is entitled to receive the same. In the absence of any nomination, the benefit is sought to be settled in favour of the spouse. In the present case, the wife of the deceased employee is entitled for pensionary benefits and for family pension under the Pension Scheme. As far as the parents of the deceased employee is concerned, even in case they are not having other sources of income, they are entitled to approach the competent authorities under the provisions of the Senior Citizen Act for redressal of their grievances. Contrarily, the family pension or pensionary benefits cannot be settled in violation of the Pension Rules/Pension Schemes.

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... ..

5. *The petitioner is unable to establish any right with reference to the Pension Scheme/Rules. In the absence of Rules, the family pension or pensionary benefits cannot be shared between the legal heirs. The right of property to the legal heirs of a deceased employee is no way connected with the Pension Scheme and payment of family pension to the spouse of the deceased employee. The petitioner as the mother of a deceased employee may have legal right in the property. However, she cannot claim the benefit of family pension or to seek the relief of sharing the family pension which is to be paid to the spouse of the deceased employee as per the Pension Rules."*

3. Feeling aggrieved by the dismissal Order dated June 10, 2021 passed in W.P. No.12565 of 2021, the writ petitioner therein has preferred this writ appeal.

4. For the sake of convenience, hereinafter, the parties will be referred to as per their rank in the writ petition.

5. The submissions of Mr.Maheswaran Prabakaran for Mr. M.A. Gowthaman, learned Counsel on record for the appellant / writ petitioner

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can be summarised as follows:

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- (i) Writ petitioner is the mother of late S.Vijayakumar. Fourth respondent is his wife and the fifth respondent is his daughter.
- (ii) Said late S.Vijayakumar was working as a Secondary Grade Teacher in Panchayat Union Elementary School [P.U.E. School], Chitteri. He joined the service on December 9, 2005.
- (iii) The fifth respondent is a baby born to the couple through In Vitro Fertilisation (IVF) method, who is now 8 years old. The fourth respondent humiliated and caused severe mental agonies to the deceased son of the writ petitioner due to which, he committed suicide on January 30, 2021.
- (iv) The suicide prompted the writ petitioner to file a complaint against the fourth respondent and an First Information Report (FIR) under Section 174 of the Indian Penal Code, 1860 (IPC) was registered and later altered to Section 306 of IPC, for which the fourth respondent obtained an anticipatory bail on April 15, 2021.
- (v) The fourth respondent with an ulterior motive to usurp the benefits



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of various schemes which were in the name of late S.Vijayakumar, has applied for a legal heir certificate with the revenue authorities suppressing the writ petitioner's name.

(vi) The writ petitioner has also made an online application dated February 22, 2021 seeking for her 1/3 share in the said benefits. But till the date of writ petition viz., April 26, 2021, there is no reply from the authorities concerned.

(vii) As S.Vijayakumar joined the service on December 9, 2005 and passed away on January 30, 2021 while in service, 'the Tamil Nadu Pension Rules, 1978' ['TN Pension Rules' for short] shall not apply to him. The learned Single Judge did not appreciate the said fact in the right perspective.

(viii) Therefore, CPS amount, terminal benefits and other service benefits, shall be considered as 'estate' of late S.Vijayakumar, who passed away as a Hindu. Hence, the writ petitioner being Class I legal heir along with Respondent Nos.4 and 5, is entitled to 1/3 share in it as per Section 8 of the Hindu Succession Act, 1956.



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(ix) Mere nomination will not affect the rights of legal heirs over the

service benefits. In this regard, he would place before this Court the

Judgments of Hon'ble Supreme Court in (i) *Sarbati Devi -vs- Usha*

Devi, reported in (1984) 1 SCC 424; (ii) *Shipra Sengupta -vs-*

Mridul Sengutpa, reported in (2009) 10 SCC 680; (iii) *Shakthi*

Yezdani -vs- Jayanand Jayant Salgaonkar, reported in (2024) 4

SCC 642, as well as the Judgments of this Court in (i) *Kalyani -vs-*

The Additional Director made in *W.P. (MD) No.18047 of 2023*

[Single Judge] on September 11, 2023 and in (ii) *P.Panchali -vs-*

The Chief Engineer reported in 2016 SCC Online Mad 9191. He

also made reliance on the Judgment of the Hon'ble High Court of

Bombay at Goa in *Antonio Joao Fernandes -vs- Assistant*

Provident Fund Commissioner, Gao, reported in 2010 4 Mh.L.J.

751 [Single Judge].

6. In response, Mr.K.H.Ravi Kumar, learned Government Advocate for the respondents 1 to 3 would submit that as late S.Vijayakumar joined the service in 2005, TN Pension Rules is not applicable to him; his family is not entitled to family pension. Further, pursuant to the Order of the

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learned Single Judge under challenge, the third respondent disbursed amounts to fourth respondent as tabulated hereunder:

S. No.	Head	Paid on	Amount
1.	Family Benefit Fund [Immediate Relief for Funeral Expenses]	March 25, 2021	Rs.25,000/-
2.	Family Benefit Fund (Final Amount)	June 25, 2021	Rs.2,75,000/-
3.	Encashment of Earned Leave	June 25, 2021	Rs.1,47,545/-
4.	Encashment of Unearned Leave on Private Affairs	June 25, 2021	Rs.1,74,723/-
5.	Special Provident Fund - 2000 (SPF 2K)	July 27, 2021	Rs.23,250/-

7. Sum and Substance of the submissions made by Mr.R.T.Vishnu, the learned Counsel on record for respondents 4 & 5 are as follows:

- (i) Late S.Vijayakumar had appointed only the respondents 4 and 5 as nominees for his various service benefits.
- (ii) As per Rule 49 (8) (ii) of the TN Pension Rules, the fourth respondent alone is entitled for the pension benefits of late S.Vijayakumar.
- (iii) As per Rule 46 (1) (a) of TN Pension Rules, the fourth respondent is alone entitled to his Death cum Retirement Gratuity (DCRG) Benefit.



