
(1997) 04 PAT CK 0031
In the Patna High Court
Case No : C.W.J.C. No. 9833 of 1996

Kumari Manju

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 11-04-1997

Acts Referred:

Constitution of India, 1950 — Article 14, 141, 142(1), 16, 226
Criminal Procedure Code, 1973 (CrPC) — Section 125
Hindu Adoptions and Maintenance Act, 1956 — Section 20(3)
Hindu Succession Act, 1956 — Section 8

Citation : (1997) 2 PLJR 77

Hon'ble Judges : A.K. Ganguly, J

Bench : Single Bench

Advocate : Jayanandan Singh, Dipak Kumar and Prakash Kumar, for the Appellant; D.N. Singh and Vishwambhar Prasad, for the Respondent

Final Decision : Dismissed

Judgement

A.K. Ganguly, J.—In this matter the writ Petitioner has challenged the order passed by the District Education Establishment Committee dated 20-6-1996 as contained in Annexure-6, whereby the case of the Petitioner for appointment on compassionate ground has been rejected. The ground allegedly shown in the impugned order of rejection is that the Petitioner is a married daughter of her deceased father.

2. The bare facts of this case are that the Petitioner's father Suryanarain Sharma died on 21-7-1994 while in service as an Assistant Teacher in a Middle School in village Farpar, Anchal Ariyari District Sheikhpura. At the time of his death, the Petitioner's father left behind his widow, who is aged about 58 years and two married daughters, one of whom is the Petitioner. Learned Counsel for the Petitioner has said that the husband of the Petitioner is un-employed and the Petitioner and her husband have moved to her maternal home and started living there in order to look after her widowed mother.

3. Learned Counsel for the Petitioner has not disputed that a married daughter is not included within the relevant circular dated 5-10-1991 of the State Government which governs the case of such compassionate appointment. It has been specifically stated in the circular that only wife, son, unmarried daughter, widow of son are entitled to obtain such appointment. It has been also specifically mentioned that the adopted son, son-in-law, and nephew are not entitled to be appointed on compassionate ground.

4. Learned Counsel for the Petitioner submits that the exclusion of the married daughter is un-reasonable and arbitrary and opposed to the principles of Article 14 of the Constitution of India. Learned Counsel submitted that the object of the Circular is to help the distressed family which has lost its earning member. Since this is the avowed object, by exclusion of married daughter the said object is not, in any way, furthered and as such it has no nexus with the exclusion of the married daughter. Therefore, this exclusion is bad. In support of his submission, learned Counsel for the Petitioner has relied on Section 20(3) of the Hindu Adoption and Maintenance Act, 1956. Relying on the said Sub-section, learned Counsel wanted to urge that the obligation for maintenance of an aged and infirm parent is squarely cast even on a married daughter. If the obligation is so case, how the married daughter be deprived of the opportunity of being considered for compassionate appointment inasmuch as the daughter is now under a social and legal obligation to maintain her infirm parents. The provisions of Section 20(3) of the Hindu Adoptions and Maintenance Act are set out below:

(3) The obligation of a person to maintain his or her aged or infirm parent or a daughter who is unmarried daughter, as the case may be, is unable to maintain himself or herself out of his or her own earning or property

5. Learned Counsel for the Petitioner also relied on Section 8 of the Hindu Succession Act in order to show that when a male Hindu dies intestate, the properties shall devolve according to the provisions of the Chapter in which Section 8 occurs and the said Chapter provides for a schedule and from the said Schedule it appears that both the son and the daughter are Class I heirs. The said provisions of Section 8 of the Hindu Succession Act are also referred to by the learned Counsel for the Petitioner in order to show that there is no distinction between the son and the daughter in matter of succession.

6. Learned Counsel for the Respondents submitted that in the matter of grant of compassionate appointment, the discretion is to be exercised on the basis of the circular and since under the Circular the Petitioner being a married daughter is not included, her case for appointment on compassionate ground cannot be considered. Learned Counsel further submitted that the Circular does not suffer from any vice of discrimination inasmuch as a married daughter belongs to separate category altogether and cannot be brought together with the dependent of the deceased as mentioned in the circular. Learned Counsel further submitted that no proper challenge to the said circular has been made. Therefore, learned Counsel for the Respondents prays for dismissal of this writ petition.

7. Considering the rival contention, this Court is of the view that neither Section 8 of the Hindu Succession Act nor Section 20(3) of the Hindu Adoptions and Maintenance Act, 1956 can be pressed into service by the Petitioner in support of her case that in the instant case the circular in question is violative of Article 14 of the Constitution of India.

8. There is a fundamental distinction between considerations for compassionate appointment in the employment under the State and the obligation to maintain infirm parents or the right of inheritance under the personal law. It goes without saying that the obligation to maintain an aged and infirm parent is an obligation which is personal in character and such an obligation arises from the very existence of relationship between the parties. In the case of compassionate appointment, there is no obligation of the State of a personal character nor does the applicant seeking compassionate appointment stand in the category of any special relationship with the State. Normally an appointment on compassionate ground is itself "not an appointment in the regular course of business. Such an appointment is an inroad to the principles of Articles 14 and 16 of the Constitution and such an appointment is an exception and not the rule. Therefore, in the matters of grant of such appointment it has been repeatedly cautioned by the Apex Court that proper rules and regulations must be framed and when such rules and regulations have been framed in such case those rules and regulations must be strictly adhered to. In fact any appointment made in violation of those rules or regulations will be violative of Article 14 of the Constitution of India. It is not in dispute that the purpose of offering such appointment is to grant relief to the dependents of the deceased who have been exposed to financial hardship as a result of the sudden demise of the earning member in the family. But in granting such appointment the State cannot act in a manner which is dehors all principles. Normally a married daughter goes out of the family after her marriage and is not considered a dependent of the family to which she belonged before her marriage. Therefore, the exclusion of the married daughter from the category of the dependent in the circular in question is not violative of Article 14 of the Constitution.

