

HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

WRIT PETITION No. 3154 of 2006

ORDER:

-

Declaring the action of the respondents in holding that the petitioner herein has no legal title to receive the settlement dues payable on the death of one Smt. Rajeswari, as illegal and arbitrary, the present writ petition is filed.

The facts in issue are as under:

The petitioner claims himself to be the adopted son of Smt. Rajeswari, who was having one daughter by name Shankamma. The husband of Rajeswari died long back and her daughter Shankamma, pre-deceased Rajeswari, leaving behind two female children by name Kumari Rajitha and Saritha. The husband of Rajeswari by name Chandraiah and natural father of the petitioner are maternal cousins. As the husband of Rajeswari died at her young age, she used to live with the parents of the petitioner and later got a job in railways. It is stated that till her death all of them lived together. After the death of her husband, Rajeswari is said to have adopted the petitioner on 10.02.1982 as per Hindu Rites and Customs as she was not having any male issue. The petitioner was aged about 11 years at the time of adoption and said Rajeswari was 37 years old by then. The adoption deed was not registered, but it was attested by the Sarpanch. While things stood thus, the said Rajeswari, who was working as Gang Woman in South Central Railway died on 13.12.2001 while in service. After the death of Rajeswari, the petitioner along with Rajitha and Saritha, being the legal heirs of

Rajeswari, applied to the respondents for settlement of death benefits. The petitioner also made an application for employment on compassionate grounds. The petitioner produced a Family Members Certificate issued by Mandal Revenue Officer, Peddapalli dated 30.07.2002 to show that he was the legal heir of Rajeswari. Since the respondents insisted for the succession certificate, he filed O.S.No.34 of 2003 before the Court of Senior Civil Judge, Peddapalli seeking a declaration that he is the legal heir of Rajeswari. The said suit was decreed on 30.06.2003 declaring that the petitioner is the adopted son of Rajeswari. Later, the petitioner filed O.P.No.7 of 2003 on the file of the Junior Civil Judge, Godavarikhani, for issuance of succession certificate basing on the said decree and the Court was pleased to issue the succession certificate in favour of the petitioner along with Rajitha and Saritha holding each of them entitled to 1/3rd share in the service benefits. After obtaining decree in O.S.No.34 of 2003 and succession certificate in O.P.No.7 of 2003, the petitioner made a representation on 17.05.2005, requesting the respondents to settle the dues payable on the death of Rajeswari. It is said that on 15.07.2005, the petitioner received the impugned letter stating that he has no legal title to receive the settlement dues payable on the death of late Rajeswari as he is not the legal heir of the deceased employee. Hence, the present writ petition.

A counter came to be filed raising objection with regard to the maintainability of the writ petition. It is contended that the request of the petitioner with regard to payment of service benefits is consequential to the relief sought by him for appointment on compassionate grounds. The South Central Railway being a notified authority under the Act, the petitioner has

no option except to approach Central Administrative Tribunal. Even otherwise, it is said that it would be wholly improper to split the relief as sought for and adjudicate the case. It is further stated that the status of the petitioner as adopted son of Rajeswari is not established beyond doubt since the decree in O.S.No.34 of 2003 came to be obtained by way of a compromise between the petitioner and the minor grand daughters of Rajeswari. Therefore, it is contended that since the judgment and decree in O.P.No.7 of 2003 came to be obtained on the basis of a decree in O.S.No.34 of 2003, the status of the petitioner as an adopted son is not conclusively established. In view of the above, it is stated that the petitioner has to approach the Central Administrative Tribunal. Even otherwise, it is stated that the petitioner is not entitled for any benefits.

Learned counsel for the petitioner admits that insofar as appointment on compassionate grounds is concerned, he has to approach the Central Administrative Tribunal, but insofar as payment of death benefits, he states that the writ petition under Article 226 is maintainable. He further submits that since the respondents herein are parties to the decree in O.S.No.34 of 2003 and as no objection was raised at the time of passing the compromise decree, they are estopped from raising the said plea now. He submits that the said decree being a non-executable one, going to the Central Administrative Tribunal seeking benefits would not arise.

As stated earlier, insofar as the plea with regard to appointment on compassionate grounds is concerned, learned counsel for the petitioner himself admits that he has to approach the Central Administrative Tribunal. Therefore, it may not be

necessary for this Court to adjudicate on the said aspect.

Coming to the second aspect of the matter i.e. payment of death of benefits, the plea of the petitioner is that the decree in O.S.No.34 of 2003 is not an executable decree may be correct but it is only a decree obtained by way of compromise before the competent Court showing that the petitioner as an adopted son of late Rajeswari. If the relief which is sought for in the writ petition with regard to payment of death benefits to the extent of his share is allowed, a finding with regard to status of the petitioner as an adopted son of the deceased Rajeswari, pursuant to the decree passed in O.S.No.34 of 2003 stands established. It may not be proper for this Court to decide an issue, which the Central Administrative Tribunal has to decide while giving a finding as to the entitlement of the petitioner for appointment on compassionate grounds, more so, when the legal heirs of Rajeswari are not made parties to the writ petition. Hence, this Court is of the opinion that the second relief being consequential to the first one, which according to the petitioner has to be decided by the Central Administrative Tribunal, it would be appropriate if both the issues are decided by one forum. It has been stated that in number of cases, the Registry has transferred the cases of this nature to the Central Administrative Tribunal, by giving a transfer OA number. .

Hence, the writ petition is disposed of directing the Registry to transfer the writ petition to the Central Administrative Tribunal by following the circulars issued earlier.

**JUSTICE C. PRAVEEN
KUMAR**

10.12.2015

gkv