

(2002) 04 PAT CK 0083
In the Patna High Court
Case No : C.W.J.C. No. 1115 of 2000

Om Prakash Prasad @ Om Prakash Singh	APPELLANT
Vs	
State of Bihar and Others	RESPONDENT

Date of Decision : 29-04-2002

Acts Referred:

Citation : (2002) 04 PAT CK 0083

Final Decision : Dismissed

Judgement

Aftab Alam, J.—Heard the Mr. R.K. Srivastava, learned Counsel appearing in support of this writ petition and Mr. Mihir Kumar Jha, Standing Counsel for the Board.

2. The petitioner is before this Court for the second time, seeking a direction to the Board and its officials to give him employment on compassionate grounds. According to the petitioner he is the adopted son of one Ram Chandra Prasad who died on 29.7.1996 while in the service of the Board. The petitioners claim for appointment on compassionate grounds has been rejected on the ground that under the Board's Standing Order No. 756 dated 18.2.1994, an adopted child of the deceased employee is excluded from the scheme of compassionate appointments. The Board's decision was communicated to the petitioner by Letter No. 156, dated 31.1.2001 (Annexure 2) issued by the Electrical Executive Engineer and Letter No. 76, dated 10.2.2001 (Annexure 3) issued by the Joint Secretary to the Board. The contents of the two letters are substantially the same and the same reason is assigned in both the letters for rejection of the petitioner's claim for appointment on compassionate grounds.

3. Mr. Srivastava submitted that the reasons assigned for rejecting the petitioners claim was unsustainable in law because the exclusion of an adopted child from the scheme of compassionate appointments has been held to be illegal. He, therefore, made a prayer for the Court's intervention in this matter and urged the Court to issue necessary direction for the appointment of the petitioner.

4. It is indeed true that a Bench of this Court in Kamal Ranjan Vs. The State of Bihar and Others, held that a Government Circular by which adopted children of deceased Government employee were excluded from the scheme of compassionate appointments was contrary to the provisions of the Hindu Law and was, therefore, illegal and unsustainable. On the basis of that decision the provision of the Board's Standing Order would prima facie appear to be bad. But in the facts and circumstances of the case the question of validity of the Board's Standing Order may not arise because the petitioner's case is bound to fail for the reason that his claim of having been adopted by Ram Chandra Prasad is based on a judgment and decree which are not enforceable against the Board.

5. At this stage, it will be appropriate to briefly State the facts of the case and the developments taking place before the matter has reached its present state.

6. As noted above, Ram Chandra Prasad died on 29.7.1996 while still in service. On 20.8.1997 the petitioner made an application for appointment on compassionate grounds, claiming to be the adopted son of Ram Chandra Prasad. The Board turned down his claim and at that stage the petitioner came to this Court in C.W.J.C. No. 3801 of 1998. That writ petition was permitted to be withdrawn by order dated 10.3.1999. It is a brief order reading as follows:

As prayed by Mr. Srivastava, learned Counsel for the petitioner, the writ application is permitted to be withdrawn with a liberty to the petitioner to seek a declaration from a Civil Court of competent jurisdiction about his adoption by the deceased employee and then to raise the claim before the authority concerned.

7. On 15.4.1999 the petitioner and the widowed wife of Ram Chandra Prasad filed Title Suit No. 117 of 1999 in the Court of Sub Judge, Gopalganj as Plaintiffs 1 and 2 respectively. In the suit, only the natural mother of the petitioner and his three brothers were impleaded as defendants and the Board was not made a party to the suit. According to the plaintiffs' case the petitioner (Plaintiff No. 1) was taken in adoption by the deceased Ram Chandra Prasad, according to the Hindu rites, on 20.12.1986. Later, after his death his widowed wife (Plaintiff No. 2) also executed a registered deed of adoption on 28.5.1997. It was further stated on behalf of the plaintiffs that a decree of the Court was required because Plaintiff No. 1 (the present petitioner) had applied for service on compassionate grounds after the death of Ram Chandra Prasad but the Electricity department (sic Board) required a certificate to that effect. It is thus to be seen that though the avowed object of the filing of the suit was to secure appointment in the Board on compassionate grounds, it was not deemed necessary or even proper to implead the Board as a party defendant. In the suit even the registered deed of adoption, dated 28.5.1997 was not produced but on the basis of the admission of the defendants the suit was finally decreed by judgment dated 9.6.2000.