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(iv) As per Rules 7 and 30 of the General Provident Fund (Tamil Nadu)

Rules, 2006, the fourth respondent is alone entitled to receive his GPF amount.

(v) As per G.O. Nos.259 and 430 / Finance (Pension) Department dated August 6, 2003 and August 6, 2004 respectively, and the letter of Principal Secretary to Government addressed to the Accountant General (A & E) Department, CPS amount shall be paid to the nominee(s) alone.

(vi) As regards the criminal case under Section 306 of IPC in Crime No.36 of 2021, fourth respondent has been falsely implicated. The said criminal charge is irrelevant to decide this case. Moreover, as per the Post-Mortem Report, S.Vijayakumar has not consumed any sleeping pills as alleged by the writ petitioner. On the other hand, it shows that he passed away due to cardio respiratory arrest. Further, quash petition filed by the fourth respondent in respect of the said criminal case is pending.

(vii) Those apart, writ petitioner retired as B.T.Assistant (Tamil Teacher) from Dr.Radhakrishnan Government Higher Secondary School,

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Tiruttani in the year 2012. Her husband - V.K.Subramaniam had retired from the post of Sub Inspector of Survey and later died in the year 2016. Thus the writ petitioner is receiving her pension benefits along with the family pension benefits of her husband. In addition, she is also receiving rental income totalling more than Rs.50,000/- per month from various houses and shops that were purchased in the name of V.K.Subramaniam. However, she had suppressed the above facts and approached this Court stating that she has no other means of income.

(viii) Further, in order to grab the separate property of her husband - V.K.Subramaniam that devolved upon late Vijayakumar after her husband passed away intestate, the writ petitioner conspired with her another son - Ramkumar and executed Release deed dated April 7, 2021 vide Document No.1865/2021 before the Sub Registrar, Arakkonam in favour of said Ramkumar by enclosing a forged legal heirship certificate as if the writ petitioner and Ramkumar alone are the legal heirs of V.K.Subramaniam. In this regard, criminal case was filed at the instance of fourth respondent and the same is pending.

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(ix) All the above material facts are categorically suppressed by the writ

petitioner and she has not approached this Court with clean hands.

(x) When it comes to family pension and other service benefits, relevant rules / schemes alone be applicable and not the law of succession. If relevant rules say nominee(s) alone is entitled, then the legal heirs would not be entitled to such benefits. To add support to the above contention, he would cite the Judgments of Hon'ble Supreme Court in *Nitu -vs- Sheela Rani*, reported in (2016) 16 SCC 229 and in *Indrani Wahi -vs- Registrar of Cooperative Societies*, reported in (2016) 6 SCC 440.

8. This Court has heard on either side and perused the materials available on record. In this writ appeal, the following points arise for consideration:

(i) Whether the benefit under the Contributory Pension Scheme (CPS) is a part of 'estate' of a deceased government servant and whether nomination under CPS confers upon the nominee(s) an absolute right over the benefits thereunder ?

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(ii) Whether the benefits under the Family Benefit Fund and the Special

Provident Fund - 2000 (SPF 2K) Schemes, of a deceased government servant, form a part of their estate or not ?

(iii) Whether the monetary benefits of Encashment of Earned Leave and

of Unearned Leave on Private Affairs falls under the category of 'estate' of a deceased government servant ?

9. There is no dispute with the relationship between the parties.

There is no doubt with the fact Respondent Nos.4 and 5 are the nominees for the various service and terminal benefits of late S.Vijayakumar. Learned Counsel for the writ petitioner would contend that nomination of respondents 4 and 5 for the Contributory Pension Scheme (CPS) is not made in the prescribed form; it is made in a different form viz., form for nomination of nominees for General Provident Fund Scheme. This Court is of the view that, in the facts and circumstances of this case, merely because nomination is made in a different form other than the prescribed form, it does not invalidate the nomination. Moreover, the forms are substantially the same except for the nomenclature.

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Point No.(i)

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10. The Tamil Nadu Government introduced a new pension scheme based on defined contribution for the employees' recruited on or after April 1, 2003, called the Contributory Pension Scheme (CPS). As per CPS, it is mandatory for all the employees recruited on or after April 1, 2003 to become a member of CPS. In CPS, each would contribute 10% of their basic pay and dearness allowance every month, deductible from their salary. A matching contribution would be made by the State Government for each employee. Nomination has to be filed at the time of admission into CPS, which has to be revised upon marriage of the Government Servant and thereafter, once in every five years. Necessary entry to the effect of filing nomination along with the names of nominees to be entered into the service register.

11. At the same time of introduction of CPS, the Government made amendments to TN Pension Rules and General Provident Fund (Tamil Nadu) Rules to the effect that those rules shall not apply to Government Servant appointed on or after April 1, 2003. In other words, those who are part of CPS, would not be governed by aforesaid two rules.



