
(2013) 07 AP CK 0123

In the Andhra Pradesh High Court

Case No : Writ Petition No. 12814 of 2013

The Suryapet Municipality

APPELLANT

Vs

Boora Satish and Others

RESPONDENT

Date of Decision : 30-07-2013

Acts Referred:

Administrative Tribunals Act, 1985 — Section 19
Hindu Adoptions and Maintenance Act, 1956 — Section 6
Registration Act, 1908 — Section 17

Citation : (2013) 5 ALD 456 : (2013) 6 ALT 233

Hon'ble Judges : R. Subhash Reddy, J;A.V. Sesha Sai, J

Bench : Division Bench

Advocate : Shanthi Neelam, S.C, for the Appellant; V. Maheswar Reddy for Respondent No. 1 and G.P. Services-I for Respondents 2 to 4, for the Respondent

Final Decision : Disposed Off

Judgement

R. Subhash Reddy, J.—Suryapet Municipality, Suryapeta, represented by its Commissioner, Nalgonda District has filed this Writ Petition, aggrieved by the order, dated 05.10.2012, passed by the Andhra Pradesh Administrative Tribunal, Hyderabad, in O.A. No. 7964 of 2012. By the aforesaid order, the Tribunal has set aside the order of the Regional Director-cum-Appellate Commissioner of Municipal Administration, Hyderabad (4th respondent herein), dated 13.07.2012 passed in L.Dis.Roc. No. 757/2012/A3 and further order of the Commissioner, Suryapet Municipality (petitioner herein), dated 05.09.2012 passed in Lr. No. C1/1280/2012, with a direction to consider the claim of the 1st respondent/applicant for appointment to a suitable post on compassionate grounds and to pass appropriate orders within a period of four weeks from the date of receipt of a copy of the order.

2. One Smt. B. Chandramma was working as Public Health Worker in Suryapet Municipality. While in service, she died on 12.04.2012. The 1st respondent who claims to be the adopted son of late B. Chandramma, has filed an application

seeking appointment to a suitable post/Junior Assistant on compassionate grounds, as per the scheme notified by the Government in G.O.Ms. No. 612, General Administration (Services-A) Department, dated 30.10.1991. The aforesaid scheme is notified for compassionate appointments to the dependents of deceased Government employees and in that scheme, a clause is incorporated extending the benefit to an adopted son of the deceased Government servant. As per the said scheme, to claim appointment on compassionate grounds, the adopted son or daughter of the deceased Government servant is entitled for consideration for appointment, if the adoption had taken place legally, at least five years prior to the date of demise of the Government servant.

3. It was the case of the 1st respondent before the authorities as well as the Tribunal that he was adopted by late Smt. B. Chandramma when he was 9 years old, in the year 1997, as such, he is entitled for consideration for appointment to a suitable post on compassionate grounds as per the said scheme. On the application filed by the 1st respondent, it appears, the Municipal Commissioner, Suryapet has sent a proposal to the appointing authority i.e., Regional Director-cum-Appellate Commissioner of Municipal Administration, Hyderabad, who in turn has issued Proceedings, dated 13.07.2012, rejecting the claim of the 1st respondent on the ground that as the adoption of the dependent has taken place in the year 2009 and completed only three years, as such he has not fulfilled the requirements as per the scheme notified in G.O.Ms. No. 612, dated 30.10.1991. Consequently, the Municipal Commissioner, Suryapet Municipality has passed consequential orders, dated 05.09.2012, returning the request of the 1st respondent, as was rejected by the appointing authority.

4. Aggrieved by both the orders referred above, the 1st respondent approached the Tribunal by filing present O.A. u/s 19 of the Administrative Tribunals Act, 1985. The Tribunal noticed the recent document of Adoption Deed, dated 15.12.2009 and having found that there is a recital in the document that the adoption took place in the year 1997, recorded a finding that the 1st respondent has fulfilled the condition of five years of adoption soon before the death of the deceased Government servant and passed the impugned order by issuing directions to the respondents therein to consider his case for appointment on compassionate grounds, while setting aside the order of the 4th respondent and consequential order of the petitioner herein. Questioning such order of the Tribunal, this Writ Petition is filed by the Suryapet Municipality through its Commissioner.

5. In this Writ Petition, it is contended by the learned Standing Counsel appearing for the petitioner that without giving any opportunity to the petitioner, the Tribunal has passed the impugned order at the stage of admission. Further, it is submitted that as the registered Adoption Deed is dated 15.12.2009, the 1st respondent has not fulfilled the criteria under G.O.Ms. No. 612, dated 30.10.1991, to claim appointment to a suitable post on compassionate grounds.

