

(2003) 10 JH CK 0011
In the Jharkhand High Court
Case No : Writ Petition (S) No. 6023 of 2002

Bishwanath Hari @ Bishun Hari	Vs	APPELLANT
State of Jharkhand and Others		RESPONDENT

Date of Decision : 16-10-2003

Acts Referred:

Constitution of India, 1950 — Article 16, 226
Hindu Adoptions and Maintenance Act, 1956 — Section 12

Citation : (2004) 1 JCR 119

Hon'ble Judges : Tapen Sen, J

Bench : Single Bench

Advocate : Sanjay Prasad and Bhैया Vishwajeet Kumar, for the Appellant; Ritu Kumar, GP-IV, for the Respondent

Judgement

Tapen Sen, J.—The petitioner, in the instant case, has prayed for issuance of an appropriate writ for quashing the order dated 24.1.1996 referred to in the Memo dated 15.2.1996 (Annexure 5) by which it was inter alia informed that no compassionate appointment can be given to an adopted son and consequently the application filed by the petitioner stood rejected.

The petitioner has also prayed for an appropriate direction upon the respondents to provide compassionate appointment to him on account of the death of his adoptive father, late Jagan Hari who died in harness while working under the respondents.

2. According to the petitioner, Jagan Hari (father of the petitioner) was a permanent Grade IV employee working in the Patliputra Medical College and Hospital, Dhanbad and since he was issueless, he had adopted this petitioner as his son on 11.1.1978 in the presence of villagers and after following customs and usage. On 11.2.1995, the said Jagan Hari died in harness leaving behind his wife and the petitioner. Thereafter Jagan Hari's wife applied for payment of the entire dues and requested the respondents to provide compassionate appointment to the petitioner by her letter dated 1.3.1995 as contained in Annexure 3. On

4.8.1995, a formal deed of adoption was also drawn up and it was registered in the Dhanbad Sub-Registry. The said deed of adoption was duly executed between the natural parents of the petitioner and his adoptive mother. Thereafter, on 15.2.1996, the petitioner came to learn that his application for compassionate appointment had been rejected vide an order dated 24.1.1996. The said communication was made vide Annexure 5. In the meantime, on 15.8.2000, the mother of the petitioner also died. Thereafter the petitioner pursued the matter in relation to payment of the dues of his father and the respondents asked him to obtain an succession certificate which was issued on 23.4.2002 vide Annexure 7. According to the petitioner, he being the adopted son, was entitled for compassionate appointment and the respondents cannot discriminate vis-a-vis a natural son.

3. A counter affidavit in the instant case has been filed on behalf of the respondent Nos. 1 to 3 as also on behalf of the respondent No. 4. The respondent Nos. 1 to 3 have adopted the counter affidavit of the respondent No. 4. According to the respondents, as per policy of the Government a compassionate appointment cannot be given to an adopted son and in support of the said statement, the respondents have referred to an executive order of the Government dated 5.10.1991 (Annexure 4/A). It is the stand of the respondents that it is because of aforesaid policy of the Government that they rightly rejected the application of the petitioner.

4. Thus the ground on which the application of the petitioner was rejected, as is evidence upon reading the impugned order as also the statements made in the counter affidavit, is that it is only a natural born son who is entitled to compassionate appointment and not an adopted son. Such a ground obviously is wholly illegal apart from being discriminatory and in complete violation of Article 16 of the Constitution of India. An adopted son of an issueless couple is a son to them for all practical purposes and once a child is adopted, the respondents cannot create an embargo on his rights which are identical to that of a natural born child. Additionally, such a ground is obviously contrary to the provisions of Section 12 of the Hindu Adoption and Maintenance Act, 1956 which reads as under :

"An adopted child shall be deemed to be the child of his or her adoptive father or mother for all purposes with effect from the date of the adoption and from such date all the ties of the child in the family of his or her birth shall be deemed to be served and .replaced by those created by the adoption in the adoptive family."

5. Upon perusal of the aforementioned provision, it is apparent that the status of an adopted child is exactly similar and directly proportionate to that of a natural born child. He is entitled to the same rights and privileges in the adoptive family just like a natural child.

6. Consequently, the ground taken by the respondents in the impugned order is wholly arbitrary and misconceived.

7. However, the question that arises for consideration in this case is whether inspite of the aforementioned finding, can the petitioner still be entitled to claim compassionate appointment ?

8. It is the admitted case of the parties that the adoptive father of the petitioner died on 11.12.1995 (i.e., almost 8 years ago). The deed of adoption is also dated 8.8.1995.

9. In a judgment of the Hon''ble Supreme Court of India delivered in the case of Haryana State Electricity Board v. Naresh Tanwar it has been observed at paragraph 9 following an earlier Supreme Court judgment in. the case of Umesh Kumar Nagpal Vs. State of Haryana and Others, that compassionate appointment cannot be granted after a long lapse of a reasonable period and the very purpose of compassionate appointment as an exception to the general rule of open recruitment is intended to meet the immediate financial problem suffered by members of the family of the deceased employee. Taking note of yet another Judgment of the Supreme Court in the case of Jagdish Prasad Vs. State of Bihar and Another, their Lordships observed that the very objection of appointment of the dependent of the deceased employee v/ho died in harness is to relieve immediate hardships and distress caused to the family by sudden demise of the earning member of the family and such consideration cannot be kept binding for years. The aforementioned judgment of the Hon''ble Apex Court was delivered while considering the order of the Punjab and Haryana High Court which had directed compassionate appointment to be given to Naresh Tanwar. Being aggrieved by the aforementioned direction, the Haryana State Electricity Board moved up to the Apex Court and after making the aforementioned observations, the Supreme Court of India set aside those orders.