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12. Notably, vide Letter No.29593A / Finance (Pension)

Department/ 2009 dated August 25, 2009, the Government clarified that the accumulated amount in case of deceased Government Servant shall be paid to the nominee(s) and in the absence of nomination, to the legal heirs of the deceased Government Servant. It is apposite to extract the relevant portion of the letter hereunder:

"Many departments have sought for clarification on the payment under New Pension Scheme in case of death of an employee, covered under Contributory Pension Scheme. In the reference cited Government of India has issued clarification on payment of terminal benefits under New Pension Scheme in respect of the death of an employee covered under Contributory Pension Scheme.

Based on the above clarification issued by the Government of India it is clarified that the deceased employee's own contribution plus Government matching contribution plus interest on both, calculated at the rate of 8% per annum or such rate the Government declare from time to time as interest rate to be paid under Contributory Pension Scheme, shall be paid to the nominee or in the

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absence of any nomination, to the legal heirs of the deceased employee."

[Emphasis supplied by this Court]

13. And subsequently, the Government vide G.O. No.59 / Finance (PGC) Department / 2016 dated February 22, 2016 announced that amount accumulated under CPS will be settled immediately upon the retired Government Servants and the 'legal heirs' of the deceased Government Servant, as the case may be.

14. The Government of Tamil Nadu had clarified that CPS amount is payable either to the nominee(s) or the legal heirs. Subsequently, as there were some pendency in the disbursement of CPS amount, it announced that CPS amount can be paid directly to the legal heirs. This points out that the benefit under CPS is an estate of the Government Servant and nominee does not have any beneficial interest over the same. The nominee is bound to disburse the CPS amount to the legal heirs of the deceased Government Servant.

15. At this juncture, it is pertinent to refer to Judgment of Hon'ble



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Supreme Court in ***Sarbati Devi's Case*** [cited *supra*], wherein while dealing with Section 39 of the Insurance Act, 1938, it was held that benefits of life insurance policy forms a part of the deceased person's estate; that nomination only indicates the hand which is authorised to receive the amount and the nominee(s) does not get any absolute right over the same. Relevant extract is as follows :-

"5. We shall now proceed to analyse the provisions of Section 39 of the Act. The said section provides that a holder of a policy of life insurance on his own life may when effecting the policy or at any time before the policy matures for payment nominate the person or persons to whom the money secured by the policy shall be paid in the event of his death. If the nominee is a minor, the policy-holder may appoint any person to receive the money in the event of his death during the minority of the nominee. That means that if the policy-holder is alive when the policy matures for payment he alone will receive payment of the money due under the policy and not the nominee. Any such nomination may at any time before the policy matures for payment be cancelled or changed, but before such cancellation or change is notified to the insurer if he

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makes the payment bona fide to the nominee already registered with him, the insurer gets a valid discharge. Such power of cancellation of or effecting a change in the nomination implies that the nominee has no right to the amount during the lifetime of the assured. If the policy is transferred or assigned under Section 38 of the Act, the nomination automatically lapses. If the nominee or where there are nominees more than one all the nominees die before the policy matures for payment the money due under the policy is payable to the heirs or legal representatives or the holder of a succession certificate. It is not necessary to refer to sub-section (7) of Section 39 of the Act here. But the summary of the relevant provisions of Section 39 given above establishes clearly that the policy-holder continues to hold interest in the policy during his lifetime and the nominee acquires no sort of interest in the policy during the lifetime of the policy-holder. If that is so, on the death of the policy-holder the amount payable under the policy becomes part of his estate which is governed by the law of succession applicable to him. Such succession may be testamentary or intestate. There is no warrant for the position that Section 39 of the Act operates as a third kind of succession



which is styled as a 'statutory testament' in para 16 of the decision of the Delhi High Court in Uma Sehgal case [AIR 1982 Del 36 : ILR (1981) 2 Del 315] . If Section 39 of the Act is contrasted with Section 38 of the Act which provides for transfer or assignment of the rights under a policy, the tenuous character of the right of a nominee would become more pronounced. It is difficult to hold that Section 39 of the Act was intended to act as a third mode of succession provided by the statute. The provision in sub-section (6) of Section 39 which says that the amount shall be payable to the nominee or nominees does not mean that the amount shall belong to the nominee or nominees...

12. ...We approve the views expressed by the other High Courts on the meaning of Section 39 of the Act and hold that a mere nomination made under Section 39 of the Act does not have the effect of conferring on the nominee any beneficial interest in the amount payable under the life insurance policy on the death of the assured. The nomination only indicates the hand which is authorised to receive the amount, on the 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



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assured in accordance with the law of succession governing them."

16. It is also pertinent to refer to the Judgment of this Court in **Ramayee -vs- Krishnaveni**, reported in **1996 SCC Online Mad 318**, wherein after referring to **Sarbati Devi's Case**, it was held as follows:

"9. In another Division Bench judgment of this Court in Narammal v. Kanthamani (vide supra), their Lordships had an occasion to consider the similar question following the decision of the Apex Court in Sarbati Devi v. Usha Devi (vide supra). The Division Bench had also held:

"that the nominee gets only a right to receive the amount to distribute the same to the heirs of the deceased in accordance with the law of succession governing them."

