

NAFR

HIGH COURT OF CHHATTISGARH BILASPUR**Judgment reserved on 01/07/2019****Judgment delivered on 14/08/2019****Writ Appeal No. 286 of 2018**

1. South Eastern Coalfields Ltd., through its Chairman-cum-Managing Director, Head Quarter, Seepat Road, Bilaspur (C.G.).
2. Deputy Personnel Manager, SECL Kumda Sub Area, Bishrampur, Distt. Sarguja (C.G.).
3. Sub Area Manager, SECL Kumda Sub Area, Bishrampur, Distt. Sarguja (C.G.).

---- Appellants**Versus**

Manoj Kumar, S/o Somra (Adopted Son), aged about 28 years,
R/o Govindpur, Tah. Surajpur, District Sarguja (C.G.).

---- Respondent

For Appellants	:	Mr. Vinod Deshmukh, Advocate
For Respondent	:	Mr. Ashok Kumar Shukla, Advocate

Hon'ble Shri P. R. Ramachandra Menon, Chief Justice
Hon'ble Shri Parth Prateem Sahu, Judge

C A V JUDGMENT**Per Parth Prateem Sahu, Judge****14/08/2019**

1. The appellants have challenged the order dated 02/01/2018 passed by learned Single Judge in Writ Petition (S) No. 2601 of 2008 whereby allowing writ petition filed by respondent and directed appellants to consider the case of

respondent for dependent employment in accordance with clause 9.4.0 of the National Coal Wage Agreement-V (*for short* 'NCWA-V').

2. Facts relevant for disposal of this appeal are that Somra was under the employment of appellants on the post of General Mazdoor Category-I. He was declared medically unfit by the Medical Board on 15/04/1998 and separated from service w.e.f. 20/05/1998. After separation of Somra from service on medical grounds, respondent moved an application for dependent employment in terms of clause 9.4.0 of NCWA-V. The candidature of respondent was rejected on the ground that Law Department of the appellants-Company have not accepted the respondent as an adopted son in accordance with Hindu Adoptions and Maintenance Act, 1956 (*for short* 'Act of 1956').

3. Aggrieved by rejection of candidature of respondent, he filed a writ petition bearing Writ Petition (S) No.2601 of 2008 before this Court along with relevant documents including the judgment and decree passed by the competent Civil Court declaring him to be adopted son of Somra (ex-employee) vide judgment and decree dated 17/04/2001, with the following reliefs :-

“10.1 The Hon'ble Court may graciously be pleased to issue writ of certiorari/mandamus to quash the impugned order dated 20/01/2005 (Annexure P-7) as well as dated 30/11/2006 (Annexure P-9) directing the respondents to give compassionate appointment to the petitioner with all amenities and monitories

benefits whatsoever.

10.2 that the Hon'ble Court may graciously be pleased to issue a command/direction for calling the entire records pertaining to the case of the petitioner from the respondents' office and further to consider the representation of the petitioner.

10.3 Any other relief, as the Hon'ble Court deems fit and proper under the facts and circumstances of the case be issued.”

4. Appellants who are respondents in the writ petition filed their reply and submitted that the respondent-employee during his period of service had not intimated the fact of adopting any child as his son and not got it entered into service record. The document (Annexure P-2) which is a certificate issued by the Gram Panchayat has been pleaded to be not legally admissible document as the Gram Panchayat is not the competent authority to give certificate with respect to status of relationship, if it is under the clouds. It was further pleaded that the judgment and decree passed by Civil Judge Class-I, Surajpur District Surguja, (C.G.) declaring the respondent to be adopted son is not binding on them, as the judgment and decree has been passed under Order XII Rule 6 of CPC on the basis of admission of defendant, therefore, judgment and decree passed by learned Civil Court will only bind the defendant who is a party to the suit and not other persons who are not arrayed as a party to the suit. Somra (ex-employee) was belonging to Scheduled Tribe community and the Act of 1956 will not be applicable to him under the provisions of sub-section (2) of Section 2 of the Act of 1956.

