
(2019) 11 JH CK 0084

In the Jharkhand High Court

Case No : Letter Patent Appeal No. 70 Of 2018

Central Coalfields Limited And Ors

APPELLANT

Vs

Abdul Sattar

RESPONDENT

Date of Decision : 05-11-2019

Acts Referred:

Constitution Of India, 1950 — Article 14, 16, 21, 44

Citation : (2019) 11 JH CK 0084

Hon'ble Judges : Aparesh Kumar Singh, J;Kailash Prasad Deo, J

Bench : Division Bench

Advocate : Amit Kumar Das, Pooja Kumari, Swati Shalini

Final Decision : Allowed

Judgement

1. Learned counsels, Mr. Ratnesh Kumar and Mr. Om Prakash Prasad, who were representing the writ petitioner/respondent submit that the

respondent has taken away the file with no objection from their office. Therefore, their names may be deleted from the Cause List.

2. It appears that no one else has entered appearance since then on behalf of the respondent.

3. In view of the specific statement made by learned counsels, let the name of Mr. Ratnesh Kumar and Mr. Om Prakash Prasad, Advocates be

deleted from the cause list henceforth.

4. Heard, learned counsel for the appellants.

5. The present appeal is the second round of litigation on the issue of compassionate appointment of the writ petitioner, who claimed to have been

adopted by the employee Abdul Rajak Ansari, who died in harness on 06.09.2008 while working as a Trammer in Kedla underground project of M/s

Central Coalfields Limited. The name of the writ petitioner was entered into official records of the employee such as Form PS-3 (particulars of Family) and Form PS-4(Nomination Form) prepared on 26.05.1998. Petitioner's educational certificates also show him as son of the deceased employee. On other eligibility conditions under the Social Security, chapter-IX of NCWA, petitioner was major at the time of application and the application was also made within time. His claim was rejected on the sole ground that he did not come into the definition of legally adopted son in terms of Clause-9.3.3. In the first round of litigation the matter was remanded for reconsideration by taking into account the case of Shabnam Hashmi Vs Union of India and Others reported in AIR 2014 SC 1281 equivalent to (2014) 4 SCC 1 by the learned Division Bench of this Court rendered in L.P.A. No.154 of 2013 without getting into the merits of the case. On reconsideration the claim was once again rejected by the order impugned in the instant writ petition on the same ground. The learned Single Judge vide the impugned judgment has remitted the matter for reconsideration taking a view that the petitioner is not claiming any property on the ground of inheritance as an adoptee son of the deceased employee but is claiming appointment on compassionate ground with supporting documentary evidence such as service excerpts and educational certificates. If a narrow interpretation to the description of family is taken then very purpose and objective of NCWA would be defeated.

6. Learned counsel for the appellants has reiterated the grounds of rejection. He has placed reliance upon the very same judgment of the Apex Court in the case of Shabnam Hashmi (Supra) where the Apex Court refused to enter into the larger question whether right to adopt can be raised to the status of a Fundamental Right under article 21 of the Constitution. At the same time provisions of JJ Act, 2000 were also taken note of which provide for a prospective parent to opt for adopting an eligible child by following the procedure prescribed by the act, the rules and the Cara-guideline, as notified under the act.

Learned counsel for the appellants has made specific reference to the discussions made on the point urged by the All India Muslim Personal Law Board, which had intervened in said proceeding to contest the claim of the appellant Shabnam Hashmi (supra) regarding recognition of right to adopt

to a Muslim person. Learned counsel for the appellants has also placed reliance upon the judgment of learned single Bench of the Patna High Court

reported in Civil Writ Jurisdiction Case No. 5574 of 2002 dated 24.07.2012 and the Bombay High Court in the case of Shaikh Jamir Sayed Saifoddin v.

The Municipal Council reported in 2015 SCC OnLine Bom 5067.

7. Learned Single Judge of Patna High Court had dealt with the very same issue and also referred to the text of Mahomedan Law by M. Hidayatullah

(N.M. Tripathi Pvt. Ltd.) 1990 containing the principles under section 347 which prescribed that Mahomedan Law does not recognize adoption as a

mode of filiation. Apart from that, Tahir Mahmood in his book, "the Muslim Law of India, 3rd Edition page 137" has also mentioned "The

various kinds of sons other than sons by birth are wholly unknown to Muslim Law. So, a person can be the child of the woman who has given birth to

that person and of the man who has or is believed or legally recognized to have begotten that person- and of none else."

Learned counsel for the appellants submits that writ petitioner had brought on record a deed of adoption of the year, 1990 which was of a much prior

date than the JJ Act of 2000 or its later amendment of 2006. There being no such precursor enabling statute to permit adoption by a Muslim person,

the very plea of the petitioner as a legally adopted son was untenable for the purposes of compassionate appointment within the provisions of the

Social Security Scheme contained in National Coal Wage Agreement which is a bilateral agreement between the management and the trade unions of

the employees. Compassionate appointment being an exception to the general rule of equality of opportunity in matters of employment under article 14

and 16 of the Constitution of India, any such claim has to be considered within the four corners of the scheme without derogating upon the specific

provisions made thereunder. There cannot be a case of legal adoption by a Muslim person in the light of the personal law. Therefore petitioner did not

fall in the definition of dependent which includes legally adopted son. The impugned judgment has failed to take note of this legal position. As such the

order of rejection is sustainable in law and facts and need no interference.

8. Respondent had earlier entered appearance through the learned counsels named above but has taken away the file with no objection and has not

entered appearance thereafter. The case is being decided in his absence.