10. The above two decisions of the Apex Court and a Division Bench judgment of this Court approve the decision of Sathyadev, J, rendered in M.V. Krishnamoorthy v. Anandakshmi [(1982) 2 M.L.J. 321] (vide supra). The very same view has been taken by Srinivasan, J., in a decision reported in Meenambal v. Saradhambal [1990



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(1) L.W. 302].

11. All these judicial decisions clearly show that the nominee gets only a right to receive the amount to distribute the same to the heirs of the deceased in accordance with the law of succession governing them. ..."

17. Further, in ***Shipra Sengupta's Case***, facts of the case are that one Shyam Lal Sengupta was a Head Clerk in the State Bank of India. He was initially an employee of Imperial Bank of India, and after the constitution of State Bank of India under the State Bank of India Act, 1955, Imperial Bank of India was taken over by the latter. Shyam Lal was a member of the provident governed by Imperial Bank of India Employees' Provident Fund Rules, and at the time of appointment, he was unmarried and he had nominated his mother as nominee for the Provident Fund. He passed away on November 8, 1990 leaving behind his widow - Shipra Sengupta, his mother and his two brothers. After the demise of her husband, Shipra Sengupta filed an application under Section 372 of the Indian Succession Act, 1925 seeking succession certificate in respect of

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her share in the Insurance, Gratuity, Public Provident Fund, etc. The major

questions before the Hon'ble Supreme Court were:

"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? ..."

18. In the above factual matrix, after referring to **Sarbatī Devi** and some other case laws, Hon'ble Supreme Court held as follows:

"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."

19. Further, in ***Ram Chander Talwar -vs- Devender Kumar Talwar***, reported in **(2010) 10 SCC 671**, the question before the Hon'ble Supreme



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Court was whether a nominee of the depositor under Section 45-Z A of the Banking Regulation Act, 1949 have full rights over the money lying in the account to the exclusion of the other legal heirs. The Hon'ble Supreme Court, after following ***Vishin N Khanchandani -vs- Vidya Lachmandas Khanchandani***, reported in ***(2000) 6 SCC 724*** [which was referred to in ***Sarbati Devi's Case*** as well] answered the question as follows:

"5. Section 45-ZA(2) merely puts the nominee in the shoes of the depositor after his death and clothes him with the exclusive right to receive the money lying in the account. It gives him all the rights of the depositor so far as the depositor's account is concerned. But it by no stretch of imagination makes the nominee the owner of the money lying in the account. It needs to be remembered that the Banking Regulation Act is enacted to consolidate and amend the law relating to banking. It is in no way concerned with the question of succession. All the monies receivable by the nominee by virtue of Section 45-ZA(2) would, therefore, form part of the estate of the deceased depositor and devolve according to the rule of succession to which the depositor may be governed."

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WEB COPY 20. Furthermore, in its recent decision in ***Shakti Yezdani's Case***

[cited *supra*], Hon'ble Supreme Court held that nominee contemplated under Sections 109A and 109B of the Companies Act, 1956 [*pari materia* to Section 72 of the Companies Act, 2013], and under the National Securities Depository Limited Bye-law Nos.9.11.1 and 9.11.7 framed under Section 26 of the Depositories Act, 1996, upon the holder's death, would not get absolute title over the subject matter of the nomination.

Relevant extract is as follows:

"62. The vesting of securities in favour of the nominee contemplated under Section 109-A of the Companies Act, 1956 (pari materia Section 72 of the Companies Act, 2013) & Bye-Law 9.11.1 of the Depositories Act, 1996 is for a limited purpose i.e. to ensure that there exists no confusion pertaining to legal formalities that are to be undertaken upon the death of the holder and by extension, to protect the subject-matter of nomination from any protracted litigation until the legal representatives of the deceased holder are able to take appropriate steps. The object of introduction of nomination facility vide the Companies (Amendment) Act, 1999 was only to



provide an impetus to the investment climate and ease the cumbersome process of obtaining various letters of succession, from different authorities upon the shareholder's death.

63. Additionally, there is a complex layer of commercial considerations that are to be taken into account while dealing with the issue of nomination pertaining to companies or until legal heirs are able to sufficiently establish their right of succession to the company. Therefore, offering a discharge to the entity once the nominee is in picture is quite distinct from granting ownership of securities to nominees instead of the legal heirs. Nomination process therefore does not override the succession laws. Simply said, there is no third mode of succession that the scheme of the Companies Act, 1956 (pari materia provisions in the Companies Act, 2013) and the Depositories Act, 1996 aims or intends to provide."

21. From the above case laws, the legal principle is abundantly clear. Nomination is only for a limited purpose of providing a valid discharge to the employer, company, depository, corporation, or the concerned entity as the case may be, in respect of subject matter of



nomination. The entity gets a valid discharge once the benefit is delivered to the hands of the nominee(s). The idea is to simplify the cumbersome process of discharge of the benefit, avoid delays caused by the legal heirs in establishing their right of succession, avoid protracted litigations in respect of subject matter of nomination, *etc.* Nomination only provides the hand that is entitled to receive the nominated property / benefit and that does not mean that hand has any beneficial interest over the same. Mere nomination in respect of Life Insurance Policy, Provident Fund, shares, bank deposits, *etc.*, do not confer any absolute right over the subject matter of the nomination to the nominee(s) and does not override the succession rights of the legal heirs over the same upon the demise of the employee. Thus, it is pellucid that nominees are mere trustees of the subject matter of nomination.

