

S.Sandhya Vs. the Chief General Manager and ors.

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Court : Chennai

Decided On : Apr-09-2012

Judge : S.Manikumar, J.

Acts : [Insurance Act 1938](#) - Section 39(6)(1); Hindu Succession Act - Section 8; Tamil Nadu Co-operative Societies Act - Section 24; Employees' Provident Funds Act, 1952 - Section 10(2), 5 ; [Employees' Provident Funds Scheme, 1952](#) ; Land Acquisition Act - Sections 16, 17; Insurance Act - Section 39; Hindu Marriage Act. - Section 11; [Succession Act, 1925](#) - Section 372; Central Pension Rules - Rule 10; Group Insurance Scheme, 1980 ; Central Civil Services (Pension) Rules - Rule 50(1)(b), 51, 52 and 53; [Constitution of India](#) - Articles 226

Appeal No. : W.P.No.29894 of 2002

Appellant : S.Sandhya

Respondent : The Chief General Manager and ors.

Advocate for Def. : Mr.K.R.Ramesh Kumar, Adv.

Advocate for Pet/Ap. : Mr.P.V.Balasubramaniam, Adv

Judgement :

Prayer: This Writ Petition is filed under Article 226 of the [Constitution of India](#), seeking for a writ of Mandamus, directing the respondents 1 to 3 to pay to the petitioners, the terminal benefits arising on account of the death of their father.

ORDER

1. Daughters of a Sub Divisional Engineer, Transmission Unit, Office of the Director, Bharat Sanchar Nigam Ltd., (BSNL), Chennai, claiming themselves as legal heirs, entitled to the terminal benefits, on account of the death of their father, have sought for a Mandamus, directing to the respondents 1 to 3 to pay the same. The 4th respondent is the brother of the deceased, in whose favour, the nomination has been made, by the employee.

2. According to the petitioners/daughters, their father expired on 31.03.2002, in harness. The marriage between their parents was dissolved by a decree of divorce in 1989. As per the Hindu Succession Act, they are the Class-I heirs and that even if there was any dissolution of marriage between the parents, the right of the children, to seek for retiral benefits, will not be taken away by such dissolution. They also submitted that the 4th respondent, younger brother of their father has staked his claim for the terminal benefits, and due to his illegal claim, terminal benefits have not been sanctioned so far.

3. Petitioners have also submitted that the 4th respondent had already received a sum of Rs.5,000/- and since there was an attempt to withdraw the balance amount of retiral benefits, the present writ petition has been filed for a Mandamus. In addition to the above pleadings Mr.P.V.Balasubramaniam, learned counsel for the petitioners, placing reliance on a decision of the Supreme Court in Shipra Sengupta Vs. Mridul Sengupta and Others, reported in 2009 (10) SCC 680, submitted that the 4th respondent, brother of the deceased, cannot be a recipient of the retiral benefits and at best, he can only be a trustee, for receiving the retiral benefits, on behalf of the legal heirs, entitled to succeed, as per the law of succession, governing them and for the abovesaid reasons, prayed for a suitable direction to the official respondents, to disburse the retiral benefits due and payable to petitioners' father, to the petitioners.

4. The Deputy General Manager, Acceptance and Testing, T&D Circle, Chennai, in his counter affidavit has submitted that the petitioners' father was working as a Sub Division Engineer in the office of the Deputy General manager (A&T), Chennai-15 and that he expired on 31.03.2002. He has also admitted that the

petitioners/children of the abovesaid officer have made a claim for the disbursement of retiral benefits and that they have also produced legal heirship certificate from the concerned revenue authority. The Deputy General Manager, has also stated that a similar claim has also been made by 4th respondent, younger brother of the deceased employee. He has further stated that Mr.E.Sivaprakasam, the deceased employee, during his life time has nominated the 4th respondent, younger brother, to receive the following benefits.

1. Death-cum-retirement gratuity

2. General Provident Fund

3. Central Government Employee Group Insurance.

5. It is the further contention of the above said authority that in view of the rival claims, made by the petitioners and the 4th respondent, the amounts have not been deposited, till the date of filing of the counter affidavit.

6. Record of proceedings shows that when the matter came up on 29.08.2003, after hearing both the learned counsel for the petitioners and the Director of BSNL, Chennai, the 3rd respondent, this Court has granted injunction directing the respondents 1 to 3 therein, not to pay the terminal benefits, arising out of the death of the petitioners' father. As there was a dispute, relating to entitlement, the 3rd respondent has been directed to deposit the entire amount in a Fixed Deposit, for a period of three years. On 03.04.2012, when the matter came up for further hearing, it was brought to the notice of this Court that the Assistant General Manager (Estt.), has addressed a letter to the Controller of Communication Account, M.P.Telecom Circle, Door Sanchar Bhawan, Hoshangabad Road, Bhopal-462 015, that he has received an order dated 09.01.2012 passed by this Court in W.P.No.29894 of 2002, wherein, directions have been issued to deposit the amounts due to Mr.E.Sivaprakasam, who expired on 31.03.2002, in Indian Bank, High Court Branch, Chennai, by 25.01.2012. In the above said letter the Assistant General Manager (Estt.), BSNL has also submitted that despite non-availability of the claim in proper proforma etc., the terminal benefit amounts have been determined, in his office, based on the prevailing rules.

7. In the said letter, the Assistant General Manager (Estt.), BSNL, has also stated that, as the deceased was a regular staff in DOT and not absorbed in BSNL, the terminal benefits have to be paid only by M.P.Telecom Circle and therefore, requested action at the M.P.Telecom Circle, in accordance with the Court order.

8. It is also brought to the notice of this Court, that a sum of Rs.92,147/-, representing leave encashment dues to be paid to the deceased Mr.E.Shivaprakasam has also been deposited on 24.01.2012 and a further sum of Rs.6,27,562/-, representing GPF (RS.2,01,240/-), CGEGIS (Rs.76,322/-) and DCRG (Rs.3,50,000/-), has been deposited on 24.03.2012 in Indian Bank, Head Office, Chennai-1.

9. Mr.K.R.Ramesh Kumar, learned counsel for the BSNL submitted that Mr.E.Shivaprakasam, Sub Divisional Engineer, was not absorbed in BSNL and that he continued to be a regular staff of DOT. He also submitted that GPF (CS Rules), CPF (India Rules) and Central Pension Rules are applicable to the deceased, employee of DOT. His submission is placed on record.

10. He also drew the attention of this Court to the relevant rules, dealing with nomination of the members of the family to receive GPF under GPF (CS Rules), CPF under India Rules, Gratuity under CCS Pension Rules, Leave encashment under Fundamental and Supplementary Rules, and Group Insurance under Group Insurance Scheme, 1980, respectively. He also endorsed the submission of the learned counsel for petitioners that at best, the 4th respondent, brother of the deceased employee, can only be a trustee and that the nomination made by the deceased employee does not confer any beneficial interest, to him, under the relevant rules. His submission is placed on record.

11. The 4th respondent, though represented by a counsel, has not filed any counter. However, Mr.S.Surya Praksah, learned counsel for the 4th respondent submitted that after the dissolution of the marriage, the 4th respondent was taking care of his brother, till his death. According to him, the 4th respondent remained as a bachelor and shared food, shelter, till the death of the employee and in such circumstances, the employee on his own accord, had nominated the 4th respondent, to receive the retiral benefits. He further submitted that as a nominee,

the 4th respondent is entitled to receive the terminal and other benefits. For the above said reasons, he prayed for dismissal of the writ petition. Without prejudice to the above, he also submitted that if this Hon'ble Court, reaches a conclusion that the petitioners are entitled to receive the terminal benefits, appropriate apportionment to the 4th respondent, be made taking into consideration the gratuitous services rendered by him.

Heard the learned counsel for the parties and perused the materials available on record.

12. The employment of Mr.E.Shivaprakasam as Sub Divisional Engineer in the office of the Deputy General Manager (A&T) and his demise on 31.03.2002, leaving behind the petitioners as legal heirs, is not disputed. They have also produced a legal heirship certificate from the concerned Thasildhar. On the one hand, the petitioners/daughters as class-I heirs of the deceased have claimed retiral benefits and on the other, the 4th respondent Mr.E.Durairaj, younger brother of the petitioners' father, falling under Class-II heirs, has claimed retiral benefits, on the grounds that during the life time, Mr.E.Shivaprakasam, the employee had nominated him, to receive the following benefits

1. Death-cum-retirement gratuity
2. General Provident Fund
3. Central Government Employee Group Insurance.

13. Whether the line of succession, governed by the Personal Law applicable to the parties or the mere nomination made by a deceased employee should be taken into consideration as the decisive factor, for the purpose of disbursing benefits, like, life insurance, gratuity, PF and leave encashment, etc., is the subject matter of the present writ petition and the said question is no longer res integra.

