REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 3242 OF 2009
[Arising out of SLP (Civil) No.6230 of 2007]

State of Chhatisgarh & Ors. …Appellants

Versus

Dhirjo Kumar Sengar …Respondent

J U D G M E N T

S.B. SINHA, J :

1. Leave granted.

2. One Chittaranjan Singh Sengar (since deceased) was posted as Head Master of a Government School, Baradwar, Dist-Champa, Janjgir, Chhattisgarh. He was unmarried. Respondent's father G.S. Sengar was his brother. Respondent and his father applied for grant of a succession certificate before the Civil Judge, Class I, Distt. Janjgir. The said

application was allowed by an order dated 15.01.1996 passed by Civil Judge, Class I, Janjgir.

3. In the said application for grant of the said succession certificate, the respondent did not make any averment that he was adopted by the said Chittaranjan Singh Sengar.

4. Indisputably, Chittaranjan Singh Sengar did not make any nomination in regard to his provident fund and other dues. The said succession certificate was produced before the Deputy Director (Education) who noticed:

> "Legal succession certificate of Shri Dheeraj Kumar Sengar S/o Shri Ganesh Singh Sengar, legal heirs of Late Shri Chittaranjan Singh Sengar, R/o Village – Latia, Tahsil – Janjgeer Bilaspur is forwarded for information and implementation. They produce his original certificate regarding qualification before concerned block/ principal for his observation."

5. Respondent filed an application for appointment on compassionate ground. The said application was rejected by the Joint Director Education Division, Bilaspur.

6. However, despite the fact that his application for grant of compassionate appointment was rejected by the Joint Director, a purported order of compassionate appointment came to be passed in his favour by the Deputy Director (Education). The said offer of appointment, however, was cancelled by an order dated 9.06.1997, stating:

> "On the basis of above reference and in absence of Legal Succession Letter your compassionate appointment order No. 731/Estab-1/Comp.Appoint Endorse No. 96-97 has been rejected from the current effect."

7. Respondent filed an Original Application before the Madhya Pradesh Administrative Tribunal questioning the validity of the said order dated 9.06.1997, which by reason of an order dated 5.06.2000 was dismissed, holding:

> "10. When anyone claims compassionate appointment on the basis of adoption, he should prove fully that he was validly adopted. The applicant has failed in discharging the burden. It has to be remembered that instructions about compassionate appointment have to be interpreted strictly because such appointments amount to a dilution of Article 14 and 16 of the Constitution."

8. Before the learned Tribunal, a contention as regards breach of the principles of natural justice was raised. The learned Tribunal answered the said contention in the following words :

> "12. The applicant argues that no show cause notice was given to him. This argument has no force. The Supreme Court has held in State of M.P. Vs. Shyama Padhi (AIR 1996 Supreme Court 2219) and S. Mohan Vs. Govt. of Tamil Nadu (1998 SCC (L&S) 1231, that no show cause notice is necessary in cases of illegal appointments. The Supreme Court has also upheld the concept of post decisional hearing in Swadeshi Cotton Mills Vs. Union of India (1991 (1) SCC 658). The applicant was fully heard by the Tribunal. He could not prove beyond doubt that he was validly appointed. The Supreme Court has observed as follows in the Board of Mining Examination Vs. Ramjee (1977 (2) SCC 256):
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> "Natural Justice is no unruly horse, no lurking land mine nor a judicial cure all. If fairness is shown by the decision maker to the man proceeded against, the form, essential procedural propriety being conditioned by the facts and circumstances of each situation, no breach of natural justice can be complained of. Unnatural expansion of natural justice without reference to the administrative realities and other factors of a given case can be exasperating. We can neither be finical nor fanatical but should be flexible yet firm in this jurisdiction."

9. A writ petition was preferred thereagainst by the respondent, which by reason of the impugned judgment and order dated 13.09.2006 has been allowed, stating:

> "…The impugned order itself would disclose that in support of his case, the petitioner has produced not only the deed of adoption as Annexure A-1 but also Succession Certificate issued by the competent Court of law as Annexure A-2. It seems to our mind that learned Tribunal had not applied its mind to the Succession Certificate issued by the competent court of law as Annexure A-2. It seems to our mind that learned Tribunal had not applied its mind to the Succession Certificate issued by the competent court of law. It is needless to state that the Tribunal has no jurisdiction to question the correctness of Succession Certificate Annexure A-2. The deed of adoption and certificate of succession would undeniably prove that the petitioner is the adopted son of the deceased Chitaranjan Singh Sengar who died in harness. It is nobody's case that the petitioner being adopted son of the deceased employee is not entitled to seek appointment on compassionate ground to a suitable post. If that is the position, the order passed by the department dated 19.06.1997, we should say, is ex-facie illegal and untenable in law."

10. Mr. Atul Jha, learned counsel appearing on behalf of the appellants, would contend:

(i) A large number of documents filed before the Tribunal would in no uncertain terms demonstrate that apart from production of the purported unregistered deed of adoption which does not carry any statutory presumption, respondent has utterly failed to establish that he was the adopted son of the said Chittaranjan Singh Sengar.