22. Citing *Nitu's Case* and *Indrani Wahi's Case* [cited *supra*], Mr.R.T.Vishnu, the learned Counsel on record for respondents 4 & 5 would contend that rules provided under the relevant schemes would alone be applicable and not the law of succession. He would go on to contend that the respondents 4 and 5 being the nominees of S.Vijayakumar for various service benefits, are alone entitled to the same and not the writ



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petitioner *qua* legal heir of late S.Vijayakumar.

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23. This Court is unable to accept the above contention. *Nitu's Case* was regarding pension benefits under the Family Pension Scheme, 1964 of the Government of Punjab. In *Nitu's Case*, Mr.Yashpal was serving as government employee under the District Malaria Officer. His mother filed a Suit for getting succession certificate for claiming pension. In the said Suit, wife of Mr.Yashpal appeared and claimed that she being the widow of Mr.Yashbal, is entitled to pension. The sister of Mr.Yashpal also filed written statement stating that she has no objection in issuing the succession certificate in favour of mother. The Trial Court therein after hearing both sides dismissed the Suit by concluding that widow of Mr.Yashpal was entitled to succession certificate *qua* pension payable in respect of the services rendered by late Mr.Yashbal. The appeal preferred by the mother before District Court got dismissed. Being aggrieved she preferred a Civil Revision Petition before the Hon'ble High Court of Punjab and Haryana, which was allowed with the observation that the mother being a legal heir of late Mr.Yashpal is entitled to the succession certificate in view of Section 8 of the Hindu Succession Act, 1956. Aggrieved by the same, the widow preferred an appeal before the Hon'ble

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Supreme Court. Hon'ble Supreme Court held that law of succession does not apply to Family Pension Scheme, as it does not form a part of the estate of the deceased; even during their lifetime, the employee has no right to dispose of the same in the manner they desire. Pension rules would prevail and the wife alone would be entitled to the pensionary benefits.

24. Indeed, non-contributory pension scheme [like the pension under TN Pension Rules], where usually a retired employee would be getting a certain amount until his demise, and post his demise, their eligible family member would be entitled to family pension during their lifetime as per the prescribed rules, cannot be classified as an estate of the employee for three reasons. One, such pensionary benefits are not quantified; employee continues to enjoy the monthly benefit until his demise and thereafter, eligible member of their family enjoys such a monthly benefit until their demise. Secondly, such benefits under such a pension scheme is not alienable / transferable, even during the life time of the employee. Thirdly, if a non-eligible family member is nominated as nominee by the employee, it would be invalid and the relevant rules would prevail; family pension would only go to the eligible family member as per the relevant rules as it was seen in *Nitu's Case* [Also See Paragraph No.6

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of the Judgment of this Court in ***Senthil Kumar -vs- The District and Sessions Judge***, reported in ***2016 SCC Online Mad 10391*** (Division Bench)].

25. Thus, there is no dispute with the *ratio decidendi* laid down in ***Nitu's Case***, but it is distinguishable from the present case on facts. In the present case, the subject matter is CPS, to which TN Pension Rules is not applicable as stated *supra*. The CPS stipulates that the accumulated amount shall be given to the Government Servant upon his superannuation, or to his nominees upon his demise and in the absence of nomination, to the legal heirs. CPS stands quantified on the date of retirement or on the date of demise of the Government Servant, unlike the non-contributory pension scheme under the TN Pension Rules. In the absence of specific rules in this regard, a Government Servant can very well divert the mode of natural succession of CPS. Hence, CPS forms a part of the estate of the deceased unlike the other Pension Scheme. Therefore, ***Nitu's Case*** is not applicable to the present case.

26. As regards ***Indrani Wahi's Case***, referring to ***Sarbaty Devi's Case***, Hon'ble Supreme Court held therein that as per Section 79 of the



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West Bengal Co-operative Societies Act, 1983 read with Rules 127 and

128 of the West Bengal Co-operative Societies Rules, 1987, transfer of share or interest based on nomination in favour of nominee, is with reference only to co-operative society concerned and is binding only on the society alone and not the legal heirs of the deceased. Such a transfer would not have any relevance to the issue of title between the inheritors and successors of the deceased. Other legal heirs may very well pursue their case as per law.

27. As a matter of fact, *Indrani Wahi's Case* support the legal position that nominees are mere trustees. The concept explained in the Judgment in *Indrani Wahi's Case* is that the co-operative society can very well discharge the money or the property in favour of the nominee and as far as the co-operative society is concerned, it is a valid discharge. But this does not mean that the nominee is absolutely entitled to the same and does not determine the title to the subject matter of nomination. It puts the nominee in the position of the trustee who is bound to distribute the subject matter of nomination to the legal heirs of the deceased as per law. Thus, *Indrani Wahi's Case* also does not come to the aid of respondents 4 and 5.

