

Dewanti Devi Vs. State of Bihar and ors.

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Court : Jharkhand

Decided On : Jun-27-2003

Reported in : [2003(3)JCR720(Jhr)]

Judge : Tapen Sen, J.

Acts : Service Law; [Constitution of India](#) - Article 226

Appeal No. : CWJC No. 3552 of 1997 (R)

Appellant : Dewanti Devi

Respondent : State of Bihar and ors.

Advocate for Def. : Rajiv Ranjan Mishra, G.P. II

Advocate for Pet/Ap. : S.P. Sinha, Adv.

Disposition : Writ application dismissed

Judgement :

Tapen Sen, J.

1. Heard Mr. S.R Sinha, learned counsel for the petitioner; and Mr. Rajiv Ranjan Mishra, learned G.P. 11 for the State-respondents.

2. In the instant Writ Application, the petitioner has prayed for quashing of the order dated 27.08.1997 as contained at An-nexure 1 by which the petitioner has been informed that her application for compassionate appointment to the post of Grade IV (Peon) in the judgship of Singhbhum (West) has been rejected.

3. The petitioner further prays for issuance of an appropriate Writ commanding upon the respondents to provide employment to the petitioner on any suitable post on compassionate considerations.

4. The case of the petitioner is that her husband late Abdul Khalil Khan (hereinafter referred to for the sake of brevity as 'Khan') sustained severe burn injuries and consequently died in the Sakchi Hospital at Jamsedpur on 26.08.1993. He according to the petitioner, was employed as a Peon at the relevant time in the Judgship of Singhbhum West at Chaibasa. At paragraph 6, this petitioner has stated that late Khan died leaving behind two wives and a marriageable young daughter.

5. It appears, from the documents brought on record by the petitioner and also from the statements made that there are two ladies who claimed benefits, one way or the other after the death of Khan. One of these ladies is Mahtab Bano and the other is the petitioner, namely, Dewanti Devi. Both put forward their claims in respect of the money lying in the account of late Khan which led to the filing of a succession case at the instance of Mahtab Bano before the District Judge, Singhbhum West at Chaibasa. The aforementioned case was registered as Succession Case No. 77 of 1994. On 05.12.1995. the same was disposed off and it appears that on the basis of a joint compromise petition between the two ladies, the General Provident Fund, Gratuity, Group Insurance and the amounts lying towards unutilized leave salary were agreed to be shared half and half between them as both claimed to be the wives of late Khan. Upon perusal of the aforementioned order of the learned District Judge, it appears that there was a further agreement between the two ladies that the petitioner (Dewanti Devi) shall receive pension and that Mahatab Bano and her heirs and successors will not put forth any claim in relation thereto. It also appears to have been agreed that in case any service was to be provided on compassionate ground by the Civil Court at

Chaibasa, Mahtab Bano and her heirs would not put any obstruction or hurdles and would allow Dewanti Devi to have the benefit of service. The aforementioned order of the learned District Judge is Annexure 3 to the Writ Application.

6. It appears that thereafter the petitioner filed an application for compassionate appointment and while the same was in process, the petitioner also filed a Writ Petition before the then Ranchi Bench of the Patna High Court which was registered as CWJC No. 2538 of 1996(R). On 06.03.1997, however, a Bench of that Court correctly came to the conclusion that the matter was premature as the counter affidavit revealed that the question of appointment of the petitioner on compassionate considerations was still in consideration. Accordingly, the Writ Petition was dismissed and that order has been marked as Annexure 2 to the Writ Application.

