

**(2012) 06 PAT CK 0041**

**Patna High Court**

**Case No:** Civil Writ Jurisdiction Case No. 1151 of 2010

Basudeo Prasad

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

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**Date of Decision:** June 26, 2012

**Acts Referred:**

- Hindu Marriage Act, 1955 - Section 16

**Citation:** (2012) 3 PLJR 587

**Hon'ble Judges:** Kishore Kumar Mandal, J

**Bench:** Single Bench

**Advocate:** Jai Shankar Barnwal, Mr. Sanjay Kumar and Mr. Krishna Murari Prasad, for the Appellant; Ganpati Trivedi, P.K. Verma and Mr. Prabhat Kr. Sharan, for the Respondent

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### **Judgement**

K.K. Mandal, J.

The petitioner, being the father of the deceased employee of the State Government, has filed the present writ petition challenging the stand of the respondents contained in letter bearing memo no. 704 dated 9.11.2009 (Annexure-1) whereby the Respondent-Executive Engineer, Construction Division No.1, Department of Building Construction, Patna, directed the petitioner as well as respondent no.5 to obtain appropriate declaration/succession certificate from the court of competent jurisdiction enabling the respondents to pay the GPF accumulation of the deceased employee. Petitioner has also prayed for a direction on the respondents to pay the aforesaid dues in his favour on the strength of nomination made in his favour by the deceased employee.

Relevant facts giving rise to the present writ petition are as under:-

Late Binod Kumar, son of the writ petitioner, was working as Estimator (Junior Engineer) in the office of the Executive Engineer, Construction Division No.1, Building Construction Department, Patna. While working as such, he was proceeded against departmentally and was terminated from service vide order no.63 dated

18.03.2008 on the charge that while his spouse (respondent no.5) was alive, he married with another lady called Rashmi Gupta. Soon after his dismissal from service the employee died on 29.04.2009. While in service and before marrying with respondent no.5, the employee had filed a nomination in appropriate format in favour of the writ petitioner on 10.03.2008 (Annexure-3) enabling him to receive the accumulation under the said fund. There is no controversy that after having made such nomination in favour of his father (the writ petitioner), the deceased employee married with respondent no.5 and thus acquired family in terms of Rule 2(c) of the Bihar General Provident Fund Rules, 1948 (for short "the GPF Rules?"). The deceased employee even after his marriage with respondent no.5 did not amend/alter or cancel the nomination made earlier in favour of the writ petitioner. The marriage with respondent no.5 soon generated litigation(s) between the said employee and respondent no.5 inasmuch as few proceedings were filed by the deceased employee seeking decree of divorce. The deceased employee, however, failed to get the desired relief by the trial court as well as this Court. After the death of the employee, both the father (writ petitioner) as well as respondent no.5 laid claim for payment of GPF accumulation of the deceased employee in their respective favour. By the impugned order Respondent-State directed both of them to obtain appropriate declaration/succession certificate in respect of the GPF amount enabling the respondents to pay the same. During the pendency of the application, the respondents sought legal opinion whereafter by a communication dated 23.02.2010 (Annexure-5) decided to release the GPF amount in favour of respondent no.5 conditionally. The said stand of the Respondent-State was challenged by the writ petitioner by filing an interlocutory application being I. A. No. 2232 of 2010. This Court, by an order dated 15.03.2010, directed that the decision taken by the respondents to pay the GPF amount in favour of respondent no.5 (Annexures-5 and 5/A of I. A. No. 2232 of 2010) shall remain in abeyance till further orders. A counter affidavit on behalf of respondent no.2 and a rejoinder thereto on behalf of respondent no.5 have been filed.

I heard Shri Jai Shankar Barnwal, counsel for the petitioner, Sri Ganpati Trivedi appearing for respondent no.5 and Mr. P.K.Verma, AAG 5 for the State at length.

