

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.409 of 2021

In

Civil Writ Jurisdiction Case No.3653 of 2020

Atul Kumar Srivastava son of Chhotan Prasad Srivastava adopted son of Late Kamalawati Devi, resident of Mohalla- Ratanpura, Police Station- Bhagwan Bazar, District- Saran, Chapra. Appellant/s

Versus

1. The State of Bihar through Principal Secretary, Health Department, Govt. of Bihar, Patna.
2. The Director, Health Services, Health Department, New Secretariat, Patna.
3. The Deputy Director, Health Saran Division, Chapra.
4. The District Magistrate-cum- Chairman District Compassionate Appointment Committee, Gopalganj.
5. The Deputy Collector, Establishment, Gopalganj.
6. The Civil Surgeon-cum- Chief Medical Officer, Gopalganj.
7. The Medical Officer, Primary Health Centre, Bijaipur, District- Gopalganj.

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Jitendra Prasad Singh
For the Respondent/s : Mr. S.D. Yadav (Aag9)

CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI

and

HONOURABLE MR. JUSTICE PURNENDU SINGH

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE PURNENDU SINGH)

Date : 19-12-2022

Heard learned counsel for the parties.

2. From the facts averred in the appeal, it emerges that Late Kamlawati Devi, who was posted as Lady Health visitor, at Bijaipur Primary Health Centre, Gopalganj, married Mani Bhushan Prasad, in the year 1975. The couple had no children of their own and subsequently they got separated by mutual divorce. The



said Mani Bhushan Prasad solemnized second marriage. In course of time Mani Bhushan Prasad as well as his second wife died without any issue. Late Kamlawati Devi started living in the house of her brother, Chhotan Prasad Srivastava. In the year 1987, she is said to have adopted her brother's three year old son (appellant) admittedly after the separation and subsequent to the death of her husband. In the month of January, 2001, Kamlawati Devi while posted at Primary Health Centre had disappeared under mysterious circumstances and remained traceless. The appellant claims he was aged about 14 years at the time of her disappearance.

3. After attaining majority at the age of 21 years, the petitioner filed Succession Case No. 27 of 2008 in the Court of learned Sub Judge-I, Saran, Chapra, in the year 2008. On 01.05.2008, the Appellant made application to the Respondent (Civil Surgeon, Gopalganj) for considering his case for compassionate appointment and for payment of death cum retiral benefits. On 08.05.2008, the Civil Surgeon, Gopalganj,



demanded the requisite Succession Certificate and Police Report regarding complaint of missing of Kamlawati Devi.

4. On 05.07.2008, paper publication was made about the disappearance of Kamlawati Devi by Civil Surgeon, Gopalganj. On 13.12.2008, Respondent In-Charge Medical officer made a '*sanha*' about disappearance of Kamlawati Devi, in Bijaipur Police Station. The learned Sub Judge -I, Saran, passed judgement dated 11.10.2012, whereby succession certificate was granted to the appellant considering him to be the adopted son of Kamlawati Devi.

5. The Appellant, once again applied for appointment on compassionate grounds along with the required documents, on 18.02.2013, before the Respondent (Civil Surgeon Gopalganj). The local police, Bijaipur had also submitted report to Medical Officer, Bijaipur, Gopalganj, on 25.04.2013 about civil death of Kamlawati Devi. On 10.06.2013, Civil Surgeon cum Chief Medical Officer, Gopalganj recommended



and forwarded letter to District Compassionate Appointment Authority, Gopalganj to consider the case of the appellant for compassionate appointment.

6. On the basis of succession certificate, Genealogical Certificate No. 445 dated 18.07.2014, was issued by the Circle Officer, Chapra and same was sent to S.D.O, Sadar, Chapra. The respondents gave the petitioner the legal dues of Kamlawati Devi, but his claim for compassionate appointment was not considered. Aggrieved by the action of the respondents, the petitioner filed C.W.J.C No.8853 of 2015. Vide order dated 02.08.2016, C.W.J.C No. 8853 was disposed of with a direction to the District Compassionate Appointment Committee, to consider the claim of the appellant within reasonable time for compassionate appointment. The District Level Compassionate Appointment Committee, on 20.10.2016, rejected the claim of the appellant, which was communicated to the appellant vide Memo No. 47 dated 17.01.2017. Consequently, the appellant challenged the rejection



