

Court No. - 33

Case :- WRIT - A No. - 54494 of 2015

Petitioner :- Rakesh Kumar

Respondent :- State of U.P. and others

Counsel for Petitioner :- Kunwar Ajay Singh, Bed Kant Mishra, Nisheeth Yadav

Counsel for Respondent :- C.S.C., Anubhav Singh, Arvind Kumar, Ashutosh Pandey, Pranjal Mehrotra

Hon'ble J.J. Munir,J.

Parties have exchanged affidavits.

2. Heard forthwith.

3. Heard Mr. Bed Kant Mishra, learned Counsel for the petitioner and Ms. Monika Arya, learned Additional Chief Standing Counsel appearing on behalf of respondent No. 1. No one appears on behalf of respondent No. 2.

4. This writ petition is directed against the order dated 10.08.2015 passed by the Managing Director, Kanpur Electricity Supply Company Limited, Kanpur Nagar, rejecting the petitioner's case for compassionate appointment.

5. The petitioner claims to be the adopted son of the late Barsati Lal, who was a Peon in the employ of the Kanpur Electricity Supply Company Limited (*'KESCO' for short*). He died in harness on 31.03.2006. The petitioner claims to be the late Barsati Lal's adopted son. The deceased employee was survived by his wife, Smt. Ganga Devi and daughter Smt. Leelam Devi. The petitioner is the daughter's son.

6. It is the petitioner's case that the late Barsati Lal adopted the petitioner on 18.02.1999, when he was aged 12 years. It is common ground between parties that the deed of adoption was executed and registered on 09.10.2007 after Barsati Lal's demise, and all formalities of adoption were undertaken under the Hindu Adoptions and Maintenance Act, 1956. The petitioner filed an application on 23.10.2007 before the respondents, staking claim for consideration of his

candidature under the Uttar Pradesh Recruitment of Dependants of Government Servants (Dying in Harness) Rules, 1974. The petitioner's claim was rejected *vide* order dated 26.12.2007 on ground that the adoption deed was not valid. It may be recorded here that relevant rules applicable for compassionate appointment in the establishment of KESCO are the Uttar Pradesh State Electricity Board Recruitment of Dependants of Board's Servants (Dying in Harness) Regulations, 1975. The petitioner challenged the order rejecting his claim for compassionate appointment before this Court *vide* Writ - A No. 63847 of 2014. In the writ petition, the claim for compassionate appointment was also sought to be supported on the basis of a declaration granted by the Civil Court in Original Suit No. 1015 of 2008, that the adoption deed was valid. This Court, upon consideration of the entire matter, particularly the fact that the deceased had not been adopted in accordance with law, while the deceased employee was alive, but after his demise, and the further fact that his service record did not show the deceased to be his adopted son, held against the petitioner and dismissed the writ petition. It was also remarked by this Court in the judgment and order dated 11.12.2014 passed in Writ - A No. 63847 of 2014 that in one of the nomination papers, the relationship of the petitioner with the deceased has been mentioned as grandson (daughter's son).

7. The judgment of the learned Single Judge dated 11.12.2014 was appealed to the Division Bench. The Division Bench, *vide* judgment and order dated 30.01.2015, though did not much disturb the findings of the learned Single Judge, but was of opinion that the petitioner's case ought to be considered by the respondents by a reasoned and speaking order. This was perhaps so because the order rejecting the petitioner's claim dated 26.12.2007 was a rather cryptic order. The Division Bench, in the operative portion of their Lordships' orders, observed and ordered :

Having perused the entire records as well as finding recorded by writ court, we are of the view that it is not possible for the High Court under Article 226 of the Constitution of India to take evidence and determine whether the appellant is in indigent circumstances or not? It is for the concerned authorities to decide this factual aspect as to whether appellant is entitled for compassionate appointment or not in the facts and circumstances of the case.

This writ petition is finally disposed of directing the respondents to consider the claim of the appellant for compassionate appointment in accordance with law. It is made clear that the Court has not entered into the merits of the case and the question either to appoint or not appoint the appellant is left open for the concerned departmental authority who shall consider and decide the question by a reasoned and speaking order, preferably within a period of three months from the date of submission of certified copy of this order before him. No order as to costs.

8. It is in compliance with the said order that the Managing Director, KESCO has passed the impugned order rejecting the petitioner's claim.

9. Upon hearing learned Counsel for parties and perusing the impugned order, this Court finds that the Managing Director has looked upon the adoption with much suspicion, because it is said that the adoption took place on 11.02.1999, while Barsati Lal was alive, yet the deed of adoption was executed and registered on 09.10.2007, much after his demise. There is apparently no evidence about the adoption said to have taken place in the year 1999. It is equally true that in the nomination form dated 11.09.2002, the heirs that Barsati Lal has mentioned are Smt. Brinda Devi, wife, and, Rakesh Kumar and Rajesh Kumar, whom he has described as his grandsons, clarifying it by words mentioned in the bracket to the effect "daughter's son". The petitioner, Rakesh Kumar, too has been shown in the nomination papers as the deceased employee's daughter's son, and not the deceased employee's son. On this state of evidence, the Managing Director has reached a conclusion that the petitioner is not proved to be the adopted son of the deceased employee, and, therefore, not a member of his family under the rules eligible for consideration to be appointed on compassionate grounds. Therefore, it cannot be said that there is any perversity in reasoning or manifest illegality in the conclusions reached.

10. In the circumstances, in the considered opinion of this Court, no case for interference with the impugned order is made out.

11. In the result, this writ petition **fails** and shall stand **dismissed**.

12. There shall be no order as to costs.

Order Date :- 2.11.2023
I. Batabyal

(J.J. Munir, J.)