
(2002) 01 PAT CK 0074
In the Patna High Court
Case No : C.W.J.C. No. 13551 of 2001

Kanhai Ram

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 02-01-2002

Acts Referred:

Hindu Adoptions and Maintenance Act, 1956 — Section 10, 4

Citation : (2002) 1 BLJR 250 : (2002) 1 PLJR 384 : (2002) 3 RCR(Civil) 323

Hon'ble Judges : Aftab Alam, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Aftab Alam, J.—Heard Counsel for the petitioner.

2. The petitioner has been denied appointment on compassionate grounds following the death of one Munakka Devi who at the time of her death was working as a sweeper in the Anugrah Narain Medical College, Gaya and who according to the petitioner was her adoptive mother. The petitioner's claim for appointment on compassionate grounds was turned down on the ground that the scheme does not relate to an adopted son. Counsel for the petitioner is quite right in his submission that the reason assigned for rejecting the petitioner's claim was incorrect and untenable in law as a bench decision of this Court has held that the expression "son" used in the scheme of compassionate appointment also included, in case of Hindus, an adopted son.

3. Nevertheless a direction for appointment of the petitioner on compassionate grounds as prayed on his behalf cannot be issued and this writ petition is bound to fail. This is for the reason that on the petitioner's own showing his adoption under the deed of adoption, dated 29-8-1995 was contrary to Section 10 of the Hindu Adoption & Maintenance Act, 1956. In the deed of adoption, the age of the petitioner is stated as "about 19 years". Section 10 of the Act, dealing with persons who may be adopted is as follows:

10. No person shall be capable of being taken in adoption unless the following conditions are fulfilled, namely:

(i) he or she is a Hindu:

(ii) he or she has not already been adopted:

(iii) he or she has not been married, unless there is a custom or usage applicable to the parties which permits persons who are married being taken in adoption:

(iv) he or she has not completed the age of fifteen years, unless there is a custom or usage applicable to the parties which permits persons who have completed the age of fifteen years being taken in adoption.

Clause (iv) of Section 10, thus, clearly bars the adoption of a person who has completed the age of fifteen years unless it was proved that any special custom affecting the parties permitted such adoption.

4. In the Principles of Hindu Law by Mulla, 15th Edition, it is stated as follows on pages 1100 and 1101:

Clause (iii) and (iv). There was difference of opinion between the various schools of Hindu law as to the age of the son to be adopted and as to whether a married person could or could not be adopted. Clauses (iii) and (iv) of the present section now deal with this aspect of the matter. The son or daughter to be adopted must not be a person who has already been married and must not have completed the age of fifteen years. The respective conditions are subject to the important qualifications that they are not to apply if there is a custom or usage applicable to the parties which permits of a married boy or girl being adopted or a boy or girl who has completed the age of fifteen years being adopted.

5. These Clauses (iii) and (iv) must be read with Section 4 of the Act, which gives overriding effect to the provisions of the Act as therein mentioned and Section 3(a) which gives the connotation of the expressions "custom" and "usage". The "custom" and "usage" envisaged in Clauses (iii) and (iv) must mean some special rule which in a particular family or a particular class or community or in a particular district or area governs the parties, although it is different from the general rule of Hindu law which would otherwise have been applicable to the parties. Thus, for instance, if a boy more than fifteen years of age is adopted, the adoption can be sustained only on proof of any such special custom indicated above affecting parties in Western India (Bombay School). The decisions of the High Courts of Bombay and Madhya Pradesh on this question show divergence of judicial opinion.

(Emphasis added)

6. For the reasons discussed above, no direction can be issued for the petitioner's appointment on compassionate grounds. This writ petition is dismissed.