order passed by the Departmental Committee in C.W.J.C No. 4100/2017, which was disposed of with a direction to the District Magistrate, Gopalganj, to examine the case of the appellant after considering the Succession Certificate as well as the report of Circle Officer. In compliance thereof, the District Magistrate, Gopalganj, sought for enquiry report from District Magistrate, Chapra, with respect to Genealogical Certificate No. 445 dated 18.07.2014, issued by the Circle Officer, Chapra. The Deputy Collector Establishment, Saran, Chapra submitted enquiry report to the Deputy Collector Establishment, Gopalganj, on 05.08.2019. The Deputy Collector Establishment sought legal opinion from the Government pleader and it was received by him on 13.08.2019. The District Compassionate Appointment Committee, Gopalganj, took decision to reject the claim of the appellant on 17.10.2019 and communicated it to him vide Memo No. 877 dated 20.12.2019. Aggrieved by the order dated 20.11.2019, the appellant filed C.W.J.C No. 3653/2020



out of which the present appeal arises for setting aside the order dated 28.06.2021. It is in that background that the appellant is before this Court challenging the order of learned Single Judge.

7. Learned Counsel for the Appellant submitted that, Late Kamlawati Devi and Mani Bhushan Prasad divorced mutually. After death of Mani Bhushan Prasad, Kamlawati Devi started living in the house of her brother(Biological father of the appellant). That kamlawati devi was legally capable of taking the Appellant in adoption as per Section 8 of the Hindu Adoption and Maintenance Act, 1956, when the appellant was 3 years old on the day of adoption and he was legally capable of being taken in adoption as per Section 10 of the Act, 1956. The ritual ceremony of adoption was duly performed between Late Kamlawati Devi and the biological father and mother of the Appellant in the presence of villagers, relatives and *Purohit* on 01.05.1987.

8. Learned Counsel further submitted that



Succession certificate granted in favour of Appellant by Sub Judge I, Saran at Chapra and on the said basis, the appellant had received legal dues of late Kamlawati Devi without objection from any corner. Thereafter, appellant having fulfilled all the condition as contained in Letter No. 512 dated 12.05.2005, issued by the Personnel and Administrative Department, Government of Bihar, in support of his claim that an adopted son/daughter again applied to be appointed on compassionate ground in the State of Bihar(Annexure D to I.A.).

9. Referring to paragraph no. 11 to the writ Petition, the appellant has stated that S.H.O, Bijaipur Police Station, after due inquiry, also issued letter to the Incharge-Medical Officer, Bijaipur on 25.04.2013 stating therein that considering the whole aspect and after proper investigation Kamlawati Devi was declared her civil death. It is further submitted that at time of disappearance appellant was minor but subsequently on the application filed by the appellant the office of Civil



Surgeon took initiative to publish press release and gave information to police in the year, 2008.

10. Learned counsel further submitted that the ceremony of actual giving and taking at the time of adoption was performed as would be evident from the judgment passed by the competent court in the succession case, which establishes the proof of his being adopted son of late Kamlawati Devi. He further submitted that the respondents have accepted the validity of adoption by paying legal dues to the appellant on the basis of succession but at the time they have rejected the claim of compassionate appointment on the ground that in absence of adoption deed furnished in his support. The District Magistrate, Gopalganj has not considered the legal value of succession certificate which was granted after the Civil Court had gone into the merits of adoption. The appellant has no other source of income and was fully dependent on his Late adoptive mother. In support of his contention, appellant has placed reliance on *Param Pal*



Singh Vs. National Insurance Company and Anr
reported as ***(2013) 3 SCC 409*** and ***Mihir Ramesh Vora***
Vs. Union Of India and anr reported in ***2013 SCC***
OnLine Bom 1032.

