

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.2846 of 2022

1. Smt. Raj Lakshmi Mishra, W/o Late Sachidanand Mishra, R/o- Flat no. 303, Lotus Mansion, Gola Road Ramjaipal Nagar, Near Corporation Bank, opposite Madhurani Complex, Danapur, Patna- 801503.
2. Hrishikesh Mishra, S/o Late Sachidanand Mishra, R/o- Flat no. 303, Lotus Mansion, Gola Road Ramjaipal Nagar, Near Corporation Bank, opposite Madhurani Complex, Danapur, Patna - 801503.

... .. Petitioner/s

Versus

1. The Chairman Cum Managing Director, Canara Bank, 112, JC Road, Bengaluru, Karnataka, 560002.
2. The Deputy General Manager, Canara Bank, 1st Floor Bells house, 21 Camac Street, Kolkatta, 700016.
3. The Assistant General Manager, HRM Section, Canara Bank, Circle Office, Bells House, 21 Camac Street, 3rd Floor, Kolkatta - 16.
4. Priyanka Kumari, D/o Jagdish Pandey, W/o Late Brajesh Mishra, Village-Dhanadih, Post- Jogiya Rasulpur, Dist- Saran, Pin- 841212, Bihar.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Gyanendra Kumar Shukla, Advocate
For the Respondent/s : Mr. Jitendra Kumar, Advocate
For the Resp. No.4 : Mr. Shekhar Singh, Advocate

CORAM: HONOURABLE MR. JUSTICE HARISH KUMAR
CAV JUDGMENT

Date : 03-09-2024

This Court has heard Mr. Gyanendra Kumar Shukla, learned Advocate for the petitioners, Mr. Jitendra Kumar, learned Advocate for the Canara Bank and Mr. Shekhar Singh, learned Advocate for respondent no.4.

2. The petitioners are aggrieved with the order contained in reference no. KC:HRM:807: 2021 dated 29.07.2021 (Annexure-4 to the writ petition) whereby the claim of the petitioners for settlement of amount under National



Pension Scheme was rejected by the respondent Bank on the ground that the deceased employee late Brajesh Mishra had given the names of the petitioners as a joint nominees prior to his marriage and after marriage there is no fresh nomination, thus the concerned respondents directed to produce succession certificate of deceased son of petitioner no.1 for settlement of the National Pension Scheme (NPS) amount, which is lying under the Pension Fund Regulatory and Development Authority (hereinafter referred to as 'the PFRDA'). The petitioners also sought a direction upon the respondent authorities to release the pensionary benefits-cum-terminal benefits so as to appropriate the housing loan taken by the deceased son of petitioner no.1.

3. The short facts, which led to the filing of the present writ petition are that the son of petitioner no.1, namely, Brajesh Mishra (deceased) was working as a Chief Manager at Kolkata, Circle Office since 28.04.2020 and passed away during service period on 20.01.2021. During the service, the deceased son of petitioner no.1 nominated the name of petitioner no.1, who happens to be his mother and petitioner no.2, his brother as joint nominee. On account of untimely demise of the son of petitioner no.1, she submitted an application with the Bank for settlement of death/terminal claim of her deceased son jointly



with deceased wife (respondent no.4) on 21.03.2021. Subsequent thereto, the petitioner no.1 had revoked her earlier authorization tendered in favour of deceased wife for settlement of retiral and terminal dues vide Email dated 10.05.2021, and further vide letter dated 13.05.2021. The prayer of the petitioners was duly considered and the settlement amount was released by the Bank, but was appropriated and adjusted under the unsecured loan availed by the deceased employee and accordingly, the petitioners were informed vide letter dated 22.11.2021.

4. In the meanwhile, the petitioners submitted an application on behalf of late Brajesh Mishra to exit from National Pension System on 22.07.2021 due to sudden demise of the subscriber. However, the claim of the petitioners have been negated vide letter no. KC:HRM:807: 2021 dated 29.07.2021, which is put to challenge before this Court.

