

Jagat Pal Vs. State of U.P. and Others

Jagat Pal Vs. State of U.P. and Others

SooperKanoon Citation : sooperkanoon.com/918639

Court : Allahabad

Decided On : Sep-24-2010

Judge : Ran Vijai Singh, J.

Appeal No. : WRIT - A No. - 26617 of 2010

Appellant : Jagat Pal

Respondent : State of U.P. and Others

Advocate for Def. : C.S.C. Adv

Advocate for Pet/Ap. : C.B. Dubey, ADV

Judgement :

1. By means of this writ petition, the petitioner has prayed for issuing a writ of certiorari quashing the impugned reply/order dated 17.4.2010 sent/passed by respondent no. 3 with the further prayer to direct the respondents to provide appointment to the petitioner under the U.P. Recruitment of Dependents of Government Servants Dying in Harness Rules 1974 (herein after referred to as Rules of 1974), within specific period.

2. The facts giving rise to this case are that the father of the petitioner late Radhey Shyam was confirmed Class IV Employee with the respondents and he expired in harness on 21.11.2007. Initially the father of the petitioner was issue less therefore through registered adoption deed he adopted the petitioner on 25.2.2004, copy of

adoption deed has been brought on record as Annexure No. 2 to the writ petition. After the death of father, the petitioner has applied for appointment on compassionate ground on 3.12.2007 under the Rules of 1974 but nothing was done. The petitioner has sent thereafter number of reminders on 15.2.2008, 28.2.2008 and 16.7.2008, copy of the application as well as reminders have been brought on record as Annexure No.4 to the writ petition.

3. It is stated in paragraph no. 7 of the writ petition that the petitioner has obtained succession certificate on 14.2.2008, copy of which has been brought on record as Annexure no. 3 to the writ petition.

4. It is stated in paragraph 9 of the writ petition, that after the death of his father, the petitioner has received all the service benefits as a legal heir of his father late Radhey Shyam.

5. It appears that the respondent no. 3 through letter dated 3.3.2008 has inquired from the higher authorities whether an adopted son of a deceased employee is entitled to get an appointment under the Rules of 1974? copy of this letter has been brought on record as Annexure 5 to the writ petition. When nothing was done, the petitioner has sent a legal notice on 10.4.2010. In pursuance thereof, impugned information dated 17.4.2010 has been given to the petitioner which has been brought on record as Annexure no. 1 to the writ petition.

6. From the perusal of the impugned reply/order dated 17.4.2010 sent by Regional Director Social Forestry Region Bareilly it transpires that Regional Director Social Forestry Region has taken the view that adopted son do not fall in the ambit of son and dependent as defined under Rule 2 (c) of the Rules of 1974.

7. While assailing the impugned notice Sri C.B.Dubey, learned counsel for the petitioner has submitted that it has not been denied by the respondents that the son of a deceased employee falls in the ambit of definition of family as defined under the Rules of 1974 and what has been denied is that the adopted son do not fall in the ambit of son. In his submissions, the respondents could not differentiate in between son and adopted son as the adopted son is as good as natural son under the provisions of Hindu Adoptions and Maintenance Act, 1956 (hereinafter

referred to as Act of 1956). In his submissions, the impugned reply/order dated 17.4.2010 is illegal and deserves to be quashed.

8. Refuting the submissions of learned counsel for the petitioner learned standing counsel has tried to defend the notice/order dated 17.4.2010 passed by Regional Director Social Forestry Region Bareilly by saying that the order dated 17.4.2010 is perfectly legal as there is no word like 'adopted son' mentioned in the definition of family of the dependents of deceased under the Rules of 1974. In his submissions no infirmity can be attached with the impugned order.

9. I have heard learned counsel for the petitioner and learned standing counsel and considered their submissions. With the consent of learned counsel for the parties the writ petition is taken up for final disposal on the admitted facts of the case.

10. The dispute involved in this case revolves towards the word 'adopted son'.

11. To appreciate the controversy the mythological and the legal aspect of 'son' is required to be looked into. In Vedic age and even thereafter prior to India got its independence, the insistence was given for a Hindu to have a male child and the desire for male offspring (in particular) was very natural in all early societies. Male issue was prized both for the continuance of the family as well as for the performance of funeral rites and offerings. The Veda declares: "Endless are the worlds of those who have sons; there is no place for the man who is destitute of male offspring". "May our enemies be destitute of offspring". "O Agni, may I obtain immortality by offspring. Rig Veda, I, 21, 5 cited in Vas., XVII, 2-4; Vishnu, XV, 45; Manu, VI, 36, 37; IX, 45.

