
(2000) 11 P&H CK 0142
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 3801 of 1999

Puneet Sharma

APPELLANT

Vs

State of Haryana

RESPONDENT

Date of Decision : 22-11-2000

Acts Referred:

Constitution of India, 1950 — Article 226
Hindu Marriage Act, 1955 — Section 13
Succession Act, 1925 — Section 372

Citation : (2000) 11 P&H CK 0142

Hon'ble Judges : Bakhshish Kaur, J

Bench : Single Bench

Advocate : Mr. O.P. Goyal, Adv and Mr. Pramod Goyal, for the Appellant; Ms. Palika Monga, AAG, Haryana, for the Respondent

Judgement

Bakhshish Kaur, J.—The petitioner prays for the issuance of a writ of mandamus directing the respondent to grant pensionary benefits.

2. Puneet Sharma, the adopted son of Shiv Ram Sharma, a minor has filed this petition through his mother Smt. Shashi Sharma. Shiv Ram Sharma was an employee of the Haryana Government. He was serving as under Secretary in the Haryana Civil Secretariat and on attaining the age of superannuation, he retired on 31.8.1991. Shashi Sharma, the mother of the petitioner and real sister of Shiv Ram Sharma was married to Ji-wan Sharma on 30.6.1982. From the wedlock, Puneet Sharma was born on 29.3.1983. Since the marriage did not last for long, therefore, their marriage was dissolved u/s 13B of the Hindu Marriage Act as per decree dated 2.2.1985, Annexure P-2. Shashi Sharma was unemployed and there was no one to look after her and her son except her brother Shiv Ram Sharma. Therefore, he had adopted Puneet Sharma when he was two years old as per Adoption Deed dated 26.8.1985, Annexure P-3. Shiv Ram Sharma had been supporting and maintaining the petitioner and his mother. They had been living together. The ration card was also joint. On the death of Shiv Ram Sharma on 19.3.1997, the petitioner applied for family pension but he was directed to

obtain the succession certificate from the court to the effect that he is the adopted son. Accordingly, succession certificate was issued in his favour u/s 372 of the Indian Succession Act, which was produced before the competent authority. But, even then they did not consider the case of the petitioner for family pension. Hence, this petition.

3. The petitioner's claim has been resisted on the grounds that no legal right of the petitioner has been infringed. Shiv Ram Sharma, who had retired as Under Secretary on 31.8.1991, at the time of submitting his pension papers never supplied information that he had adopted a son. Even after his retirement till his death this fact was not disclosed by him. Therefore, Puneet Sharma, the petitioner, is not entitled to the family pension. In the ration card, the petitioner has been shown as his nephew. It is admitted that when the petitioner had applied for family pension, he was requested to submit the succession certificate issued by the Court that he is the adopted son or the successor of the deceased. The succession certificate produced by him simply shows that Court has empowered him to collect the debts and securities noted in the certificate and to receive all the benefits but it is nowhere mentioned that he is entitled to the family pension or other pensionary benefits, It is, however, admitted under para 14 that in the nomination form for the purpose of General Insurance Scheme filed by Shiv Ram Sharma on 27.10.1986, while posted as Deputy Attorney in the office of Engineer-in- Chief, Public Works (Buildings and Roads) Branch, he had shown his sister Shashi Sharma as his first nominee and the name of Puneet Sharma as nephew in the column. "To whom the right of the nominee shall pass in the event of his/her predeceasing to the Government employee". Since the petitioner has been identified as nephew, therefore, he is not entitled to family pension.

4. I have heard Shri O.P. Goyal, Senior Advocate, assisted by Shri Pramod Goyal, Advocate and Ms. Palika Monga, Assistant Advocate General, Haryana.

5. It is admitted fact that Shashi Sharma is the mother of the petitioner and real sister of Shiv Ram Sharma and the marriage of Shashi Sharma with her husband Jiwan Sharma stood dissolved by decree of divorce Annexure P-2 on 2.2.1985.

6. The adoption deed is Annexure P-3 dated 26.8.1985; meaning thereby that it came into existence after the marriage of Shashi Sharma was dissolved. In the judgment Annexure P-2 vide which the marriage was dissolved, it is specifically mentioned that as mutually agreed the son will remain in her (Shashi Sharma) custody and she will not claim any maintenance from her husband. The respondent i.e. the authorities concerned have not recognised the petitioner as adopted son of Shiv Ram Sharma on the basis of the ration card Annexure P-4 because he has been described as nephew. It is pertinent to note that this ration card is dated 4.4.1982 and by that time the marriage of his mother and father had not been dissolved. It was dissolved only on 2.2.1985. Rather, it is a strong circumstance which goes in favour of the petitioner that he along with his mother was dependent upon his maternal uncle Shiv Ram Sharma, with whom they were

residing.

Adverting to the succession certificate issued u/s 372 of the Indian Succession Act in favour of Puneet Sharma, in respect of the estate of Shiv Ram Sharma, Annexure P-7, the Court has specifically referred to the adoption deed vide which Puneet Sharma was adopted by Shiv Ram Sharma. It is also mentioned therein that there is no other class-I legal heir of the deceased and that the deceased had not executed any will. The Court has given a specific finding in para 6 that oral as well as documentary evidence led by the petitioner transpire that he is the only class-I legal heir of the deceased. This judgment has not been set aside or challenged by anyone till today. Thus, the petitioner is entitled to the pension being adopted son of Shiv Ram Sharma. Herein also the petitioner has placed on record the copy of the adoption deed though original was produced during the course of arguments. It was the respondent who had asked the petitioner to obtain the succession certificate which he did not obtain and it was granted by the civil Court in his favour on 1.4.1998. On this basis as well as on the adoption deed duly proved, the petitioner stakes his claim to family pension. In my opinion, he is entitled to the family pension being adopted son of the deceased.

6. In view of the above, this writ petition is allowed with a direction to the respondent to grant pensionary benefits, including pension to the petitioner, which is admissible, as per rules.

7. Petition allowed.