5. Learned Single Judge while considering the clause 9.4.0 of NCWA-V, particularly, clause 9.4.0 (iii), has allowed the writ petition holding that the respondent herein obtained a decree from the Civil Court declaring him to be an adopted son of Somra, which is binding on the appellants-South Eastern Coalfields Limited unless it is set-aside and directed the appellants to consider the candidature of respondent herein for dependent employment.

6. Learned counsel appearing for the appellants submitted that clause 9.4.0 of NCWA-V mentions that along with other dependents, legally adopted son also to be dependent of worker. As on the date of his departing from service on medical grounds, there was no adoption deed available in existence showing relationship of respondent as adopted son nor his name was recorded in service records in the Column of dependents to be a dependent being adopted son along with wife and parents of ex-employee respondent is not having status of dependent as provided under clause 9.4.0 of NCWA-V. He further submitted that act of preparation of adoption deed dated 01/11/2000 appears to be a concocted document and it was prepared afterthought only to achieve ulterior goal i.e. dependent appointment. He further argued that ex-employee separated from service in April 1998, whereas for the first time, so-called dependent i.e. respondent approached the authorities for dependent employment only on 28/05/2001 i.e. after lapse of

three years. Further contention of the appellants is that the decree of declaration obtained by the respondent in his favour is also not binding on them as they were not party to the suit.

7. Learned counsel appearing for the respondent opposed the argument raised by learned counsel for the appellants and submitted that respondent is a legally adopted son of the ex-employee Somra. He further submitted that in his favour, there was a registered deed of adoption which was registered on 01/11/2000, in which, it has been categorically mentioned that he was adopted 15 years prior to the date of execution of adoption deed. On the basis of adoption deed, Civil Suit was filed before learned Civil Court for declaration of respondent to be an adopted son, which was decreed in his favour. He submitted that there is a specific clause in 9.4.0 (iii) of NCWA-V wherein adopted son is shown to be entitled for dependent employment.

8. We have heard learned counsel appearing for the parties.

9. To appreciate the grounds raised by learned counsel for appellants as well as respondent, this Court has called for the records of Civil Suit No.29-A/2001 from the Court of Civil Judge Class-I, Surajpur, District Surguja (C.G.).

10. So far as argument raised by learned counsel for the appellants that registered adoption deed to be a concocted document and further the judgment and decree passed by Civil

Court is not binding upon them is concerned, we have perused the records of the Civil Suit.

11. Perusal of plaint would show that the plaint does not mention under which provision of law, respondent has been adopted by defendant therein. It also does not mention that how and before whom, Somra adopted the respondent. He has filed copy of *Rashan Card* which is available on record of the Civil Suit wherein the date of preparation of *Rashan Card* has been shown as 01/05/2000 i.e. just before few months of the date of preparation of registered adoption deed. No other document of any nature was submitted by respondent in support of his claim.

12. From perusal of pleadings made in the plaint, it is apparent that pleadings made in the plaint are not specific with respect to provision under which, the application has been filed. If the respondent is claiming him to be a member belonging to Scheduled Tribe community, then what were the customs and if adoption has been taken place under the Act of 1956, then what ceremonies have been performed and before whom.

13. The cause-title of plaint also shows that only Somra has been arrayed as one of defendants who claimed to be an adoptive father of respondent. As per proceedings drawn by learned Trial Court, the order-sheet would reflect that on 23/02/2001, Civil Suit was filed. On 16/03/2001, written statement was filed by the sole defendant Somra and case was fixed for framing of issues on 17/04/2001. On 17/04/2001,

learned Trial Court instead of framing issues, after considering the pleadings have recored the order-sheet mentioning therein that as all the facts have been admitted by defendant, therefore, under the provision of Order XII Rule 6 of CPC, judgment and decree has been passed.

14. We have given our deep thought to the grounds urged by the respective parties as well as considered the record and proceedings of Civil Suit minutely.

15. The respondent in support of his claim with regard to his adoption by Somra has not filed any authentic or admissible piece of any documentary evidence before this Court or writ Court. Only one *Rashan Card* dated 01/05/2000 has been filed, which is part of Civil Suit. Though, claim of respondent is that he was adopted about 15-16 years prior to execution of registered adoption deed, but he has not filed any documentary evidence showing that after his adoption, he was residing with Somra (ex-employee) under his guardianship and his name is being recorded in any of Government records prior to year 1998. Even the documents annexed along with writ appeal which are documents of employer i.e. extract of service-book does not mention the name of respondent to be one of the dependents upon Somra (ex-employee).