12. Not only in Vedic age but later on Manu also emphasized the Vedic injunction regarding the necessity for a son thus : "Through a son, he conquers the world; through a son's son, he obtains immortality but through his son's grand-son, he gains the world of the Sun. Because a son delivers his father from the hell called PUT, he was therefore called PUT-TRA. Manu, IX, 137, 138; Vishnu, XV, 44, 46. Medhatithi explains that the hell called 'put' is only 'the name given to the four kinds of elemental life on the earth' and that all that is meant is that by the birth of

a son, the father is "born next in a divine life". Jha., Manu Bhashya, Vol. V, 123.

13. So also Yajnavalkya : "Because continuity of the family in this world and the attainment of heaven in the next are through sons, son's sons and sons' grandsons, therefore women should be loved and protected."

14. For the above reasons, in the old age twelve or thirteen kinds of sons were recognized and mentioned by the earlier writers : (1) The legitimate son (Aurasa) is one begotten by a man upon his lawfully wedded wife. (2) The son of an appointed daughter (Putrikaputra). (3) The son of the wife (Kshetraja) is one begotten upon a man's appointed wife or widow by his brother or near kinsman. (4) The son secretly born (Gudhaja or Gudhotpanna) is the son born in a man's house to his wife when it is not certain who the father is. (5) The maiden's son (Kanina) is the son born to an unmarried girl in her father's house before her marriage. (6) The son of the pregnant bride (Sahadha or Sahodhaja) is the son born to a woman whom one, while she is pregnant, knowingly or unknowingly marries. (7) The son of a twice married woman (Paunarbhava). (8) The son given (Dattaka) is the son whom his father or mother gives in adoption. (9) The son made (Kritrima) is the son whom a man himself makes his son with the adoptee's consent only. (10) the son bought (Krita) is one sold by his father and mother or either. (11) The deserted son (Apaviddha) is one who, having been discarded by his father and mother, is taken in adoption. (12) The son self-given (Svayamdatta) is one, who bereft of father and mother or abandoned by them presents himself saying ' Let me become thy son', and (13) The Nishada or Parasava is the son of a Brahmin by a Sudra wife. A person by appointing another as heir to his property cannot confer on him the status of a son; the latter cannot claim as heir of another on the footing that he is the son of the farmer. Gaut. XXVIII, 32,33; Baudh II, 2, 3, 14-30; Apas, II, 6, 13, 1-11; Vas., XVII, 9-22; Vishnu, XV, 1-27; Manu, 1, 127-140, 158-184; Yajn II, 127-132; Nar., XII, 17-20; 45-47; Mitakshara, I, xi.

15. Gurudit Singh v. Surjit Singh 1950 Pepsu 56: 2 Pepsu LR 431.

16. Under the old Hindu law the insistence was not only given for having a son and perpetuate the family line but simultaneously a pious duty was also imposed to maintain the dependents like wife, aged parents and a minor son as a matter of

personal obligation arising from the very existence of the relationship and quite independent of the possession of any property, ancestral or self acquired. A text of Manu cited in the Mitakshara and the Parasaramadhaviya says " It is declared by Manu that the aged mother and father, the chaste wife and an infant child must be maintained even by doing a hundred misdeeds". The text is not found in Dr. Buhler's edition (SBE Vol XXV) but is cited in Mit. on Yajn II, 175 (Setlur, 819). The last clause is only an arthavada to show the importance of the duty. Ghose HL, I, 322; see Manu, VIII, 389 with Medhatithi's comment on it; Savitribai vs. Luximibai (1878) 2 Bom 573; Commr of Income-tax v. Lakshmipathi Saheba (1935) 14 Pat 313, 316; Bhoopathi Nath v. Basanta Kumari (1936) 63 Cal 1098, 1110. So the Mitakshara lays down that " where there may be no property but what has been self-acquired, the only person whose maintenance out of such property is imperative are aged parents, wife and minor children."

17. The importance and extent of the right of maintenance necessarily arisen from the theory of an undivided family. The head of such a family is bound to maintain its members, their wives and their children, to perform their ceremonies and to defray the expenses of their marriages, in other words, those who would be entitled to share in the bulk of the property are entitled to have all their necessary expenses paid out of its income. The right of maintenance includes persons who by reason of personal disqualification are not allowed to inherit, such as the idiot, the madman and the rest. The right of maintenance was also extended with respect to illegitimate son, Concubine etc. (some portion of the citation has been borrowed from Mayn's Hindu Law.

