

(2009) 01 PAT CK 0022
In the Patna High Court
Case No : CWJC No. 3071 of 2001

Sanjay Kumar Priyadarshi

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 09-01-2009

Acts Referred:

Hindu Adoptions and Maintenance Act, 1956 — Section 12

Citation : (2009) 3 PLJR 284

Hon'ble Judges : Shailesh Kr. Sinha, J

Bench : Single Bench

Advocate : B.N.P. Singh, Rajesh Kumar, for the Appellant; Shashi Dhar Jha for the State, for the Respondent

Final Decision : Dismissed

Judgement

S.K. Sinha, J.—Heard the parties. This application is for quashing of the memo No. 119 dated 25.1.2000, as contained in Annexure-13 of the writ petition whereby the caste certificate issued in favour of the petitioner was cancelled. Petitioner also challenges the memo No. 226 dated 30.4.2001 to the effect that the petitioner is not entitled to receive the caste certificate of scheduled caste in his favour and the deed of adoption dated 7th October, 1987, as contained in Annexure-1 was found to be created only for the purpose of taking the benefit attached to the scheduled caste category.

2. It has been submitted on behalf of the petitioner that he was born to a Barber family, a backward community, however while at the age of five years he was adopted by the parents of scheduled caste community for that a deed of adoption was executed on 7.10.1987 (Annexure-1). It is further submitted that the petitioner passed the matriculation examination in the year 1988 vide certificate dated 24th August, 1988, as contained in Annexure-A to the counter affidavit. He made an application for his appointment as School Teacher to the Bihar Public Service Commission, who after written examination and completing the required formalities recommended the name of the petitioner for

appointment to the District Magistrate, Purnea for taking necessary action regarding the appointment upon verification of certificates. In course of such verification of the certificates it was detected that the petitioner applied for appointment giving the name of his father as Nageshwar Paswan whereas the matriculation certificates bears the name of his father as Satyadeo Thakur and on account of that the petitioner was not appointed. The petitioner as per the memo No. 119 dated 25.1.2000 was directed to submit back the caste certificate issued earlier in his favour. The petitioner challenges the aforesaid order on the ground that he was given in adoption at the age of five years, and as such, the certificate which was issued in his favour was legal and valid. Besides the above it is submitted that the Circle Officer, Bhawanipur also enquired into the matter and submitted his report to the District Welfare Officer, Purnea as per the memo No. 665 dated 5.9.1998, as contained in Annexure-8 to the writ petition to the effect that the petitioner is the adopted child of one Nageshwar Paswan. Referring to letter No. 11 dated 15th April, 2001, as contained in Annexure-16, it is submitted that the reasons assigned by the authorities for holding that the petitioner is not entitled to the certificate of scheduled caste on the ground that the petitioner appeared in matriculation examination in the year 1988 and in the application form of such examination written the name of his father as Satyadeo Thakur and not the name of the alleged adoptive father namely, Nageshwar Paswan cannot be accepted as a valid consideration, and as such, on the above grounds it has been submitted that the Annexures-13 & 16 deserve to be quashed.

3. Learned counsel appearing for the State, on the other hand, opposes the writ application and has also filed a counter affidavit. It is primarily submitted that the claim of the petitioner that he was adopted at the age of five years is not correct and not supported by any corroborative material. The petitioner on his own saying had made an application for appearing in matriculation examination to the Bihar School Examination Board in the month of March, 1987 i.e. before the execution of the deed of adoption made on 7th October, 1987. The petitioner in the said application form did not mention the name of his adoptive father as Nageshwar Paswan but had mentioned the name of his natural father i.e. Satyadeo Thakur. It has been submitted that had the petitioner was adopted at the age of five years, the name of his adoptive father ought to have been mentioned in the application for appearing in the Matriculation Examination. Therefore, it has been submitted that the deed of adoption dated 7th October, 1987 (Annexure-1) was created only to take the undue benefits attached for the persons belonging to the scheduled caste category. In other words, the genuineness/correctness of the claim of adoption was seriously disputed. Learned counsel further submits that the provisions of Section 12 of the Hindu Adoption & Maintenance Act, 1956, as relied upon by the petitioner, is not attracted in the facts and circumstances of the case since in the instant case the genuineness of adoption is seriously disputed. The effect of adoption as per the Section 12 of the aforesaid Act comes into operation only when the adoption is

legal and valid.

4. Considering the rival submissions of the parties and upon perusal of the averments made in their respective pleadings, the genuineness or correctness of the fact of adoption cannot be appropriately adjudicated in a writ proceeding in face of serious disputed questions of fact which are required to be considered in order to give a finding over the adoption of the petitioner, as claimed by him. There is no explanation on record so as to justify the name of the natural father of the petitioner in the matriculation certificate whereas long before the same, as claimed by the petitioner, he was adopted by one Nageshwar-Paswan. Besides the above, there is nothing on record to substantiate the claim of the petitioner that he was given in adoption at the age of five years and thereafter continued living with the adoptive parents. Therefore, in the above circumstances, the claim of the petitioner that he was the adopted child of one Nageshwar Paswan cannot be decided appropriately in this proceeding in order to quash the Annexures-13 & 16 issued by the respondent authorities to the effect that the petitioner did not belong to the category of scheduled caste. As such, no direction can be issued for appointment of the petitioner taking into consideration that he belongs to the scheduled caste category. In the facts and circumstances, I do not find any merit in this writ application and the same is accordingly dismissed.