
(1996) 01 RAJ CK 0006
In the Rajasthan High Court
Case No : Civil Writ Petition No. 197 of 1996

Taj Mohammed

APPELLANT

Vs

District and Sessions Judge and Others

RESPONDENT

Date of Decision : 29-01-1996

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 21, 309

Citation : (1996) 1 RLW 313 : (1996) 2 WLC 26 : (1996) 1 WLN 70

Hon'ble Judges : R.R. Yadav, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

R.R. Yadav, J.—Heard learned counsel for the petitioner at length.

2. It is mentioned in paragraph 13 of the writ petition that the present petitioner has filed S.B. Civil Misc. Writ petition No. 1546 of 1985, which was dismissed on 12.7.1995 by the learned Single Judge of this Court. The aforesaid order passed by the learned Single Judge is not annexed with the writ petition for the reasons best known to the petitioner. Although earlier said dismissal order was shown in the index as Annexure "9" but later on scored out with the initial of the learned counsel for the petitioner.

3. The aforesaid conduct amounts misleading the Court by concealing material fact relevant for just decision of the case and as such, the present writ petition is liable to be dismissed on this ground alone without further ceremony. Specious comment on the point of material concealment from the Court in the case would be to say the least.

4. On the title page of the Paper-book, it is clearly written by the learned counsel for the petitioner, which is reproduced below for ready reference:

Vires not challenged.

Conventionally such endorsements made by a counsel on the title page of the

paper-book are always treated to be a certificate given by the counsel and the office of the Registry of the Court and the Court itself placed reliance on such endorsements having implicit faith on the same.

5. Judicial restraint does not permit me to say more than this that in the present case, the aforesaid implicit faith of reliance on such certificates is eroded. It is contended by the learned counsel for the petitioner that though in the body of the writ petition, no proper foundation has been laid challenging the constitutional validity of Rajasthan Recruitment of Dependents of Government Servants Dying while in Service Rules, 1975 (hereinafter referred to as the Rules of 1975") yet since in the relief clause (c), it is prayed by the petitioner that the Rules of 1975 be declared ultra vires to the provisions of Articles 14, 16 and 21 of the Constitution of India, therefore, he can be permitted to argue the constitutional validity of the said Rules.

6. Suffice it to say with regard to the aforesaid submission of the learned counsel for the petitioner is that constitutional vires of the said Rules can be tested before a Division Bench of this Court under the Rules of the Court and such writ petitions are not cognizable by this Court sitting singly. I record my disapproval about twisting of the facts of the present case by indulging in acrobatic exercises.

7. The prerogative writs can be issued only in those cases where the court is satisfied to the effect that the petitioner has invoked its equitable jurisdiction with clean hands. I am satisfied in the present case that the petitioner after dismissal of his earlier writ petition has not approached to this Court by filing a second writ petition for the same relief with clean hands.

8. In the present case, it is alleged that the deceased Government Servant Mohammed Ramzan was unmarried and the mother and sister were dependants on him. According to the allegation made in the writ petition, the mother is not included in the definition of "family" under the Rules of 1975 but looking into the spirit of the said Rules, mother should also be included along with widow.

9. A similar controversy arose before me in the case of Kishan Singh v. State of Rajasthan (S.B. Civil Writ Petition No. 284 of 1996), decided on 24.1.1996, where it is held in paragraph 8 as follows:

A Court cannot afford to usurp nor can abdicate its power to interpret an enactment or statutory Rule. Judicial interpretation by a Court is required to be within its definable parameters and never to be exceeded. Addition and substitution of words should always be treated to be contrary to all canons of construction unless it is absolutely necessary to do so. In the present case, the expression "any criminal offence" used under statutory Rule 13 of the CCA. Rules, 1958 is clear, therefore, it is to be enforced without adding and subtracting any word or words into it.

10. Applying the aforesaid ratio in the present case, since the expression "family" used under the Rules of 1975 is clearly defined therefore it is to be

enforced in toto without including mother along with widow In my humble opinion, if it is done as suggested by the learned counsel for the petitioner, it would lead to a naked usurpation of the legislative function of the Governor of the State conferred upon him under Article 309 of the Constitution of India.

11. It is settled principle of law that this Court cannot afford to go behind the wisdom of Rule-making Authority by way of interpretation.

12. The function of the Court is to apply the law as stands. But it is not for the Court: to rewrite the law even though the Court considers the provisions as it stands to be unreasonable. Even if such omission appears to have been crept in the definition of "family" under the Rules of 1975 either due to over-sight of inadvertantly, such omission cannot be supplied by courts under their disguise of interpretation.

13. In my considered opinion, inclusion of mother alongwith widow in the definition of " family" under the Rules of 1975 can be made possible by His Excellency the Governor of State in exercise of his legislative function under Article 309 of the Constitution of India. This Court cannot afford to include: mother in the definition of "family" under the Rules of 1975 along with widow lest it would tantamount arrogating to itself legislative functions which this Court does not possess.

14. As a result of the afore-mentioned discussion, the instant writ petition is hereby dismissed in limine.