18. After India's independence the Parliament realising the present need of the society, has enacted The Act of 1956. The object and reason of the Act as has been mentioned in introductory part of the Act is reproduced below :-

19. With the passing of the Hindu Succession Act, 1956, which treats sons and daughters equally in the matter of succession, it has now become possible to simplify the law of adoption among Hindus. The Bill provides for the adoption of boys as well as girls. There is no longer any justification for allowing a husband to prevent his wife from taking a child in adoption after his death. The adoption made

by a widow will hereafter be in her own right. No person need be divested of any property, which has vested in him, by reason only of the fact that subsequent to such vesting an adoption has been made. This rule of divesting has been the cause of many a ruinous litigation.

20. It would appear from the perusal of the Act that after enactment of the Act of 1956 now a male or female both can adopt a child either it is male or female.

21. In the Ancient Hindu Law five kinds of adopted sons were recognized as there was no concept to adopt a female child. However the Modern Hindu Law recognizes only two namely, the dattaka (adopted) and the Kritrima. The dattaka form is in use all over India. The Kritrima form is prevalent in Mithila and the adjoining districts.

22. The object and purpose of the adoption are two fold. The first is religious, to secure benefit to the adopter and his ancestors by having a son for the purpose of offering funeral cakes and libations of waters to the soul of the adopter and his ancestors. The second is secular, to secure an heir and perpetuate the adopter's name.

23. However after the enactment of the Act of 1956 the mythological purpose has disappeared but so far as the modern purpose is concerned, the Act provides for adoption of a child and once a child has been adopted either by adoptive father or mother it has a definite effect which has been provided under Rule 12 of the Act of 1956.

24. For better appreciation Section 12 of the aforesaid Act is quoted below.

12. Effects of adoption :- An adopted child shall be deemed to be the child of his or her adoptive father or mother for all purposes with effect from the date of the adoption and from such date all the ties of the child in the family of his or her birth shall be deemed to be severed and replaced by those created by the adoption in the adoptive family :

Provided that-

(a) The child cannot marry any person whom he or she could not have married if he or she had continued in the family of his or her birth;

(b) Any property which vested in the adopted child before the adoption shall continue to vest in such person subject to the obligations, if any, attaching to the ownership of such property, including the obligation to maintain relatives in the family of his or her birth;

(c) The adopted child shall not divest any person of any estate which vested in him or her before the adoption.

25. From the perusal of above section, it is clear that an adopted child shall be deemed to be the child of his or her adoptive father or mother for all purposes with effect from the date of the adoption and from such date all the ties of the child in the family of his or her birth shall be deemed to be severed and replaced by those created by the adoption in the adoptive family.

26. It appears recognizing the duty to maintain the dependents in the service law also, proper care has been taken of by the framer of the Rules of 1974 by making a provision for saving out the dependents of a deceased employee who have fallen under financial crunch after the death of an employee while working with the department. There also almost on the same line the family has been defined and dependents have been identified.

27. In so far as the lis involved in this case with regard to equivalence of adopted son with natural son (aurasa) under the Rules of 1974 is concerned, it has to be looked into in the context of the word 'family' as defined under Rule 2 (c) of the Rules of 1974 which runs as under.

(i) Wife or husband

(ii) Sons

(iii) Unmarried and widowed daughters.

(iv) If the deceased was unmarried government servant, brother unmarried sister and widowed mother dependent on the deceased government servant.

28. From the perusal of Rule 2 (c) (ii) and 2 (c) (iii) of the Rules of 1974 it transpires that the word 'sons' and 'unmarried and widowed daughters' have been mentioned whereas in Clause (iv) the word 'brother' and 'unmarried sister' has been mentioned. Here, in Sub-Rule 2 (c) (ii) and 2 (c) (iii) plurality is attached with the word 'son' and 'daughter' whereas with respect to Sub-Rule 2 (c) (iv) it is in singular form by mentioning (brother and sister) and not 'brothers' and 'sisters'.

