

(2012) 12 GAU CK 0015
In the Gauhati High Court
Case No : Writ Petition (C) No. 3613 of 2012

Pranjal Nath Acharjee

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 13-12-2012

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 9
Constitution of India, 1950 — Article 226
Hindu Adoptions and Maintenance Act, 1956 — Section 10(iv)

Citation : (2013) 2 GLT 287

Hon'ble Judges : S.C. Das, J; Iqbal Ahmed Ansari, J

Bench : Division Bench

Advocate : R. Mazumdar, Mr. H.K. Das and Mr. J. Talukdar, for the Appellant; B. Gogoi, CGC, for the Respondent

Judgement

Iqbal Ahmed Ansari, J.—Aggrieved by the order, dated 16.5.2012, passed, in Original Appeal No. 278 of 2012, by the learned Central Administrative Tribunal, Guwahati Bench, dismissing the Original Appeal (in short, "OA"), which the present petitioner had made, the petitioner has, now, come to this Court with the present application made under Article 226 of the Constitution of India. The OA was made by the biological mother of the present petitioner, as guardian, on the ground that the present petitioner was a minor at the time of making the O.A. By the O.A., the petitioner sought for necessary directions to be issued to the respondents to pay, in favour of the present petitioner, family pension, GPF, DCRG, Leave Encashment Benefits etc., along with all other retiral benefits coupled with interest @ 18% p.a. on the total sum of money, which were, on the basis of the succession certification, issued, in favour of the petitioner, by the learned District Judge, Kamrup, Guwahati, as the legal representative of the late Samarendra Nath Acharjee, payable to the present petitioner, with effect from 26.09.2006.

2. The case, which had been set up, for the purpose of obtaining retiral benefits aforementioned, arising out of the death of Samarendra Nath Acharjee, in the

O.A., may, in brief, be described as under:

(i) The said Samarendra Nath Acharjee, a Fitter General Mechanic (skill), in the office of the Garrison Engineer (I), Rangia, Kamrup, was unmarried and as he was issueless, he adopted the present petitioner, namely, Sri Pranjal Nath Acharjee, by a registered Deed of Adoption, dated 31.08.2006.

(ii) Having adopted the present petitioner as son, Samarendra Nath Acharjee died, on 26.09.2006, leaving behind the present petitioner as his sole legal representative. On death of the said Samarendra Nath Acharjee, a representation was made by the petitioner's biological mother, who had given her son (i.e., the present petitioner) to the said Samarendra Nath Acharjee and the said Samarendra Nath Acharjee accepted the present petitioner as his adopted son by the deed of adoption, dated 31.08.06. Upon the death of Samarendra Nath Acharjee, the present petitioner's biological mother made an application/representation to the respondents seeking release of terminal benefits arising out of the death of the said deceased.

(iii) Having, however, obtained opinion from the Central Government Standing Counsel, on the said application/representation and, relying upon the opinion given, in this regard, by the Central Government Counsel, that the present petitioner's adoption, in terms of the deed of adoption, was not valid inasmuch as the deed mentions the age of the applicant as 16 years at the time of his adoption; whereas Section 10 (iv) of the Hindu Adoption and Maintenance Act, 1986, makes it clear that the child, male or female, ought not to have completed 15 years before he/she is adopted, the respondents declined to pay to the petitioner the retiral benefits arising out of the death of said Samarendra Nath Acharjee.

(iv) Thereafter, a Succession Certificate, in the name of the present petitioner, as the sole legal heir of the said deceased, was obtained by the petitioner's biological mother from the District Judge, Kamrup, Guwahati. The petitioner's biological mother, then, submitted to the respondents the said Succession Certificate, along with an application, seeking family pension, GPF, DCRG, Leave Encashment Benefits, etc.

(v) As the request, so made, was not acceded to, the OA was filed. The learned Tribunal, however, having taken into account the fact that in terms of the deed of adoption executed on 31.08.2006, the present petitioner was 16 years old, his adoption was invalid and he would, therefore, be not entitled to obtain either family pension or any retiral benefits arising out of the death of the said deceased, Samarendra Nath Acharjee, dismissed the OA. It is this decision of the learned Tribunal, which, as we have indicated above, stands impugned in this writ petition.

3. We have heard Mr. R. Mazumdar, learned counsel for the petitioner, and Ms. B. Gogoi, learned Central Government Counsel, for the respondents.

4. Appearing on behalf of the petitioner, it is submitted by Mr. R. Mazumdar, learned counsel, that in terms of Rule 52 of the Central Civil Services (Pension) Rules, 1972, the respondents ought to have released, on the strength of the said Succession Certificate, the retiral benefits arising out of the death of the said deceased.

