

(2009) 08 DEL CK 0023

In the Delhi High Court

Case No : Writ Petition (C) No. 5091 of 2000

Suresh Kumar

APPELLANT

Vs

Delhi Vidhyut Board and Another

RESPONDENT

Date of Decision : 07-08-2009

Acts Referred:

Hindu Adoptions and Maintenance Act, 1956 — Section 11, 11(1)

Citation : (2009) 8 ILR Delhi 86 Supp

Hon'ble Judges : Suresh Kait, J

Bench : Single Bench

Advocate : S.D. Singh, for the Appellant; Avnish Ahlawat, for the Respondent

Final Decision : Dismissed

Judgement

Suresh Kait, J.—Initially, this matter was heard on 26.05.2009. The counsel for the petitioner argued the case. Since, none appeared for the respondents, liberty was given to respondents to file written submission and the matter kept reserved for judgment. However, the respondents did not come forward. While dictating the judgment, some clarifications were required and accordingly the matter was listed for directions on 10.07.2009. Appeared none on that day, the matter was posted on 17.07.2009. Only counsel for the respondents appeared which could not clarify, as was required. The matter was again listed on 24.07.2009 and on that day learned Counsel for the petitioner sought time to reply the query put forth by this Court. Ultimately, both counsel appeared on 31.07.2009 and addressed the court. The learned Counsel for the petitioner fairly conceded that in pursuance of order dated 10.07.2002, he did not file the ?Amended Memo of Parties?. Even on 31.07.2009, he has shown his inability to file the same because new companies have come up and he is unable to fix, who shall be the concerned respondent. Though, this petition deserves to be dismissed on this ground alone, however, this Court has decided to proceed further with the matter on merits. Accordingly, the matter was heard and after clarification it was reserved for judgment on 31.07.2009 itself.

2. The deceased Sh. Ram Sahay was employed in Delhi Electricity Supply Undertaking on 24.12.1969 (thereafter it was renamed as Delhi Vidut Board) as Assistant Line Man and he rendered services in the department for 29 years & 4 months. The deceased Ram Sahay was having only son namely Babu Lal. The said son of the deceased died on 10.08.1987 at Delhi, leaving behind his wife and a son, who is the petitioner in the present writ petition. The deceased employee Ram Sahay adopted the petitioner as his son by virtue of adoption deed dated 30.09.1991. Since then, the petitioner was discharging all the duties as a son of the deceased Ram Sahay. Admittedly, deceased Ram Sahay died on 25.04.1999 and the wife of the deceased had already expired. During his employment he got added on 21.11.1995 the name of the petitioner as his son in the medical card which is annexed as page 26 of this writ petition. Since then the petitioner was getting all the medical facilities from the department as a son of the deceased Ram Sahay. After the demise of the deceased Ram Sahay i.e., on 25.04.1999, the petitioner applied for the compassionate appointment in the department. The respondent had rejected the claim of the petitioner as under:

Delhi Vidyut Board

Shakti Bhavan,

New Delhi-110019

S. No. E/A.O/P/-D/99-2000/3939/1474

Dated 12.06.2000

Mr. Suresh Kumar

S/o Late Sh. Ram Sahay

13/335, Trilokpuri, Delhi-91

Sub. : Service help on compassionate ground

Sir/Madam,

In respect of your application on the above said subject dated 30.07.1999, I am directed to inform you that your matter has been discussed before March/April, 2000 Committee but your application dismissed due to the following reasons:

Ineligible according to rules.

Sd/-

Assistant Labour Officer [Labour-3]

3. On perusal of this letter, the respondents had not mentioned anywhere how the petitioner was ineligible according to rules or the policy. Learned Counsel for the petitioner has pointed out that the respondent sent this communication to the petitioner and specifically mentioned son of Late Sh. Ram Sahay. Since the name of the petitioner was recorded as a son of the deceased Ram Sahay in the

