

(2015) 10 BOM CK 0202
In the Bombay High Court
Case No : Writ Petition No. 7729 Of 2013

Shaikh Jamir Sayed Saifoddin	Vs	APPELLANT
Chief Officer The Municipal Council		RESPONDENT

Date of Decision : 15-10-2015

Acts Referred:

Maharashtra Recognition Of Trade Unions And Prevention Of Unfair Labour Practices Act, 1971 — Section 28(1), 347
Industrial Disputes Act, 1947 — Section 2(k), 25G, 25N, 25L
Factories Act, 1948 — Section 2(m)
Constitution Of India, 1950 — Article 21

Citation : (2015) 10 BOM CK 0202

Hon'ble Judges : Ravindra V. Ghuge, J

Bench : Single Bench

Advocate : A.N. Ansari, Amit S. Deshpande

Final Decision : Dismissed

Judgement

1. Rule. Rule made returnable forthwith and heard finally by the consent of the parties.
2. The Petitioner challenges the judgment and order dated 31.07.2012 delivered by the Labour Court thereby, dismissing Complaint (ULP) No.13/2011 and the judgment dated 24.06.2013 delivered by the Industrial Court thereby, rejecting Revision (ULP) No.52/2012.
3. One Shri Sayed Saifoddin Yusufoddin was working as a Fireman in the Fire Brigade Division of the Respondent. Since he was suffering from Tuberculosis, he stood medically retired on account of being unfit due to health reasons from 19.10.1999. An application dated 01.12.1999 was filed by the Petitioner along with a notarized adoption deed dated 20.05.1999, thereby projecting that the Petitioner was adopted by Sayed Saifoddin.

4. The Petitioner was appointed on compassionate ground on 25.02.2011 subject to the approval from the Directorate of Municipal Council, Mumbai.

As the approval was not received and the appointment of the Petitioner was found to be against the provisions of law, his appointment came to be cancelled and he stood terminated by order dated 27.09.2011, which is about 07 months after his appointment.

5. The Petitioner challenged his termination before the Labour Court by filing Complaint (ULP) No.13/2011 under Section 28(1) of the MRTU & PULP Act, 1971. Item 1(a, b, d, f & g) of Schedule IV of the said Act were invoked by the Petitioner.

6. The Respondent filed it's Written Statement and contended that the adoption of the Petitioner was not in accordance with law and was not in tune with clause 3 of the Government Resolution dated 26.10.1994.

7. Considering the rival contentions and the oral and documentary evidence, the Labour Court dismissed the complaint by the impugned judgment dated 31.07.2012.

8. The Petitioner preferred Revision (ULP) No.52/2012 which was dismissed by the Industrial Court vide judgment dated 24.06.2013.

9. Mrs.Ansari, learned Advocate for the Petitioner, submits that the Government Resolution dated 26.10.1994 enables the appointment of an adopted son or daughter on compassionate ground. The Petitioner was adopted by Sayed Saifoddin on the basis of a notarized adoption deed.

Subsequently, a registered adoption deed dated 07.06.2001 was filed with the Respondent and the Petitioner was, therefore, appointed on compassionate ground on 25.02.2011. The termination of the Petitioner is on account of false reasons.

10. She further submits that the stand taken by the Respondent is unsustainable. The Petitioner was legally adopted by Sayed Saifoddin and hence, the Respondent could not have terminated the service of the Petitioner. She submits that the Labour Court as well as the Industrial Court have committed a patent error in concluding that the Petitioner does not deserve to be continued in employment.

She has relied upon the judgment of the Apex Court in the matter of Shabnam Hashmi v/s Union of India and others, AIR 2014 SCW 132 9and the judgment of this Court in the matter of Sundar Shaekhar v/s Shamshad Abdul

Wahid Supariwala, 2014 (1) Mh.L.J. 738.

12. Shri Amit Deshpande, learned Advocate has appeared on behalf of the Respondent. On 03.08.2015, it was intimated to the Court that he had quit the panel of Advocates of the Respondent on 02.08.2015.

It is now submitted that the Respondent/ Council has insisted that Shri Deshpande should conduct the matter and hence, he has appeared on behalf of the Respondent/ Council.