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28. As regards *Kalyani's Case* relied on by learned Counsel for the writ petitioner, there is no information in the Judgment as to when the deceased joined the service. It could be seen that he retired on June 30, 2023 leaving behind wife, mother and two minor children. The submission of the learned Government Side Advocate therein was that the wife was nominated as nominee to receive his Death cum Retirement Gratuity and Gratuity under Rule 48 of the TN Pension Rules. In this factual matrix, learned Single Judge of this Court made a passing remark that the mother being a legal heir is entitled to all terminal and pensionary benefits. The learned Single Judge eventually directed the concerned authorities to consider the representation of the writ petitioner therein and pass appropriate orders in accordance with law. There is no legal principle advanced in *Kalyani's Case*. No law was laid down nor was there any interpretation of law. The Court had merely directed the authority to consider the representation. Hence, in the considered opinion of this Court, *Kalyani's Case* is not a valid precedent to contend that legal heirs are entitled to pensionary benefits under TN Pension Rules.

29. In *Panchali's Case*, the deceased employee therein joined service in 2008 and his service was regularised in the 2009. He passed



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away on March 4, 2016 leaving behind wife and mother. Learned Single

Judge of this Court held that wife and mother are equally entitled to terminal benefits of the deceased, though wife is the nominee. *Panchali's Case* follows *Sarbati Devi's Case* and *Shipra Sengupta's Case*, and there is no quarrel with it.

30. In *Antontio's Case*, the Hon'ble High Court of Bombay at Goa was dealing with the Provident Funds Act, 1925 and the 1952 Scheme framed under Employees' Provident Fund and Miscellaneous Provisions Act, 1952. One Joazinho Dias had nominated two people as his nominees in the Provident Fund Scheme. One was his sister - Libinia Dias and the other was his cousin - Antonio. Joazinho's nomination was on 50:50 basis which means each of the nominee would be entitled to 50% of the benefit. Applicable law of succession was the Civil Code, 1867. Upon his demise, a question arose as to whether both the nominees are equally entitled to the benefits, or whether the legal heir of Antonio as per Article 1969 of the Civil Code, 1867 namely his sister - Libinia Dias. It was held that provident fund is an estate of the deceased and hence the law of succession would apply. Accordingly, even if the cousin had received 50% of the benefit, the cousin is not entitled to the same and liable to pay it to

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Joazinho's sister - Libinia Dias. There is no quarrel with the *ratio decidendi* laid down in *Antonio's Case* and it supports the case of the writ petitioner.

31. Thus, CPS is an estate and the nominee does not get absolute rights over the subject matter of nomination. The nominee acts merely as a trustee and not as a title holder. Upon receiving the subject matter of nomination, the nominee is bound to disburse the same to the eligible legal heirs of the deceased. Therefore, the writ petitioner being the mother and a Class-I legal heir of late S.Vijayakumar, is entitled to 1/3 share in his CPS amount. **Point No.(i) is answered accordingly in favour of the writ petitioner.**

Point No.(ii) - Whether the benefits under the Family Benefit Fund and the Special Provident Fund - 2000 (SPF 2K) Schemes, of a deceased government servant, form a part of their estate or not ?

32. The Family Benefit Fund is covered under 'the Tamil Nadu Government Servants' Family Benefit Fund Scheme' ['TN FBF Scheme' for short] and the relevant rules are 'the Tamil Nadu Government Servants' Family Benefit Fund Rules' ['TN FBF Rules' for short]. In the TN FBF Scheme, a Government Servant shall contribute certain specified amount

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monthly. In case of their demise while in service, a lumpsum amount will be given to their nominee; in the absence of nominee, to their legal heirs.

When the TN FBF Scheme was introduced in 1973 vide G.O. No.1515 / Finance Department / 1973 dated December 3, 1973, the contribution was Rs.10/- per month and the lumpsum amount payable by the Government in case of demise while in service was Rs.10,000/-. Over the years, the rates have been enhanced and as on the date of demise of the deceased, vide G.O. No.57 / Finance Department / 2016 dated February 22, 2016, the monthly contribution was Rs.60/- and the lump sum amount payable was Rs.3,00,000/-.

33. Rule 8 under the TN FBF Rules lays down that in case of superannuation or if the government servant demits office for any other reason, they shall be paid 80% of the actual amount contributed by them till then, at the rates indicted in Schedule I thereunder, and the balance 20% be paid after verifying the period of extraordinary leave availed by them as illustrated therein.

34. Rule 9 under the TN FBF Rules lays down as to who shall be entitled to receive the family benefit fund in case of demise of the



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government servant; Rule 9 says it shall be paid to the nominee who shall be their spouse, minor child / children, mother or father in that order. For

ready reference, Rule 9 is extracted hereunder :-

"9. Persons entitled to receive family benefit :-

"If a Government servant dies while in service his/her nominee who shall be his wife/husband, minor child or children, mother or father (in that order) shall be paid Rs. 10,000/- in a lumpsum in lieu of his contribution. If none of the nominees are alive, this lumpsum amount shall be paid to the legal heirs of the deceased Government servant. The nomination shall be in Form A. This statement shall be countersigned by the Head of Office and pasted in the Service Book of the Government servant after making entries in it. In the case of self-drawing officers the nomination should be sent to the Head of the Department. It is the duty of the Government servant, thereafter to keep this nomination up-to-date. No Government servant shall be paid his/her first full month's pay after joining the service unless he/she files his her nomination."

35. This Court is of the considered view that Family Benefit Fund is also a part of the estate of the Government Servant. In TN FBF Scheme,



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the Government Servant pays a monthly subscription, aggregate of which

along with the government contribution representing the element of

interest, is returned to them at the time of them demitting office; in an unfortunate incident of their demise, instead, a lumpsum amount is paid.