14. Before advertng to the above issue, it would be relevant to consider the statutory position on the above aspects. As per GPF (CS Rules) and CPF (India Rules), Central Government Employees, who have been appointed on or before 31.12.2003, they are entitled to General Provident Fund, subject to terms and

conditions contained in the above said rules.

15. Rule 10 of the said rules, deals with the nomination by a Central Government employee, which states as follows

"A subscriber can nominate one or more persons conferring the right to receive his GPF amount in the event of his death. If more than one pension is nominated, the amount or share payable to each should be indicated clearly. A subscriber may at any time cancel a nomination by due indicated clearly. A subscriber may at any time cancel a nomination by due notice and send a fresh nomination. A subscriber having no family can nominate only members of his family. Subscriber having no family can nominate only members of his family. Subscriber having no family can nominate any person/persons, including a Company/Association/Body of individuals a Charitable or other Trust or Fund Subject to its validity, a nomination/notice of cancellation takes effects from the date of its receipt by the Accounts Officer. Rule 5.

Note: - A nomination submitted to the Head of Office is valid even if the subscriber dies before it reaches the Accounts Officer. - C&A.G s Decision (2), Rule 5.

16. 'Family' as defined in rule 11 of the said rules is as follows:

Family includes wife/wives except judicially separated wife, husband (unless expressly exclude), parents, a paternal grandparent when no patent is alive, children (including adopted children), minor brothers, unmarried sisters and deceased son s widow and children. A ward under the Guardians and Wards Act., 1980 , who lives with the Government servant and to whom the Government servant has given through a special will the same status as that of a natural child, will also be treated as a member of the family. Rule 2."

17. A conjoint reading of Rules 10 and 11 makes it clear that under GPF (CS Rules) and CPF (India Rules), brother, who had already attained majority, does not fall within the definition of 'family'. Reading of the definition 'family' also would indicate that the nominees, should be conferred with the beneficial interest in the retiral benefits and brother of the deceased, who had attained majority or married

sisters are not included.

18. As per sub rule (1)(b) to rule 50 of the Central Civil Services (Pension) Rules, if a Government servant dies while in service, the death gratuity shall be paid to his family in the manner indicated in sub-rule (1) of Rule 51, at the rates given in the Table thereunder.

For the purpose of the abovesaid rule and rules 51, 52 and 53 '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,
- (ii) husband, including judicially separated husband in the case of a female Government servant,
- (iii) sons including stepsons and adopted sons,
- (iv) unmarried daughters including stepdaughters and adopted daughters,
- (v) widowed daughters including stepdaughters and adopted daughters,
- (vi) father, (vii) mother, (including adoptive parents in the case of individuals whose personal law permits adoption)
- (viii) brothers below the age of eighteen years including stepbrothers,
- (ix) unmarried sisters and widowed sisters including stepsisters,
- (x) married daughters, and
- (xi) children of a pre-deceased son.

19. Reading of the relevant rule makes it clear that only brothers below the age of 18 years including stepbrothers are included as a member of the family, eligible, even for nomination, as per the provisions of Central Civil Services (Pension) Rules.

20. Encashment of Leave is dealt with in Part-III of the Fundamental and Supplementary Rules. As per the abovesaid rules, on the death of a Government servant, while in service or after retirement or quitting service, but, before the actual receipt of cash equivalent of leave salary, the cash equivalent of leave salary shall be payable to a member of his family in the following order of preference:-

- 1) widow or the eldest surviving widow (with reference to the date of marriage) or husband;
- 2) the eldest surviving son or an adopted son;
- 3) the eldest surviving unmarried daughter;
- 4) the eldest surviving widowed daughter;
- 5) the father;
- 6) the mother;
- 7) the eldest surviving married daughter; and
- 8) the eldest surviving brother below the age of 18 years;
- 9) the eldest surviving unmarried sister;
- 10) the eldest surviving widowed sister;
- 11) the eldest child of the eldest predeceased son.

21. Part-III of the Fundamental and Supplementary Rules again makes it clear that the entitlement or nomination to receive the cash equivalent to leave salary payable to a member of the family of the deceased is in the order of preference, but a surviving eldest brother below the age of 18 years alone is included.

22. There are certain welfare schemes to a Central Government Servant and one such scheme is Group Insurance Scheme, 1980. Clause 9 of the Group Insurance Scheme, 1980, indicates as to how a valid nomination to the nominee(s), is made.

Nomination: If the employee has a 'family' he shall make such nomination only in favour of a members of his 'family'. However, a female subscriber can exclude her husband from her family for the purpose of this scheme, by a notice in writing to the Head of Office.

23. Again, for the purpose of receiving benefit under the scheme, "Family" means husband, wife or wives, parents, children, a ward, minor brothers, unmarried sisters, deceased son's widow and children, and where none of the parents of the members of the scheme is alive, a paternal grandparent.

Here again, only minor brothers and others stated supra, have been included as members of a family. The extracts from the abovesaid rules/clause, relating to the nominees under General Provident Fund (CS) Rules and CPF (India) Rules, CCS (Pension) Rules 2012, FR & SR Rules, applicable to Central Government Services and the Group Insurance Scheme, 1980, make it abundantly clear that it is not the intention of the framers to include an unmarried major son, as one of the nominees entitled to receive the retirement benefits and the lump sum payment to be made under the insurance scheme is intended only to help the family, in the event of death in harness.

24. Apart from the judgment cited by the learned counsel for the petitioners, this Court deems it fit to consider some of the judgments on the aspect, as to whether a nomination outside the line of succession, would confer any right on the nominee, to receive the retiral benefits.

In Ramballav Dhandhanian v. Gangadhar Nathmal reported in AIR 1956 Cal. 275, the nomination was in the following terms:

"I nominate my wife and my son-in-law, the survivor or survivors, as the person to receive the moneys under the above policy in the event of my prior death"

When there was a dispute regarding disbursement, the Calcutta High Court held as follows:

"A nominee in respect of a policy of insurance under these terms does not become the owner of the money payable to him under the policy. Such nomination Only

indicates the person who should receive the money should the owner die. A receiver of moneys is not the owner of the moneys, He has only the right to collect the moneys."

"In my view Sub-section (6) of Section 39, Insurance Act does no more than make the nominee a receiver to receive the moneys from the insurance policy without deciding the question of title. The language used in Sub-section (6) of Section 39, Insurance Act does not say that the amount secured by the policy shall belong to such nominee, but uses the words 'shall be payable' to such nominee."

25. The said view has been affirmed by the Full Bench of Kerala High Court in *Sarojini Amma v. Neelakanta Pillai* reported in AIR 1961 Kerala 126, wherein, it was held that a nomination in respect of a policy of life insurance, confers no right on the nominee, during the lifetime of the assured. It confers on him a bare right to collect the policy money, on the death of the assured and to give a good discharge to the insurance company. The nominee does not become the owner of the money, payable under the policy and that he is liable to make it over to the legal representatives of the assured. Section 39(6), Insurance Act does no more than to make the nominee, a receiver to receive the money from the insurance policy, without deciding the question of title.

26. In *Narayanan Vs. Aesha*, reported in AIR 1964 Kerala 197, the question that came up for consideration before the Kerala High Court was whether the Provident Fund amount of an employee in the Central Bank of India is the absolute property of his wife, who was the nominee therein, under the Provident Fund Rules of the bank, on the death of the subscriber, so that the amount is not liable for attachment, for a debt due by the subscriber. Though this judgment does not deal with any rival claim between the kith and kin of the deceased, it is relevant, in the context of explaining the position and the right of the nominee, under the Provident Fund Rules. At paragraphs 2 and 3, the Kerala High Court has held as follows:-

2. Rule 23 of the Employees' Provident Fund Rules of the Bank, marked as Ex. D-3, provides that each member may nominate in writing any person, to whom the amount standing to the credit of such member shall be paid, in the event of his death while in the service of the Bank or before his claim on the Fund shall have

been discharged, and may from time to time change such nomination in writing. Under this provision the subscriber nominated his wife, who is the respondent before me.