record of the respondents, therefore, the present communication was also sent as son of the deceased. The respondents in their counter affidavit have in fact given the reason for not considering the application of the petitioner that the petitioner is, in fact, the natural born son of Sh. Babu Lal, deceased son of Sh. Ram Sahay. Letter dated 29.10.1999 issued by Govt. Boys Sr. S. School, Trilokpuri Block-20, New Delhi, in the column "father?s/guardian?s name" bears name of Sh. Babu Lal, the natural father of the petitioner and not that of the deceased Sh. Ram Sahay. The respondents further stated that the appointments in the public service are made strictly on the open invitation of the applications and merit. No other mode of appointment or any other consideration is permissible. In such cases only the humanitarian considerations are looked into. The whole object of granting compassionate appointment is thus to enable the family to tide over the sudden crisis. The object is to relieve the family from the financial destitution and to help it get over the emergency. The main thrust of the respondents herein is that the compassionate employment cannot be granted to a person who is not eligible as specified in the rules which are as under:

4. That compassionate employment as per the current rules can only be claimed by "Dependent Family Member" means:

- a) spouse; or
- b) son (including adopted son) ; or
- c) daughter (including adopted daughter); or
- d) brother or sister in case of unmarried DVB employees.

Who were wholly dependent on the DVB employee at the time of his death in harness or retirement on medical grounds as the case may be.

4 Though as per rules, adopted son is also eligible for compassionate employment, however, no person has any vested right to compassionate appointment. It is also true that granting of appointment is not the total discretion of the authorities. While granting the compassionate appointment, the authorities are bound to go through the means of the family left behind, their financial status, any movable and immovable property. All these things have to be taken into consideration.

5. After going through this case the rejection of the application of the petitioner herein was on the only ground that the petitioner was a natural grandson of the deceased employee of the respondent. Therefore, the petitioner was not eligible for any appointment.

6. Learned Counsel for the petitioner states that the natural father of the petitioner died on 10.08.1987 and thereafter by adoption deed dated 30.09.1991, which is annexed as paras 21-25 of this writ petition, the petitioner was adopted by the deceased employee of the respondents. Undisputedly, the deceased died in harness. On perusal of the medical card dated 21.11.1995 the

petitioner was enrolled as a son of the deceased.

7. Learned Counsel for the petitioner further states that as per Section 11 of the Hindu Adoption & Maintenance Act, 1956 the adoption deed dated 30.09.1991 is a legal and valid document. Section 11(1) of the Hindu Adoption & Maintenance Act, 1956 as under:

11. Other conditions for a valid adoption: In every adoption, the following conditions must be complied with:

(1) if the adoption is of a son, the adoptive father or mother by whom the adoption is made must not have a Hindu son, son's son or son's son's son (whether by legitimate blood relationship or by adoption) living at the time of adoption.

As per the provisions of the aforesaid section, the adoptive father must not have a hindu son, son's son. But, in the present case the adoptive father though did not have son (since expired at the time of adoption), but he had son's son. Therefore, the adoption is not valid as per Section 11(1) of the said Act.

8. The scheme of compassionate appointment as on today is that there are 5% vacancies reserved for this purpose. If the vacancies are not available, then the application of the candidate will be considered continuously for three years and if the candidate does not get the seat, then thereafter his claim will not be considered. In the present case, his claim was rejected not on the ground that the vacancies were not available but on the ground that the petitioner was not eligible to be appointed on compassionate grounds.

9. Though the learned Counsel for the petitioner has relied upon the following judgments as under:

(i) Indian Bank Vs. K. Usha and Another,

(ii) Smt. Sushma Gosain and Others Vs. Union of India (UOI) and Others,

(iii) Hindustan Aeronautics Ltd. Vs. Smt. A. Radhika Thirumalai,

However, in the present situation none of the judgments cited hereinabove are relevant. There is no doubt that the adopted son is also eligible for compassionate employment. Undisputedly, the deceased was fully qualified and eligible to adopt a son, definitely not to his own grandson which is contrary to Section 11(1) of the Hindu Adoption & Maintenance Act, 1956. Since, the adoption was not valid, therefore, the application of the petitioner for compassionate employment was rightly rejected. Though the department had not clearly stated while rejecting the application that the adoption of the petitioner u/s 11(1) of the said Act is not valid, however, rejected the application as ? ineligible? according to rules. It does not matter that the petitioner's name was added in the medical card.

10. In view of the aforesaid discussion, there is no merit in the present writ

petition which fails and is accordingly dismissed, but in the circumstances with no order as to costs.