11. *Per Contra*, learned counsel appearing on behalf of respondent submitted that the appellant has not produced any cogent legal document which goes to prove the factum of adoption by bringing it before the authorities, particularly, the adoption deed executed by Late Kamlawati Devi and his father and also decree from the competent Court. Referring to para 14 to the Counter Affidavit he submitted that Medical Officer I/C, Primary Health Centre, Bijaipur vide Letter No. 614 dated 13.12.2008 had sent a written information to the S.H.O, Bijaipur P.S. about disappearance of late Kamlawati Devi. The S.H.O, Bijaipur P.S. in spite of lodging the F.I.R, made an Station Diary Entry No. 406/2008 dated 20.12.2008 i.e after seven years of disappearance of late Kamlawati Devi and thereafter after a lapse of about 05 years of lodging of the Station



Diary entry, on the report submitted by the A.S.I, Bijaipur P.S. had sent a report vide D.R. No. 397/ 2013 dated 25.04.2013 and declared the Civil Death of said Kamlawati Devi and not her actual death.

12. Learned Counsel further submitted that, the District Compassionate Appointment Committee, had taken the matter of appellant for consideration in its meetings dated 20.10.2016 and 17.10.2019, and after examining the documents available on record, found that the Appellant and in absence of any legal document in support of the story of adoption had rejected the claim in accordance with law.

13. We have heard the learned counsel for the parties and have gone through the pleadings made in the writ petition, counter affidavit and the finding of the learned Single Judge on merit.

14. The issues that fall for consideration before this Court are:

I. Whether a Succession Certificate can be treated as an adoption deed?



II. Whether the acceptance of civil death by the learned Sub-Judge-I, Saran, Chapra based on the report of the Investigating Officer is in accordance with the provisions of law?

15. Now reverting to the facts of the case as already noticed, the appellant is claiming to be adopted son of Kamlawati Devi, an employee posted at Bijaipur Primary Health Centre. Her civil death was reported in the year 1987 by the Bijaipur in the year 2013. The Succession Certificate was issued to the appellant by the competent Civil Court. The appellant, on the basis of the Succession Certificate has claimed that he was only 3 years old at the time of adoption but in all his certificates, his father's name has been mentioned as Chottan Prasad Srivastava. In **Jai Singh vs. Shakuntala reported in (2002) 3 SCC 634**, the presumption of adoption can be rebutted when the adoptive son is described as son of his natural father.

16. Further the appellant claims that there was separation between Kamlawati Devi and her husband



but no document in support of divorce has been brought on record. In para 14 of the counter affidavit filed on behalf of the respondent, it is stated that the Medical Officer I/C of Primary Health Centre, Bijaipur vide Letter No. 614 dated 13.12.2008 had sent a written information to the SHO, Bijaipur P.S. about disappearance of Kamlawati Devi against which the SHO, Bijaipur P.S. instead of lodging of the FIR, made an Station Diary Entry No. 406/ 2008 dated 20.12.2008 i.e after seven years of disappearance of said Kamlawati Devi and thereafter after a lapse of about 05 years of lodging of the Station Diary entry, an ASI of Bijaipur P.S. had sent a report vide D.R. No. 397/ 2013 dated 25.04.2013 and declaring Civil Death of Kamlawati Devi without jurisdiction. The civil death can be declared only by a competent Civil Court in a separate suit. A Bench of Bombay High Court in case of *Vijaya Shrikant Revale Versus Shirish Shrikant Revale and Others* reported in *2016 SCC OnLine Bom 1898* has held as follows:



“11. It is true that only Civil Court has power to give relief of declaration in such matters. The inquiry under section 372 of the Act is limited. However, the Court which conducts the inquiry under Section 372 of the Act is a civil Court and therefore the said Court is competent to decide the issue of declaration of death of Shrikant Vishnupant Revale.”

17. *Sanju Devi and Ors v. State and Anr 2014 SCC*

OnLine Del 65 : (2014) 6 AIR Del R (NOC 344) 109 :

PLR (2014) 174 Del 20, observed that proceedings under Indian Succession Act, are summary in nature and that the petitioner therein ought to file a civil suit to establish the factum of death and a civil court has the power to grant the declaratory relief of civil death of a person who goes missing for more than seven years.

18. In the present case, the S.H.O. has registered report with respect to missing of Kamlawati Devi and after investigation reported her civil death. In light of above decision, the information and report of the S.H.O. with regard to the missing of Kamlawati Devi only has evidentiary value and the appellant was required to obtain a decree of civil death by a competent Civil Court.



