

06. 15.03.2024
Court No.6
(Tanmoy)

FMA/241/2024

**SIMA KUMARI
VS
THE STATE OF WEST BENGAL & ORS.**

**WITH
IA No: CAN/1/2023**

Ms. Mousomee Shome, Adv.,
Mr. Subhajit Das, Adv.

...for the appellant/
writ petitioner.

Affidavit of service filed in Court today be kept with the records. In spite of service, nobody appears for the respondents. However, since we do not propose to pass any order which would be adverse to the respondents, we do not deem it necessary to adjourn this matter.

With consent of learned Advocate appearing on behalf of the appellant, the appeal and the connected application are taken up together for hearing.

A judgment and order dated October 10, 2023, passed by a learned Single Judge of this Court dismissing the appellant's writ petition being WPA 8241 of 2023, is the subject-matter of challenge in this appeal at the instance of the writ petitioner.

It appears that the father of the appellant/writ petitioner was an employee of Howrah Municipal Corporation (in short, 'HMC'). He died in-harness in the year 1998. The appellant says that she was only about six months old at that time, having been born in the year 1997.

In the year 2003, the private respondent was given appointment by HMC on compassionate ground on account of the death of the writ petitioner's father.

Before the learned Judge the writ petitioner contended that she was not aware of the scheme for compassionate appointment and, therefore, was not able to approach the Court earlier. In 2023, she came to learn about the private respondent having been engaged on compassionate basis. She has made a representation to HMC in February 2023, seeking cancellation of the appointment of the private respondent. The same has not received the attention of the Competent Authority.

It was submitted on behalf of the private respondent before the learned Judge that the private respondent is the adopted son of the deceased.

Having heard learned Counsel for the parties, the learned Judge dismissed the writ petition with the following observations:-

"Admittedly, the father of the petitioner expired in the year 1998 when the petitioner was only one year old. The private respondent was engaged in service in 2003 and he is in service till date.

It is settled law that vacancy for appointment on the compassionate ground cannot be reserved till the heir of the deceased attains majority. Appointment on compassionate ground is meant to tide over the immediate financial crisis faced by the family of the deceased bread winner.

In the present case, the employee expired in the year 1998. At such delayed stage there is neither any scope for considering the prayer of the petitioner for providing compassionate appointment nor there is any reason to reopen the case of appointment of the private respondent.

There is hardly any scope to entertain the dispute regarding adoption of the private respondent by the deceased employee.”

Being aggrieved, the writ petitioner is before us by way of this appeal.

Learned Advocate representing the appellant/writ petitioner says that the private respondent, on the basis of forged documents, obtained employment in HMC. He is actually the son of the deceased person's brother. He was never adopted by the deceased person being the father of the appellant. An FIR has been lodged against the private respondent in the jurisdictional Police Station in the State of Bihar. The Police is looking into the matter. The HMC Authorities should also initiate appropriate proceedings in the matter to ascertain whether or not the private respondent obtained the job by practising fraud.

She further submitted that no papers showing the alleged adoption of the private respondent were produced before the learned Judge.

We are not impressed with the submission made on behalf of the appellant. Matters of forgery, adoption etc., are not for the Writ Court to adjudicate upon. Further, the private respondent was engaged way back in the year 2003. If the appellant was born in the 1997, as she says she was, she would have attained majority in the year 2015. After that she took eight years to approach the Writ Court. The learned Judge rightly refused to interfere in the facts and circumstances of the case. As

regards non-production of any document supporting the plea of adoption of the private respondent by the deceased person, all that we can say is that the appellant has also not been able to produce any document before us contradicting such stand. We find no infirmity in the order impugned in this appeal.

The appeal being FMA 241 of 2024 and the connected application being IA No: CAN/1/2023, therefore, fail and are dismissed.

This will not prevent the appellant from taking recourse to such other remedies that she may have for redressal of her alleged grievance including filing civil suit and pursuing the criminal justice system, in accordance with law.

Urgent photostat certified copy of this order, if applied for, be made available to the parties upon compliance with all requisite formalities.

(Arijit Banerjee, J.)

(Supratim Bhattacharya, J.)