

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

WRIT PETITION (S) No. 6399 OF 2010

Kanwal Das, son of Heera Sai, aged about 35 years, R/o Godripara,
Post/P.S./Tah.- Chirimir, Distt. Korea (C.G.)

... Petitioner

Versus

1. South Eastern Coalfields Limited, through the Chairman-cum-
Managing Director, Head Quarter, PB No. 60, Seepat Road, Bilaspur
(C.G.)

2. The General Manager, South Eastern Coalfields Limited, West
Chirmiri, Distt. Korea (C.G.)

... Respondents

For Petitioner	:	Mr. Shushil Dubey, Advocate.
For Respondents	:	Mr. Sudeep Agrawal, Advocate.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

18/12/2015

1. Grievance of the Petitioner is that the Petitioner being an adopted son of the deceased Sohago Bai his case for compassionate appointment has not been considered by the Respondents.

2. According to the Petitioner, he was an adopted son of Late Sohago Bai who while working as Peon in the Respondent establishment died in harness on 20.1.2002. The Petitioner had applied for grant of monetary benefits payable to the deceased employee and also sought for dependent employment under the provisions of the welfare scheme applicable in the Respondent company. The Petitioner further submitted that he has got a succession certificate in his favour wherein one Amar Das was also a party who was also claiming to be the son of the deceased. Amar Das had also preferred a Miscellaneous Appeal against the granting of succession certificate which has also been dismissed. That subsequently he had again moved an application

for grant of compassionate appointment with the Respondent company which they have till date not considered and is pending.

3. Counsel for the Respondents however opposes the application on the ground that the Petitioner is not entitled for compassionate appointment for the reason that he is not the legal heir of the deceased Sohago Bai. Further the adoption deed on the basis of which he is claiming his right also is not legal and valid and therefore he cannot be declared as a legally adopted son of the deceased employee. Counsel for the Respondents also opposes the petition on the ground that as per the nomination papers pertaining to payment of gratuity and in respect of coal mines provident fund of the deceased employee, the name of the present Petitioner was not reflected as a son whereas the name of one Rajan was reflected in the nomination forms of the coal mines provident fund and the names of Amar Das and Biresh Das were reflected in the Form 'F' of payment of gratuity and in both these nomination forms the name of Rajan, Amar Das and Biresh Das were shown to be the son of the deceased. According to the Counsel for the Respondents, the very fact that from the records it is evident that the deceased had sons alive at the time of her death and hence the adoption deed in the possession of the Petitioner is of no relevance as the same is in total contravention to the provisions of Section 11 of the Hindu Adoptions and Maintenance Act, 1956.

4. Counsel for the Respondents relies upon a decision rendered by the Supreme Court in the case of State of Chhattisgarh and Others v. Dhirjo Kumar Sengar [2009 (13) SCC 600] and also the judgment in the case of Ashish Kumar Shrivastava v. Western Coalfields Ltd. [2011 (1) MPLJ 353].

5. The Supreme Court in the case of Dhirjo Kumar Sengar (supra) has held that only because there is an order of succession or a succession certificate in favour of an employee itself would not create any right in him for grant of compassionate appointment which can only be granted in accordance with the scheme of the employer. The Supreme Court in para 10 and 22 has held as under:-

“10. ... Appointment on compassionate ground is an exception to the constitutional scheme of equality as adumbrated under Articles 14 and 16 of the Constitution of India. Nobody can claim appointment by way of inheritance.”

22. ... The succession certificate merely enabled him to collect the dues of the deceased. No status was conferred on him thereby. It did not prove any relationship between the deceased and the applicant.”

6. Further, in Ashish Kumar Shrivastava (supra), the High Court of Madhya Pradesh in somewhat identical set of facts as in the present writ petition has held that an adoption deed would be per se bad by virtue of the provisions of Section 11 of the Hindu Adoptions and Maintenance Act, 1956. The Madhya Pradesh High Court in para 13 and 16 has held as under:-

“13. ...During life time of male issue, whether an adoption can be made has been considered by the Apex Court *Salekh Chand vs. Satya Gupta*, (2008) 13 SCC 119 wherein the Apex Court in para 21 of the judgement has held thus :-

“it is not disputed that even under the old Hindu Law, adoption during life time of a male issue was specifically prohibited. In addition, I have observed that such an adoption even if made would be contrary to the concept of adoption and purpose thereof, and reasonable. Without entering into the arena of controversy, whether there was such a custom, it can be said even if there was such a custom, the same was not a valid custom.”

16. ... The aforesaid adoption was contrary to Section 11(i) of the Act. In view of the aforesaid, if the respondents turned down the case of the petitioner on the ground that he was not an adopted son of Shantibai and was not entitled to seek compassionate appointment, no fault is found.”

7. Having perused the records and upon hearing the Counsel for the parties, it is apparently clear that in the records maintained at the office of the Respondent company, the name of the Petitioner is not reflected; on the contrary, the names of the three sons of the deceased employee are reflected. Similarly, it is also reflected from the records that the so called adoption deed has been prepared just a couple of days prior to the death of the deceased which itself creates a great element of doubt. All the more for the reason that the deceased had sons alive at the relevant point of time and therefore there was no special reason for the deceased to have adopted the Petitioner as a son and which was otherwise prohibited under law.

8. In the facts and circumstances of the case, since there are considerable dispute between the Petitioner and the other sons of the deceased employee, the Petitioner at this juncture does not have any right created in him for being considered for grant of compassionate appointment.

9. For the foregoing reasons, this Court is not inclined to entertain the writ petition and the same is accordingly dismissed.

Sd/-
(P. Sam Koshy)
Judge