29. The problem which is wriggling in my mind is that why the framer of the Rules of 1974, in Rule 2 (c) (ii) and (iii) has attached plurality with the word 'son' and 'daughter' as 'sons' and 'daughters' and why singularity is attached with the word 'brother' and 'sister' in Rule 2 (c) (iv), whereas either it is son, daughter, brother or sister they constitute one class and in each category their number may be more than one, therefore, in view of Rule 5 which provides that only one member of the family is entitled to be considered for appointment, attaching plurality with the word 'son' and 'daughter', the framer of the rule has intended to mean something more behind the attachment of plurality with the word 'son' and 'daughter' and that looking into the object of the rule in recent perspective is to attach plurality means not to infer number of the 'son' and 'daughter' but the kind of the 'son' and 'daughter' who are legally recognized under law, as after the enactment of the Act of 1956 the kind of 'son' and 'daughter' has become more than one i.e. natural/real/son/daughter and adopted son/ daughter. It may be noticed that according to the Act of 1956 right of adoption has been given to a male and female both to adopt either a male or female child. The effect of such adoption is that by virtue of adoption a male or female child becomes a 'son' or 'daughter' as the case may be of the adopter and this constitute a separate category i.e. adopted son/daughter and that is why plurality is not attached with the words 'brother' and 'sister' under Rule 2 (c) (iv) as the kind of 'brother' and 'sister' for the purposes of this rule or other rules is not more than one.

30. Otherwise also the Act of 1956 has been enacted by the Parliament and the provisions contained in this Act, unless something otherwise is provided under this Act, will prevail over any Act of the State legislation or Rules framed under Article 309 of the Constitution of India. In the present case, the Rule which is under consideration has been framed under Article 309 of the Constitution of India,

therefore, also the effect of adoption providing same status to adopted child as of a natural child will prevail over the rule in question and both the adopted child as well as the natural child will be treated at par, without there being any difference amongst two.

31. For the above reason, I am of the view that the Rules of 1974 itself provide that the adopted son/daughter is also included in the definition of family as defined under Rule 2 (c) (ii) and (iii) of the Rules.

32. Otherwise also the definition of family as defined under the Rules of 1974 begins as, 'family shall include' and this aspect of the matter has been considered by this Court in the case of Shiv Prasad v. State of U.P. and others 2009 (3) ESC 1869 (All) where this Court has observed as under :-

33. It appears that in Rule-2 of Dying in Harness Rules which defines various words or expressions mentioned in the definition clause, these words and expressions are preceded by the words 'unless the context otherwise requires'. It means that the definitions given in the definition clause should be normally applied and given effect to but this normal rule may however be departed from if there be something in context to show that definition should not be applied. In view of legal position stated by Hon'ble Apex Court referred hereinbefore, the definition of expression 'family' given in the definition clause appears to be an inclusive definition as the definition clause used the word 'include' in the definition of family. Such definition is known as expansive definition and is used to enlarge the meaning of the words or phrases occurring in the body of statute and when it is so used, the words or phrases should be construed as comprehending not only such thing which they signify according to their natural import, but also those things which the interpretation clause declares that they shall include. Where the definition is an inclusive definition, the word not only bears its ordinary, popular and natural sense whenever that would be applicable but it also bears its extended statutory meaning. Contrary to it, where in a definition clause of a statute a word is defined to mean certain thing whenever that word is used in that statute, it shall mean what is stated in the definition 'unless the context otherwise requires'. Such definition is known as restrictive definition and used to restrict the meaning of

expression defined in the definition clause and whenever such word or expression is used in the body of the statute, it shall be restricted to meaning assigned in the definition clause and popular or natural meaning of such word or expression shall not be applied.

34. After observing so, this Court has held that adopted son is as good as real son. In this view of the matter, I am of the definite opinion that the adopted son has got the same status under law as the natural son has and there can be no difference in between the two (adopted or natural) either for mythological purpose or for secular purpose to perpetuate the line of family. The view taken by me also finds support from several decisions of this Court rendered in *Sunil Saxena v. State of U.P. and others*, 1994 (68) FLR 283; *Singhasan Gupta v. State of U.P. and another*, (1996) 1 UPLBEC 4 and *Ravindra Kumar Dubey v. State of U.P. and others*, 2005 (4) ESC 2706 (All). Thus, the impugned notice/order dated 17.4.2010 sent/passed by respondent no. 3 is unsustainable in the eye of law and deserves to be quashed.

35. In the result, the writ petition succeeds and is allowed. The impugned reply/order dated 17.4.2010 passed by respondent no. 3 (Regional Director Social Forestry, Region Bareilly) is hereby quashed.

36. Keeping the purpose and object of the Rules of 1974 i.e. to save out the family from financial crunch after the death of an employee, the concerned respondent is directed to reconsider the petitioner's matter in view of the observation made hereinabove within a period of six weeks from the date a certified copy of this order is produced before him, by passing a reasoned speaking order.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com