3. In the recent Full Bench decision in *Sarojini Amma v. Neelakanta Pillai*, 1960 Ker LT 1319: (AIR 1961 Kerala 126) this Court has held that a nominee in respect of a policy of insurance does not become the owner of the money payable to him under the policy, he being only a receiver of the money and not the owner thereof, and he has therefore only the right to collect it. The decision has also laid down that a nomination by itself conferred no right on the nominee during the lifetime of the assured and it gave only a bare right to collect the money on the death of the assured. Sub-section (1) of Section 39 of the Insurance Act has been considered in the decision; and interpreting that section the Full Bench has given the aforesaid ruling. In considering the case their Lordships have referred to the case in *Ramballav Dhandhanian v. Gangadhar Nathmall*, AIR 1956 Cal 275. Rule 23 and the nomination in the present case are in effect similar to Section 39(1) of the Insurance Act and the nomination referred to in the Calcutta case, AIR 1956 Cal 275. Therefore that decision must apply to the present case as well.

27. In *Controller of Estate Duty, Madras v. Estate of Pitchai Thambi* reported in 1976 TNLJ 393, the employee had taken an insurance policy, for a sum of Rs.20,000/-. He assigned the said policy in favour of his wife on 16.03.1956. The Policy matured on 18.11.1965. He died on 19.03.1966. Prior to his death, he wrote a letter to the Life Insurance Corporation of India, Colombo Office, requesting it to send a cheque amounting to Rs.23,495.20, due under the policy. A reply had been sent, stating that the cheque could not be issued, as the policy had been assigned by the deceased in favour of his wife and that if the deceased wanted payment, a note of authority on the back of the discharge form, should be executed by his wife, enabling the employee, to receive the amount. In the mean time, the policy holder died. Wife sent a letter, dated 14.12.1966, with a note of authority in favour of one Mr.S.A.Samu, after completing the discharge form. Pursuant to which, LIC sent a cheque for the amount, to the said Mr.S.A.Samu. The amount was included in the dutiable estate of the deceased, under the provisions of Estate Duty Act. That was the subject matter of controversy in the Tax case before the Division

Bench. However, while considering the effect of nomination under Section 39 of the Insurance Act, 1938, to receive the amount, a Division Bench of this Court, held as follows:

"The effect of nomination is not to clothe the nominee with beneficial interest in the policy or the money payable thereunder, but to clothe him or her only with the power to revive the money under the policy from the insurer without prejudice to the question of title to the money. Consequently, it confers on the nominee a bare right to collect the policy money when the money becomes payable and by such nomination and the collection of the money, the nominee does not become the owner of the money payable under the policy and he or she is liable to make it over to whomsoever is entitled to the same under the law. Therefore, the mere use of the word "nominee" or "assignee" in section 14 of the Act does not decide the title to the money."

28. In *M.V.Krishnamoorthy v. Tmt.Anandalakshmi* reported in 1980 (2) MLJ 321, the deceased was working as an Assistant in Life Insurance Corporation, at Coimbatore. He died on 28th January' 1970, leaving behind his wife, the plaintiff and parents, without any children. Wife and mother of the deceased claimed Provident Fund dues from LIC. 1st defendant, father of the deceased, claimed that he had been nominated, even as early as on 10th March, 1958, to receive the Provident Fund amount and hence, he is wholly entitled to it. The second defendant, mother of the deceased, also claimed that she is also an heir to her son and therefore, she is entitled to share in the property. Third defendant, employer, has contended that as per Rule 22 of the Provident Fund No.1 Rules, the first defendant alone has been nominated to receive the amount. Ex.B1 is the Nomination. The suit filed by the plaintiff-wife, was dismissed on the basis of Ex.B1, nomination, in favour of the father of the deceased, holding that the widow has no legal right to file a suit. The lower appellate Court reversed the finding and held that the widow alone was entitled to the benefit and accordingly, the suit was decreed. Father of the deceased moved this Court, contending inter alia that the Court is bound to act upon Ex.B1, unless and until, it is established that the said nomination had been lateron varied, modified or canceled. It was also contended that as per the Rules, employer can act only on the basis of nomination and that

the employer is not concerned with sharing or distribution of the Provident Fund money to the heirs of the deceased. A further contention has also been made that Ex.B1, Nomination disentitles the plaintiff therein, from claiming any portion of the amount and as per the Rules, when a direction is given by the contributor to pay the amounts to the nominee in the event of his death, it should be distributed only to the person named in the nomination. Therefore, it was contended that as the nomination stood in the name of the first defendant-father, he is the only person entitled to claim the amount. This Court considered the effect of Rule 22 of the Provident Fund Rules, before and after amendment. While dealing with the rival submissions made by the wife of the deceased, in terms of law of succession vis-a-vis the nomination, in favour of father of the deceased, this Court has elaborately considered the effect of the above rules and the position of the nominee. After considering the interpretation and construction of the Provident Fund Act, the scope of nomination under the Act and after taking note of the judgment of various Courts, and at Paragraphs 8 and 17, held as follows:

"8. Rule 22 before 1972 amendment, provided that all nominations must be in writing and must be registered with the trustees. Rule 23 deals with payment to nominee and is to the effect that on the death of a member, the full amount shall be paid to the nominee, and such payment shall be a good discharge to the Trustees and to the Corporation.... against all claims whatsoever in respect of the Fund by whomsoever claiming through the said member. These two rules go to show that the main purpose of taking nomination is for the trustees of the fund to relieve themselves of their obligation in paying the provident fund amount, irrespective of the persons who may be entitled to the fund. Whenever provident fund amount is disbursed, the custodian of the fund is anxious to have a good discharge against all claims from whomsoever claiming through the member. The rules nowhere provide that the nomination is to be construed as a "will" by the member. If a nomination is to be taken as a final disposition made by the member as to how it should be taken by his heirs on his death, it would lead to anomalies because till the member dies, the nominee acquires no right to claim the amount. The legal right of a member to decide from time to time as to how his assets should be taken consequent to his death, cannot be frozen by a nomination given, as part of his service conditions. His legal rights about disposition of his assets

cannot be circumscribed by such nomination. If he is to execute a "will" later on, contrary to the nomination that has been made earlier, the terms and conditions of the "will" alone can prevail, and so far as the trustees of the fund are concerned, their obligation will be fully discharged by paying it to the nominee, who will in turn be liable to handover the funds to the persons entitled to as per the 'will'. In case of intestate succession, the nominee is bound to handover the amounts to the heirs of the deceased. The main purpose of nomination is intended to benefit the custodians trustees of the fund to know as to how or to whom they should handover the amounts and need not make themselves answerable to multiplicity of claims from different persons claiming to succeed to the interests of the deceased member. If there is no nomination, the custodian of the fund cannot decide as to who are the lawful heirs to succeed and they will have to wait for a Court order to be produced, and unless finality is reached, therein the disbursement of the fund will be delayed. Funds, like the provident fund, in the case of State or other public institutions, may be sufficiently safeguarded even if there is to be a delay in disbursement. But in cases of other institutions, if the amounts are not immediately disbursed on the basis of nomination, and before proceedings in Court are over, if for any reasons, the companies or institutions are liquidated the contributions made by a member of such bodies will not enure to the benefit of the legal heirs till finality is reached in Court proceedings unless the amount is deposited in Court at the earliest stage. The concept of nomination has been thought of to achieve the disbursement of the amounts at the earliest point of time to the nominee who will be answerable to claims made by those who are entitled to the amount lawfully. Nomination means 'to mention by name' to appoint 'to propose formally'.

17. Most of the decisions above referred to arose under the Provident Funds Act and even then subsequent to amendments it has been held that the nominee does not acquire absolute interest in the funds. The provision for nomination is made for the benefit of discharging the liability of the custodian of the fund, which aspect I have dealt with at length in the earlier part of this judgment, and unless a specific provision is made in the relevant Act or even in the nomination a direction of bequeathing the amount is given to the effect that except the nominee, none of the legal heirs would acquire rights and such directions is not varied later on, the right

of a nominee cannot be anything more than being the sole person entitled to draw out the amount and he would be doing so in the capacity of a trustee of the funds answerable to the claims of the lawful heirs of the deceased member. The use of the word 'nomination' which means only appointment to receive the amount, cannot be construed as to confer any absolute right in the funds to the exclusion of the rights of the lawful heirs, because even a stranger may be nominated in whom the nominator may have trust. If the intendment is to make the nominee as the absolute owner there can be no difficulty in incorporating the necessary recitals to the effect that he has got, on the date of nomination, his legal heirs and in spite of it, he bequeaths the amount only to the nominee to take the funds to the exclusion of the other heirs. When such an unequivocal expression is not present in a nomination, it would not be proper to hold that such a nomination would result in absolute conferment of rights in the nominee to take the amount for himself."