5. Mr. Mazumdar, learned counsel, also submits that though in the said deed, it has been mentioned that the age of the present petitioner was, at the time of execution of the said deed, 16 years, the fact remains that the petitioner was 12 years old at the time of the adoption and, in support of this submission, reliance has been placed by the petitioner on the Admit Card issued by the Board of Secondary Education, Assam, which shows that the petitioner's date of birth is 29.3.1994.

6. It is, thus, clear, according to Mr. Mazumdar, that in terms of the Admit Card, the petitioner's age, at the time of his adoption, was 12 (twelve years). The petitioner's adoption was, therefore, contends Mr. Mazumdar, wholly valid and he is entitled to receive, if not pension, the other retiral benefits, such as, GRF, DCRG, Leave Encashment benefits, etc.

7. Passionately pursuing his contention as indicated above, Mr. Mazumdar submits that the Succession Certificate absolves the respondents from the liability, if any, which may arise out of the dues, which may be paid, as retiral benefits, to the present petitioner and, in such circumstances, there was no legal impediment, on the part of the respondents, in releasing retiral benefits in favour of the petitioner. The denial by the respondents to make payment of the retiral benefits, on the basis of the said Succession Certificate, is, according to Mr. Mazumdar, wholly illegal and ought not to have been sustained by the learned Tribunal.

8. Controverting the submissions made on behalf of the petitioner, Ms. Gogoi, learned Central Government Counsel, submits that the learned Tribunal was wholly justified in dismissing the OA inasmuch as the petitioner was adopted by means of the deed of adoption and since the deed mentions the age of the petitioner as 16 years, his adoption ought to have been treated as not sustainable in law and the learned Tribunal committed no error in taking the view that the present petitioner was not entitled to obtain the retiral benefits despite the fact that he held the Succession Certificate.

9. While considering the rival submissions made on behalf of the parties concerned, it needs to be pointed out that Section 10 (iv) of the Hindu Adoption and Maintenance Act, 1956, clearly lays down that a child, male or female, cannot be adopted if he or she has completed the age of 15 years. Necessarily, therefore, no adoption, under the Hindu Law, can be sustained if the adoption of the child was, at a point of time, when the child had completed 15 years of age.

10. What is also pertinent to note is that the petitioner relied, in order to obtain the Succession Certificate, on the deed of adoption. We have perused the deed of

adoption and we find that it is by means of the deed of adoption that the petitioner claims to have been adopted. The deed does not show that it is the factum of adoption, which has been mentioned in the deed. Far from this, it is the deed, whereby petitioner was shown to have been adopted. The source of the petitioner's right to obtain retiral benefits is, undoubtedly, traceable to the deed of adoption and this deed, when read as a whole, makes it clear that the petitioner was, according to the deed, aged about 16 years at the time, when the deed was executed.

11. Since the means of adoption is the deed and not any other ceremony, customary or otherwise, one has to go by the deed until the time a court of competent jurisdiction holds the petitioner's adoption valid on the ground that he was less than 16 years old at the time of his adoption or that he was 12 years old at the time of his adoption.

12. When the biological mother of the petitioner had herself gone to the respondents claiming pension and retiral benefits in favour of the petitioner on the basis of adoption and it was on that basis that the said Succession Certificate was obtained, it was imperative, on the part of the petitioner's biological mother, to have impleaded the respondents as parties to the Succession Certification inasmuch as the respondents were disputing and denying the petitioner's right to obtain retiral benefits and pension by questioning the validity of his deed of adoption. The respondents were, however, not parties to the said Succession Certificate and the learned Tribunal has correctly noted that the respondents were, while applying for the Succession Certificate, not impleaded as parties, and no notice was given to them. Undoubtedly, a Succession Certificate creates a right in rem and entitles the holder of the Succession Certificate to obtain the dues payable to the deceased, whose death leads to the obtaining of the Succession Certificate. The situation, in the present case, is, however, entirely different inasmuch as the Succession Certificate has been obtained to meet the respondents' denial to make payment of pension and retiral benefits to the petitioner. In such circumstances, the respondents ought to have been impleaded as parties, in the application, which was made for obtaining the Succession Certificates.

13. Moreover, it was, on the basis of the adoption, that the claim for payment of pension and retiral benefits was made; it was, again, on the basis of adoption that the OA was filed. It, therefore, logically follows that while the petitioner claims to be the adopted son of the said deceased, the respondents denied. Thus, the dispute has been on the question as to whether the petitioner's adoption was legally valid or not. In other words, what has been at issue is the status of the petitioner as the adopted son of the said deceased. The learned Tribunal was not, to our mind, incorrect, when it held that the deed of adoption reflects that the petitioner's adoption was invalid and, in the face of such invalid adoption deed, no right accrued to the petitioner to claim retiral benefits and pension arising out of the death of the said deceased.