This is nothing more than a type of life insurance offered by the government for the welfare of its servants. The amount payable is

quantified as on the date of his superannuation or demise. As per Rule 8 of

TN FBF Rules, in case of superannuation of the Government Servant or in

case they demit the office for any other reason, then the Family Benefit

Fund is eventually paid to the Government Servant subject to some

conditions, which will be a movable asset / separate property in their hand.

In others words, it would form a part of the Government Servant's estate in

case of superannuation or them demitting office for any other reason.

36. Rule 9 speaks of as to whom the Family Benefit Fund is to be paid in case of demise of the Government Servant while in service.

Though it says it shall be paid to the nominee(s) in a specified order, as

detailed above Nominee(s) is a mere trustee and they shall not be

absolutely entitled to the Family Benefit Fund. It is the eligible legal heirs

of the deceased Government Servant who are absolutely entitled to the

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Family Benefit Fund as per the applicable law of succession.

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37. Thus, in case of a deceased Government Servant, the Family Benefit Fund shall be paid to their nominee(s), who shall be their spouse, minor child / children, mother or father in that specific order. In the given case, late S.Vijayakumar had nominated Respondent Nos.4 and 5 as his nominees. Wife being the first in the order stipulated in Rule 9 of the TN FBF Rules, fourth respondent shall be paid the Family Benefit Fund and shall act as a trustee of the same until it is apportioned among the eligible legal heirs of late S.Vijayakumar.

38. As regards Special Provident Fund - 2000 (SPF 2K), it was introduced as a supplemental scheme to the other Provident Fund schemes available under State Government, vide G.O. No.136 / Finance (Pension) Department / 1984 dated February 28, 1984 in the name of Tamil Nadu Government Employees' Special Provident Fund cum Gratuity Scheme. The said Scheme is governed by 'the Tamil Nadu Government Employees' Special Provident Fund cum Gratuity Rules' ['TN SPF 2K Rules' for short]. At the time of introduction, the initial subscription was Rs.20/- per month till the date of superannuation, or till the subscription along with

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the interest thereon add up to Rs.5,000/-, whichever is earlier. The subscription will carry 8% compound interest until the subscription and interest adds to Rs.5,000/-, and thereafter, the interest rate applicable for General Provident Fund will be applicable.

39. As per Rule 9 of TN SPF 2K Rules, at the time of retirement, the actual amount of subscription recovered from the Government Servant and the interest thereon will be paid along with the Government's contribution of Rs.5,000/-. Subsequently, the subscription amounts and the benefits have been subjected to enhancements and modifications.

40. Rule 9 further provides that in the event of death of an employee while in service, voluntary retirement or medical invalidation, a sum equivalent to the actual subscription made by him together with the interest thereon alone will be paid, to his nominee or legal heirs.

41. Rule 10 of TN SPF 2K Rules talks about the persons entitled to receive the money in the event of death of the Government Servant while in service; it says that the Government Servant shall nominate his family members in accordance with provisions relating to Death cum Retirement Gratuity (DCRG) Benefits under TN Pension Rules.



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42. Rule 45 (5) of TN Pension Rules pertaining to Death cum

Retirement Gratuity (DCRG) Benefits, reads thus:

"(5) For the purposes of this rule and rule 46, 47 and 48 'family' in relation to a Government servant means.

(i) Wife or wives, including judicially separated wife or wives in the case of a male Government servant.

... ..

(vii) Mother and step mother, including adoptive parents in the case of individuals whose personal law permits adoption. ..."

43. As per Rule 45 of TN Pension Rules read with Rule 10 of TN SPF 2K Rules, mother is also an eligible person for nomination. In this case, however, late S.Vijayakumar had nominated only the Respondent Nos.4 and 5. Be that as it may, Special Provident Fund - 2000 Scheme is also similar to the TN FBF Scheme; both are like a life insurance policy. In Special Provident Fund - 2000, just like in the case of TN FBF Scheme, the realised / matured amount is paid to the Government Servant themselves in case of superannuation or them demitting office for any other reason, and in case of their death, it is paid to the nominee(s). As

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stated *supra*, mere nomination will not confer any absolute rights; a nominee is only a trustee, who is entitled to only receive the amount and the legal heirs can very well claim the same from the nominee(s). Hence, Special Provident Fund - 2000 is also an estate. As it is neither specified in Rule 9 nor in Rule 10 of TN SPF 2K Rules that the realised / matured amount shall be payable to the nominees in a specific order, both the nominees nominated by late S.Vijayakumar namely Respondent Nos.4 and 5 are eligible to receive the same and the writ petitioner being a Class I legal heirs, is entitled to equal share in it along with respondents 4 and 5.

Point No.(ii) is answered accordingly in favour of the writ petitioner.

Point No.(iii) - Whether the monetary benefits of Encashment of Earned Leave and of Unearned Leave on Private Affairs fall under the category of 'estate' of a deceased government servant ?

