
(1992) 06 KL CK 0059
In the High Court Of Kerala
Case No : Op. No. 5640 of 1989

Suresh Babu

APPELLANT

Vs

State of Kerala

RESPONDENT

Date of Decision : 09-06-1992

Acts Referred:

General Clauses Act, 1897 — Section 2(1)

Citation : (1992) 3 ILR (Ker) 289 : (1993) 1 LLJ 139

Hon'ble Judges : Balanarayana Marar, J

Bench : Single Bench

Advocate : K.P. Dandapani and K. Jaiju Babu, for the Appellant; G. Krishnakumari, Govt. Pleader, for the Respondent

Final Decision : Dismissed

Judgement

Balanarayana Marar, J.—The claim of an adopted son of a Government servant who died in harness was rejected for the reason that adopted sons/daughters are excluded from the category of dependants. That order is under challenge in this O.P.

2. Sri M.Achuthan died in harness on July 10, 1971 while working as a Lay Secretary and Treasurer of Women's and Children's Hospital, Kozhikode. Petitioner was abandoned by his parents a day or two after his birth. He was under the protection of Medical Officer, Alathur. By order of District Court, Kozhikode in O.P. 4/1969 Sri Achuthan was appointed as the guardian of petitioner. The legal custody of petitioner was entrusted to Achuthan and his wife who were not having any children. Sri Achuthan adopted petitioner as his son in conformity with the customary and religious formalities. After attaining majority petitioner filed an application for employment assistance under the dying-in-harness scheme. His request was rejected on the ground that there is no provision to extend the benefit to adopted sons and daughters. Note 3 to Clause 11 of Ext. P10 G.O. dated January 21, 1970 and note 3 to Clause 16 of Ext. P11 G.O. Dt. December 17, 1987 which states that sons and daughters will not

include adopted sons and adopted daughters are challenged in this O.P. and a declaration is sought that these notes are illegal, unconstitutional and void. Petitioner seeks a writ of cartiorari to quash note 3 to Clause 11 of Ext. P10 and note 3 to Clause 16 of Ext. P11. A declaration that petitioner is entitled for appointment as an L.D. Clerk under the scheme is also sought.

3. In the counter affidavit filed on behalf of respondents 1 and 2 it is contended that the intention of the Government is to give employment assistance to one of the dependants of Government servants who died in harness. Specific mention has been made in Exts. P10 and P11 orders that sons and daughters will not include adopted sons/adopted daughters. The Government is competent to decide as a matter of policy to whom employment assistance should be given under the scheme. Petitioner has no right to question that policy. It is a matter of discretion of the Government as to who should be considered as the dependants of Government servants. It is therefore contended that the impugned notes are perfectly legal and valid and are not liable to be declared as illegal and void.

4. Heard counsel for petitioner and Government, Pleader.

5. The scheme for giving employment assistance to dependants of Government servants dying in harness was introduced by G.O. (MS) 20/70/PD dt. January 21, 1970. Till then there were no general instructions for considering requests for appointments from relatives/dependants of Government servants dying in harness. The necessity of a uniform procedure was felt by the Government and the Government Order dt. January 21, 1970 was issued regulating the procedure. Since then relaxations have taken place and eligibility was widened to bring in more and more dependants within the purview of the scheme. Codified orders were issued as per G.O. (P) No. 64/86 dt. February 28, 1986. Clause 11 of that G.O. classifies that relatives who will be considered as dependants eligible for employment assistance in the order of priority. That clause contains a note that sons and daughters will not include adopted sons and adopted daughters. This note is seen retained in the consolidated order issued by the Government on December 17, 1987. The contention of petitioner is that unreasonable classification has been made by excluding adopted sons and adopted daughters from the eligibility for employment assistance.

6. Relying on the definition contained in the General Clauses Act learned counsel for petitioner points out that sons in the case of anyone whose personal law permits adoption shall include adopted sons. Parties being Hindus, adoption is permissible. Counsel also draws attention to the definition of "father" contained in that Act. "Father" as defined shall include "adoptive father in the case of any one whose personal law permits adoptions". Counsel would therefore assert that a son includes an adopted son also and the benefits conferred by the scheme cannot be denied to an adopted son provided he is a dependant. Attention is drawn to the decision In re: Divi Ditta AIR 1931 Lah 661. That decision was rendered under the Workmen's Compensation Act. The question arose whether a minor adopted son falls within the scope of the definition of "dependant" in

Section 2(1)(d) of that Act. It was held that he will fall within the scope of that definition, provided the personal law of the deceased workman permitted adoption. Counsel would also draw attention to the definition of dependant in other beneficial legislations. But the question to be considered is not whether a son includes an adopted son, but whether the exclusion of adopted sons from the category of sons is proper and justified.

7. It cannot be disputed that law can make and set apart the classes according to the needs and exigencies of the society. But the classification should never be arbitrary, irrational or evasive. As observed by the Supreme Court in *D.S. Nakara and Others Vs. Union of India (UOI)*, the classification must not only be based on some qualities or characteristics which are to be found in all the persons grouped together and not in others who are left out. Those qualities or characteristics must have a reasonable relation to the objects of the legislation. The object of the scheme is to give employment assistance to the dependants of Government servants who died in harness. While classifying the persons eligible to such assistance, the scheme envisaged only blood relations apart from widow or widower. In the case of Government servants who have not left behind any of the categories specified in the G.O., a nephew or a niece can also be considered for appointment under the scheme provided he or she has been a dependant of the deceased Government servant. They also are blood relations. The reason for exclusion of adopted sons and adopted daughters may be to exclude persons who are not blood relations. There is also a possibility of the scheme being misused by ineligible persons claiming themselves to be adopted sons or adopted daughters. There is therefore a policy behind the exclusion of these categories of persons from the scheme. This court should not examine the merits and demerits of a policy laid down by a regulation-making body. The classification contemplated in Clauses 11 and 16 of Exts. P10 and P11 respectively is therefore based on an intelligent differentia. The impugned notes are therefore valid and legal.

8. For the aforesaid reasons the O.P. is dismissed, but without costs.