16. The judgment and decree passed by Civil Court will have its binding effect looking to the nature of judgment and decree passed by it and parties to the suit. Looking to the overall facts

and circumstances of the Civil Suit as well as pleadings made therein, it *prima facie* appears that decree is a collusive decree obtained by respondent. Learned Trial Court while deciding the suit, has not taken into consideration under which law of adoption, suit was filed and Civil Court had not taken pains to look into that adoption requires proof as it is between two parents. In the case at hand, neither natural parents or any relative or person was brought as witness to proof the fact of giving respondent in adoption to Somra.

17. The Hon'ble Supreme Court in the matter of **Nagubai Ammal v. B. Sharam Rao**¹, has considered the difference between collusive and fraudulent proceedings. The Hon'ble Court laid down that while the former was the result of an understanding between the parties, both the claim and the contest being fictitious, and the purpose is to confound third parties whereas in the latter the contest was real, though the claim was untrue, and the purpose is to injure defendant by a verdict of Court obtained by practicing fraud in it.

18. In the another matter of **Gram Panchayat of village Noulaka v. Ujaghar Signh**², the Supreme Court has laid down that plea of decree passed in earlier proceeding was collusive or fraudulent can be raised even in a later proceedings. Filing a separate suit for declaration that decree was collusive or fraudulent is not a condition precedent for raising such plea.

¹ (1956) AIR SC 593

² (2000) AIR SC 3272

19. Further, in the matter of **Bhapurao Dagdu Paralkar v. State of Maharashtra**³, the Hon'ble Supreme Court laid down that fraud and collusion vitiate even the most solemn proceedings in any civilized system of jurisprudence. Fraud and justice never dwell together. An act of fraud on Court is always viewed seriously.

20. In the instant case, the respondent filed a suit for declaring him to be 'adopted son' of one Somra. The adopted father who is defendant therein filed a reply admitting all the pleadings made in the plaint and the learned Trial Court without framing issues and recording evidence of the parties, decreed the suit only on the basis of admission made by defendant therein declaring the plaintiff to be adopted son. This specifically appears to be a collusive decree between plaintiffs and defendant therein, therefore, the said decree, in view of the aforementioned verdicts of the Hon'ble Supreme Court, cannot have its binding force on the person/institution, who is not a party to the suit.

21. The other aspect of the case with respect to whether the judgment passed by the Civil Court in a civil suit filed by the appellants/respondents therein have its binding effect when the judgment was not passed in a contested suit and no reasons have been assigned.

22. The Full Bench of Andhra Pradesh High Court in **Aziz**

³ (2005) AIR SC 3330

Ahmed Khan v. I.A. Patel⁴, have observed the essential requirements of a judgment and held thus:-

“8.The form is designed to ensure that while pronouncing the orders or judgments, the Court do not act mechanically. They should apply their minds to the facts of the case and the points at issue and give a reasoned judgment.....”

23. Further, the Hon'ble Supreme Court in the matter of **Rameshwar Dayal v. Banda (Dead) through his Lrs and another**⁵, has held thus :

“19.....The present decision of the Small Causes Court which has not even stated the points for determination and given finding thereon, is obviously not a judgment within the meaning of Section 2(9) of the Code.....”

24. In the matter of **Balraj Taneja v. Sunil Madan**⁶, the Hon'ble Supreme Court has laid down that a judgment should be a self contained document from which it should appear as to what were the facts of the case and what was the controversy which was tried to be settled by the Court and in what manner. The process of reasoning by which the Court came to the ultimate conclusion and decreed the suit should be reflected clearly in the judgment. Whether, it is a case which is contested by the defendants by filing a written statement, or a case which

⁴ AIR 1794 Andhra Pradesh 1 (V 61 C 1)

⁵ (1993) 1 SCC 531

⁶ (1999) AIR SC 3381

proceeds *exparte* and is ultimately decided as an *exparte* case, or is a case in which the written statement is not filed and the case is decided under Order VIII Rule 10 of CPC. The Court has to write a judgment which must be in conformity with the provisions of the Code or at least set out reasoning by which the controversy is resolved. A Judge can not merely say suit decreed or dismissed.

