

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No 866 of 2005

IN

Civil Writ Jurisdiction Case No 6844 of 2005

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Jay Kumar, son of late Baleshwar Sharma, resident of Village & PO – Sarai, PS –
Maner, District - Patna

.... Appellant/s

Versus

- 1 The Bihar State Electricity Board through its Chairma, VidhutBhawan, Bailey Road, Patna
- 2 The Bihar State Electricity Board through its Secretary Vidhut Bhawan, Bailey Road, Patna
- 3 Secretary, Bihar State Electricity Board –cum- Chairman, Central Compassionate Committee Vidhut Bhawan, Bailey Road, Patna
- 4 General Manager –cum- Chief Engineer, Tirhut Regional Electricity Board, Muzaffarpur
- 5 Technical Secretary to General Manager –cum- Chief Engineer Tirhut Regional Electricity Board, Muzaffarpur
- 6 Electrical Superintending Engineer, Electricity Board, Tirhut Circle, Muzaffarpur
- 7 Electrical Executive Engineer, Electric Supply Division, Hajipur, Vaishali
- 8 Joint Secretary, General Administration Department, Bihar State Electricity Board, Patna

.... Respondent/s

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For the Appellant/s : M/s Chakrapani, Sanjeev Kr & Ravi Kr, Advocates

For the Respondent/s : M/s Vinay Kirti Singh & Vijay Kr Singh, Advocates

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CORAM: HON'BLE MR JUSTICE NAVANITI PRASAD SINGH

And

HON'BLE JUSTICE SMT NILU AGRAWAL

ORAL JUDGMENT

(Per: HONOURABLE MR JUSTICE NAVANITI PRASAD SINGH)

Date: 04-08-2015

The appellant, in this intra-Court appeal, was the unsuccessful writ petitioner who was trying to enforce his right to get compassionate appointment in the erstwhile Bihar State Electricity Board (for brevity, *the Board*).

2 All the parties having appeared, with consent, this matter

has been heard for final disposal at this stage itself.

3 The facts are not in dispute. The writ petitioner claimed that he was the adopted son of one late Baleshwar Sharma whose wife was late Bindu Devi. Baleshwar Sharma had long since pre deceased his wife Bindu Devi. Bindu Devi was employed in the Bihar State Electricity Board in Hajipur Division as a peon. She had adopted the writ petitioner in the year, 1991 and a deed recognizing adoption was executed some months prior to her death in the year, 2001. Upon her death, the writ petitioner/appellant, being the adopted son, sought compassionate appointment under the Board. He filed not only the registered deed of adoption but other documents including the order in the Testamentary Suit, holding the writ petitioner/appellant to be successor to the estate of late Bindu Devi being the validly adopted son. When it came to the question of compassionate appointment, the Board rejected the same on the ground that Standing Order No 749 dated 21.04.1993 of the Board did not recognize the right of an adopted son to claim compassionate appointment and, as such, the claim was rejected by the Board. Writ petition having been filed, the same was dismissed in view of the Standing Order of the Board. It is against the judgment of the learned Single Judge, as aforesaid, that this Letters Patent Appeal was filed.

4 Initially, this appeal was heard and allowed by Division

Bench of this Court by judgment and order dated 05.01.2007. It appears that the matter was taken by the Board to the Apex Court and the Apex Court set aside the order on the ground that the Division Bench of this Court ought to consider the various judgments, which were said to be in conflict, and then decide the matter alongwith the Standing Order No 749 dated 21.04.1993. It is, accordingly, this appeal has been placed before this Division Bench.

5 Before considering anything further, we would first like to point out that compassionate appointment is not an appointment by way of right. It is not necessary for an employer to give this right to the dependents of an employee. It is a compassion shown to meet the sudden departure of the bread earner and the consequent difficulties created by this unanticipated death of the bread earner to the family. It is to mitigate that hardship that in the welfare State, such benevolent right is being conferred upon the dependent of an employee who dies in harness. In absence of this right being conferred, no one can claim it to be an enforceable right.