10. Additionally, in yet another judgment of the Hon''ble Supreme Court of India, delivered in the case of State of U.P. and Others Vs. Paras Nath, , their Lordships have held that the purpose of providing employment to a dependent of an employee dying in harness in preference to anybody else, is to mitigate the hardship caused to the family on account of his unexpected death while in service and in order to alleviate the distress of the family, such appointments on compassionate considerations are given, provided of course, there are rules for such appointment. In my judgment delivered in WP(S) No. 5814 of 2002 in the case of Shri Shankar Nunia v. B.C.C.L. delivered on 30.9.2003, I have held at paragraph 8 thereof that the normal procedure for appointment is open recruitment following a lawful and legal procedure--that is appointment on the basis of detection/ declaration of vacancy followed by proper advertisement, screening and so on and so forth. The concept of compassionate appointment by passes such an elaborate transparency only for purposes of enabling the bereaved to tide over the colossal loss and misery which the family is suddenly faced with on account of the death of its bread earner. This consideration is the only consideration, but such a consideration cannot be allowed to be kept alive for an indefinite period of time because it is allowed to do so, it will encroach and

create inroads into an otherwise transparent procedure commonly known as open recruitment. The effect would be that all of a sudden, when other persons are in the queue waiting for their turn for regular appointment, their legitimate expectation would abruptly be snatched away by a seeker of compassionate appointment at a time when the consideration for such appointment was non-existent--the deceased parent having died long time ago--an event which can hardly be said to be reasonable vis-a-vis persons waiting for regular appointment.

11. In another judgment delivered by me in WP(S) No. 5124 of 2002 in the case of Akhilesh Kumar Singh v. C.M.D., B.S.R.T.C. etc., while relying upon the judgment of the Hon"ble Supreme Court of India passed in the case of Haryana State Electricity Board Vs. Naresh Tanwar and Another, I have held that after seven years, the object of compassionate appointment and entitlement thereto cannot be allowed to be kept binding for so many years.

12. The learned counsel for the petitioner has however, cited a judgment delivered in WP(C) No. 2092 of 2003 and other analogous cases passed by this Court, on 18.7.2003 wherein another Single Judge has held that although the death took place in the year 1996-97, there is continuity of cause of action and therefore it is not open to the respondents to say that the need of assistance by way of compassionate appointment is no more. This judgment is reported in 2003 (3) JLJR 624.

13. The aforementioned judgment relied upon by the learned counsel for the petitioner has been passed relying upon the judgment of Umesh Kumar Nagpal Vs. State of Haryana and Others, which incidentally was taken note of by the Hon"ble Supreme Court of India in the case of Haryana State Electricity Board Vs. Naresh Tanwar and Another, Thus, it appears that the judgment of the Hon"ble Supreme Court in the case of Haryana State Electricity Board Vs. Naresh Tanwar and Another, which observed that compassionate appointment cannot be granted after a long lapse of reasonable period, was not brought to the notice of the learned Single Judge who delivered the judgment in WP(C) No. 2092 of 2003 reported in 2003 (3) JLJR 624. Moreover, the other judgment relied on by the learned Single Judge in the case of Balbir Kaur and Another Vs. Steel Authority of India Ltd. and Others, does not deal with the point that was decided in the case of Haryana State Electricity Board v. Naresh Tanwar because the core question that fell for determination in that case was the interpretation of the family benefit scheme as introduced by a tripartite agreement and the consequences thereof. Moreover, from the facts of this case it is evidence that the adoptive father of the petitioner died on 11.2.1995 and the rejection of his application came on 15.2.1996. The writ petition was filed on 31.10.2002 and therefore, the "continuous cause of action" contemplated in paragraph 9 of the judgment reported in 2003 (3) JLJR 624 cannot be said to be applicable in the facts and circumstances of this case. On the contrary, the judgment of the Hon"ble Supreme Court of India in the case of Haryana State Electricity Board Vs. Naresh Tanwar and Another, appears to be applicable.

14. However, since a contrary view has been taken by another Hon''ble Single Judge in the aforementioned case reported in 2003 (3) JLJR 624, this Court finds it difficult to render a judgment specially because the Hon''ble Single Judge has referred to the judgment of Umesh Kumar Nagpal Vs. State of Haryana and Others, wherein it was held that compassionate appointment cannot be granted after a long lapse of reasonable period. The judgment in the case of Umesh Kumar Nagpal was taken note of in paragraph 9 in the case of Haryana State Electricity Board v. Naresh Tanwar and it was held therein that compassionate appointment cannot be granted after a long lapse of reasonable period and that the very purpose of compassionate appointment, as an exception to the general rule of open recruitment, is intended to meet the immediate financial problem being suffered by the members of the family of the deceased employee. It has further been observed in the same paragraph following yet another judgment of Jagdish Prasad Vs. State of Bihar and Another, that the consideration in relation to the object of compassionate appointment cannot be kept binding for years.

15. In that view of the matter, this Court considers it apt and appropriate to refer this matter to the Division Bench for considering as to whether in view of the writ itself having been filed after six years from the date of rejection, whether the same still amounts to an ongoing, continuous cause of action as has been held in (2003) 3 JLJR 624 notwithstanding the ratio that was decided in the judgment delivered by the Hon''ble Supreme Court of India in the case of Haryana State Electricity Board Vs. Naresh Tanwar and Another, ?

Accordingly, this matter is referred to the Division Bench.