

(2007) 02 PAT CK 0040
In the Patna High Court
Case No : CWJC No. 3428 of 2006

Sunil Kumar Pandey

APPELLANT

Vs

The Union of India and Others

RESPONDENT

Date of Decision : 08-02-2007

Acts Referred:

Citation : (2007) 3 PLJR 24

Hon'ble Judges : Narayan Roy, J;J.N. Singh, J

Bench : Division Bench

Final Decision : Allowed

Judgement

1. Heard Mr. A.B. Ojha, Learned Counsel for the petitioner and Mr. Bhupendra Narayan Yadav, Learned Counsel appearing on behalf of the contesting respondent-Railways. This writ application is directed against the order dated 5.1.2006 passed by Central Administrative Tribunal, Patna Bench, Patna (hereinafter referred to as Tribunal) in O.A. No. 849 of 2004 whereby and whereunder the prayer of this petitioner for his appointment on compassionate ground has been rejected.

2. Short facts giving rise to this writ application are that the petitioner Sunil Kumar Pandey claimed to be adopted son of late Sri Ram Pandey and he accordingly filed an application before the Railways authorities for his appointment on compassionate ground as late Sri Ram Pandey died in harness on 3.7.1995. The application so filed by the petitioner was rejected by the Railways authorities on the ground that no proof of adoption was given by the writ petitioner. The writ petitioner, thereafter, filed a declaratory suit before the competent Civil Court at Arrah and obtained a decree of adoption. On that basis, he again applied before the Railways authorities which was again rejected which occasioned the petitioner to challenge the matter before the Tribunal, ultimately giving rise to this impugned order.

3. The Tribunal held that since the petitioner had not impleaded the Railway

administration as party respondent in the declaratory suit, the same was not enforceable against the Railway administration in view of the judgment rendered by this Court in the case of Om Prakash Prasad @ Om Prakash Singh Vs. State of Bihar and Others .

4. Mr. Ojha, Learned Counsel for the petitioner submitted that since a suit for declaration merely was filed by the petitioner, wherein the relief was sought for declaring him as adopted son of deceased Sri Ram Pandey, there were no necessity to implead the Railway administration as party respondent as no relief was sought for against them. The decree of declaration so obtained by the petitioner was a piece of proof of his adoption and, therefore it was required to be considered by the Railway administration for the sake of his appointment on compassionate ground. Learned Counsel further submitted that the decree was not obtained to enforce it against the Railway and, therefore, the ratio laid down by this Court in the case of Om Prakash (supra) would not apply in the facts and circumstances of this case.

5. Learned Counsel for the Railway, however, submitted that the Tribunal was not wrong in rejecting the prayer of the petitioner and the writ application, therefore, is liable to be dismissed.

6. The judgment and decree of declaration obtained by the petitioner has been brought on record and marked as Annexures 10 and 10/A. From these annexures, it appears that pure and simple declaratory suit was filed by the petitioner to declare him as adopted son of late Sri Ram Pandey. In the suit aforesaid, the brothers and other family members of late Sri Ram Pandey were impleaded as party defendants who did not oppose the prayer of the writ petitioner for declaring him as adopted son of late Sri Ram Pandey rather it appears that they supported the case of the petitioner saying that he was kept by late Sri Ram Pandey as adopted son althrough. No objection from any corner was raised in the declaratory suit. The declaration so made, entitled the petitioner to pray for appointment on compassionate ground treating him as good as a dependent of the deceased employee in view of the judgment of this Court rendered in the case of Kamal Ranjan Vs. The State of Bihar and Others, and the ratio laid down in the case of Om Prakash Prasad (supra) will not apply in the facts and circumstances of this case. Regard being had to the facts and circumstances of the case and for the reasons aforementioned, this application is allowed. Order impugned passed by the Tribunal is set aside and the Railway administration is directed to consider the case of the petitioner for his appointment on compassionate ground treating him as one of the dependents of the deceased Sri Ram Pandey in accordance with law preferably within a period of three months from the date of receipt/production of a copy of this order.