7. From a perusal of the order which has been challenged in the instant Writ Application, i.e. Annexure 1, it is apparent that the same is a communication informing the petitioner that her application for compassionate appointment had been rejected on 27.08.1997. That order has been brought on record not by the petitioner, but by the respondents Nos. 2 and 3 in their counter affidavit and the same has been appended as Annexure 'A' thereof. Had this order not been placed before this Court, some very important factual aspects would have gone totally unnoticed and from a perusal of the order passed by the learned District Judge, Chaibasa, being Order No. 55/97 dated 27.08.1997 the following facts appeared :--

(a) That Khan was married to Mahatab Bano on 10.02.1971 and a sum of Rs. 11,000/- was paid as Dain Mohr. They were governed by the Mohammedan Law.

(b) Khan sustained burn injuries as a result of which he died on 28.06.1993 whereafter a dispute arose between the two ladies and both starting claiming the amounts lying in the account of Khan. Subsequently in the Succession Case, Mahatab Bano filed an application praying for issuance of Certificate of Succession and in that application she stated that Dewanti Devi (petitioner herein) was a Hindu who having been taken into marriage by Khan in a Shiv Mandir which was totally contrary to Mohammedan Law and therefore it was not a valid marriage

at all.

(c) From paragraphs 4 and 10 of the order of the learned Sessions Judge it appears that Mahatab Bano filed an application under Section 125 of the Code of Criminal Procedure wherein she had stated that her husband Khan was living in adultery and had kept this petitioner as his mistress although she (Mahatab Bano) was alive and their marriage had not been dissolved. Thereafter an award of Rs. 200/- per month was passed in her favour and that amount was being deducted from his monthly salary for the maintenance of Mahatab Band.

(d) It is also apparent that before the Succession Court, Dewanti Devi (petitioner) produced a Certificate to show her marriage to Khan in a Shiv Mandir, but whether such a marriage was at all to be valid was a question that was rightly discussed by the learned Sessions Judge inasmuch as he appears to have rightly expressed his doubt that it could not have either been a marriage in accordance with Mohammedan Law nor could it have been a marriage in accordance with Hindu Law. The learned Sessions Judge also rightly observed that 'that apart, the rules do not permit offering appointments on compassionate ground to the second or third wife of the deceased Government Servant specially when, as in the instant case, keeping a second or third wife during life time of the first wife, the marriage with the first wife without being dissolved or without permission of the Government, is not permissible under law and rules. As a matter of fact Mahatab Bano is still alive as stated by Dewanti Devi.'

8. To get an order on the basis of compromise for purposes of receiving a Succession Certificate is one matter, but to get compassionate appointment is a totally different concept altogether. The two ladies may have entered into some sort of a compromise before the Court which issued the Succession Certificate, but the moment one of them claimed appointment on compassionate considerations, then it was absolutely mandatory on her part to establish eligibility. For a compassionate appointment, the minimum eligibility criterion is that the person claiming such benefit must be a legal heir and/or successor. From the facts stated and also from the facts appearing to the effect that Khan had married the petitioner in a Hindu Temple and that too, when his first wife who was legally

married to him was alive, the said marriage could neither have been a valid marriage nor a marriage under the Muslim Law nor could the same be said to be a proper valid marriage under the Hindu Marriage Act. That being the position, the petitioner, Dewanti Devi could not have been treated to be a legal heir or successor for purposes of compassionate appointment. Additionally Khan died in 1993. Ten (10) years have gone by; the concept of compassionate appointment is to give relief to the family of the deceased instantaneously and the very fact that the matter has lingered on for so many years also is another factor that disentitles the petitioner from any relief in relation to compassionate appointment.

9. For the foregoing reasons, therefore, this Court is of the opinion that there is no merit in this Writ Application. Accordingly the Writ Application fails and is dismissed. No order as to costs.

10. However, any observations made in this case shall not be prejudicial to the observations that have been made by the Succession Court while granting Certificate which has been issued on the basis of compromise recorded between the two ladies in the manner stated above. Let it also be recorded that whatever observations have been made herein are only for purposes of adjudicating the petitioner's claim for compassionate appointment and these observations will not be used against the petitioner in any other area/areas where she may be claiming under late AbdulKhalil Khan as those will be dealt with as per their own merits.