2. Mr. Barnwal, learned counsel for the petitioner submits that petitioner, being the father of the deceased employee, was nominated by him to receive the amount/accumulation under the head GPF of the deceased employee in terms of Rule 8(3) of the GPF Rules and the same having not been cancelled and the employee having not nominated respondent no.5 as nominee to receive the said amount, he is entitled to receive the same, although as a trustee on behalf of the legal claimant(s). The respondents were, thus, not justified in directing him to obtain appropriate declaration in respect of his claim/share in the amount or a succession certificate in respect thereof.

3. Mr.Trivedi, per contra, submits that when the deceased employee made nomination in favour of the petitioner the employee had not acquired family in terms of Rule 2(c) of the GPF Rules, but subsequent to filing of nomination in favour of the petitioner, the deceased employee was married to respondent no.5 and, as such, she is entitled to receive the GPF amount from the respondents. Learned counsel submits that nomination earlier made in favour of the petitioner would be deemed to be a nullity no sooner the deceased employee married with respondent no.5 and acquired family in terms of the provisions of the GPF Rules. He has in this regard relied on the provision(s) contained in sub-rules (2), (3) and (5) of Rule 8. It is next contended that the father of an employee has not been recognized as a family member in terms of Rule 2(c) of the Rule and, as such, he is not entitled to receive the GPF amount of the deceased employee. Elaborating further, it has been contended that in terms of Rule 8(5) of the GPF Rules the employee, after acquiring family, is required to formally cancel the previous nomination made in favour of the writ petitioner or any other person. If the same has not been done, then the payment has to be made in terms of the provisions contained in Rule 31 of the Rules. It is submitted that even in terms of Rule 31 of the Rules a person constituting family would be entitled to receive the amount. The father being not the member of the family cannot claim payment thereof. He argued that in the light of the provisions contained in GPF Rules, the nomination earlier made in favour of the petitioner became a nullity by force of law and, as such, the present application at his instance is not maintainable before this Court.

4. Mr.Verma, learned counsel for the State submits that accumulation of GPF amount of an employee is a property. Any person nominated in appropriate format is only the receiver thereof. It does not vest any right, title or interest in respect of the same. The question, therefore, is whether the father (writ petitioner) or the widow (respondent no.5) is entitled to receive the amount. A nominee is a trustee who can be paid the amount on behalf of all the beneficiaries. It does not confer exclusivity. It is not the case of the petitioner or respondent no.5 that when the nomination was made in terms of Rule 8(3) of the Rules the same was a nullity or void as the employee had already acquired a family on the date when such nomination was made. Rule 8(3), however, states that nomination made under sub rule 3 of Rule 8 shall be deemed to have been duly made in accordance with the rule only for so long the subscriber has no family. In the event the subscriber subsequently acquires a family he/she is required to nominate afresh in terms of sub rule 3 of the Rule 8 of the Rules after canceling the previous nomination made in favour of any person other than the member of the family. Giving a harmonious construction to the provision(s) of the Rule, it would manifest that as per the provisions contained in sub rule 5 of Rule 8, a fresh nomination is to be made after canceling the previous one in case the subscriber acquires a family after having made initial nomination in terms of sub rule 3 thereof. It has to be formally made in favour of one or the other member constituting family. The nomination earlier made

in favour of the writ petitioner being not void ab initio, therefore, has to be declared as such by a court of competent jurisdiction since the creator thereof himself has not cancelled it even after acquiring family by marrying with respondent no.5. It is next contended that there is clear finding in the order afflicting punishment of termination (Annexure A to the State counter affidavit) that the deceased employee, during the subsistency of his first marriage, again married with another lady called Rashmi Gupta. The said lady has not been impleaded as party respondent. This Court, therefore, is not aware as to whether the said marriage with Rashmi Gupta produced any offspring. If that be so, then the offspring of the said marriage will also constitute members of the family in the light of the provisions of the GPF Rule(s) as well as section 16 of the Hindu Marriage Act. The relevant circular of the government has already been amended vesting legal right in such offspring(s) of the second marriage of a Hindu in the matter of sharing service benefits of the deceased employee. In the backdrop of these facts appearing from records, the respondents by the impugned communication directed the parties to get appropriate declaration/succession certificate in respect of their entitlement or the portion thereof from a court of competent jurisdiction and, as such, this Court may not interfere with the said stand of the State.