6 The second is it is to be made available to dependents who are adversely hit by sudden death of their guardian. The question would be who would be dependent? Necessarily, they would be persons who are dependents upon the bread earner, the employee for their living and upbringing. Therefore, if one dependent has already



been given compassionate appointment then other dependents need not be considered at all. From this, can it be said that State can declare that though a person is an adopted son whose adoption is valid and binding in terms of Section 12 of the Hindu Adoptions and Maintenance Act, 1956 (For brevity, *the Act*) but he cannot be fitted as a dependent for the purposes of compassionate appointment. To us, that would be wholly illogical and arbitrary. This issue was considered by Division Bench of this Court in the case of *Kamal Ranjan –Versus- State of Bihar & Others, 1994 (2) PLJR 536*. The question that had come up was the validity of the Circular of the State Government which prohibited the inclusion of adopted son for consideration of compassionate appointment. Earlier, the State Circulars made no distinction between natural son and adopted son in matters of compassionate appointment and it was for the first time in 1991 that this distinction was sought to be brought. A Division Bench of this Court held, thus, in paragraph 5 of the judgment:

“5 It is, thus difficult to accept the plea of the respondents that an adopted son or daughter of a deceased Government employee dying in harness is not entitled to appointment on compassionate ground. Any stipulation to the contrary as contained in the circulars of the Personnel & Administrative Reforms Department dated 15.10.91 must be held to be illegal and arbitrary. It need hardly be emphasized that the provisions of the Hindu Adoption and Maintenance Act cannot be superseded, nullified or modified in any manner by the State, much less by way of executive circulars.”

7 It would, thus, be seen that the State Government's decision and Circular of the year, 1991 debarring adopted son from claiming compassionate appointment was, thus, disapproved and struck down by this Court.

8 Now we come to the Board. The Board was a statutory body constituted under the Indian Electricity Act. It is autonomous and independent body. It has its own Rules and Regulations. Till 1993, the Rules of the Board did not make any distinction between son and an adopted son especially with regard to matters of compassionate appointment. In 1993 came the Standing Order of the Board being Standing Order No 749 dated 21.04.1993 which is Annexure B to the counter affidavit of the Board in this appeal. Here, the Board noticed that the Standing Order of the Board dated 13.07.1991 specifically provided that the claim of compassionate appointment would also be available to adopted son and, accordingly, compassionate appointments were being made in favour of adopted sons. It, further, noted that now the State Government has excluded adopted sons from the category of dependents for the purposes of compassionate appointment and, accordingly, the Board also amends its earlier Circulars in conformity with the State Government decision. Accordingly, in view of this Standing Order, adopted sons were excluded from the purview of dependents for the purposes of

compassionate appointment.

9 On behalf of appellant, it is submitted that as the Standing Order of the Board had made amendments following the State Government's order and the State Government's order having been declared ultra vires, the same must be the result with the Standing Order of the Board. We would consider this at appropriate stage.

10 Now we may come to decisions in relation to the Board. The first decision we would like to notice is the case of *Chairman, Bihar Rajya Vidyut Board –Versus- Chhathu Ram & Others* since reported in (1999) 5 Supreme Court Cases 673. Here, we have also examined the records of the writ petition, the Letters Patent Appeal which ultimately ended before the Apex Court. In the writ petition, a person that is Chhathu Ram claimed to be adopted son of an employee who died in harness under the Board and, as such, he claimed compassionate appointment. Learned Single Judge of this Court rejected the claim holding that the adoption itself was not proved. The so-called registered deed did not have signatures of both the parties to an adoption. Thus, the claim of adoption was negated. In the Letters Patent Appeal, the Division Bench allowed the appeal and directed the writ petitioner to be treated as adopted son and be given the benefit of compassionate appointment. When the matter was taken to the Apex Court, Apex Court noticed the Circular of the Board

of the year, 1993 which provided that an adopted son could not get benefit of compassionate appointment and also held that the adoption itself is not proved. The appeal was allowed and the order of Division Bench was set aside. Neither before the learned Single Judge of this Court nor before the Division Bench of this Court and the Apex Court, the validity of the Circular was challenged. Even if it could be challenged, it would be of no avail because the very factum of adoption was not accepted by the Court. The issue would not, thus, arise whether an adopted son could or could not be considered for compassionate appointment nor was there any issue, whether the Circular of 1993 distinguishing between naturally born son and adopted son from the category of dependents was valid or not, was not the issue.