29. The judgments considered by this Court, in M.V.Krishnamoorthy's case (cited supra) are worth reproduction,

"12.In Union of Bharat v. Asha Bi [AIR 1957 MP 79], a Division Bench presided over by Chief Justice Hidayatullah, as he then was, on a consideration of all the decisions rendered by various High Courts including the Division Bench decisions above referred to, had held that Section 5 of the Act merely wipes off all personal and other laws thus creating right in the nominee to receive the money according to the nomination. But it does not make the nominee the owner of the Fund. The expression 'absolutely' only gives him a right to demand it unconditionally from the custodians of the fund to the exclusion of others, so long as the nomination stands, and after receiving the amount, there is no need to show that it belongs only to the nominee to the exclusion of other heirs. It was also held therein that "there is nothing in those words which shows that even before the death of the subscriber, the nominee is entitled to a beneficial interest in the money", and that the nomination is in its nature testamentary and being ambulatory the death of the nominee in the life-time of the subscriber defeats the nomination, so that on the death of the member, his legal personal representative is entitled to the property and not the legal representative of the nominee.

13. In *Hardev Kaur v. Jodh Singh* [AIR 1969 P & H 44], a Division Bench came to the conclusion that the contention that the Rules of the fund do not prevent a declaration from being treated as a 'will' cannot be upheld. If there is no nomination, there is no provision in the relevant rules to suggest that the deceased officer did not have disposing power over his provident fund and merely because the provident fund is to be administered in accordance with the relevant rules, it does not preclude the legal right of a subscriber to dispose of it by a will.

14. A Full Bench of Kerala High Court in *Sarojini Amma v. Neelakanta* [AIR 1961 Ker. 126], dealing with the Employees Provident Fund Rules of the Central Government of India, held that a nominee had a bare right to collect the policy money on the death of the assured, and to give a good discharge to the insurance company, and that he did not become the owner of the money payable under the policy and he is liable to make it over to the legal representatives of the assured.

15. A Division Bench of this Court while dealing with a case that arose in respect of a nomination made under Section 39 of the Insurance Act, 1938, held in *Controller of Estate Duty, Madras v. Estate of Pitchai Thambi* (1976) T.L.N.J. 393,

"The effect of nomination is not to clothe the nominee with beneficial interest in the policy or the money payable thereunder, but to clothe him or her only with the power to receive the money under the policy from the insurer without prejudice to the question of title to the money. Consequently it confers on the nominee a bare right to collect the policy money when the money becomes payable and by such nomination and the collection of the money the nominee does not become the owner of the money payable under the policy and he or she is liable to make it over to whomsoever entitled to the same under the law."

16. In *Man Singh v. Mothi Bai* [71 M.L.J. 790 : 43 L.W. 604 : (1936) I.L.R. 59 Mad. 855 : A.I.R. 1936 Mad. 477], prior to the amendment of Rule 5, a Division Bench had taken the view that the words "absolute right to receive" mean that the money which is paid under the Rules, gives a vested right to the heir of the nominee to receive it, even though the nominee predeceased the subscriber."

30. In *Meenambal Vs. Sornathammal*, reported in 1990 (1) L.W 302, wife made a claim that she alone is entitled to the retiral benefits such as, family benefit fund, pension, on the ground that she was the only nominee, as against the mother of the deceased Government servant. While distinguishing that payment under the Tamil Nadu Government Servant's Family Benefit Fund Scheme, as not to be equated to pension, governed by the provisions of the Pension Act and the rules and repelling the contention that Section 8 of the Hindu Succession Act provides for succession to the hindu, has been excluded by the service rules relating to Gratuity, Death cum Retirement Gratuity, and Family Pension, Hon'ble Mr.Justice. M.Srinivasan (as he then was) held that "the rules only provide for nomination and payment of the amount due under the rules to the nominee, in order that the Government may not be put to the trouble of searching for the proper person who will be entitled to receive the amount on the death of a Government Servant. The nomination is filed only to facilitate the Government to make payment to a particular person named by the deceased Government servant, so that the Government would be in a position to discharge its liability. The person who receives the money from the Government holds it in trust, for all the legal heirs of the deceased. The nomination will not operate as a testamentary disposition in favour of the nominee. As I have held that the Family Benefit Fund Scheme of insurance, necessarily the amount payable under the scheme will form part of the estate of the deceased. Once it is held that the amount paid under the Family Benefit Fund Scheme forms part of the estate of the deceased, it has to be taken by all the legal heirs of the deceased in accordance with the law of succession."

31. In *Narammal died and another Vs. Kanthamani and five others*, reported in 1992 (2) L.W. 222, a Division Bench was considered a first appeal which arose out of the suit instituted by the appellant R (mother) claiming a share in the monies and properties of her deceased son. During his life time, he had nominated his wife in the application preferred by him to the house building society and also in the insurance policy and in the nomination form of the provident fund (Schedules 4 and 2 in the plaint). The claim of the mother was negatived in respect of the items covered under Schedule 2 and 4 on the ground that the deceased had nominated his wife, the first defendant therein, to receive the benefits and therefore to that extent, the plaintiff must be deemed to have been disinherited in respect of those

items. The trial Court also drew a conclusion from the recitals in the application form preferred by the deceased to the co-operative society to the effect that the property belonged to him, at that time and in future, to his wife and that the recitals would constitute a will bequeathing the house to his wife and for arriving at the abovesaid conclusion, the Civil Court also took note of Section 24 of the Tamil Nadu Co-operative Societies Act. On the facts of the above case, this Court held as follows:-

"A reading of Section 24 of the Tamil Nadu Co-operative Societies Act definitely will not lead to a construction of that section that it altered the course of succession under personal law, Nomination, if any, under Section 24 of the said Act is to protect the interests of the society against payment and transfers in terms of the nomination and this is clear from sub-S(2) of the said Act. Likewise, sub-S(2) of Section 24 also indicates that Section 24 was not intended to alter the course of succession under the personal law. There is no difficulty is coming to the conclusion that the nomination if any, by the deceased in respect of the second schedule house property in favour of the 1st defendant will not amount to a testament excluding the mother from claiming a share in the property. Therefore, the court below was not right in dismissing the suit in respect of the second schedule house property. Consequently, the plaintiff is entitled to a half share in the second schedule (house property).

(Paras 24 and 25)

There is nothing to suggest that a different mode of succession is prescribed even under Section 10(2) of the Employees Provident Funds Act. On the other hand, Section 10(2) of the Act is intended to save the provident fund money from the clutches of debtors of the nominee so as to enable him to distribute it to the heirs of the deceased who are entitled to the money under the personal law.

Unless the main Section clearly and unequivocally prescribes a different line of succession, it cannot be presumed that a different line of succession is prescribed by reading paragraphs 61 and 70 of the E.P.F. Scheme alone. No doubt, the Division Bench of the Calcutta High Court in AIR 1988 Calcutta 115 has referred to Section 10(2) of the Act to support its view. The Court is unable to subscribe to the

view expressed by the Calcutta High Court, on the scope of Section 10(2) of the Act.

(Para 31)

The Court has to read down paragraphs 61 and 70 of the Scheme to be in conformity with item 10 of Schedule II, read with Section 5 of the Act, and by so reading, 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. In the view expressed above, the plaintiff is entitled to a half share in Schedule 4 moneys as well. To that extent, the plaintiff is entitled to a decree."

(Para 32)

32. In *Nozer Gustan Commissariat v. Central Bank of India* reported in 1993 (II) LLJ 98, an employee of the Central Bank of India, married to X, had a son. After divorce, he nominated his brother in the service records, under the Provident Fund Scheme. The minor son filed a petition, for issuance of the succession certificate, in respect of certain dues and assets belonging to his father, through his next friend, mother and natural guardian. A sum of Rs.1,1,95,167/- was lying in the credit of the deceased in the Provident Fund Account. Brother, who was the nominee, opposed the claim of the petitioner on the ground that by virtue of nomination, he was absolutely entitled to Provident Fund amount. He also contended that the said amount does not form part of estate of deceased and no injunction and/or other relief can be granted in respect thereof. On the above pleadings, the High Court of Bombay, framed two questions for consideration, viz.,

(1)Whether the "nominee" has absolute title to the Provident Fund Amount lying to the credit of the deceased employee by virtue of his nomination under the Provident Fund Scheme, i.e, Employee's Provident Fund Scheme, 1952.

(2)Whether the Provident Fund Amount lying to the credit of the employee forms part of the estate of the employee and is available for distribution amongst heirs of the deceased notwithstanding the nomination subject to special provision contained in [Employees' Provident Funds Scheme, 1952](#).