9. A matter of somewhat similar nature came up for consideration before the Supreme Court in the case of *State of Haryana and Another Vs. Dhan Singh*, . A contention was raised before the Supreme Court that within the definition of the word "family" a brother has been included who is below the age of 18 years but as the appointment cannot be given to a person below the age of 18 years, such inclusion is meaningless inasmuch as, as soon as the brother reaches the age of 18 years, he goes out of the definition of "family" under the relevant rules but unless the brother reaches the age of 19 years, he cannot be appointed. The Supreme Court while considering this contention refused to interfere with the definition of "family" and held that grant of appointment to the brother who is above 18 years of age is not permissible. In that view of the matter, this Court is of the view that the facts in the said case of *State of Haryana (supra)* stood on a much stronger footing even though the Hon'ble Supreme Court refused to

interfere and held that by way of compassionate appointment the Court cannot go beyond the definition of "family" as given under the Rules.

10. Learned Counsel for the Petitioner has also relied on the decision of the Supreme Court in the case of Dr (Mrs) Vijaya Manohar Arbat Vs. Kashirao Rajaram Sawai and Another, . Reliance was placed on paragraph 12 of the judgment to show that there is an obligation on the married daughter to maintain her parents in a proceeding under Sections 125 of the Code of Criminal Procedure.

11. For the reasons already stated this Court cannot apply the ratio of maintenance proceeding to a case of compassionate appointment. Apart from that in paragraph 8 of the said judgment in the case of Dr. Mrs. Vijaya Manohar Arbat (supra), it has been made clear that before ordering maintenance in favour of a father or mother against their married daughter, the Court must be satisfied that the daughter has sufficient means of her own independent earning irrespective of the earnings or income of her husband and her father and mother as the case may be is unable to maintain himself or herself. That is the ratio of the case. It is obviously true that in a proceeding u/s 125 of the Code of Criminal Procedure if the Court finds that there is a solvent married daughter who is in a position to maintain her aged and infirm parents from her own independent income, the Court can obviously pass an order directing her to maintain her parents but those matters stand on a completely different footing where the obligation is personal arising out of the peculiar nature of relationship between the parties.

12. Learned Counsel has also cited a Division Bench judgment of this Court in the case of Rizwan Ansari and Anr. v. The State of Bihar and Ors. reported in 1991(2) P.L.J.R. 383 where a nephew has been appointed and directed to be appointed on compassionate ground by the learned Judges of the Division Bench. Learned Counsel submitted that at the relevant point of time under the circular in question such an appointment, namely, appointment of nephew was barred, even then the Court directed the authorities concerned to appoint a nephew. Therefore, relying on the said decision of the Division Bench learned Counsel submitted that this Court may also issue a similar direction. This Court is afraid that having regard to the various decisions of the Supreme Court, as pointed out above, this Court cannot travel beyond the circular of the State Government in the matters of such appointment. Even though the said judgment has been delivered by the Division Bench, this Court having regard to the mandate of Article 141 of the Constitution, cannot follow the same for the reasons indicated below.

13. In Anr. judgment of the Supreme Court in the case of State of Haryana Vs. Naresh Kumar Bali, , a three " Judges Bench deprecated the issuance of similar directions by the writ Court in the strongest possible terms. In that case the Supreme Court has held "the High Court could have merely directed consideration of the claim of the Respondent in accordance with the rules. It can

not direct appointment. Such a direction does not fall within the scope of mandamus. Judicial review, it has been repeatedly emphasised, is directed against the decision making process and not against the decision itself; and it is no part of the Court's duty to exercise the power of the authorities itself. The exercise of the extraordinary jurisdiction constitutionally conferred on the Apex Court under Article 142(1) of the Constitution can be of no guidance on the scope of Article 226"

14. Following the ratio of the aforesaid judgment of the three Bench Judges of the Supreme Court in the case of State of Haryana (supra), this Court is of the view that the decision rendered by the Division Bench of this Court in the case of Rizwan Ansari (supra) is beyond the scope of Article 226 of the Constitution and is as such "per incuriam" and cannot be followed by this" Court. Apart from that the said Division Bench judgment, with great respect, does not indicate any ratio in favour of the direction so given. So I am unable to follow the said judgment as a binding precedent.

15. Learned Counsel for the Petitioner has also cited Anr. judgment of this Court in the case of Kamal Ranjan Vs. The State of Bihar and Others, . In the said judgment a Division Bench of this Court held that an adopted son cannot be excluded from the category of the persons who are entitled to be granted the benefit of compassionate appointment. In coming to the said finding the learned Judges reasoned that the principles of Hindu Adoptions and Maintenance Act cannot be superseded or modified by an executive circular. The said judgment in the case of Kamal Ranjan (supfa) has no relevance to the, facts and circumstances of this case as the Petitioner is not an adopted son. In that view of the matter, this Court holds that the said decision has no application in the facts and circumstances of the instant case.

16. For the reasons aforesaid, all the contentions raiseckoy the learned Counsel for the Petitioner fail. This writ petition is thus dismissed. There will be no order as to cost.