5. Referring to Sub-Clause V of Clause 31 of Gazette notification issued by the Pension Fund Regulatory and Development Authority Regulation, 2015, the impugned order states that a fresh nomination was to be made by the subscriber on his marriage and any nomination made before such marriage shall be deemed to be invalid; the petitioners, thus directed to



submit a legal heir certificate to settle the NPS amount lying with PFRDA.

6. Assailing the impugned order, as contained in Annexure-4 to the writ petition, learned Advocate for the petitioners contended that the very aforesaid Regulation has been amended in the year 2017, which crystallized that at the time of exit of the subscriber on account of death, the nomination, if any existing in the records of subscriber with his or her employer for the purpose of receiving other terminal benefits shall be treated as nomination exercised for the purposes of receiving benefits under the NPS. The copy of the amended rule has been brought on record by way of Annexure-5/1 to the writ petition. Learned Advocate for the petitioners would thus contended that despite the amendment in the above Regulation in the NPS, as noted above, the denial of the legitimate claim of the petitioners to receive the NPS amount is apparently suffers from illegalities of the highest magnitude and an apathy. It is also contended that petitioner no.1 is a hapless widow and mother of a deceased employee suffering from various old age ailment and has no other source of income to carry out her livelihood and to repay the housing loan taken by her late son Brajesh Mishra. The respondent Bank repeatedly



threatening the petitioner no.1 to clear the loan amount of her deceased son, otherwise the Bank would put an auction sale of the said premises/flat for realizing the loan amount. In absence of release of NPS amount by the Bank authorities, the outstanding amount in the housing loan of late son of petitioner no.1 could not be appropriated and the respondent Bank has kept on applying interest and penal interest on the outstanding loan amount in a most arbitrary manner. Nonetheless, the Bank is very much aware that the entire loan amount could be adjusted from NPS amount of son of the petitioner no.1.

7. On the other hand, learned Advocate for the Bank contended that the impugned order has been passed in the light of notification published in the Gazette of India under PFRDA Regulation, 2015, dated 11.05.2015. After passing of the impugned order, the wife of the deceased also submitted an application before the respondent Bank for exit of subscriber from NPS due to the death of the deceased employee (Brajesh Mishra) as a claimant vide its letter dated 29.07.2021. However, it has been informed that her claim as a nominee will not be considered by the concerned authority because after marriage she was not nominated as a nominee by the deceased employee. It is also the contention of the learned Advocate for the Bank



that as per the amended Regulation of PFRDA, the claim of NPS amount can only be settled in favour of the legal claimants, if the same has been settled in other terminal benefits account and in the present case, the gratuity and other accounts have been settled in favour of petitioner no.1 and wife of the deceased as per the guidelines issued by the Government of India.

8. The facts involved in the case is suggestive that petitioner nos. 1 and 2 as well as wife of the deceased created a serious dispute between them, hence it was directed to produce a joint legal heirs certificate for settlement of such dispute, as same is also required as per the guidelines issued by the Government of India. It has also been apprised to this Court by filing a counter affidavit that there are still liabilities of the deceased employee, which shall be recovered from his legal heirs. A chart disclosing the liabilities of the deceased employee under the Home Loan to the tune of Rs.31,96,787.69 and under the Over Draft Rs.5,63,267.03 has been brought on record by way of Annexure-2 to the counter affidavit filed on behalf of respondent nos. 1, 2 and 3.

9. It is to be noted that though the wife of the deceased employee was not made party respondent in the writ



petition. However, pursuant to the direction of this Court dated 09.02.2023, she was added as respondent no.4 and, accordingly, notices were issued. On receipt of notice, she entered her appearance and filed her response.

