
(2008) 02 JH CK 0027
In the Jharkhand High Court

Pareme Marandi @ Parmeshwar Marandi	APPELLANT
Vs	
Bharat Coking Coal Limited and Others	RESPONDENT

Date of Decision : 22-02-2008

Acts Referred:

Constitution of India, 1950 — Article 14
Hindu Adoptions and Maintenance Act, 1956 — Section 11, 16

Citation : (2008) 2 JCR 4

Hon'ble Judges : R.K. Merathia, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

R.K. Merathia, J.—Heard the parties finally.

2. Petitioner is claiming that he being the legally adopted son of his Aunt (Talwa Manjhian), who was a spinster and died in harness on 27.10.1997, is entitled to appointment on compassionate ground. The petitioner filed writ petition being WP (S) No.5066 of 2001 for the same relief which was disposed of on 8.10.2001 remitting the matter to the respondents to determine such claim. Petitioner filed representation. By the impugned order dated 3.1.2002, the concerned respondent has rejected such claim.

3. Mr. Tiwari, appearing for the petitioner, submitted that Talwa Manjhian declared the petitioner as one of her dependants in her service records. He further submitted that petitioner has been enjoying all the benefits of a dependant, during the life-time of Talwa Manjhian and all the retiral dues have been paid to the petitioner being the nominee/legal heir of the deceased Talwa Manjhian. He further submitted that the Project Officer wrongly rejected petitioner's claim on the ground that the deed of adoption was not produced, though it was produced before him, otherwise how he could mention the date of the adoption deed.

4. Learned Counsel appearing for the respondents on the other hand submitted

as follows. Petitioner could not prove that he is legally adopted son. In the earlier Writ Petition (WPS No. 5066 of 2001) he simply said that he is adopted son but neither annexed the deed of adoption nor mentioned the date of such deed. Even in the alleged deed of adoption it is mentioned that adoption was according to Hindu (San thal) custom. As per Section 11 of the Hindu adoptions and Maintenance Act, 1956 (the Act for short) two sons could not be adopted but petitioner has admitted in paragraph 14 of the writ petition that he and his younger brother Prem Marandi were adopted as sons. The alleged adoption was done on 5.9.1976 but the deed is of 12.11.1988. In view of Section 16 of the Act the presumption of adoption cannot be drawn on the basis of the alleged unregistered deed. The alleged deed of adoption annexed with this writ petition as Annexure 3 has been fabricated only for the purpose of claiming compassionate appointment. Only because petitioner was declared as dependant entitled to receive the retiral benefits, he will not become a legally adopted son. In 2008 (1) JLJR 145 Santosh Kumar Dubey etc. this Court noticed that the respondent Company became sick industry and it has been registered under BIFR and is also having surplus man power. In any event, petitioner got all the death-cum retiral benefits and has survived all these 10 years, and therefore he cannot claim appointment on compassionate ground.

5. I find force in the submissions of learned Counsel appearing for the respondents. The copy of the representation, filed by the petitioner, (pursuant to the order passed in earlier writ petition-WPS 5066 of 2001) has not been annexed with this writ petition. However, a copy of the same was provided by Mr. Tiwari but without its Annexures. Let it be kept on the record. From the copy of the said representation itself it is clear that petitioner neither said any-thing about the deed of adoption nor annexed it with the representation. Even it is accepted, that it was produced before the Project Officer, it is surprising that petitioner did not say anything about the alleged deed of adoption nor annexed the same with the earlier writ petition, It is therefore not possible to rely on the purported deed of adoption (Annexure 3 for holding that petitioner is the legally adopted son of Talwa Manjhian. Further petitioner has survived for all these 10 years. Moreover, in the case Santosh Kumar Dubey (supra), it was found that the respondent BCCL is under BIFR. having become a sick industry and is having surplus manpower. Over employment is not good in view of the present competitive global scenario. Furthermore in the case reported in Umesh Kumar Nagpal Vs. State of Haryana and Others, , it has been held that consideration for such employment is not a vested right which can be exercised at any time in future and it cannot be claimed and offered whatever the lapse of time and after the crisis is over. Paragraph 11 of State of Jammu & Kashmir and Others Vs. Sajad Ahmed Mir, , reads as follows:

We may also observe that when the Division Bench of the High Court was considering the case of the applicant holding that he had sought "compassion?", the Bench ought to have considered the larger issue as well and it is that such an appointment is an exception to the general rule. Normally, an employment in the

Government or other public sectors should be open to all eligible candidates who can come forward to apply and compete with each other. It is in consonance with Article 14 of the Constitution. On the basis of competitive merits, an appointment should be made to public office. This general rule should not be departed from except where compelling circumstances demand, such as, death of the sole breadwinner and likelihood of the family suffering because of the setback. Once it is proved that in spite of the death of the breadwinner, the family survived and substantial period is over, there is no necessity to say "goodbye" to the normal rule of appointment and to show favour to one at the cost of the interests of several others ignoring the mandate of Article 14 of the Constitution.

6. In the facts and circumstances of the case, and legal position, noticed above, it will not be proper for this Court to direct the respondents to appoint the petitioner on compassionate grounds. Accordingly this writ petition is dismissed. However, no cost.