
(2002) 07 PAT CK 0143
In the Patna High Court
Case No : C.W.J.C. No. 7300 of 2001

Union of India (UOI) and Others

APPELLANT

Vs

Most. Shitali Devi and Another

RESPONDENT

Date of Decision : 25-07-2002

Acts Referred:

Citation : (2002) 4 PLJR 62

Hon'ble Judges : Ravi S. Dhavan, C.J;R.N. Prasad, J

Bench : Division Bench

Advocate : J.P. Karn, for the Appellant; M.P. Dixit and Sanjay Kumar Dixit, for the Respondent

Final Decision : Dismissed

Judgement

1. The Union of India has filed this petition against the order of the Central Administrative Tribunal dated 17 January 2001 in O.A. No. 558 of 1999 : Mostt. Shitali Devi and Anr. v. The Union of India and Ors.

2. A trolleyman employed with the Eastern Railway, Danapur died in a road accident on 19 December 1994. His widow made application that their adopted son Pappu Das be given an employment under the rule of harness.

3. The matter was verified by the railway administration and a report was received from the Welfare Officer to the effect that in the normal course in the conduct of the affairs of the family of Late Feku the deceased employee, there was a member known as Pappu Das who had been registered at the school and the name of the father had been shown as Feku Ram. This fact that Pappu Das was the adopted son was fortified by certificate which had been issued by the Ex-Ward Commissioner, Khagaul, Municipality. Other records being the report of the administration itself was before the railway administration to arrive at an objective satisfaction. Ultimately when the matter was laid before the higher authorities, the Divisional Regional Manager, the prayer for granting a compassionate appointment was rejected on a reference made by the General

Manager, Personnel. The main reason given for not granting the appointment was that the adoption, certificate apparently was after the death of the railway employee.

4. The Court is of the view that this matter should not be made an issue and the logic of a regulation is not going to solve any human problem. If the employees, who are being considered, are class IV employees then regard being had to the realities it is unlikely that in that strata of the society issueless couples go through the formality of the law and make an adoption and have it duly registered. This is a common law concept. An oriental society such as ours containing an amalgam of many cultures does by practise and custom resort to resolving problems within the family and society, and adoption is one such modality. Indian marriages in generality do not see a registration but are conducted on custom. The case before the railway was one such circumstance. If the railway takes the posture that the strictness of the regulation must apply, then it is clear that no Class IV employees' wards may get an employment if adopted. Nobody apprehends death of an earning member so as to keep papers as a record, to be made available for such an eventuality. The eventuality is to seek employment on the rule of harness. In India amongst economically weaker sections of the society, and at times the middle class not excluded, the generality is that children are adopted and are brought up by foster parents without the rigours of a registered document. This is one such matter where a hard or fast rule or a rigid interpretation of the regulation may, perhaps provide a soulless escape for the railway administration but it will defeat the rule of harness and not solve a problem of life for a class for whom the rule was meant. Fraud, mischief, misrepresentation may by all means be inquired, so as not to render the Rule of Harness in service nugatory. But if the relationship of adoption and foster parents be bonafide and not manufactured to defeat a regulation, such a relationship, exceptions apart as pointed out, should be accepted.

5. Thus, the Court does not find any error in the observation of the Tribunal and the railway administration ought to accept the decision gracefully.

6. Petition fails.

7. Dismissed.