33. After referring to the statutory provisions under the Provident Fund Act, and the [Employees' Provident Funds Scheme, 1952](#), and also the expressions "Family" and "Vest", the High Court, at Paragraphs 16 and 17, held as follows:

"16. There are two main points of distinction, which have to be kept in mind while considering the submission concerning literal interpretation of Section 10(2) of the 1952 Act as appears to have been done by the High Court of Calcutta. The question to be asked is why the word "absolutely" hitherto before existing in Section 5 of the Employees' Provident Funds Act, 1952 was deliberately omitted by the Amending Act XI of 1946. Was it the intention of the Legislature that even after omission of the said word from the said provision, the nominee must be held to have an absolute right to the provident fund amount lying to the credit of the deceased employee. Even prior to 1946, some of the High Courts had interpreted the provision to mean that the nominee of provident fund had no title to the amount belonging to the deceased subscriber. The object of Amending Act, 1946 by directing omission of word 'absolutely' from Section 5 of the Act of 1925 was to make it clear beyond doubt that the nominee would have no title to the amount. Section 10(2) of the Act of 1952 does not use the word "absolutely". It appears to me that the Supreme Court judgment highlighting various meanings of the word "vest" in the case of *The Fruit and Vegetable Merchant's Union v. The Delhi Improvement Trust* (supra) and holding that the word 'vest' in the context could mean mere possession for specific purpose without any title was not cited before the Hon'ble High Court of Calcutta. If the various English and Indian cases noticed by Hon'ble Justice Sinha of the Supreme Court in the abovereferred judgment are to be considered and applied having regard to the context and object of the Act, it would follow that the use of the word "vest" in Section 10(2) of the Act merely meant that the nominee is merely entitled to collect the amount for benefit of heirs of the deceased coupled with exemption thereof from attachment and subject to category of heirs being restricted as specified in Provident Funds Scheme. I, therefor, hold that the provident fund amount forms belonging to the estate of the deceased and the petitioner is solely entitled thereto. Having regard to the facts of this case, the respondent No. 4 is liable to be restrained from collecting the said amount from the former employer of the deceased. It is the duty of this Court to pass appropriate orders so as to safeguard the interest of petitioner minor and

pass order of injunction against respondent No. 4 having regard to the above. I am supported in the view which I have taken on interpretation of Section 10(2) of the Employees' Provident Funds and Misc. Provisions Act, 1952 and also by judgments of High Court of Delhi in the case of Smt. Om Wati v. Delhi Transport Corporation, 1988 Labour and Industrial Case 500 and also the recent judgment of the High Court of Gujarat in the case of Lalitaben Bhanabhai d/o Bhanabhai Malabhai b. Laliben Bhanabhai w/o Bhanabhai Malabhai, 1992 I Current Labour Reports 164.

17. I have no hesitation in accepting the submission of Miss Irani that the nomination itself is invalid. No nomination can be made under the Provident Funds Scheme in favour of a person who is not a member of the family as defined in para 2(g) of Employees' Provident Fund Scheme, 1952. Brother is not a member of the family within the meaning of the word 'family' as defined in the Scheme. In the result, I have come to the conclusion that the nominee has no title whatsoever in respect of the provident fund amount lying to the credit of deceased merely by virtue of his nomination and the provident fund amount belongs to the petitioner minor and forms part of estate of the deceased. Accordingly the said amount including all other amounts forming part of the estate of the deceased must be made available to the petitioner on issue of succession certificate. No other contentions were urged at the hearing of this motion."

34. In the above reported judgment, it has been held that no nomination can be made under the Provident Fund Scheme in favour of a person, who is not a member of the Family, as defined in Paragraphs 2(g) of the Employees' Provident Fund Scheme, 1952 and brother is not a member of the family within the meaning of the word 'family' as defined under the scheme.

35. In Lalitaben D/o.Bhanabhai Malabhai Vs. Lalitaben W/o.Bhanabhai Malabhai, reported in 1995 III Suppl. 376, explaining the word 'vest' in sub Section 10 of the Employees Provident Fund and Miscellaneous Provisions Act 19 of 1952, Paras 60 and 70 of the Employees Provident Fund Scheme, 1952, Hon'ble Mr.Justice M.B.Shah, at paragraphs 10, 10A, 11 and 15 held as follows:-

10. In my view, it would be difficult to accept the said contention. Firstly, it should be noted that Sub-section (2) nowhere provides that the Provident Fund amount shall vest absolutely in the nominee. Under Sub-section (2) limited protection is given against the debt or other liability incurred by the deceased or the nominee before the death of the member and against the decree or order of any Court, but it does not provide that the Law of Inheritance would not be applicable to the Provident Fund amount received by the nominee.

10-A. Secondly, the word "vest" is ambiguous and may have different shades depending on the context in which it is used. What meaning should be given to the word "vest" is considered by the Supreme Court in the case of *F. & V. Merchants Union v. Improvement Trust, Delhi* AIR 1957 SC 344. The Supreme Court has held that the term "vesting" has a variety of meanings which has to be gathered from the context in which it has been used. It may mean full ownership or only possession for a particular purpose of clothing the authority with power to deal with the property as the agent of another person or authority. After discussion the various authorities the Court has held as under:

(19) That the word "vest" is a word of variable import is shown by provision of Indian Statutes also. For example. Section 56 of the Provincial Insolvency Act (5 of 1920) empowers the Court at the time of the making of the order of adjudication or thereafter to appoint a receiver for the property of the insolvent and further provides that "such property shall thereupon vest in such receiver". The property vests in the receiver for the purpose of administering the estate of the insolvent for the payment of his debts after realising his assets. The property of the insolvent vests in the receiver not for all purposes but only for the purpose of the Insolvency Act and the receiver has no interest of his own in the property. On the other hand, Sections 16 and 17 of the Land Acquisition Act (Act I of 1894), provide that the property so acquired, upon the happening of certain events, shall "vest absolutely in the Government free from all encumbrances". In the cases contemplated by Sections 16 and 17 the property acquired becomes the property of Government without any conditions or limitations either as to title or possession. The legislature has made it clear that the vesting of the property is not for any limited purpose or limited duration. It would thus appear that the word "vest" has not got a fixed

connotation, meaning in all cases that the property is owned by the person or the authority in whom it vests. It may vest in title, or it may vest in possession or it may vest in a limited sense, as indicated in the context in which it may have been used in a particular piece of legislation. The provisions of the Improvement Act, particularly Sections 45 to 49 and 54 and 54(a) when they speak of a certain building on street or square or other land vesting in a Municipality or other local body or in a trust do not necessarily mean that ownership has passed to any of them."

For finding out the correct meaning of the word 'vest' used in Sub-section (2) of Section 10, it would be necessary to refer to the object and reasons of enacting the Act as per the preamble. It provides for the institution of Provident Fund (Family Pension Fund) for employees of factories and other establishments. Further, the heading prefixed to Section 10 is "protection against attachment". It clearly indicates that the only object of incorporating Section 10 is to protect the provident fund amount against attachment. Sub-section(1) specifically provides that the member of the Provident Fund Scheme is not entitled to assign or charge the said amount. The purpose is to see that after the retirement he gets the said amount and that he does not waste the said amount by assigning or by taking loan on the basis of the said amount. It further affords protection against the attachment under any decree or order of any Court in respect of any debt or liability incurred by the member. The protection which is afforded is even given to the extent that the Official Assignee appointed under the Presidency Towns Insolvency Act or any receiver appointed under the Provincial Insolvency Act shall not be entitled to have any claim on the provident fund amount. Similar protection is given to a nominee under Sub-section (2) of the Act. Therefore, the sole purpose of Section 10 seems to afford protection to the member of the Provident Fund Scheme against creation of any debt by the member so that after retirement he gets something to survive or in case of his death his heirs get something to live on. Therefore, the word "vest" is required to be given a limited meaning to the effect that as against attachment of the said amount for the debt or other liability incurred by the deceased member or the nominee, it shall vest in the nominee. The heading prefixed to sections is useful in interpretation of the words in the section or sections if the words are ambiguous. This aspect is considered by the Supreme Court in the case of Binka

v. Charan Singh' AIR 1959 SC 960, by observing as under:

"The heading reads thus:

'Ejectment of person occupying land without Title.'

'Maxwell on Interpretation of Statutes, 10th Edn.' gives the scope of the use of such a heading in the interpretation of a section thus, at p.50:

'The headings prefixed to sections or sets of sections in some modern statutes are regarded as preambles to those sections. They cannot control the plain words of the statute but they may explain ambiguous words.'

If there is any doubt in the interpretation of the words in the section, the heading certainly helps us to resolve that doubt".

