

IN THE HIGH COURT OF JUDICATURE AT PATNA

**Letters Patent Appeal No.567 of 2014
Arising out of
Civil Writ Jurisdiction Case No. 11018 of 2011**

- =====
1. Manish Kumar Upadhaya, S/o Sri Sugandh Upadhya, R/o Mohalla-West Lakshmi Nagar, Khemani Chak, P.S.-Ramkrishna Nagar, Distt-Patna.
 2. Kusum Kumari, D/o Late Baijnath Upadhya, R/o Mohalla-West Lakshmi Nagar, Khemani Chak, P.S.-Ramkrishna Nagar, Distt-Patna.
 3. Nirasha Kumari, D/o Late Baijnath Upadhya, R/o Mohalla-West Lakshmi Nagar, Khemani Chak, P.S.-Ramkrishna Nagar, Distt-Patna.
 4. Nittu Kumari, D/o Late Baijnath Upadhya, R/o Mohalla-West Lakshmi Nagar, Khemani Chak, P.S.-Ramkrishna Nagar, Distt-Patna.

.... Appellants

Versus

1. The Bihar School Examination Board through its Chairman having his office at Sinha Library Road, Patna.
2. The Secretary, Bihar School Examination Board, Patna.
3. The Deputy Secretary, Bihar School Examination Board, Patna.

.... Respondents

=====

Appearance:

For the Appellant/s : Mr. Awadhesh Kr. Mishra, Advocate.
Mr. Ajay Kumar, Advocate.
For the Respondent/s : Mr. Ajay, Advocate.
Mr. Ashish Kumar Lal, Advocate.

=====

CORAM: HONOURABLE MR. JUSTICE HEMANT GUPTA

and

HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE HEMANT GUPTA)

Date: 14-09-2016

Heard learned counsel for the parties.

2. The challenge in the present Letters Patent Appeal is to an order dated 10.02.2014 passed by Learned Single Judge whereby the claim of the appellant no.1 for appointment on Compassionate ground consequent to death of one Baijnath Upadhaya remained unsuccessful.

3. Sri Baijnath Upadhaya died in harness on 22.05.2003 leaving behind three minor daughters who are the

appellant nos. 2 to 4. The appellant no. 1 is the natural son of Shri Sugandh Upadhaya, the brother of Late Baijnath Upadhaya.

4. As per the learned counsel for the appellants, the appellant no. 1 born on 02.11.1986. As per the appellant, he was adopted in the year 1993. Neither the date of birth nor the date of adoption or the manner of adoption is disclosed in the writ application. The appellant no. 1 relies upon an affidavit executed on 29.07.2006 by Late Sona Devi, wife of Late Baijnath Upadhaya to the effect that the appellant no. 1 is the adopted son of Late Baijnath Upadhaya. The affidavit does not disclose the date of adoption, but it discloses the date of death of her husband as 22.05.2003. The executant of this affidavit died on 20.08.2006.

5. The appellants have attached an order passed by District Judge, Patna in Guardianship Case No. 81 of 2010, where the appellant no.1 has shown himself as son of Sugandh Upadhaya. The prayer in the said petition was for his appointment as guardian of three minor daughters of Late Baijnath Upadhaya. The operative part of the order reads as under:

“It is, therefore, ordered that the Guardianship application be and the same is allowed. The applicant Manish Kumar Upadhayay S/o Sugandh Upadhayay of resident of West Laxmi Nagar, Khemani Ck. P.S. Ram Krishna Nagar, District-Patna, is hereby, appointed guardian of the persons & property of all three minor cousin sisters namely, (1) Miss. Kusum Kumari (2) Miss Nirasa

Kumari & (3) Miss Nitu Kumari.”

6. The appellants have also attached a copy of the order passed in C.W.J.C. No. 13931 of 2009 in which again the appellant no.1 has shown himself as son of Sri Sugandh Upadhaya, whereas three cousins have been shown as daughter of Late Baijnath Upadhaya. The claim in the writ petition seems to be in respect of pending claims on account of death of Late Baijnath Upadhaya.