14. At the cost of repetition, we may point out that when the petitioner had himself approached the respondents and also, later on, the learned Tribunal by claiming to be adopted son of the said deceased, neither the respondents nor the learned Tribunal can be held to be wrong or can be alleged to have acted illegally, when there was refusal by the respondents to release the amounts covered by the said Succession Certificate. Naturally, therefore, the learned Tribunal was within the ambit of its powers in dismissing the OA.

15. It needs to be borne in mind that Succession Certificate merely affords full indemnity to the debtor for the payment he makes to the person holding such certificate. Thus, when the debtor pays the debts, or the securities as specified in the certificate, to the holder of such certificate, then, on such payment, he is absolved from his obligation to pay to any one else as the payment concludes his part of the obligation and such payment is construed to be in good faith. This safeguards the debtor so that he may not be later dragged into any litigation, which may arise subsequently inter se between the claimants. The use of words "good faith" in Section 381 of Succession Act exhibits that decision, in these proceedings, are not final. When statute recognises such payment to be in good faith, it gives a clear indicate that there may be, in future, better claimant, but that would not effect the indemnification of the debtor. Thus, any decision made, in a proceeding for Succession Certificate, cannot be treated to be final adjudication of the rights of the parties. (See Madhvi Amma Bhawani Amma and Others Vs. Kunjikutty Pillai Meenakshi Pillai and Others, .

16. In the case at hand, when the validity of the present petitioner's adoption was under challenge, he could not have, as we have already pointed out above, be granted pension and other retiral benefits without the respondents having their say in the matter, particularly, when the main respondent is the State and the State holds, in trust, any dues payable by it to its employee. The dues, payable to a Government employee, is, ultimately, the public money and the State has to be careful as to whom it pays the money.

17. It is, however, of immense importance to note that though the deed of adoption mentions the petitioner's age as 16 years on the date of adoption, the figure appearing as 16, in the said deed, was according to the petitioner, wrongly typed. Thus, the numerical figure "16" was, according to the petitioner, a typographical error appearing in the said deed. This submission of the petitioner may be true, because of the fact that the petitioner has, in support of his case, as already noted above, placed on record the Admit Card issued by the Board of Secondary Education, Assam. None-1 the less, so long as the deed of adoption, in question, is not rectified or a court of competent jurisdiction does not declare the petitioner's adoption to be valid on the ground that his age had been wrongly mentioned as 16 year on the date of his adoption, the adoption deed holds the field.

18. It needs to be also pointed out that when a dispute, with regard to the status of a person, is raised, the court of competent jurisdiction is, in terms of Section 9

of the Code of Civil Procedure, a civil court. The remedy, therefore, of the present petitioner lies in instituting appropriate suit for declaration of his status as adopted son of the said deceased and, for this purpose, the petitioner may also seek, in appropriate suit, the declaration that his age, at the time of adoption, was 12 years and the deed of adoption incorrectly mentioned his age as 16 years on the date of execution of the deed.

19. What crystallizes from the above discussion is that the learned Tribunal was not wrong in coming to the conclusion, which it has reached, and in dismissing the OA. We do not find that the impugned order suffers from any illegality, factual or legal, and does not, therefore, in our considered view, call for any interference by this Court in exercise of this Court's extraordinary jurisdiction under Article 226.

20. In the result and for the reasons discussed above, this writ petition fails and the same shall accordingly stand dismissed.

21. Before parting with this case, we may point out that an apprehension has been expressed by Mr. Mazumdar, learned counsel for the petitioner, that since the learned Tribunal has held that the petitioner's adoption was illegal, this may be taken into account by the civil court if the petitioner chooses to approach the civil court for declaration of his status as adopted son of the said deceased. The apprehension, so expressed, may not be entirely unfounded. Suffice it, therefore, to point out, in this regard, that if the petitioner institutes a suit seeking declaration that his age had been wrongly mentioned, in the deed of adoption, as 16 years and that, at the time of adoption, he be declared to be 12 years old and that his adoption be declared as valid, the civil court would remain free and competent to decide the issue independently of, and without being influenced by, the conclusions, which the learned Tribunal or this Court has reached. The fact, that this writ petition has been dismissed, does not, in any way, bar adjudication by a civil court of the status of the petitioner as the adopted son of the said deceased.

22. The non-interference by this Court, with the impugned order of the learned Tribunal, by invoking its extra-ordinary jurisdiction, under Article 226, is only because of the fact that we do not find that in the facts and attending circumstances of the present case and so long as the petitioner did not have a declaration from a competent court of the said deed of adoption having wrongly mentioned the petitioner's age as 16 years, the learned Tribunal could not have directed payment of retiral benefits and/or pension to the petitioner.

23. With the above observations and directions, this writ petition shall stand disposed of. No order as to costs.