By Sub-section (2) of Section 10 Law of Inheritance is not changed. The family member who is a nominee would not get the said amount exclusively debarring the other members to claim any right under the Law of Inheritance. Further, the Act nowhere contemplates to change the Law of Inheritance. It also specifically debar the member from assigning the provident fund amount or creating charge over it. It would, therefore, mean that the member is not entitled to give away the provident fund amount by way of gift. As per Clause 61 of the Scheme if a member is having family, then he is not entitled to nominate in favour of third person because Sub-clause (3) specifically provides that any nomination made by such member in favour of a person not belonging to his family shall be invalid.

11. Further, under the provisions of the Act, if the member is alive, he is entitled to get the provident fund amount and the nominee would not get anything. That means during the lifetime of the member, nominee does not acquire any right to receive the provident fund amount. If that is so on the death of the member, the amount payable under the provident fund normally would become part of his estate which would be governed by the Law of Succession applicable to him. Such succession may be testamentary or according to Law of Inheritance applicable to the member. Reading Sub-section (2) of Section 10 it would be apparent that the legislature never intended to change the Law of Succession applicable to the

member. The sole purpose of Sub-section (2) and of using the word "vest" seems to afford protection against the creation of debt so that the said amount may not be taken away by the creditor of the member or his nominee. Therefore the proper meaning which could be given to the word "vest" used in Sub-section (2) of Section 10 would be that the provident fund amount vests in the nominee so that he can receive the said amount from the concerned authority and give a valid discharge and that the said amount would not be liable to be attached for the debt incurred by the member or the nominee. The amount, however, can be claimed by the heirs of the member in accordance with the Law of Succession governing them.

15. Learned Advocate Mr. Damani, however, further relied upon Clause 70 of the Employees' Provident Fund Scheme, 1952 and submitted that by the said Scheme a different mode of succession is provided because the proviso to the said clause specifically provides that the major sons and married daughters whose husbands are alive are not entitled to have any share in the provident fund amount where there is no subsisting nomination or the nomination relates only to a part of the amount standing to his credit in the Fund. For appreciating this contention, it would be necessary to reproduce Clause 70 of the Scheme which reads as under:

"70. On the death of a member before the amount standing to his credit has become payable or where the amount has become payable before payment has been made-

(i) if a nomination made by the member in accordance with the paragraph 61 subsists, the amount standing to his credit in the Fund or that part thereof to which the nomination relates, shall become payable to his nominee or nominees in accordance with such nomination, or

(ii) if no nomination subsists or if the 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 become payable to the members of his family in equal shares:

Provided that no share shall be payable to:

(a) sons who have attained majority;

(b) sons of a deceased son who have attained majority;

(c) married daughters whose husbands are alive;

(d) married daughters of a deceased son whose husbands are alive;

if there is any member of the family other than specified in Clauses (a), (b), (c), (d):

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 member and had not attained the age of majority at the time of the member's death.

(iii) in any case, to which the provisions of clauses (i) and (ii) do not apply the whole amount shall be payable to the person legally entitled to it.-

Explanation:- For the purpose of this paragraph a member's posthumous child, if born alive, shall be treated in the same way as surviving child born before the member's death."

Considering the aforesaid Clause 70 it is apparent that if there is a subsisting nomination as provided in Clause 61. the provident fund amount or the part of the amount to which nomination relates is payable to the nominee or nominees in accordance with the nomination. For the amount for which there is no nomination, it is required to be paid to the family members in equal shares. The proviso however, prescribes that to the sons who have attained majority or the married daughters whose husbands are alive, no share in the provident fund amount would be payable. This proviso is incorporated with an object to see that the widow of the deceased member or his minor children get some amount for their survival and the concerned authority would pay the said amount to them instead of distributing it to all the family members. But that would not mean that if there is a dispute between the family members with regard to the partition of the estate of the deceased member. Law of Succession would not be applicable with regard to the provident fund amount. As stated above the Parliament never intended or attempted to

change the Law of Succession applicable to the member of the Provident Fund Scheme. The sole purpose and intent of affording protection under, Section 10 of the Act and Clauses 61 and 70 of the Scheme is to see that the member of the Scheme or needy family members of the deceased member get the provident fund amount for their survival. Therefore it is provided that the nomination could only be in favour of the family members by the member of the Provident Fund Scheme; the member cannot nominate an outsider if he is having family, he can modify the nomination at any time; he cannot assign the provident fund amount or create charge over it and the provident fund amount is not liable to attachment under any decree or order of the Court. In the hands of the nominee also the said amount would be free from, any debt or other liability incurred by the deceased member or the nominee before the death of the member.

36. In *Ramayee Vs Krishnaveni and others*, reported in 1997 (1) LLN 406, a person employed as a police constable died in harness. Mother filed a suit for declaration that she is also a heir to the deceased to receive the amount of gratuity, family pension and other amounts to be disbursed by the Government and also for disbursement of the amount by the Life Insurance Corporation of India. She also sought for a permanent injunction restraining the defendants 2 to 4 therein, from disbursing the amount. The 1st defendant therein was the wife of the police constable. During the life time, the police constable has nominated his wife, 1st defendant therein, to receive the amount under the Tamil Nadu Family Benefit Fund Scheme, pension, gratuity. The deceased was also a policy holder. The 4th defendant therein was the Insurance Corporation of India. As the 1st defendant was making arrangements to get the amount to herself, the suit has been filed. The 3rd defendant therein filed a written statement which was adopted by the defendants 1 and 2 therein, stating that the mother has no right to sue for the relief, stated supra. According to the 3rd defendant, with regard to pension, Gratuity and family benefit fund scheme, the general Hindu law is not applicable and that the amounts shall be disbursed only to the nominees of the deceased. It was also submitted that as per G.O.No.1515, Finance, dated 03.12.1973 read with Government Memo No.8339/Pen/74, the amount shall be given to the nominee alone and not to any other heirs of the deceased. The 4th defendant Life Insurance Corporation in its counter affidavit submitted as per Section 39 of the

Insurance Act, the 1st defendant/wife alone had been nominated by the policy holder and therefore, without any order annulling the said nomination the plaintiff/mother is not entitled to receive the insurance amount from them. The insurance company further submitted that the amounts would be paid to the person who produces a succession certificate from the competent Court. After considering the rival evidence and following a decision *M.V. Krishnamoorthy v. Tmt. Anandalakshmi*, reported in 1982 II M.L.J 321, the trial Court found that the first defendant's nomination by the deceased will not confer any absolute right in the first defendant, over the monies payable to the deceased from the hands of defendants 2 to 4. The trial court also observed that the plaintiff/mother, being a heir to the deceased is entitled to inherit half share in the said monies of the police constable, who died intestate. The trial Court further held that the mother of the deceased is entitled to half share in the family pension, gratuity, family benefit fund amount and other amounts payable by the Tamil Nadu State Government and for the Insurance amount payable by the Life Insurance Corporation of India. Accordingly, a decree was granted. Wife of the deceased filed an appeal. The lower appellate Court relying on a Bench decision of this court, reported in *Karuppa Gounder v. Palaniammal*, reported in AIR 1963 Mad 245, held that the first defendant being the nominee, she alone is entitled to the insurance amount to the exclusion of the mother and granted the relief. The lower appellate Court also determined that the nominee alone is entitled to receive family pension, gratuity, and other pension amounts payable by the Government. The unsuccessful plaintiff/mother filed an appeal before this Court and while entertaining the same, the following substantial question of law has been framed:-

"Whether the nomination made by the deceased in relation to the pecuniary benefits gratuity and the family benefit fund which become payable on the death of the deceased will override the right of inheritance available to the legal heirs of the deceased under the personal law?

37. Following the decision of the Supreme Court in *Sarbati Devi Vs. Usha Devi*, reported in 1984 (1) SCC 424, and the Division Bench judgment of this Court in *Narammal (died) v. Kanthamani*, reported in 1992 (2) M.L.J. 538, which approved the decision made in *M.V. Krishnamoorthy's* case (cited supra) and also

considering a decision of this Court in Meenambal v. Saradhambal, reported in 1990 (1) L. W. 302, The Hon'ble Mr. Justice P. Sathasivam, at paragraph 11 held as follows:-

All these judicial decisions clearly show that the nominee gets only a right to receive the amount or distribute the same to the heirs of the deceased in accordance with the law of succession governing them. The above said legal position has not been disputed by any of the respondent's counsel. Hence the judgment of the lower appellate court is set aside and the judgment of the trial court is restored, accordingly the second appeal is allowed.