44. Similarly, the monetary benefits of Encashment of Earned Leave and Unearned Leave on Private Affairs are also quantified as on the date of superannuation or demise of the Government Servant. As per G.O. No.409 / Finance (Pension) Department / 2004 dated July 31, 2004 read with Tamil Nadu Leave Rules, 1933, the employee is entitled to encash

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Earned Leave and Unearned Leave on Private Affairs at the time of retirement, voluntary retirement, or compulsory retirement, and in case of their demise while in service, their family is entitled to the benefit thereof. The Government Servant is entitled to divert the natural mode of succession. Hence, it is also an estate of the Government Servant. Thus, the writ petitioner is entitled to equal share in it along with Respondent Nos.4 and 5. **Point No.(iii) is answered accordingly in favour of the writ petitioner.**

45. Learned Counsels for the respondents, both in unison, would submit that the writ petitioner is receiving her pension, as well as family pension in lieu of her husband's demise. Similarly, the learned Counsel for the writ petitioner would contend that Respondent No.4 is working as a teacher and having a good source of income. This Court is of the view that these are all immaterial for this case as there is no question of equity here, while deciding the right and share of the writ petitioner in the service and terminal benefits of late S.Vijayakumar.

46. Before parting with this Judgment, this Court would like to observe that from the Post-mortem Report of S.Vijayakumar, it prima

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facie appears that he passed away due to Sudden Cardiac Respiratory Arrest. Further, it reveals the absence of any drugs, Ethyl Alcohol, or Poison in the internal organs. However, the question of cause of his death is a subject matter pending before Court. It is stated that a Criminal Case for an offence punishable under Section 306 of IPC and Quash Petition in respect of it are still pending. Moreover, Section 25 of the Hindu Succession Act, 1956 lays down that a person who commits murder or abets the commission of murder shall be disqualified from inheriting the property of the person murdered or any other property in furtherance of succession to which, the murder or abetment thereto was committed. It does not talk about abetment of suicide dealt under Section 306 of IPC. Considering the facts and circumstances of the case, this Court is of the *prima facie* view that Section 25 of the Hindu Succession Act, 1956 is not applicable to the instant case.

47. As regards the Release Deed dated April 7, 2021, the Respondent Nos.4 and 5 are at liberty to pursue the legal remedy available to them, if not yet done. This Judgment would in no manner stand as a bar to the same. If any Suit is already instituted, then the Court may decide the same on merits, untrammelled by any observation made by this Court

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in this Judgment.

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CONCLUSION:

48. To conclude, the writ petitioner is entitled to all the service and terminal benefits due to late S.Vijayakumar.

48.1. The Benefits under Family Benefit Fund [Immediate Relief for Funeral Expenses], Family Benefit Fund [Final Amount], Encashment of Earned Leave, Encashment of Unearned Leave on Private Affairs, and Special Provident Fund - 2000 (SPF 2K), together to the tune of Rs.6,45,518/- have been disbursed to the Respondent No.4 towards her share and her minor daughter's share.

48.2. Family Benefit Fund [Immediate Relief for Funeral Expenses] would have been spent on the funeral expenses of late S.Vijayakumar as it is meant to be and hence, it is not available for distribution. After excluding the funeral expenses, the total amount available for distribution is Rs.6,20,518/-, of which the writ petitioner is entitled to 1/3rd share *i.e.*, Rs.2,06,839/-.

48.3. Contributory Pension Scheme (CPS) Amount is yet to be disbursed. Total Contributory Pension Scheme (CPS) Amount lying in



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S.Vijayakumar's CPS Account bearing No.727014/EDN as in February, 2020 is Rs.13,28,168/-. Since S.Vijayakumar passed away in 2021, the final amount would be higher.

48.4. This Court is of the view that as the entire amount in respect of other service and terminal benefits, including the writ petitioner's share therein, had already been disbursed in favour of fourth respondent, necessary addition shall be made to the writ petitioner's 1/3 share in the total CPS Amount payable, in lieu of writ petitioner's 1/3 share in the other service and terminal benefits. In other words, while disbursing the CPS Amount due to S.Vijayakumar, the writ petitioner shall be paid her 1/3rd share thereof, along with amount equivalent to her 1/3rd share in the other service and terminal benefits which comes to Rs.2,06,839/-, and the same *i.e.*, Rs.2,06,839/- shall be adjusted against / subtracted from the share of fourth and fifth respondents in the CPS Amount.

48.5. Further, this Court directs the Respondent Nos.1 to 3, to deposit the fifth respondent / minor's 1/3 share in the CPS Amount (after making the aforesaid adjustment), in an interest bearing fixed deposit in a nationalised bank for until fifth respondent attains the age of majority, and

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the mother / guardian of fifth respondent shall be permitted to withdraw the interest accruing thereon and use the same for the benefit of the fifth respondent.

49. Resultantly, the writ appeal is allowed in the above terms. The Order of the learned Single Judge dismissing the writ petition is set aside. In view of the facts and circumstances of this case, there shall be no order as to costs. Consequently, Connected Miscellaneous Petition is closed.

[M.S.R., J.]

[R.S.V., J.]

29 / 10 / 2025

Index : Yes
Neutral Citation : Yes
Speaking Order : Yes
PAM/TK

To

1.The Chief Educational Officer,

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Vellore District,
Vellore Collectorate Office,
Tamil Nadu House Board,
Vellore – 632 012.

- 2.The District Educational Officer,
Arakkonam Taluk,
Vellore District.
- 3.The Block Level Educational Officer,
Nemili Taluk,
Vellore District.



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M.S.RAMESH, J.

AND

R.SAKTHIVEL, J.

PAM/TK

PRE-DELIVERY JUDGMENT MADE IN
W.A.NO.2014 OF 2021

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