

(2012) 07 PAT CK 0065

In the Patna High Court

Case No : Civil Writ Jurisdiction Case of 5574 of 2002

Md. Amin

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 24-07-2012

Acts Referred:

Citation : (2012) 07 PAT CK 0065

Hon'ble Judges : Chakradhari Sharan Singh, J

Bench : Single Bench

Advocate : Raj Kamal, A.C. to S.C.9., for the Respondent

Final Decision : Dismissed

Judgement

Hon'able Mr. Justice, Chakradhari Sharan Singh

1. No one appears on behalf of the petitioner. Yesterday, i.e., on 23.07.2012 also there was no representation on behalf of the petitioner on call. This writ application is, therefore, being decided on the basis of pleadings in the writ application and the counter affidavit filed on behalf of the respondents. The petition has been filed for a direction to respondents to appoint the petitioner on the post of constable in Bihar Police on compassionate ground as the petitioner's father Late Md. Kasim died on 02.04.1998 as constable of Bihar Military Police (B.M.P.-9) at Jamalpur, Munger. The petitioner has also sought for quashing of Memo of 1377/P2 dated 01.04.2002 whereby his claim for appointment on compassionate ground has been rejected by the office of the Director General and Inspector General of Police, Bihar.

2. The petitioner's claim for appointment on compassionate ground has been rejected by the impugned order dated 01.04.2002 (Annexure-7) on the ground that the petitioner claimed to be the adopted son of Late Md. Kasim and under the Muslim Personal Law there is no concept of "adoption".

3. Before coming to the issues involved in this writ application, the facts as

pleaded in the writ application are that Late Md. Kasim while serving as constable in B.M.P.-9, died on 02.04.1998 leaving behind his widow, namely, Bibi Taimun and the "adopted son", Md. Amin (the petitioner).It has been asserted that Md.Kasim and his wife Bibi Taimun adopted the petitioner as their son because they were unable to bear a child and accordingly the petitioner's name was mentioned in the verification roll of Late Md. Kasim at the time of his appointment. After death of Md.Kasim, his widow Bibi Taimul filed an application on 06.07.1999 (Annexure-2) seeking appointment of the petitioner on compassionate ground. The petitioner also is said to have filed an application on 07.07.1999 for his compassionate appointment. The Commandant, B.M.P.-9, Jamalpur, Munger, acting on the application of the petitioner and his mother referred the petitioner's name for his compassionate appointment to the Deputy Inspector General of Police (Personnel), who in his turn vide his letter dated 11.03.1999 asked the Commandant, B.M.P., Jamalpur, Munger, to verify the verification Roll of the deceased constable Late Md. Kasim. There was specific query in the said letter dated 11.03.1999 by the Deputy Inspector General (Personnel) from the Commandant, B.M.P. 9 to give a report as to whether the name of the petitioner was originally entered into the verification roll at the time of appointment of Md. Kasim or the petitioner's name has been mentioned in the verification roll subsequently in different ink. The D.I.G. (Personnel),Bihar,Patna also sought a clarification from Additional Secretary, Home (Police) Government of Bihar, Patna, on the point as to whether adopted son of a Muslim employee could be appointed on compassionate ground on the death of such employee.

4. The petitioner filed a writ petition vide C.W.J.C. of 3146 of 2000 before this Court with a grievance that his case for compassionate ground was not being considered, though application for the same was filed in 1999 itself. This Court vide order dated 26.07.2000 passed in C.W.J.C. of 3146 of 2000 passed the following order by which the competent authority was required to consider the petitioner's case within three months:-

In the facts and circumstances, I remit the case to the respondents to determine the question relating to appointment of petitioner Md. Amin, if he produces any evidence showing his adoption and is found to be adopted son of Late Md. Kasim, the authority will consider the same and pass an order, in accordance with law, within three months from the date of receipt of representation to be filed along with this order.

The writ petition stands disposed of with the aforesaid observations and directions.

5. Thereafter vide impugned order dated 01.04.2002, the Deputy Inspector General of Police (Personnel), Bihar, Patna, rejected the petitioner's claim for compassionate appointment assigning the reason that there was no recognition of "adopted son" under the Muslim Personal Law and, therefore, his claim could not be entertained. It is this order by which the petitioner is aggrieved and has challenged the same in the present writ application.

6. Two counter affidavits have been filed; one on behalf of respondents of 2 to 4 and the other on behalf of respondent of 5, the Commandant, B.M.P. - 9, Jamalpur, Munger. The consistent stand in the counter affidavit filed by the officials respondent is that there is no provision for adoption in the Muslim Personal Law and, therefore, the petitioner's claim for compassionate appointment was rejected. In the background of the controversy as above mentioned, the only question which requires consideration is as to whether the petitioner can be treated as a son of the deceased employee, not being his natural son under the Muslim Personal Law. In other words, whether the Muslim Personal Law recognizes "filial" relationship in any form other than a child by birth.

7. This is not in dispute that the petitioner has not claimed sonship on the basis of being the natural son of the petitioner. In the writ petition itself it has been pleaded that he is the adopted son of the deceased employee Late Md. Kasim and he was taken into adoption by Md. Kasim and Bibi Taimun as they were not capable to bear a child. It is not the pleading of the petitioner that there is existed any custom in his family to which he or the deceased employee belonged, recognizing "adoption" as mode of "sonship".

8. In the principles of Mahomedan Law by M. Hidayatullah (N.M.Tripathi Pvt. Ltd.) 1990 u/s 347. it is specifically mentioned that the Mahomedan law does not recognize adoption as a mode of filiation." Tahir Mahmood in his book, "the Muslim Law of India, 3rd Edition page 137 "has 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."

9. 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 the Muslim Law the adoption does not create a parent and child relationship. This writ application is, accordingly, dismissed. No order as