

S.B. Civil Writ Petition No.1542/06
Smt. Manju Kumari Vs. State & Anr.

Date of Order : 29/03/2006

Hon'ble Mr. Justice Ajay Rastogi

Mr. Ashok Bansal, for petitioner

Instant petition has been filed against the order dt.16th February, 2006 [Ann.3] whereby the services of the petitioner have been dispensed with.

Facts in brief are that Shri Ishwar Ram who was serving as LDC in the State Government while in service died on 12th July, 1999. The application was filed by the petitioner for seeking appointment under the Rajasthan Compassionate Appointment of Dependents of Deceased Government Servant Rules, 1996 ["the Rules of 1996"]. In the application before the competent authority this fact was not disclosed that Shri Iswar Ram has one son namely; Ashok Kumar who was already in government service since 1994 as a Teacher working in substantive capacity. Proceeding on the said premise that there is none in family of the deceased who is serving in the state government or any other State Organization, the authority considered the candidature of the present petitioner for

appointment under the Rules of 1996 and after due consideration she was appointed vide order dt. 4th May, 2001 [Ann.1] as LDC and later on, she was confirmed w.e.f. 9th May, 2003 vide order Ann.2.

A complaint was made before the authority that this fact has been concealed by the family of deceased Shri Ishwar Ram that he has one son Shri Ashok Kumar who is already in government service, as such on this material concealment appointment by the present petitioner has been obtained and she is not eligible to seek appointment under the Rules of 1996. After such compliant, the competent authority inquire into the matter and also served a notice upon the petitioner. The petitioner came out with explanation that Ashok Kumar who is in government service is her brother, but way back on 10th August, 1986 he went on adoption to their maternal uncle Rameshwar and one registered deed is also available with them, copy of which has been placed on record. In view of her brother being under adoption, this fact was not required to disclose by the petitioner's mother in their application, which was furnished for seeking appointment under the Rules of 1996.

The competent authority after taking into

consideration the material cancelled her appointment vide order dt.16th February, 2006 [Ann.3]. Hence, this petition.

Shri Ashok Bansal, counsel for petitioner submits that the petitioner was substantive and confirmed in the cadre of LDC and if at all there was any concealment made, the respondents were under an obligation to hold a regular inquiry provided under the Rules of 1958 and mere furnishing a notice in calling her explanation could not be said to be a sufficient compliance of the principles of natural justice. In support of his contention, counsel has placed reliance upon the judgment of apex court in **J.N. Ganatra Vs. Morvi Municipality [(1996) 9 SCC-495]**.

Counsel further submits that once her brother went into adoption of his paternal uncle, no concealment was made while furnishing application in 1999 on account of death of her father late Shri Ishwar Ram and counsel further submits that there is no requirement under law to get the adoption deed registered and inference which has been drawn by the authority that Ashok Kumar being only son of late Shri Ishwar Ram as such could not have been given an adoption, there is no bar under law as such the very

premise on which the respondents have proceeded in making assumption is without basis. Consequently, the very decision by which services have been terminated requires interference by this court.

I have considered the submission made by the counsel and perused the material on record.

This fact remained undisputed that Shri Ashok Kumar is her real brother and he is in service of the respondents State as a Teacher since 1994 and holding the post in substantive capacity. On a question put to the counsel that any official document either of his academic qualification or at the time when he entered in service Ashok Kumar has never mentioned at any point of time the name of his adopted father, only explanation coming forward from the petitioner is that in the school record since the name of original father of Ashok Kumar was shown as such it continued later on and at the time when he entered in service. This fact remained undisputed that Ashok Kumar has always mentioned at all places the name of his father late Shri Ishwar Ram.

Under the scheme of Rules of 1996, there is a clear bar that if there is any person of the family

of the deceased is in government service, no other can claim appointment on compassionate basis under the Rules of 1996. Apparently, appointment sought by the petitioner is a case of clear concealment made while furnishing application seeking appointment.

The submission made by the counsel that regular inquiry is required to be held and mere explanation was not sufficient as called for by the respondents and registration of the deed was not required and so also presumption which has been drawn by the respondents that Ashok Kumar being only son could not have been given an adoption, in my opinion, is without any substance.

So far as relationship between the petitioner and Ashok Kumar is concerned, is not disputed to establish the fact finding in question the petitioner has been called upon by a notice and he also came with the explanation, in my opinion, sufficient compliance of principles of natural justice has been made and regular inquiry under the Rules of 1958 is required, if a misconduct has been committed by a government servant. In my opinion, the procedure followed in the instant case is in due compliance of Article 14 of the Constitution.

So far as the presumption drawn of being only son may be a perception of the authority, but in my opinion, substantially it does not rule out the situation of the instant case and I do not find any illegality in the final decision in passing the order dt.16th February, 2006 [Ann.3].

The judgment [supra] on which the counsel has placed reliance is not applicable in the facts of present case.

Consequently, the writ petition fails and is hereby dismissed.

[Ajay Rastogi],J.

FRB