38. In G.L. Bhatia Vs. Union of India and another, reported in 1999 (5) SCC 237, there was an estranged relationship between the spouses. Nomination of the wife, Central Government Servant was not in favour of the husband. He was also staying away from his wife. After the demise of the Government Servant, when the husband made a claim for disbursement of family pension under the provisions of the Central Civil Services (Pension) Rules, agreeing with the authorities that since the nomination was not in favour of the husband, he would not be entitled to family pension, the Courts declined his request. Testing the correctness of the same, the Supreme Court, at paragraph 2 of the judgment held as follows:-

2. The sole question that arises for consideration in this appeal is whether the appellant, who happens to be the husband of the deceased government servant, is entitled to family pension under the provisions of the Central Civil Services (Pension) Rules (for short the rules) notwithstanding the fact that the deceased wife in her nomination did not include the husband. The forums below have taken the view agreeing with the authorities that since the nomination was not in favour of the husband and the husband was staying separate from the wife, the husband would not be entitled to family pension in question. This view cannot be sustained in view of the provisions contained in Rule 54 of the rules. It is too well settled that where rights of the parties are governed by statutory provisions, the individual nomination contrary to the statute will not operate.

After extracting rule 54, sub rule (14)(b)(i) where expression family has been defined, the Apex Court at paragraph 5, further held as follows:-

5. In the light of the aforesaid provisions and there being no divorce between the husband and wife even though they might be staying separately, the appellant husband would be entitled to the family pension in terms of the rules as noted aforesaid and the authorities, therefore, committed error in not granting family pension to the appellant relying upon the nomination made by the deceased wife of the appellant.

39. So saying, the Supreme Court in G.L.Bhatia's case (cited supra) set aside the orders passed by the Courts below, and allowed the appeal. From the above, it is evident that if the nomination made by a Government servant is contrary to the statutory provisions, the same would not operate. In this context, it is also useful to refer a decision of the Apex Court in Smt. Violet Issac and others Vs Union of India and others, reported in 1991 (1) SCC 725, wherein one X was employed in railways. He died in harness. On his death, a dispute arose between the widow, his sons, daughters vis-a-vis the brother of the deceased, regarding disbursement of pension, gratuity, and other amounts payable by the railway administration. When an application was made by the widow of the deceased before the competent authority for grant of family pension, gratuity and other amounts, the railway authorities did not pay the amount, on the ground that an injunction order had been obtained by the brother of the deceased in a Civil Court restraining the widow from claiming or receiving any amount. Yet another fact in the reported case was that due to the strained relationship between the spouses, the railway employee had nominated his brother to receive the abovesaid amount and also executed a will in favour of his brother bequeathing, all his properties to him, including family pension, gratuity etc. The Civil Court granted an injunction. Widow, sons and daughters moved the Central Administrative Tribunal, Chandigarh, for a direction for a direction to release the amounts namely, gratuity, group insurance, provident fund, CTD account, and family pension. On an application made by them, the suit pending before the Civil Court was transferred to the Tribunal. Before the Tribunal, the genuineness of the will was raised. Finding that the dispute related to rival claims based on title arising from relationship in one case and from a will on the other, the Central Administrative Tribunal held that it has no jurisdiction to decide the same and therefore, redirected the transfer of suit to the Civil Court for proper adjudication. Being

aggrieved by the same, widow, sons and daughters moved the Supreme Court. Though the dispute between the parties related to gratuity, provident fund, family pension and other allowances, the Apex Court confined the adjudication only to family pension, and after referring to Family Pension Rules, 1964, the Supreme Court held that

"the rules do not provide for nomination with regard to family pension instead, the rules only designate the persons who are entitled to receive the family pension. Thus, no other person except those designated under the rules are entitled to receive family pension. The Family pension Scheme confers monetary benefit on the wife and children of the deceased railway employee, but the employee has no title to it. The employee has no control over the family pension, as he is not required to make any contribution to it. The family pension scheme is in the nature of a welfare scheme framed by the railway administration to provide relief to the widow and minor children of the deceased employee. Since the rules do not provide for nomination of any person by the deceased employee during his life time for the payment of family pension, he has no title to the same. Therefore, it does not form part of his estate enabling him to dispose of the same by testamentary disposition."

40. In this context, the Apex Court also relied on a decision made in *Jodh Singh Vs. Union of India*, reported in 1980 (4) SCC 306, wherein, at paragraph 10, the Supreme Court observed that

"Where a certain benefit is admissible on account of status and a status that is acquired on the happening of certain event, namely, on becoming a widow on the death of the husband, such pension by no stretch of imagination could ever form part of the estate of the deceased. If it did not form part of the estate of the deceased it could never be the subject matter of testamentary disposition."

41. The Supreme Court in *Smt. Violet Issaac's case* (cited *supra*) further held that only the widow of the deceased railway employee was entitled to receive the family pension notwithstanding the will alleged to have been executed by the deceased. Accordingly, a direction was given to the railway administration. Insofar as the other claims, the Supreme Court did not express any opinion.

42. Extract of the judgment is reproduced, for the limited purpose that no Government servant, employee of the public sector undertaking or railways etc., or any other statutory bodies, during his life time had any power of disposition of family pension, treating it as a part of his estate.

43. In the case on hand before me, father of the petitioners during his life time has nominated his brother to receive the entire retirement benefits and in the light of the pronouncement of the Supreme Court, the family pension cannot be sanctioned in favour of the brother of the deceased, 4th respondent in the present writ petition.

44. In Hemant Kulshrestha Vs. Puspa Kulshrestha and others, reported in 2002 II LLJ 97, the deceased nominated his brother to receive provident fund dues. Estranged wife, who had also deserted sought for a succession certificate for herself and minor children. Succession certificate granted to them, was challenged by the brother nominee. Referring to rule 2(1)(c), Madhya Pradesh General Provident Fund Rules which defines 'family' and the rules which provide for nomination, the Madhya Pradesh High Court, at paragraphs 3 and 6 held as follows:-

3. Rule 8 provides for nominations and proviso to Rule 8 provides that if the subscriber has a family then the nomination shall not be in favour of any person or persons other than the members of his family. Note below Rule 8 provides that even if some sanction is accorded in relaxation of Rule to any nomination made by a subscriber in favour of a person or persons other than members of his family (say 'mother' and 'brother', who are not included in the term 'family' as defined in these rules) when members of his family are surviving that is ineffective and the nominee would not be entitled to the right conferred by sub-section (1) of Section 5 of the Provident Funds Act, 1925. Therefore, under the provisions of Section 5 of the Provident Funds Act and the rules framed thereunder, the person entitled to become nominee should be a member of the family, as defined under Rule 2 (1) (c) of the Madhya Pradesh General Provident Fund Rules.

6. Even under the Hindu Succession Act, widow, children and mother are class one heir. Brother is not class 1 heir. In the facts and circumstances of the case, if

nominee is not a member of family, he will not be entitled for succession certificate of deceased's property. On plain reading of Rule 8 Madhya Pradesh General Provident Fund Rules and Section 5 of Provident Funds Act, only members of family are entitled to be nominated. Any nomination other than member of family is invalid and, as such, nominee who is not a member of family as defined will not acquire any right in the funds of deceased-employee.

45. In *Gouri Rani Das Vs. Commissioner of Police, Kolkata*, reported in 2007 (114) FLR 459, a police constable died. His wife made a claim for release of retiral benefits. There was also a rival claim. The authorities conducted an enquiry and came to know that the deceased constable had contracted marriage twice, during subsistence of the first marriage, without obtaining dissolution of the earlier marriage and that the applicant was the 3rd wife of the deceased. The enquiry also revealed that the mother of the deceased was alive. The first wife died leaving her son as the legal representative. The second wife, without obtaining any divorce from the deceased constable, married a third person. The second wife had no child. There were two daughters to the third wife, born out of the wedlock, between her and the deceased. The marriage between the third wife and the deceased was during the life time of the first wife and therefore, the said marriage was void ab initio as per Section 11 of the Hindu Marriage Act. The third wife also filed a original application before the State Administrative Tribunal, West Bengal, for disbursement of the retiral benefits, on the basis of the entry of the names of the applicant and her two daughters, with the respondent police authorities. The third wife moved the High Court by way of the writ petition. Taking note of rule 100(1) of the West Bengal Services (Death-cum-Retirement Benefit) Rules, 1971, that nomination of the employee shall not be in favour of any person or persons, other than the members of his family and also the fact that the marriage of the petitioner with the deceased constable amounts to inclusion of the name of a stranger, and rule 4 of the Payment of Arrears of Pension (Nomination) Rules, 1986, which states that any pensioner may nominate if he has a family as defined in Clause (a) of the rule 3, one or more members of the family includes (1)wife (2)husband (3)sons (4)unmarried and widowed daughters (5)mother and (6)father, the Division Bench of the Kolkata High Court held that the very nomination submitted by the deceased was not therefore proper. The Division Bench also

observed that the deceased police constable therein had suppressed the true facts regarding his family and that he had nominated his third wife, who was a stranger and therefore, she cannot be considered as a nominee of the deceased in so far as the retiral benefits are concerned. G.L.Bhatia's case (cited supra) has also been considered.