For better appreciation of the case, this Court would notice the relevant rule provision(s). Rule 2 (c) of the GPF Rules defines family as under:-

(c) Family means:-

(i). in the case of a male subscriber, the wife or wives and children of a subscriber, and the widow or widows, and children of a deceased son of the subscriber: provided that if a subscriber proves that his wife has been judicially separated from him, or has ceased under the customary law of the community to which she belongs to be entitled to maintenance, she shall henceforth be deemed to be no longer a member of the subscriber's family in matter to which these rules relate, unless the subscriber subsequently indicates by express notification in writing to the Account Officer, that she shall continue to be so regarded;

(ii). in the case of a female subscriber, the husband and children of a subscriber, and the widow or widows and children of a deceased son of a subscriber:

Provided that if a subscriber by notification in writing to the Account Officer, expresses her desire to exclude her husband from her family the husband shall henceforth be deemed to no longer a member of the subscriber's family in matters to which these rules relate unless she subsequently cancels formally in writing her notification excluding him.

Rule 8 provides for nomination. Relevant part whereof reads as under:-

(1) A subscriber shall, as soon as may be, after joining the Fund send to the Accounts Officer a nomination conferring the right to receive the amount that may stand to

his credit in the Fund in the event of his death before, the amount standing to his credit has become payable, or where the amount has become payable, before payment has been made.

(2) A subscriber who, at the time of joining the Fund, has a family shall send to the Accounts Officer a nomination in the form set forth in the First Schedule in favour of one or more members of his family.

(3) A subscriber who has no family shall similarly nominate a person or persons in the form set forth in Second Schedule: Provided that a nomination made under this sub-rule shall be deemed to have been duly made in accordance with rules only for so long the subscriber has no family.

(4) if a nomination under any of the preceding sub-rules is in favour of a minor, the subscriber may at the same time nominate a person or persons to whom payment is to be made, on behalf of the minor.

(5) If a subscriber at any time acquires a family he shall send to the Accounts Officer a nomination as provided in sub-rule (2) and if he has under sub-rule(3) nominate any person other than a member of his family he shall formally cancel the previous nomination.

(6) xxx

(7) xxx

(9) xxx

(10) xxx

Rule 31 of the GPF Rules deals with a case where the amount standing to the credit of the employee becomes payable or where the amount has become payable before payment has been made. It reads as under:-

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

(i) When the subscriber leaves a family-

(a) if a nomination made by the subscriber in accordance with the provisions of rule 8, or of the corresponding rule heretofore in force in favour of a member or members of his family subsists, the amount standing to his credit in the Fund or the part thereof to which the nomination relates shall be credit in the Fund or the part thereof to which the nomination relates shall become payable to his nominee or nominees in the proportion specified in the nomination.

(b) If no such nomination in favour of a member or members of the family of the subscriber, subsists; or if such nomination relates only to a part of the amount

standing to his credit in the Fund, the whole amount or the part thereof to which the nomination does not relate, as the case may be, shall notwithstanding any nomination purporting to be in favour of any person or persons other than a member or members of his family, become payable to the members of his family in equal shares:

Provided that no share shall be payable to-

(1) sons who have attained legal majority;

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

(3) married daughters whose husbands are alive;

(4) married daughters of deceased son whose husbands are alive if there is any member of the family other than those specified in clauses (1), (2), (3) and (4); ...