11 Now, we come to a judgment of a Division Bench of this Court in the case of *Deepak Kumar Tiwari –Versus- Bihar State Electricity Board through its Secretary & Others, 2004 (2) PLJR 19*. Here, there was a challenge to the Board's Circular dated 18.02.1994 which, following its earlier Circulars, has held that adopted son would not get compassionate appointment not being dependent. We may notice that the judgment of Division Bench in the case of *Kamal Ranjan (supra)* holding the State Rules in relation to not granting the benefit to adopted sons of compassionate appointment was held to be

bad. The Division Bench referred the case of *Chhathu Ram (supra)* and held that in that case in respect of Board's Circular, the Supreme Court had negated the plea of compassionate appointment to an adopted son and, therefore, this Division Bench did not follow the judgment of the coordinate Bench which was binding on it. As we have already noticed in relation to the case of *Chhathu Ram (supra)* right from the writ proceedings to the appeal proceedings and to the proceedings before the Apex Court, the validity of the Circular was not an issue. The adoption itself was not accepted as valid adoption. It was not brought to the notice of the Division Bench that earlier the Rules of the Board itself permitted and treated an adopted son to be entitled to compassionate appointment. It was only after 1991 when the State Government revised its Rules making a distinction between natural son and adopted son in the category of dependents for the purposes of compassionate appointment that the Board's Standing Order of the year, 1993 was issued. It specifically noticed that earlier the Board did not make any such distinction but in view of the State Government's decision in the year, 1991 making the distinction, Board is also making the said distinction. Therefore, the Board's Rules were changed by 1993 Standing Order and then continued thereafter. It was primarily because of the decision of the State Government. The question is what is the effect once the State

Government Rules itself was struck down by this Court as noticed in the case of *Kamal Ranjan (supra)* by the Division Bench and which judgment has attained finality? It is stated at the Bar, and not disputed by anyone, that in conflict with the judgment of Division Bench judgment of this Court in Kamal Ranjan's case, State has modified its Rules and in the category of dependents, adopted son is also included now (the State Government's decision restoring the position is available at Annexure 5 to the Memo of Appeal).

12 Unfortunately, though for excluding from the class of dependents, the adopted son, the Board followed the State Government but after the said State Rule was declared ultra vires by this Court and State reinstated the old position making no distinction, the Board forgot to follow the same.

13 In our view, compassionate appointment is to be given to dependents. It would be highly illogical if not arbitrary to say that only natural children would be dependent and adopted children, who are treated under Section 12 of the Act to be for all intents and purposes natural children, not to be dependents. There is no logic either legal or otherwise in such a distinction. This is what earlier the Division Bench in Kamal Ranjan's case had held. It was binding on the subsequent Division Bench. No court has taken a different view of the matter. The latter Division Bench, in the case of *Deepak*

Kumar Tiwari (supra) took the view because no one brought to its notice the history of the Circular how it changed because of change in the stand of the State and we are sure that if that had been shown, the judgment would have followed the binding precedent rather than trying to take a different view notwithstanding the binding precedent being otherwise.

14 Thus, in our view, the Circulars of the Board in making this distinction between adopted son and natural son and not treating the former as dependent for the purposes of compassionate appointment is totally illogical and arbitrary. It cannot form the basis for denying the right of compassionate appointment to the writ petitioner/appellant if he is otherwise qualified.

15 We, accordingly, allow this appeal once again, set aside the order of the learned Single Judge and direct the Board to consider the case of the writ petitioner/appellant for compassionate appointment, which was wrongly denied to him, at the earliest and not later than two months from today.

(Navaniti Prasad Singh, J)

(Nilu Agrawal, J)

M.E.H./AFR

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