7. In the counter affidavit, it is mentioned that Late Baijnath Upadhaya has submitted his family details in prescribed format in which name of the appellant no. 1 Manish Kumar Upadhaya is not mentioned. In fact, the father of the appellant Sugandh Upadhaya was also a Class-IV employee of the Board and voluntary retired on 31.03.2009 i.e. much after death of Late Baijnath Upadhaya. In the family details of Sugandh Upadhaya, the name of the appellant no. 1 Manish Kumar Upadhaya was mentioned therein as son. It is also mentioned that the Board received an application for appointment of Shri Rameshwar Tiwary on compassionate ground by Smt. Sona Devi on 27.10.2004. The said representation was accompanied with an affidavit dated 22.11.2003 executed by Smt. Sona Devi and certificate of Mukhiya indicating that Sri Rameshwar Tiwary, her son-in-law has been accepted by both Late Baijnath Upadhaya and Smt. Sona Devi as their son, who performed last rites of the deceased as well. It is also asserted that the affidavit dated



29.07.2006 submitted on behalf of Sona Devi is identical as that of earlier affidavit filed on 22.11.2003, but the only difference is that in the affidavit dated 22.11.2003, the adopted son is Rameshwar Tiwari and in the affidavit dated 29.07.2006, the appellant no. 1 is adopted son. It is also pointed out that appellant no. 1 is not adopted son, as no documents have been produced to prove adoption. Along with the counter affidavit, the document of family members submitted by Shri Sugandh Upadhaya to his employer shows that he had two daughters and the only son.

8. In view of these documents, the learned Single Judge considered the claim of the appellant for appointment on compassionate ground and found to be untenable for the reasons stated therein. The learned Single Judge observed as under:

“There is absolutely no material on record, on the basis of which, learned counsel for the petitioners could show that the petitioner no.1 was in fact adopted by Late Baijnath Upadhaya. I am on the other hand constrained to observe that the petitioner has attempted to mislead his court by wrong and vague assertions. I would have imposed exemplary cost for the frivolous application filed by the petitioners but I have restrained myself in view of submission made by learned counsel for the petitioners that petitioners are suffering from great financial hardship.”

9. At the outset, the learned counsel for the appellants was asked as to whether he would like to press the present appeal in view of the conclusive findings recorded by the learned Single

Bench, but the Learned Counsel insisted on arguments and also referred to another C.W.J.C. No. 10488 of 2011 in which the appellant claims himself to be adopted son of Baijnath Upadhaya in support of his argument. The claim in the writ application was for the payment of ACP benefits to Baijanth Upadhaya.

10. The learned Counsel for the respondents also referred to supplementary affidavit filed on behalf of the appellants along with photocopy of the affidavit of Shri Baijnath Upadhaya dated 21.06.1993 attested by notary public. The learned counsel for the respondents pointed out that the affidavit is purportedly attested in the year 1993 but it carries welfare stamp of Rs. 5/- which were in fact became necessary in the year 2000 or so. The said affidavit does mention that his son-in-law Rameshwar Tiwari who is residing with him though he is threatening them.

11. After having heard learned counsel for the parties, we find that the claim of the appellant is untenable. The appellant no.1 has reflected himself as son of Sugandh Upadhaya in Guardianship Proceedings and also in an earlier writ petition filed by him. It is only in the writ petition filed in the year 2011, he has shown himself as adopted son of Baijnath Upadhaya. In the absence of any registered document of adoption which is required in “The Hindu Adoption and Maintenance Act, 1956”, the claim of the appellant that he was adopted by Shri Baijnath Upadhaya in 1993 is

not acceptable. The conduct of the appellant no. 1, thereafter, till the year 2009 was that he was asserting himself to be son of Sugandh Upadhaya. Still further, he was the only son of Sugandh Upadhaya. Therefore, in normal circumstances, the sole son would not be given for adoption. We find that patent false stand has been taken in the writ application, in the letters Patent Appeal and in the supplementary affidavit.

12. In view of the fact that the process of the court has been invoked on the basis of false assertions, which finding was even recorded by the learned Single Bench, therefore, the present Letters Patent Appeal is dismissed with cost of Rs. 30,000/-. The cost shall be deposited with Patna High Court Middle Income Group Legal Aid Society within one month.

(Hemant Gupta, J)

(Ahsanuddin Amanullah, J)

Mishra/-

AFR/NAFR	N.A.F.R
CAV DATE	N.A.
Uploading Date	20.09.2016
Transmission Date	N.A.