25. In the light of aforementioned law laid down by the Hon'ble Supreme Court, if we considered the judgment passed by the Civil Court in proceedings of civil suit in favour of respondent No.1, it has not decided the fact of valid adoption or not, but merely on the basis of admission made by defendant therein, has passed the decree.

26. The judgment and decree, which is a nullity cannot have its binding effect, therefore, learned counsel for appellants herein appears to be right in saying that the judgment and decree passed by the Civil Court is not binding on them on the ground that they are not party to suit and the decree is collusive.

27. Looking to the case with another angle, NCWA-V provides for legally adopted son to be one of defendants of the employee. Under NCWA-V the word 'legally' has been placed with some purpose. 'Legally adopted son' means the adoption should be in accordance with law and not at the whims of two persons i.e. a person who is to be adopted and the person by

whom the first person is to be adopted, consent of parents of adoptive child and group of persons before whom the ceremony of give and take took place are important considerations for holding or declaring that adoption is legal, which is lacking in this case.

28. If we go through the provisions of Hindu Adoptions and Maintenance Act, 1956, Section 7 of Act of 1956 provides for capacity of a male Hindu to take in adoption, Section 9 of Act of 1956 provides for persons capable for giving in adoption, persons who may be adopted and Section 11 of Act of 1956 provides for the other conditions for a valid adoption.

29. If the word 'valid' has been put in the language of clause 9.4.0 of NCWA-V that means mere making statement that a particular person has been adopted or produces some deed of adoption that itself will not be sufficient to prove the adoption deed to be a valid adoption deed, but it is required to be proved in accordance with law particularly when deed of adoption is prepared after 15 years of said adoption.

30. In the case at hand, adoption deed has been prepared on 01/11/2000 at the time of taking some benefit from the appellants-Department. At the time of execution of deed of adoption, respondent was aged about 25 years. It appears that to avoid and overcome from specific provision under the Act of 1956 with respect to the age of a person to be adopted, the respondent very cleverly mentioned in the deed of adoption that

the adoption took place 15-16 years prior to execution of the deed of adoption.

31. For the foregoing discussions and taking into consideration that adoption deed has been executed only on 01/11/2000, immediately before filing of an application for dependent employment, Civil Suit was filed without mentioning any provision of law under which he was seeking a declaratory decree for declaring him to be an adopted son of Somra i.e. defendant therein. Neither father nor mother of appellant was examined to say that they have handed over their son to Somra, which is one of the essential conditions for valid adoption. As held earlier, the adoption cannot be proved by placing adoption deed on record or by mere filing of pleadings before the Court by two persons i.e. one is the adopted father and other is the adoptive son of Somra.

32. Even if all the admissions have been made, then there is a requirement under the Hindu Adoptions and Maintenance Act, 1956 that there should be give and take ceremony which is to be proved by producing witnesses before the Court. Though there is document on record that on the basis of deed of adoption, amount of GPF has been paid to respondent, but that cannot be a ground to commit again a mistake which was committed by the Department. After release of funds by one of Departments, application of the respondent for dependent employment was forwarded to the Law Department. After

considering the material placed on record before them, they have decided that respondent is not a legally adopted son of Somra (ex-employee), therefore, he has not been treated to be entitled for dependent employment and his application was rejected.

33. In view of overall facts and figurers of case at hand, in the considered opinion of this Court, the judgment and decree passed by the Civil Court cannot have its binding effect on the appellants who are not party to suit as it has not been passed in accordance with law, in fact, it is a collusive decree. In the considered opinion of this Court, the respondent cannot be treated as a legally adopted son as provided under clause 9.4.0(iii) of NCWA-V.

34. In the result, appeal filed by appellants is allowed. The impugned order passed by learned Single Judge on 02/01/2018 is hereby set-aside and the decision taken by the appellants-Department in rejecting candidature of respondent holding that he is not entitled for dependent employment is upheld.

Sd/-

(P. R. Ramachandra Menon)
Chief Justice

Sd/-

(Parth Prateem Sahu)
Judge