

03.01.2024
Court No. 13
Item No. 356
AP

WPA 3346 of 2022

Krishna Bhuiya

Vs.

M/s. Eastern Coalfields Limited and Ors.

Mr. Partha Ghosh
Mr. Amal Kumar Datta
Ms. Simran Sureka
Mr. Debashis Das

.... For the Petitioner.

1. The respondents have used affidavit-in-opposition, but not represented today.
2. The writ petitioner is the adopted son of one Radha Devi, wife of Late Choto Lakhan Bhuiya. By a deed of adoption dated 25th May, 1993 the petitioner's father Chota Jamuna Bhuiya gave in adoption of the writ petitioner to Choto Lakhan Bhuiya and his wife Radha Devi. The adopting parents did not have any children on their own. They adopted the writ petitioner, who was a son of the older brother of Choto Lakhan Bhuiya.
3. It further appears that Radha Devi, who was a Group D staff with Dalurbadh Colliery under M/s. Eastern Coalfields Limited, had recorded the name of the writ petitioner as a son in her Provident Fund Account with the Coal Mines Provident Fund Organization. The service book of Radha Devi maintained with the Eastern Coalfields Limited also records the writ petitioner as her son. The petitioner has been recorded as nominee in the Provident Fund and Gratuity account of the Late Radha Devi.

4. The said Radha Devi died-in-harness on 22nd November, 2013. The petitioner immediately applied for compassionate employment in place and stead of his mother. The writ petitioner was asked by the respondents to submit various documents, which he did. The writ petitioner was also sent for the medical examination. The deed of adoption, which was notarized before a notary public at Kolkata, was also verified by the ECL from such notary.

5. The respondents, however, did not issue any order of formal employment of the writ petitioner.

6. By an order dated 6th August, 2021 a coordinate Bench of this court in WPA 6544 of 2021 directed the respondents to pass a reasoned order on the writ petitioner's application for compassionate employment. Pursuant to such directions, the impugned order dated 26th October, 2021 was passed.

7. By the said order, the respondents required the writ petitioner to produce a registered adoption deed. The respondents have held that in the absence of a registered adoption deed, the relationship between the writ petitioner and the deceased employee Radha Devi cannot be accepted. The petitioner has been denied compassionate employment.

8. This Court is very carefully considered the pleadings on the writ petition and the affidavit-in-opposition filed by the respondents.

9. In the decision of ***Param Pal Singh Vs. National Insurance Company and Anr.*** reported in **(2013) 3 SCC 409** at Paragraph 14 and 15 it is held as follows:-

“14. In this context, it will be worthwhile to note the requirement of registration of an adoption deed. Section 17 of the Registration Act specifically refers to the documents of which registration is compulsory. The deed of adoption is not one of the documents mentioned in sub-section (1) of Section 17 which mandatorily requires registration. Sub-section (3) of Section 17 only refers to the mandatory requirement of registration of an authorisation that may be given for adopting a son executed after 1-1-1872 if such authorisation was not conferred by a will. Dealing with the said provision relating to authorisation, it has been held in the decision in *Vishvanath Ramji Karale v. Rahibai Ramji Karale* [AIR 1931 Bom 105] that a deed of adoption as distinguished from authority to adopt does not require registration.

15. Keeping the above statement of law in mind as regards the procedure to be followed for a valid adoption and the statutory stipulation that an adoption deed does not require registration, the claim of the appellant as the adopted son of the deceased requires to be considered. We find from the record that the appellant has produced Ext. AW1/R which is the copy of the adoption deed. To appreciate the claim of the appellant in the proper perspective the contents of the said document can be usefully referred to which reads as under:

“(True translation in English)

(Stamp)

ADOPTION DEED

1. I, Ajit Singh, son of Surta Singh, son of Deva Singh, am residing at Village Dhariwal Kalan, Tehsil and District Gurdaspur, Punjab (hereinafter called ‘the first party’). That I am unmarried so I have no children. Keeping in mind that in absence of children one becomes without any care. Hence, for the purpose of proper maintenance a son is necessary. So, I have thought it fit to take Master Parampal, son of Shri Santokh Singh and Smt Nirmal Kaur (hereinafter called ‘the second party’), resident of Village Dhariwal Kalan in adoption and they have decided to give him. Master