46. In Shipra Sengupta Vs. Mridul Sengupta and others, reported in 2009 (10) SCC 680, relied on by the learned counsel for the petitioners, the appellant before the Apex Court was the wife of a deceased Head Clerk, in State Bank of India, Bhopal, Madhya Pradesh. He was initially an employee of Imperial Bank of India and after the creation of State Bank of India Act, 1955, the business of Imperial Bank of India was taken over by State Bank of India, as per the provisions of the State Bank of India Act, 1955. He died on 08.11.1990 at Bhopal, leaving behind him, his widow, Smt.Shipra Sengupta; his mother Niharbala Sengupta; his brothers, Pushpal Sengupta and Mridul Sengupts. At the time, when the employee joined the bank, he was unmarried and nominated his mother, as nominee. The appellant/widow filed an application under Section 372 of the [Succession Act, 1925](#), claiming her share in insurance, gratuity, public provident fund etc, on the principle that any nomination made by the employee prior to his marriage, would automatically stand cancelled, after his marriage. It was also her contention that after the death of her husband, both she and the mother of the deceased being Class I heirs, under the Schedule of the Hindu Succession Act, 1956, were entitled to succeed equally to the property. The trial Court granted a succession certificate to the appellant/widow and the mother of the deceased, in respect of the total amount of life insurance, gratuity, public provident fund and general provident fund, due to the deceased employee. The trial Court also held that both of them were entitled to half share in the aforesaid amounts, due to the employee from different heads. As regards the rest of the items mentioned in paragraph 6 of the application therein, the trial Court held that the widow alone was entitled to a succession certificate. Being aggrieved by the same, a joint appeal has been filed by the mother and brother of the deceased. The appellate Court rejected the contention of the widow that on account of the nomination made in favour of the mother of the deceased in respect of the aforesaid items, the appellant/wife of the deceased would not get any share in the amount credited or payable to the

deceased employee. The Learned District Judge held that the nomination did not confer any beneficial interest in the amount due, towards life insurance, gratuity, public provident fund and general provident fund.

47. in Shipra Sengupta's case (cited supra), placing reliance on a decision of the Supreme Court in Sarbati Devi Vs. Usha Devi, reported in 1984 (1) SCC 424, the Learned District Judge modified the order of the Civil Judge in respect of other items, holding that the mother of the deceased being a Class I heir, under the Hindu Succession Act, 1956, was equally entitled to half share along with the widow. A succession certificate was directed to be issued in accordance with the modifications made by him.

48. Wife of the deceased Niharbala Sengupta and son Pushpal Sengupta filed a revision petition before the High Court. During the pendency of the revision, mother of the deceased died and the other son of the deceased Mridul Sengupta was substituted in her place on the basis of an alleged will executed by her prior to her death, in favour of the other brother. The High Court also relied on the judgment in Sarbati Devi's case (cited supra) and passed the following orders:-

(i) The amount of General Provident Fund deposited in the name of Shyamal Sengupta declaring that Mirdul Sengupta shall be entitled to entire sum due to Shyamal Sengupta together with interest to which he is entitled as per rules of deposit by the Bank till he is paid in full.

(ii) So far as rest of the items mentioned in paragraph 6(a) of the application under section 372 are concerned it is declared that after the death of Niharbala Sengupta, Mirdul Sengupta is entitled to succession certificate along with Shipra Sengupta. Both of them shall be entitled to 1/2 share each as directed by the District Judge.

(iii) The Civil Judge shall also direct non-applicant No. 2 or any other authority to pay the interest on the amount mentioned in paragraph 2 till that is paid to them at the usual rate of 9% from the date of death of Shyamal Sengupta or the usual rate available to the depositor/subscriber whichever is less."

49. Assailing the correctness of the judgment of the High Court, the widow moved the Supreme Court. Though as many as seven questions were raised in the appeal, questions 1 to 3 considered by the Apex Court would be relevant for the purpose of adjudication of the rival claims in the present writ petition.

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 right of succession of the widow under Succession Act?

II. Whether nomination only indicates the hand which is authorized 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?

50. Placing reliance on Sarbati Devi's case (cited supra), Vishin N. Khanchandani Vs. Vidya Lachmandas Khanchandani, reported in 2000 (6) SCC 724 and Ashok Chand Aggarwala Vs. Delhi Admn, reported in (1998) 7 AD 639 (Del), before the Supreme Court, the appellant/widow has contended that a mere nomination does not have the effect of conferring on the nominee any beneficial interest in the property, after the death of the employee. She has also contended that the nomination only indicates the person who is authorised to receive the amount or manage the property or the amount, as the case may be, and that the same would succeed only in accordance with law of succession governing the deceased. Considering the rival submissions and the issues stated supra, at paragraphs 17 and 18, the 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 this 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 in any head can be received by the nominee, but the amount can be claimed by the heirs of the deceased in accordance with law of succession governing them. In other words, nomination does not confer any beneficial interest on the nominee. In the instant case amounts so received are to be distributed according to the Hindu Succession Act, 1956.

51. As discussed in the foregoing paragraphs, this Court after referring to the relevant provisions relating to General Provident Fund, Gratuity, Leave Encashment Salary and Insurance Scheme, has noticed the specific exclusion of the brother of the deceased who had attained the age of 18 years and above, from inclusion in the definition 'family', as one of the nominees, entitled to the beneficial interest, in the property, after the death of the person concerned. Therefore, when the statutory provisions relating to GPF, Family Pension, Gratuity, or the Group Insurance Scheme, 1980, do not contemplate nomination of the brother of the deceased who had attained the age of 18 years and above, the intention of the framers to restrict the beneficial interest in the property only to the members of the family, in the respective rules, is clear and in such circumstances, the very nomination made in favour of the brother of the deceased 4th respondent herein, is questionable and therefore, his contention that on the basis of the nomination made by his deceased brother, he alone is entitled to receive the retiral benefits and the lump sum amount under the Group Insurance Scheme, 1980, cannot be countenanced. Material on record discloses that the marriage between the petitioners' parents had been dissolved and for some reasons, best known to him, during the life time, father of the petitioners had nominated his brother, 4th respondent herein, to receive the terminal benefits.

52. In view of the settled pronouncement of law in Shipra Sengupta's case (cited supra) of the nominee is only an authorised person or a trustee to receive the amount or manage the property. If there is any claim by the heirs of the deceased, to the beneficial interest in the property, the same should devolve only upon the

legal heirs of the deceased, in accordance with the law of succession, governing them.

53. In the light of the decision of the Supreme Court, the petitioners, daughters of the deceased alone are entitled to the beneficial interest and to receive the payments under the heads.

54. As stated supra, retiral benefits have already been deposited in Indian Bank, High Court, Madras. As this Court has held that the petitioners/daughters, the surviving legal heirs, as per the law of succession, alone are entitled to receive the terminal benefits, there shall be a direction to the Manager, Indian Bank, High Court Branch, Madras to disburse the entire amounts deposited to the credit of W.P.No.29894 of 2002 on 24.01.2012 and 24.03.2012 to the petitioners. Mr.P.V.Balasubramanian, learned counsel for the petitioners also submitted that if there is any amount due and payable to BSNL, the petitioners would execute an undertaking to pay the same and that they also undertake for any recovery taken, in the manner known to law.

55. Before parting with this case, this Court would like to make an observation. Though a positive direction cannot be granted for apportionment of any amount to the fourth respondent, but, considering the fact that after divorce, the employee continued to live with his brother, till his death and that it was only the fourth respondent-brother, nominee, who shared the food and shelter, joy and sorrow, pleasure and pain and remained as a bachelor till the demise of his brother, this Court is of the view that it is for the petitioners-daughters to take a pragmatic approach and apportion some amount to the fourth respondent, their uncle, if they so desire, considering the fact that the brothers were together, until they were separated, by death, which is inevitable. Sometimes law cannot extend its helping hand even in deserving cases. But equity, good conscience and justice, can always be considered by the daughters, while taking a decision in this regard. With the above directions and observations, the Writ Petition is allowed. No costs.