8. Thus armed with the decree of the Civil Court the petitioner once again approached the Board for employment on compassionate grounds. His claim was rejected for the second time by the impugned orders contained in Annexure 2

and 3 against which this writ petition has been filed.

9. In the aforesaid facts and circumstances the question that arises for consideration is whether in the face of the Civil Court decree (to which it was not a party) it is still open to the Board to deny or dispute the petitioner's claim of having been adopted by Ram Chandra Prasad or whether the Board is bound to accept his claim of adoption unquestioningly.

10. Mr. Mihir Kumar Jha appearing for the Board submitted that the Board not being party to the decree cannot be bound by the decree and cannot be directed to act unquestioningly on the petitioner's claim of his adoption by Ram Chandra Prasad. Mr. Jha submitted that a decree of adoption was not a judgment in rem within the meaning of Section 41 of the Evidence Act and the decree would, therefore, only bind the parties to the suit. In support of his submission he relied upon a decision of the Privy Council in AIR 1941 85 (Privy Council) and another decision of the Supreme Court in R. Viswanathan Vs. Rukn-ul-Mulk Syed Abdul Wajid, .

11. The stand taken by Mr. Jha appears to be correct.

12. Mr. Srivastava too gracefully accepted that a judgment in a case of adoption will not be a judgment in rem but a judgment in personam.

13. That being the legal position the petitioner practically loses the case. In the facts of this case the failure to implead the Board as a defendant in the suit was a fatal lacuna. In the context in which the suit was filed and the avowed object of its filing made it imperative for the plaintiffs to have the Board impleaded as a party defendant. And the impleadment of the Board would not have been an empty formality because, the Board had in its possession materials relevant to the issue which it would have been in a position to produce before the Court had it been impleaded as defendant in the suit.

14. Mr. Jha submitted that according to the case of the petitioner the adoption was made on 20.12.1986 and Ram Chandra Prasad died ten years later on 29.7.1996, yet the fact of adoption was not disclosed by him to the Board. On the contrary on 1.7.1987 Ram Chandra Prasad filed his nomination form in connection with the Group Savings Scheme. In this form (a copy of which is at Annexure D) he named his wife as his nominee, and in the column for special remarks he gave the instruction that in case of his wife's death his four nephews, including the present petitioner, would be entitled to the amount in equal shares. The nomination form submitted by Ram Chandra Prasad on 1.7.1987 thus completely falsified the petitioner's claim of adoption on 20.12.1986.

15. Mr. Srivastava submitted that the decree of the Civil Court could not be challenged or subjected to attack in a collateral proceeding before the writ Court. Mr. Srivastava further submitted that being stranger to the decree it was not open to the Board to challenge it in this writ proceeding.

16. The submissions of Mr. Srivastava are misconceived. The question is not whether the Board can assail or challenge the decree in this writ proceeding. But the question is whether the petitioner can enforce action against the Board is found on a decree to which the Board was not a party and which for that reason is not binding on the Board. The answer to the question can only be in the negative.

17. The petitioner though having a decree of the Civil Court cannot enforce it against the Board for the simple reason that the Board is not a party to the decree and as seen above the Board had materials germane to the issue on the basis of which it could legitimately dispute the petitioner's claim of adoption by Ram Chandra Prasad.

18. In these facts and circumstances any interference with the Board's decision not to accept the petitioner's claim for compassionate appointment on the ground that the reason assigned in the impugned letters was unsustainable would amount to issuing a futile writ. The petitioner's case is liable to be rejected because he has not been able to lay down a basis for his claim for adoption which may be legally enforceable against the Board. No relief can, therefore, be granted to the petitioner. This writ petition is dismissed.