
(2020) 02 RAJ CK 0223

In the Rajasthan High Court

Case No : Civil Writ Petition No. 17914 Of 2019

Kanhaiya Lal

APPELLANT

Vs

State Of Rajasthan And Ors

RESPONDENT

Date of Decision : 11-02-2020

Acts Referred:

Guardians and Wards Act, 1890 — Section 8
National Trust for Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities Act, 1999 — Section 2(h), 14
Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 — Section 2(i), 2(i)(viii)
Constitution of India, 1950 — Article 226

Citation : (2020) 02 RAJ CK 0223

Hon'ble Judges : Arun Bhansali, J

Bench : Single Bench

Advocate : Surendra Thanvi, Vivek Firoda

Final Decision : Disposed Of

Judgement

This writ petition has been filed by the petitioner aggrieved against order dated 24.09.2018 (Annexure-3) passed by respondent No. 4, whereby, the respondents have required the petitioner to produce a valid guardianship certificate qua his brother Ghanshyam Panwar for grant of family pension to him.

It is claimed that the petitioner's brother Ghanshyam Panwar is suffering from multiple disability and mental illness, which is reflected from the certificate dated 27.06.2018 (Annexure-1) issued by the competent authority.

Father of the petitioner Mr. Lakhpat Ram retired on 31.10.2004 and died on 26.01.2008. Whereafter, his mother was getting family pension, who also died on 30.03.2018.

When the petitioner Kanhaiya Lal filed application with the respondents that as Ghanshyam Panwar, his brother and son of deceased Lakhpat Ram is mentally ill and was dependent on the pension received by his mother and there was no

other source of income, the family pension be continued to be paid to him, the application, which was forwarded to the Pension Department, the same was responded vide Annexure-3 requiring a valid guardianship certificate qua Ghyanshyam Panwar, as he was claimed to be mentally ill and thereafter the case be sent back to the department.

For the said purpose, the petitioner approached the Family Court, Bikaner under Section 8 of the Guardians and Wards Act, 1890.

The application was returned by the Family Court vide its order dated 21.08.2019 (Annexure-5) indicating that as the provisions of Mental Health Act, 1987 stood repealed and in the Mental Healthcare Act, 2017 there was no provision for according guardianship, the petition was not maintainable.

Learned counsel for the petitioner made submissions that the powers of this Court under Article 226 of the Constitution of India can be invoked for the purpose of appointment of guardian.

Reliance has been placed on judgment in *Shobha Gopalkrishnan & Ors. v. State of Kerala & Ors.* : 2019 (1) KLT 801.

I have considered the submissions made by learned counsel for the petitioner and have perused the material available on record.

As the prayer made by the petitioner pertains to the appointment of guardian for his physically challenged (mentally ill) brother, the said power can be exercised by the authority under the provisions of The National Trust for Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities Act, 1999 ('the Act of 1999').

Under the Act of 1999 provisions of Section 14 deal with appointment of guardian wherein a parent of a person with disability or his relative may make an application to the local level committee for appointment of any person of his choice to act as a guardian of the person with disability.

The term 'multiple disability' has been defined under Section 2(h) of the Act of 1999 as meaning a combination of two or more disabilities as defined in clause (i) of Section 2 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 ('the Act of 1995').

Though the Act of 1995 has been replaced by the Rights of Persons with Disabilities Act, 2016, however, in the Act of 1995 under Section 2(i)(viii) 'disability' inter alia means 'mental illness' and as the certificate (Annexure-01) issued to the petitioner's brother indicates his disability as multiple disability/ mental illness, the case would be governed by provisions of the Act of 1999 and the petitioner can approach the local level committee for appointment of guardian under the said Act.

The petitioner may approach the competent authority under the Act of 1999 and if an application is filed, the same may be dealt with by the said authority

appropriately and most expeditiously.

With the above observations and directions, the writ petition filed by the petitioner stands disposed of.