From the narrative recorded above, the only point of issue seeking adjudication is whether the writ petitioner was a dependant within the meaning of

clause 9.3.3 of chapter-IX Social Security of the NCWA to be considered for appointment on compassionate grounds on the death of the employee

who was a Muslim. Clause 9.3.3 is quoted hereunder for proper appreciation:

“9.3.3. the dependant for this purpose means the wife/husband as the case may be, unmarried daughter, son and legally adopted son. If no such

direct dependant is available for employment, brother, widowed daughter/ widowed daughter-in-law or son-in-law residing with the deceased and

almost wholly dependant on the earnings of the deceased may be considered to be the dependant of the deceased.”

It contemplates a legally adopted son within the definition of dependant. The personal law of Muslims did not permit adoption. No such secular statute

has been shown or relied upon by the learned Single Judge where such an adoption was permissible by a Muslim in the year 1990 when the writ

petitioner claims to have been adopted by way of a deed of adoption. In the case of Shabnam Hashmi (supra), the apex court has refrained from

recognizing right to adoption as a fundamental right by observing as under (para-15 and 16):

“15. Even though no serious or substantial debate has been made on behalf of the petitioner on the issue, abundant literature including the holy

scripts have been placed before the Court by the Board in support of its contention, noted above. Though enriched by the lengthy discourse laid before

us, we do not think it necessary to go into any of the issues raised.

16. The fundamental rights embodied in Part III of the Constitution constitute the basic human rights which inhere in every person and such other

rights which are fundamental to the dignity and well-being of citizens. While it is correct that the dimensions and perspectives of the meaning and

content of the fundamental rights are in a process of constant evolution as is bound to happen in a vibrant democracy where the mind is always free,

elevation of the right to adopt or to be adopted to the status of a fundamental right, in our considered view, will have to await a dissipation of the

conflicting thought processes in this sphere of practices and belief prevailing in the country. The legislature which is better equipped to comprehend

the mental preparedness of the entire citizenry to think unitedly on the issue has

expressed its view, for the present, by the enactment of the JJ Act 2000 and the same must receive due respect. Conflicting view-points prevailing between different communities, as on date, on the subject makes the vision contemplated by Article 44 of the Constitution i.e. a Uniform Civil Code a goal yet to be fully reached and the Court is reminded of the anxiety expressed by it earlier with regard to the necessity to maintain restraint. All these impel us to take the view that the present is not an appropriate time and stage where the right to adopt and the right to be adopted can be raised to the status of a fundamental right and/or to understand such a right to be encompassed by Article 21 of the Constitution. In this regard we would like to observe that the decisions of the Bombay High Court in *Manuel Theodore D'Souza* and the Kerala High Court in *Philips Alfred Malvin* can be best understood to have been rendered in the facts of the respective cases. While the larger question i.e. qua fundamental rights was not directly in issue before the Kerala High Court in *Manuel Theodore D'Souza* the right to adopt was consistent with the canonical law applicable to the parties who were Christians by faith. We hardly need to reiterate the well-settled principles of judicial restraint, the fundamental of which requires the Court not to deal with issues of constitutional interpretation unless such an exercise is but unavoidable.â??

9. The learned Single Judge of Patna High Court has dealt with the very same issue, in a case relating to compassionate appointment of a person claiming as adopted son of the deceased Muslim employee, a constable of the Bihar Military Police, para 9 and 10 quoted under:

â??9. In the principles of Mahomedan Law by M. Hidayatullah (N.M. Tripathi Pvt. Ltd.) 1990 under Section 347. it is specifically mentioned that the Mahomedan law does not recognize adoption as a mode of filiation. â??Tahir Mahmood in his book, â??the Muslim Law of India, 3 rd Edition page 137â? has mentioned â??The various kinds of sons other than sons by birth are wholly unknown to Muslim Law. So, a person can be the child of the woman who has given birth to that person and of the man who has or is believed or legally recognized to have begotten that person-and of none else.â??

10. In view of the above, the claim of the petitioner to be appointed on compassionate ground has rightly been rejected by the impugned order as he

would not have claimed such appointment on the plea that he was the adopted son of the deceased constable Late Md. Kasim as the Mahomedan

Law does not recognize adoption as a mode of sonship and under Patna High Court CWJC No.5574 of 2002 dt.24-07-2012 the Muslim Law the

adoption does not create a parent and child relationship.â??

Adoption being an unknown mode of filiation under the Mahomedan law, writ petitioner would not come in the category of dependant as contemplated

under clause 9.3.3 of the NCWA. The Bombay High Court has taken a similar view and also relied upon a decision of Allahabad High Court in the

case of Muhammad Allahdad Khan v. Muhammad Ismail Khan, (1888) ILR 10 All 290, a full bench decision of the Allahabad High Court.

In the impugned order, the learned Single Judge, it appears has been guided by the plea of the petitioner that he is not seeking any inheritance in the

property of the deceased and documentary evidence in the nature of service excerpts and matriculation certificates showed him as the son of the

deceased employee. The definition of dependant whether narrow or broad but arrived at after a bilateral agreement between the management and the

employees recognized as National Coal Wage Agreement cannot be expanded beyond its purport keeping into mind the whole scheme and object of

compassionate appointment which is an exception to the general rule of equality of opportunity in public employment under article 14 and 16 of the

Constitution of India. We thus, find that the grounds of rejection of claim of the writ petitioner were within the confines of the scheme and not in

derogation of any precepts of the Muslim law which do not permit for adoption. Hard though may it may seem but the stand of the appellant C.C.L

cannot be held to be unjustified in the light of reasons recorded and discussions made herein above.

10. The impugned judgment is accordingly set aside.

11. The appeal stands allowed.

12. I.A. No. 1874 of 2018 is closed.