

S.B.CIVIL WRIT PETITION NO.329/2004

Ram Singh
V.
Ajmer Vidhyut Vitaran Nigam Ltd. & Ors.

DATE OF ORDER :: 31st January, 2007

HON'BLE MR.JUSTICE GOVIND MATHUR

Mr. Rakesh Arora, for the petitioner.
Mr. Sumeet Mehta, for the respondents.

....

The petitioner by claiming himself to be an adopted son of Late Shri Mithu Singh, a deceased employee of the respondent Corporation, submitted an application for appointment on compassionate grounds. The Deputy Secretary (Administration & Personal) Group-II of the respondent Corporation by communication dated 14.2.2002 conveyed the petitioner that the appointment could not be given to him being the adoption deed produced by him was not in accordance with law. Being aggrieved by the same this petition for writ is preferred.

The factual matrix as stated in the petition is that the petitioner after death of Shri Mithu Singh, who was working as Switch Board Attendant Gr.III in the office of the Executive Engineer, Ajmer Vidhyut Vitaran Nigam Ltd., Makrana, submitted an application to be appointed on compassionate grounds claiming himself to be an adopted son of Late Shri Mithu Singh. The petitioner alongwith application form

also submitted a registered document titled as "Godnama" whereby Late Shri Mithu Singh declared the petitioner as his adopted son from the childhood. The respondents also made payment of a part of gratuity to the petitioner by treating him a son of Late Shri Mithu Singh. According to the petitioner he was adopted by Late Shri Mithu Singh in his childhood and he was a dependent to Late Shri Mithu Singh, widow of Late Shri Mithu Singh Smt. Prem Kanwar is residing with him and she is treating the petitioner as her son. In the factual background above the petitioner has given challenge to the decision of the respondents for denial of appointment by not considering him as an adopted son of Late Shri Mithu Singh.

In reply to the writ petition it is stated by the respondents that the adoption deed produced by the petitioner is not in accordance with law as on the date of adoption the petitioner was of more than 15 years and as such the adoption under the deed concerned is not valid. It is further contended by the respondents that the appointment on compassionate grounds cannot be claimed as a matter of right. The appointments on compassionate grounds have to be made in accordance with the Rules, Regulations and also the financial conditions of the family of the deceased. According to the respondents the petitioner not being a legally adopted son of Late Shri Mithu Singh is not entitled for appointment on compassionate grounds.

Heard counsel for the parties.

It is not in dispute that an adopted son is entitled for appointment on compassionate grounds under the Rajasthan Compassionate Appointment of Dependents of Deceased Government Servants Rules, 1996 (hereinafter referred to as "the Rules of 1996"). The only reason given by the respondents to deny appointment to the petitioner is that his adoption by Late Shri Mithu Singh was not in accordance with law. The respondents have placed reliance upon the provisions of Section 10 of the Hindu Adoption and Maintenance Act, 1956 which prescribes that no person shall be capable of being taken in adoption unless he has not completed the age of 15 years, unless there is a custom or usages applicable to the parties which permits persons who have completed the age of 15 years being taken in adoption. According to the respondents the adoption deed was executed and registered on 5.12.2000 and on that day the age of the petitioner was of 18 years, as such he was not capable to be adopted as son by Late Shri Mithu Singh.

I have examined the contents of the document i.e. titled as "Godnama" and is placed on record as Anx.2. As a matter of fact the document Anx.2 though titled as "Godnama" but is not an adoption deed on basis of its contents. It is a declaration about the

fact that the petitioner was adopted by Late Shri Mithu Singh as his son in his childhood. It is pertinent to note that the petitioner is real nephew of Late Shri Mithu Singh and Shri Mithu Singh being issue-less was supporting and maintaining the petitioner and that is quite common in Indian society. Late Shri Mithu Singh by document Anx.2 in his lifetime declared the petitioner as his successor. The respondents by treating the document Anx.2 as an adoption deed failed to note an important fact mentioned in the document aforesaid that the petitioner in his childhood was adopted by Shri Mithu Singh as his son. By the document Anx.2 the fact of adoption of the petitioner in his childhood, i.e. prior to acquiring the age of 15 years, was reiterated and he was declared successor of Shri Mithu Singh. The petitioner was adopted by Late Shri Mithu Singh as his son prior to the age of 15 years as it is apparent from perusal of document Anx.2. I do not find any violation of conditions mentioned in Section 10 of the Hindu Adoption and Maintenance Act.

This Court for abundant caution also recorded statement of Smt. Prem Kanwar, widow of Late Shri Mithu Singh, on 18.1.2007. Smt. Prem Kanwar in quite unambiguous terms and with all confidence stated that the petitioner is residing with her since his childhood and is taking all care of her. She further stated that Shri Datar Singh, the natural father of

the petitioner, is also residing in Makrana town itself but in a separate house. Petitioner Ram Singh is residing with her and she also reiterated the fact of adoption of the petitioner as her son. She reiterated her statements by submitting an affidavit on 19.1.2007.

An another important aspect of the matter is that the respondents themselves paid a part of gratuity to the petitioner by treating him a son of Late Shri Mithu Singh. Once they accepted this fact for grant of gratuity, there was no just reason for not treating the petitioner an adopted son of Late Shri Mithu Singh while considering his case for appointment on compassionate grounds.

In view of the factual background above, I am of the considered opinion that the respondent Corporation erred while rejecting the petitioner's claim for appointment on compassionate grounds by treating the document Anx.2 in contravention of law. The adoption of the petitioner as son of Late Shri Mithu Singh is well established and, therefore, he deserves to be considered for appointment on compassionate grounds under the Rules of 1996.

Accordingly, this petition for writ is allowed. The respondents are directed to consider the candidature of the petitioner for appointment on

compassionate grounds being adopted son of Late Shri Mithu Singh and in the event he is found otherwise suitable, appointment be accorded to him. The respondents are directed to complete the exercise with regard to consideration as above within a period of two months from today.

(GOVIND MATHUR),J.

kkm/ps.