10. Mr. Shekhar Singh, learned Advocate for the respondent no.4 countering the submissions advanced on behalf of learned Advocate for the petitioners and the Bank, vigorously contended that being wife of deceased employee, the respondent no.4 is entitled to receive all terminal benefits of NPS and the death claim settlement. So far the petitioner no.2 is concerned, he is elder brother of the respondent no.4 and has been maintaining himself and his family, including his mother, the petitioner no.1. After the death of the deceased employee, the respondent no.4 has neither any means of earning nor any source to maintain herself, thus she is in the great hardship.

11. Referring to the application form for settlement of deceased constituents for payment of balances in Accounts, articles in safe deposit locker and safe custody, the learned Advocate for respondent no.4 attempted to persuade the Court that she being the wife has been acknowledged as the legal heir of late Brajesh Mishra and thus she is very much entitled to claim the benefits of NPS settlement scheme. It is also the



contention of respondent no.4 that the impugned communication, as contained in Annexure-4, is absolutely in conformity with the relevant laws and regulations, which shows in clear terms that any nomination made before marriage is deemed to be invalid, as per the relevant provisions. The writ petitioners have given wrong interpretation to the provisions envisaged in National Pension Scheme and have deliberately not quoted para. 32(V) of the Regulation, which provides that a fresh nomination shall be made by the subscriber on his marriage and any nomination made before such marriage shall be deemed to be invalid.

12. While concluding his submission, reliance has also been placed on a decision rendered by the Hon'ble Supreme Court in the case of **Shakti Yezdani & anr. Vs. Jayanand Jayant Salgonkar & Ors. (Civil Appeal No. 7107 of 2017)** specially paragraph 25 and 26 thereof to buttress the proposition that the nomination so made would not lead to the nominee attaining absolute title over the subject property for which such nomination was made. In other words, the usual mode of succession is not to be impacted by such nomination. The legal heirs therefore have not been excluded by virtue of nomination.



13. This Court has given anxious consideration to the submissions advanced on behalf of the learned Advocate for the respective parties and also perused the materials available on record, including the relevant provisions of the Regulation issued under PFRDA Act. The Apex Court had the occasion to consider the scope and effect of “nomination” in case of **Shipra Sengupta v. Mridul Sengupta & Ors., (2009) 10 SCC 680**. Placing reliance upon an earlier decision rendered in the case of **Sarbati Devi & Anr. Vs. Usha Devi [(1984) 1 SCC 424]** the Hon’ble Supreme Court held 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. The Hon’ble Apex Court while resolving the issue had in uncertain term quoted that the nominee is entitled to receive the same, but the amount so received is to be distributed according to the law of succession.

14. The learned Division Bench of this Court in the



case of **Ati Razia Devi Vs. The State of Bihar & Ors. 2016(1) PLJR 835** while considering the dispute with regard to the liability of the State to pay Family pension held that “the very purpose of the nomination is to enable the State to meet its obligations and get a valid discharge in respect thereof. Once, the employee had nominated the other lady to receive the family pension, the State discharges its obligation lawfully by paying that lady i.e. the nominee. Now, if the appellant disputes this fact and claims to be the first lawfully wedded wife, and thus, in civil law, entitled to the family pension, then, it is for her to establish her right, title and interest in this regard in a court of competent jurisdiction and get an order to override the nomination made by the person/employee concerned. The nominee, in matters where the status and the right is disputed, is merely a trustee for the rightful owner thereof, but, of course, subject to the right of nominee to receive and give a valid discharge. Nomination by itself, it is well settled, does not make the person the owner or the rightful recipient of the property, but holds it in trust for rightful and lawful recipient or person entitled therein.”

15. On the similar line, in the case of **Shiv Shankar Arya Vs. The Union of India & Ors, since reported in**



2016(2) PLJR 477, the Division Bench of this Court has held that the nomination is only authority to receive payments or properties and give valid discharge to a person making payment. Nominee would not become an absolute owner upon the receipt of the properties, but is a trustee for the heirs.