19. The petitioner seeks appointment on compassionate ground and also on the ground that financial benefits which he has been received by him on account of the alleged death of Late Kamlawati Devi on the basis of Succession Certificate obtained by him from the competent Civil Court

20. The facts of the case also reveal that after a delay of seven years when the appellant attained majority, he started taking steps in the year 2008, without explaining the undue delay in making application for compassionate appointment. In the present case, the family sustained from the year 2001 to 2008, therefore, appellant has no fundamental right to claim compassionate appointment. The appellant has not produced adoption deed before the competent authority and is depending upon succession certificate. The Apex Court in case of ***Rahasa Pandlani v. Gokulananda Panda*** AIR reported in ***1987 SC 962***, has held as follows:

“4.....When the plaintiff relies



on oral evidence in support of the claim that he was adopted by the adoptive father in accordance with the Hindu rites, and it is not supported by any registered document to establish that such an adoption had really and as a matter of fact taken place, the court has to act with a great deal of caution and circumspection. Be it realized that setting up a spurious adoption is not less frequent than concocting a spurious will, and equally, if not more difficult to unmask. And the court has to be extremely alert and vigilant to guard against being ensnared by schemers who indulge in unscrupulous practices out of their lust for property. If there are any suspicious circumstances, just as the propounder of the will is obliged to dispel the cloud of suspicion, the burden is on one who claims to have been adopted to dispel the same beyond reasonable doubt. In the case of an adoption which is not supported by a registered document or any other evidence of a clinching nature if there exist suspicious circumstances, the same must be explained to the satisfaction of the conscience of the court by the party contending that there was such an adoption. Such is the position as an adoption would divert the normal and natural course of succession. Experience of life shows that just as there have been spurious claims about execution of a will, there have been spurious claims about adoption having taken place. And the court has therefore to be aware of



the risk involved in upholding the claim of adoption if there are circumstances which arouse the suspicion of the court and the conscience of the court is not satisfied that the evidence preferred to support such an adoption is beyond reproach.”

21. As held by Apex Court, when there is no registered document pertaining to adoption under section 16 of the Hindu Adoptions and Maintenance Act, 1956 then the Court has to be very cautious and extremely alert to guard the persons against being ensnared by the unscrupulous persons who indulge in grabbing the properties. Further, as held by the Apex Court, in the absence of registered document confirming the actual performance of the ceremony of adoption in terms of Section 11 of the Hindu Adoptions and Maintenance Act, 1956. In the instant case, there is no registered document nor details of the ceremony mentioned. The Succession Certificate has been granted without examining the biological father and mother of the Appellant, who are competent witnesses to ascertain whether they really did intend to give their



son(appellant) in adoption to Late Kamlawati Devi.

22. There is considerable difference in the legal rights arising out of a succession certificate and that of an adoption deed. A succession certificate, under the Indian Succession Act, 1925, is a document that gives authority to the person who obtains it, to represent the deceased for the purpose of collecting debts and securities due to him/her or payable in his/her name. Usually, a succession certificate is the key in the absence of a will. A succession certificate will be the primary document through which the heirs can stake a claim to the assets of a deceased relative. Issuance of succession certificate does give right of succession to the claimed property of a deceased person, whereas, adoption deed is a legal document wherein all rights and responsibilities, along with filiation, from the biological parent or parents are transferred to adopted parents. A succession certificate can be granted in favour of any person, including a nominee. A nominee is someone who has been designated as the person who would receive the proceeds of the account in the case of unexpected death of persons holding the money market instruments.



23. The Supreme Court, while dealing with similar circumstances, in the case of *State of Chhattisgarh v. Dhirjo Kumar Sengar*, (2009) 13 SCC 600 : (2010) 1 SCC (L&S) 281 : 2009 SCC OnLine SC 1001 at page 607 has held as under:

“22. A succession certificate can be granted in favour of any person. It may be granted to an heir or a nominee. By reason of grant of such certificate, a person in whose favour succession certificate is granted becomes a trustee to distribute the amount payable by the deceased to his heirs and legal representatives. He does not derive any right thereunder. 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. Even otherwise, the respondent and his father were entitled to the said dues being his heirs and legal representative....”