6. On the other hand, it is submitted by the learned counsel appearing for the

1st respondent that there is a valid adoption, which was also registered vide Adoption Deed, dated 15.12.2009, in which there is a recital that adoption had taken place in the year 1997. It is also submitted that as much as adoption has taken place more than 15 years prior to the death of the deceased, the claim of the 1st respondent fits into the scheme notified by the Government in G.O.Ms. No. 612, dated 30.10.1991.

7. Having heard the learned counsel for the parties, we have also perused the orders passed by the 4th respondent, petitioner and the Tribunal.

8. In this case, it is to be noticed that the claim of the 1st respondent is that he was adopted by the deceased Government employee in the year 1997. It is also his case that there is no requirement of reducing the document into writing as per the provisions of the Hindu Adoptions and Maintenance Act, 1956. It is further submitted that the registration of the Adoption deed was effected on 15.12.2009 and it is not a compulsorily registerable document. It is also submitted that there is a recital in the Adoption deed that the adoption had taken place 12 years earlier to the document.

9. From a perusal of the order passed by the 4th respondent, it appears that without conducting any independent enquiry on the claim of adoption, taking into account the registered Adoption deed, dated 15.12.2009, the 4th respondent rejected the claim of the 1st respondent by recording a finding that the adoption was not taken place five years earlier to the death of the Government employee. Further, the Tribunal taking note of the registered Adoption deed, dated 15.12.2009, in which there is a clear recital that adoption had taken place 12 years prior to such document, issued directions considering the claim of the 1st respondent by setting aside the orders of the 4th respondent as well as the petitioner.

10. Adoption of Hindus is governed by the Hindu Adoptions and Maintenance Act, 1956 (for short "the Act"). Chapter-II of the Act deals with "Adoption" and Section 6 of the Act illustrates the "Requisites of a valid adoption", which reads as under:

No adoption shall be valid unless--

- (i) the person adopting has the capacity, and also the right, to take in adoption;
- (ii) the person giving in adoption has the capacity to do so;
- (iii) the person adopted is capable of being taken in adoption; and
- (iv) the adoption is made in compliance with the other conditions mentioned in this Chapter.

11. From a perusal of the provision u/s 6 and other provisions of the Act, it is clear that for a valid adoption, it need not be reduced into writing and though it is reduced, the said document is not a compulsorily registerable document u/s 17 of the Registration Act, 1908. The registered Adoption deed, dated 15.12.2009,

which is relied on by the 1st respondent, can be a document in proof of claim of the 1st respondent that he was adopted by late Smt. B. Chandramma. At the same time, it is to be noticed that the document which is not compulsorily registerable, but registered, can also be looked into in support of the claim of the 1st respondent for adoption. It is also to be noticed that the Adoption deed, which was registered more than 21/2 years earlier to the death of the deceased, cannot simply be overlooked. At the same time, only on the ground that there was no interregnum period of five years from the date of registration of adoption deed to the date of demise of the Government servant, the claim of the 1st respondent would not have been rejected by the authorities, as they did so in this case. At the same time, whether the adoption has taken place earlier to 2009 or not, is not enquired into by the authorities and in absence of which, the Tribunal should not have directed the authorities to consider the case of 1st respondent only basing on the recitals mentioned in the Adoption deed, dated 15.12.2009. Even before completion of enquiry as to whether his claim fits into the scheme issued in G.O.Ms. No. 612, dated 30.10.1991 or not, the 1st respondent is not entitled for any positive directions of appointment on compassionate grounds.

12. For the aforesaid reasons, we deem it appropriate to dispose of this Writ Petition with a direction to the petitioner, to conduct independent enquiry on the claim of the 1st respondent to extend the benefit of compassionate appointment. Whether the adoption was five years earlier to the date of death of the deceased Government employee or not and whether the adoption was taken place prior to the Adoption deed, dated 15.12.2009 as indicated in the document or not, are the questions to be enquired into independently by the petitioner herein. It is open to the petitioner to take the registered document, dated 15.12.2009 into consideration as a proof of evidence in the enquiry. After completion of such enquiry, the petitioner shall send proposals to the 4th respondent herein and such exercise shall be completed by the petitioner within a period of two (2) months from the date of receipt of a copy of this order. On such proposals to be sent by the petitioner, the 4th respondent shall take appropriate decision and pass suitable order on the claim of the 1st respondent for extending the benefit of compassionate appointment within a period of one month from the date of receipt of the proposals to be sent by the petitioner herein. In that view of the matter, the impugned order of the Tribunal, dated 05.10.2012 stands modified.

13. Subject to the directions as indicated above, the Writ Petition is disposed of. No order as to costs. Miscellaneous Petitions, if any, pending in this Writ Petition, shall stand closed.