16. Similarly, in the case of **Khushboo Gupta Vs. The Life Insurance Corporation Of India Through Executive Director & Ors.**, reported in **2019(4) PLJR 885** where a dispute has arisen on account of the fact that the deceased had nominated his mother as nominee and by virtue of that nomination, after death of the life assured she was claiming the entire insurance proceeds. The wife had a grievance that after obtaining the policy the deceased had solemnized marriage with the petitioner and thus she was claiming herself a legally wedded wife of the deceased life assured and is looking for 50% of the proceeds of the death claim.

17. The learned coordinate Bench, painstakingly having taken note of various provisions of the Insurance Act vis-a-vis Hindu Succession Act, 1956 held that only by virtue of nomination under Section 39 of the Insurance Act, 1938, the mother of the deceased employee cannot claim 100% of the death claim proceeds, in a case where she has not questioned the



status of the petitioner, as a widow of her son. The learned Court having taken note of the status of the wife and the mother being Class-I legal heirs under the Hindu Succession Act, 1956 held to be entitled to receive the entire proceeds by dividing the same equally between two of them after getting due discharge.

18. Now coming to the legality of the impugned order, as contained in Annexure-4, to the extent whereby while negating the claim of petitioner no.1, it is said that she being nominated by the deceased employee before his marriage, her claim for all the benefits shall be considered void in terms of the notification published in the Gazette of India on 11.05.2015; wherein it is mentioned in the Point No.31, Sub Clause (v) that a fresh nomination shall be made by the subscriber on his marriage and any nomination made before such marriage shall be deemed to be invalid; in the opinion of this Court is wholly misconceived and fit to be rejected.

19. The aforementioned Sub-Clause (v) of Point No.31 of PRDA Act talks about the contingency that on or after marriage if an employee makes any nomination, the earlier nomination made by the subscriber before such marriage shall be deemed to be invalid, but the same does not talk about automatic invalidation on account of the marriage of the subscriber.



20. It is admitted position that the deceased subscriber did not file fresh nomination after his marriage. It is also the fact that the status of the respondent no.4 as a widow of the deceased employee has never been questioned either before the Bank authorities or before this Court, rather the petitioner no.1 had herself submitted an application with the Bank for settlement of death claim of her son jointly with deceased's wife (respondent no.4). It is also admitted in fact as well as law that petitioner no.1 being mother and the respondent no.4 being the widow of the deceased employee are Class-I legal heirs under the Hindu Succession Act, 1956.

21. The issue with regard to the effect of nomination has been clarified by various judgments rendered by the Apex Court as well as this Court in the cases noted hereinabove that the nominee is entitled to receive the same, but the amount so received is to be distributed according to the law of succession. Once on account of the petitioner no.1 being the mother and the respondent no.4 being the widow of the deceased employee, a right has been vested in their favour, the same cannot be divested because of any family feud.

22. In view of the settled legal position that nomination alone does not confer any exclusive beneficial



interest on the nominee, the amount so received are to be distributed according to Hindu Succession Act, 1956. The respondent Canara Bank is directed to release half of the amount of NPS or any other terminal benefits each to the petitioner no.1 as well as respondent no.4 by dividing the same equally between two of them preferably within a period of four weeks from the date of receipt/production of a copy of this order.

23. This Court has also been apprised that the deceased employee has purchased a flat by taking home loan and there is a loan under the over draft facility, as discussed earlier and the aforesaid liability would be settled from the assets of the legal heirs of the deceased employee in accordance with law. If on disbursement of the amount under the NPS Scheme, if petitioner no.1 and respondent no.4 are consented to repay the loan, the said amount shall be appropriated against home loan or in case there is no consensus between the petitioner no.1 and respondent no.4, the Bank shall be at liberty to proceed in accordance with the provisions of Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act, 2002).

24. The writ petition is partly allowed to the extent indicated hereinabove with the aforesaid observation. There



shall be no order as to costs.

(Harish Kumar, J)

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AFR/NAFR	AFR
CAV DATE	13.08.2024
Uploading Date	04.09.2024
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