Parampal's date of birth is 8-12-1996. His bringing up is being done by me and I am planning to send him to school. For the interest of his health and medication I myself do care. Parampal Singh is a very obedient boy and he always remains obedient to me and shows me utter respect. I always have a great affection for him. I want that whatever I leave behind be owned by Parampal Singh. I, in the presence of all respected persons and panchayat, adopt Master Parampal Singh as my son and in the ceremony goods and sweets are distributed for the happiness of one and all.

Adoption deed is reduced in writing for the purpose of proof.

First party

sd/-

Ajit Singh LTI

sd/-

Gurbux Singh

Sarpanch 15-2-1999

Gram Panchayat Seal & Stamp

Dhariwal Kalan

Witnesses:

sd/-

Nishan Singh

S/o Dayal Singh

Village Chhina Retwala

15-2-1999

Second party

sd/-

Nirmal Kaur

Witnesses:

sd/-

Tarsem Singh

S/o Bawa Singh

R/o Dhariwal Kalan

sd/-

Karnail Singh

Nambardar

Village Kallu Sohal"

10. It follows from the above dicta that a deed of adoption is not required to be registered under the Registration Act 1908. There are various methods of adoption prescribed in Indian law. Adoption can be effected by way of ceremony recognized as a practice and also by a deed. Such deed, however, does not require registration within the meaning of the Registration Act.

11. On the question of passage of time since 2014, this Court finds that it is now well-settled as inter alia mandated by the Supreme Court in the case of **Umesh Kumar Nagpal Vs. State of Haryana** reported in (1994)

4 SCC 138 that compassionate employment is not a matter of right. It is not a regular source of employment. However, since compassionate employment is a right under a statutory agreement available to the employees of the Eastern Coalfields Limited under the National Coal Wages Agreement, the passage of time cannot stand in the way of the petitioner's claim. Reference in this regard is made to the decision of the Supreme Court in the case of **Subhadra Vs. Ministry of Coal** reported in **(2018) 11 SCC 201**.

Paragraph 5 of the said decision is set out hereinbelow:-

“5. The learned counsel for Respondent 2 Organisation has invited our attention to the decision of this Court in *Canara Bank v. M. Mahesh Kumar* [*Canara Bank v. M. Mahesh Kumar*, (2015) 7 SCC 412 : (2015) 2 SCC (L&S) 539] and submitted that compassionate appointment is not a matter of right and there is a discretion available to the employer. We have no quarrel with the settled position, but the instant case is not a case of discretionary compassionate appointment governed by any statutory guidelines. It is governed by a Scheme, as agreed to by the parties and which has become part of the Bipartite Agreement. The terms of the Agreement are very specific and give no room for any discretion.”

12. The petitioner, therefore, can claim compassionate employment under the National Coal Wages Agreement as a matter of right.

13. For the reasons stated hereinabove, the impugned order requiring the writ petitioner to produce a registered deed of adoption is not sustainable in law and is contrary to the law of the land.

14. The adoption deed produced by the writ petitioner must be accepted by the respondents. The writ petitioner's adoption by Late Radha Devi and her husband is further

strengthened by the fact that the service book of Late Radha Devi contains the name of the writ petitioner as her son. The writ petitioner is also the nominee of her Provident Fund and Gratuity and others retiral benefits, which have already been paid to him.

15. In view of the above, this Court directs the respondents Eastern Coalfields Limited to grant compassionate employment to the writ petitioner within a period of two months from the date of communication of a copy of this order.

16. With the aforesaid directions, the writ petition is allowed and disposed of.

17. There shall be no order as to costs.

18. All parties shall act on the server copy of this order duly downloaded from the official website of this Court.

(Rajasekhar Mantha, J.)