13. Shri Deshpande draws my attention to the Written Statement filed by the Respondent. It is categorically stated that the Respondent has not retrenched or terminated the services of the Petitioner. The Directorate of Municipal Council, Maharashtra State, has not granted its assent to the appointment of the Petitioner on compassionate ground. The Respondent noticed that clause 3 of the Government Resolution dated 26.10.1994 was not complied with by Sayed Saifoddin and hence, the appointment of the Petitioner was cancelled.

He further submits that clause 3 of the Government Resolution mandates that the adoption should be strictly in accordance with the law applicable.

The adoption should be legal and the document indicating the adoption should be executed prior to the employee retiring from service on medical

grounds. In the instant case, Sayed Saifoddin cannot adopt the Petitioner as Section 347 of the Mahomedan Law does not permit adoption and does

not recognize adoption.

15. He further points out that a notarized adoption deed has no sanctity in the eyes of law. The Petitioner had submitted a notarized document dated

20.05.1999 along with his application dated 01.12.1999. Without scrutinizing the papers properly, the Respondent had issued the appointment order to

the Petitioner under a bona-fide belief that his application would be accepted by the competent authorities.

16. He further submits that Sayed Saifoddin retired from employment on 19.10.1999 and the Petitioner submitted the registered adoption deed dated

07.06.2001 which is after the retirement of Sayed Saifoddin.

17. He relies upon the judgment of the Patna High Court in the matter of Mohammad Amin v/s State of Bihar, 2012 (7) Laws (Pat) 54 : 2012 TLPAT

540. He submits that when the adoption in the Muslim religion is impermissible and not recognized by law, the Petitioner could not have been continued

in employment on the basis of Sayed Saifoddin having adopted him. In the light of these circumstances, the competent authority refused to accord

approval and hence, the appointment of the Petitioner has to be cancelled.

18. I have considered the submissions of the learned Advocates as have been recorded herein above.

19. Section 347 of the Mahomedan Law reads as under:-

347. Adoption not recognized. The Mahomedan Law does not recognize adoption as a mode of filiation.

20. There is no dispute that the Mahomedan Law does not recognize adoption as a mode of filiation. The condition of being a child of a specified

parent is not recognized by the Mahomedan Law in the form of an adoption. In the case of Muhammad Allahdad Khan V/s Muhammad Ismail Khan,

(1888) ILR 10 All 290, the Full Bench of the Allahabad High Court held that, in the Muslim religion, the doctrine of acknowledging paternity is

available, but adoption is not recognised.

21. The Government Resolution dated 26.10.1994 mandated that a legal adoption deed should be placed on record before the incumbent employee

retires from employment on medical ground. The Petitioner had filed a notarized adoption deed dated 20.05.1999 which was hardly five months prior

to the retirement of Sayed Saifoddin on 19.10.1999. He was suffering from Tuberculosis and was quite unwell, is not disputed. It, therefore, appears

that the notarized document was prepared just five months prior to the retirement of Sayed Saifoddin for facilitating a compassionate appointment to

the Petitioner.

22. It is not disputed that the registered adoption deed dated 07.06.2001 is subsequent to the retirement of Sayed Saifoddin. It is also not in dispute that

the Mahomedan Law does not recognize an adoption.

23. The ratio laid down by the Apex Court in the Shabnam Hashmi case (supra) is that the right to adopt and be adopted cannot be declared as a

fundamental right covered under Article 21 of the Constitution of India.

24. This Court in the matter of Sundar Shaekhar (supra) dealt with the issue of adoption under the Mahomedan Law and concluded that when the

adopted person was not claiming property of the deceased on the basis of oral adoption as a son, the temporary restraining order against the person

portraying himself as an adopted son of the deceased is not justified and deserves to be set aside. It was also concluded that any order even if passed by the Court, must be executable and enforceable. In the Mahomedan Law the adopted son is not recognized unless proved in view of certain customs, if any.

25. In the instant case, there is no contention by the Petitioner about any prevailing custom and if so, whether, such custom has been followed while adopting the Petitioner.