5. It thus appears that in terms of the definition of the family provided under Rule (2) (c) of the GPF Rules the wife or wives and children of a subscriber and the widow or widows of the deceased son of the subscriber can only be treated as family members of the male employee. Rule 8 provides filing of nomination in respect of the GPF accumulation in appropriate/prescribed format. It enjoins upon the subscriber to the fund to file a nomination soon after joining the fund. Rule 2 thereof provides that if at the time of joining the fund, the employee has a family then a nomination has to be made in favour of one or more members of his family in accordance with the first schedule of the Rule. However, when at the time of joining the fund and filing nomination if the employee had no family then he could have nominated a person or persons other than the family in prescribed format. Proviso to the said rule declares that nomination made in this sub rule shall be deemed to have been duly made in accordance with these rules only for so long the subscriber has no family. Rule 8(5) states that if a subscriber at any time acquires a family then he shall send a nomination in terms of sub-rule 2 of the Rule 8 in favour of such member/members of the family. If the subscriber had earlier nominated any person other than member of his family then he shall formally cancel the previous nomination. Rule 31 of the GPF Rules deals with a situation where the subscriber dies and the accumulation becomes payable before actual payment thereof.

6. The submission of the petitioner is that the deceased employee nominated the writ petitioner (the father) soon after joining the fund and, as such, until and unless the same is formally cancelled and a fresh nomination is subsequently made in terms of sub-rule 5 of Rule 8, the GPF accumulation will be payable to him. On the contrary, counsel for respondent no.5 has argued that in terms of proviso to sub-rule 3 of Rule 8 any such nomination earlier made shall be deemed to have been made in accordance with these rules only so long the subscriber has no family. Once the subscriber acquires the family the earlier nomination made in favour of the writ petitioner would, by force of law, become redundant. The employee was

required to formally cancel the nomination earlier made in favour of the writ petitioner and peremptorily nominate any one of the family member(s) to receive the GPF accumulation.

7. Learned counsel for the State, on the other hand, submitted that the provisions referred to and relied upon by the writ petitioner and the respondents deal with the amount payable to the one or the other persons. It does not grant any exclusive entitlement on the nominee in respect of the GPF accumulation which is a property. The entitlement of the parties had to be first adjudicated upon by a competent court in appropriate proceeding. Learned Additional Advocate General further contended that Rashmi Gupta with whom the deceased employee married for the second time as held in the departmental proceeding levied against the employee has not been impleaded as party respondent. This Court is thus not aware whether the wedlock produced any offspring who admittedly shall have interest in the GPF accumulation of the deceased employee. The question, therefore, is of the entitlement to the property.

8. On a consideration of submissions of the parties, it appears that the writ petitioner claims himself to be a nominee in respect of the GPF accumulation made under sub rule 3 of the Rule 8, and thus legal claimant thereof. Proviso to sub-rule 3 clearly contemplates that once the subscriber acquires a family then the previous nomination made in favour of one or the other person shall deemed to have come to an end. The Rule has provided a deeming fiction according to which such nomination made in terms of sub-rule 3 of Rule 8 would be valid so long the subscriber has no family. There is no controversy that the subscriber (son of the writ petitioner) had subsequently married respondent no.5 and acquired family. In the light of the aforesaid conclusion, the petitioner cannot claim payment of the entire GPF accumulation in his favour on the strength of the earlier nomination made by the subscriber(deceased employee). The question is whether respondent no.5 can be paid the GPF accumulation. Admittedly, the subscriber did not file any nomination in favour of respondent no.5 after canceling the previous nomination. This Court is not aware about the claim of Rashmi Gupta with whom the deceased employee married for the second time. This Court is also not aware of the offspring, if any, born out of the said wedlock. If that be the case, then the submission of respondent no.5 that she, being the wife/widow of the deceased employee would only be entitled to receive the GPF accumulation in terms of Rule 31 of the Rules cannot be accepted. The provisions contained in GPF Rules only contemplate who can be paid the accumulation. They do not deal with the entitlement of one or the other dependents of the subscriber to get the same. In the backdrop of the aforesaid facts appearing from the records, in my view, the aforesaid stand of the respondents would not call for interference. The claimant to the GPF accumulations of the subscriber shall be entitled to institute appropriate proceeding(s) and obtain appropriate declaration/certificate based on which the GPF accumulation shall be paid by the respondents. The orders contained in Annexure-5 and 5/A of the

interlocutory application being I. A. No. 2232 of 2010 shall abide by the result of the suit/proceeding to be filed/instituted by the petitioner or respondent no.5 in the light of the present order. The application stands disposed of. There shall be no order as to costs.