24. The Hon’ble Supreme Court in the said judgment *Dhirjo Kumar Sengar* (Supra), further observed in paragraphs 15 to 17 that, seeking appointment on compassionate ground on the basis of inheritance is an exception to the principle of equality enshrined under Article 14 and 16 of the Constitution of



India. The relevant paragraphs referred above are reproduced *inter alia* as follows:

“15. We have noticed hereinbefore that in the application for grant of succession certificate, G.S. Sengar was described as the respondent's father. Even in the marksheets which had been drawn up on the basis of the record maintained in the school in which he was studying, his father's name was G.S. Sengar. It may be correct that for the purpose of proving that the respondent was the adopted son of the deceased, a registered deed of adoption was not imperative in character, but then, he was required to prove that datta homan ceremony or compliance with the other statutory conditions for a valid adoption had taken place.

16. In terms of Section 106 of the Evidence Act, the respondent having special knowledge in regard thereto, the burden of proving the fact that he was adopted by Chittaranjan Singh Sengar was on him. He did not furnish any evidence in that behalf. Even the records clearly show to the contrary.

17. It is in the aforementioned premise, the contention in regard to the breach of audi alteram partem doctrine must be considered. The principle of natural justice although is required to be complied with, it, as is well known, has exceptions. (See *Banaras Hindu University v. Shrikant* [(2006) 11 SCC 42 : (2007) 1 SCC (L&S) 327] .) One of the exceptions has also been laid down in *S.L. Kapoor v. Jagmohan* [(1980) 4 SCC 379 : AIR 1981 SC 136] wherein it was held: (SCC p. 395, para 24)

“24. ... In our view the principles of natural justice know of no exclusionary rule dependent on whether it would have made any difference if natural justice had been observed. The non-



observance of natural justice is itself prejudice to any man and proof of prejudice independently of proof of denial of natural justice is unnecessary. It ill comes from a person who has denied justice that the person who has been denied justice is not prejudiced. As we said earlier where on the admitted or indisputable facts only one conclusion is possible and under the law only one penalty is permissible, the court may not issue its writ to compel the observance of natural justice, not because it is not necessary to observe natural justice but because courts do not issue futile writs.”

25. The law is well settled that the object of compassionate appointment is to meet immediate harness in the family. The Supreme Court has time and again reiterated that compassionate appointment is not to be used as an alternate remedy for securing employment. This has been well emphasized in ***Haryana State Electricity Board And Anr Versus Hakim Singh, (1977) 8 SCC 85***, in the following paras:

“8.The rule of appointments to public service is that they should be on merits and through open invitation. It is the normal route through which one can get into a public employment. However, as every rule can have exceptions, there are a few exceptions to the said rule also which have been evolved to meet certain contingencies. As per one such exception relief is provided



to the bereaved family of a deceased employee by accommodating one of his dependents in a vacancy. The object is to give succour to the family which has been suddenly plunged into penury due to the ultimately death of its sole bread-winner. This Court has observed time and again that the object of providing such ameliorating relief should not be taken as opening an alternative mode of recruitment to public employment.

12. The object of the provisions should not be forgotten that it is to give succour to the family to tide over the sudden financial crisis befallen the dependents on account of the untimely demise of its sole earning member.

13. The learned Judge pointed out that if the claim of the dependent which was preferred long after the death of the deceased employee is to be countenanced it would amount to another mode of recruitment of the dependent of the deceased government servant "which cannot be encouraged, dehors the recruitment rules."

26. In the light of the law laid down by the Apex

Court in judgments referred above law is well settled that the compassionate appointment is not the right and the Court cannot issue direction to the respondents contrary to the scheme adopted by them. In the present case, record reveals that the appellant has not been able to bring on record the adoption deed/registered adoption



deed, decree of adoption and the declaration made by the competent Civil Court declaring her civil death in support of his claim to be adopted son of Late Kamlawati Devi. In light of the Apex Court decision, the succession certificate as observed above is not a document to establish the fact that the biological parents of the appellant had given him in adoption to Late Kamlawati Devi, during their lifetime.

27. In view of aforesaid finding and observations, we find no material to interfere with the order passed by the learned single judge.

28. We therefore find no merit in the appeal accordingly, the present appeal is dismissed with no costs.

(P. B. Bajanthri, J)

(Purnendu Singh, J)

Niraj/-

AFR/NAFR	A.F.R.
CAV DATE	N/A
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