26. This Court in Sundar Shaekhar case (supra) has observed in paragraph 7 as under:-

7. The Patna High Court, in Md. Amin Vs. State of Bihar, LAWS (PAT)-2012-7-54, has recorded as under:-""In the principles of Mahomedan Law

by M. Hidayatullah (N.M.Tripathi Pvt.Ltd.) 1990 under Section 347, it is specifically mentioned that the Mahomedan law does not recognize adoption

as a mode of filiation. Tahir Mahmood in his book, ""the muslim Law of India, 3rd Edition page 137 ""has mentioned"". The various kinds of sons other

than sons by birth are are wholly unknown to muslim Law. So, a person can be the child of the woman who has given birth to that person and of the

man who has or is believed or legally recognized to have begotten that person and none else"".

In view of the above, the claim of the petitioner to be appointed on compassionate ground has rightly been rejected by the impugned order as he would

not have claimed such appointment on the plea that he was the adopted son of the deceased constable late Md. Kasim as the Mahomedan Law does

not recognize adoption as a mode of sonship and under the muslim Law the adoption does not create a parent and child relationship.

27. A somewhat identical situation arose before the Patna High Court in the case of Mohammad Amin (supra). It would be apposite to reproduce

paragraphs 3 and 4 of the said judgment as under:-

3. Two counter affidavits have been filed; one on behalf of respondents no.2 to 4 and the other on behalf of respondent no.5, the Commandant,

B.M.P. - 9, Jamalpur, Munger. The consistent stand in the counter affidavit filed by the officials respondent is that there is no provision for adoption in

the Muslim Personal Law and, therefore, the petitioner's claim for compassionate

appointment was rejected. In the background of the controversy as above mentioned, the only question which requires consideration is as to whether the petitioner can be treated as a son of the deceased employee, not being his natural son under the Muslim Personal Law. In other words, whether the Muslim Personal Law recognizes filial relationship in any form other than a child by birth.

This is not in dispute that the petitioner has not claimed sonship on the basis of being the natural son of the petitioner. In the writ petition itself it has been pleaded that he is the adopted son of the deceased employee Late Md. Kasim and he was taken into adoption by Md. Kasim and Bibi Taimun as they were not capable to bear a child. It is not the pleading of the petitioner that there is existed any custom in his family to which he or the deceased employee belonged, recognizing adoption as mode of sonship.

In the principles of Mahomedan Law by M. Hidayatullah (N.M.Tripathi Pvt. Ltd.) 1990 under Section 347, it is specifically mentioned that the Mahomedan law does not recognize adoption as a mode of filiation. Tahir Mahmood in his book, "the Muslim Law of India, 3rd Edition page 137 "has mentioned "The various kinds of sons other than sons by birth? are wholly unknown to Muslim Law. So, a person can be the child of the woman who has given birth to that person and of the man who has or is believed or legally recognized to have begotten that person and of none else.

4. In view of the above, the claim of the petitioner to be appointed on compassionate ground has rightly been rejected by the impugned order as he would not have claimed such appointment on the plea that he was the adopted son of the deceased constable Late Md. Kasim as the Mahomedan Law does not recognize adoption as a mode of sonship and under the Muslim Law the adoption does not create a parent and child relationship.

28. It is, therefore, evident that an adopted son of a person professing Muslim religion cannot be recognized under Section 347 of the Mahomedan Law. The case of the Petitioner is, therefore, squarely covered by clause 3 of the Government Resolution dated 26.10.1994. On this count, the cancellation of the Petitioner's appointment on compassionate ground, therefore, cannot be faulted.

29. Insofar as the contention of the Petitioner before the Labour Court is concerned, I am of the view that Section 25G of the Industrial Disputes Act,

1947 is not attracted in the peculiar facts of this case, much less Section 25N since the cancellation of the appointment order of the Petitioner would not amount to retrenchment.

30. In order to invoke Section 25N, the Petitioner should have worked for 240 days in the continuous and uninterrupted service of the Respondent, inasmuch as, the Respondent will have to be covered by the definition of Industrial Establishment under Section 25L so as to attract Section 25N of the Industrial Disputes Act, 1947. Similarly, the Respondent will have to fall within the definition of a manufacturing process under Section 2(k) and a factory under Section 2(m) of the Factories Act. Moreover, the number of workers engaged at its establishment should be 100 or more.

31. In the light of the above, I do not find that the Labour Court or the Industrial Court have committed any error in dismissing the complaint and the revision petition filed by the Petitioner. The impugned judgments are neither perverse nor erroneous. This Petition being devoid of merit is, therefore, dismissed.

32. Rule is discharged.

33. No costs.