(ii) Grant of succession certificate, by no stretch of imagination, would be a relevant factor for the purpose of determination of the question as to whether the adoption was valid or not.

11. Mr. Raj Kumar Gupta, learned counsel appearing on behalf of the respondent, on the other hand, urged that as the appointment had been granted on compassionate ground, which having been cancelled without observing the requirements of the principles of natural justice, the same cannot be sustained.

12. Chittaranjan Singh Sengar was the Head Master of a Government School. He did not file any nomination in respect of his statutory dues. As he was unmarried, his brother and the respondent were his natural heirs. Application for grant of succession certificate was not filed by the respondent alone. It was filed jointly by him and his father. Had the respondent been his adopted son, he would have claimed a succession

certificate only on that basis. His natural father G.S. Sengar could not have been arrayed as an applicant. No joint succession certificate, thus, could have been applied for and granted.

13. Various other documents have also been brought on record. It appears from the marksheet of the High School Examination of the respondent that his father's name was shown as Ganesh Singh Sengar. Similar endorsement has been made in the marksheet in his Higher Secondary Examination.

14. Even the Principal of the said school while forwarding the respondent's application for payment of dues of Chittaranjan Singh Sengar did not state that the respondent was his adopted son.

15. Appointment on compassionate ground is an exception to the constitutional scheme of equality as adumbrated under Articles 14 and 16 of the Constitution of India. Nobody can claim appointment by way of inheritance.

In Steel Authority of India Ltd. v. Madhusudan Das and Ors. [2008 (15) SCALE 39], this Court held:

> "…This Court in a large number of decisions has held that the appointment on compassionate ground cannot be claimed as a matter of right. It must be provided for in the rules. The criteria laid down therefor, viz., that the death of the sole bread earner of the family, must be established. It is meant to provide for a minimum relief. When such contentions are raised, the constitutional philosophy of equality behind making such a scheme be taken into consideration. Articles 14 and 16 of the Constitution of India mandate that all eligible candidates should be considered for appointment in the posts which have fallen vacant. Appointment on compassionate ground offered to a dependant of a deceased employee is an exception to the said rule. It is a concession, not a right."

16. This Court in I.G. (Karmik) v. Prahalad Mani Tripathi [(2007) 6 SCC 162] carved out an exception to the ordinary rule of recruitment, stating:

> "6. An employee of a State enjoys a status. Recruitment of employees of the State is governed by the rules framed under a statute or the proviso appended to Article 309 of the Constitution of India. In the matter of appointment, the State is obligated to give effect to the constitutional scheme of equality as adumbrated under Articles 14 and 16 of the Constitution of India. All appointments, therefore, must conform to the said constitutional scheme. This Court, however, while laying emphasis on the said proposition carved out an exception in favour of the children or other relatives of the officer who dies or who becomes incapacitated while rendering services in the Police Department.

> 7. Public employment is considered to be a wealth. It in terms of the constitutional scheme cannot be given on descent. When such an exception has been carved out by this Court, the same must be strictly complied with. Appointment on compassionate ground is given only for meeting the immediate hardship which is faced by the family by reason of the death of the breadearner. When an appointment is made on compassionate ground, it should be kept confined only to the purpose it seeks to achieve, the idea being not to provide for endless compassion."

[See also Mohan Mahto v. Central Coal Field Ltd. and Ors. (2007) 8 SCC 549]

17. This Court, times without number, has held that appointment on compassionate ground should not be granted as a matter of course. It should be granted only when dependants of the deceased employee who expired all of a sudden while being in service and by reason thereof his dependants have been living in penury.

The Government of Madhya Pradesh had adopted a scheme for appointment on compassionate ground which was circulated to all concerned in terms of a letter dated 10.06.1994, stating:

> "If any government servant dies in harness then either his widow or his legal children (which includes the step son/ daughter also) would be

> made available service. Service wouldn't be made available to any other member or relative."

The nephew of the deceased employee, therefore, was ineligible for grant of such appointment.

18. Appointment, however, was offered to the respondent without taking into consideration that he had not been able to establish his relationship with the deceased or that he was in fact totally dependant on him.

The purported deed of adoption was not a registered one. It, therefore, did not carry with it a presumption as envisaged under Section 16 of the Hindu Adoptions and Maintenance Act, 1956.

The adoption was purported to have been recorded on a stamp paper of Rs. 2/-.

We have noticed hereinbefore that in the application for grant of succession certificate, G.S. Sengar was described as his 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 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 of the other statutory conditions for a valid adoption had taken place.

In terms of Section 106 of the Indian 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.

19. It is in the aforementioned premise, the contention in regard to the breach of *audi alteram partem* doctrine must be considered.

Principle of natural justice although is required to be complied with, it, as is well-known, has exceptions. [See V.C., Banaras Hindu University and Others v. Shrikant (2006) 11 SCC 42]

20. One of the exceptions has also been laid down in S.L. Kapoor v. Jagmohan and others [(1980) 4 SCC 379 : AIR 1981 SC 136] wherein it was held:

> "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."
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> (Emphasis supplied)

21. Legality of grant of a valid appointment was dependant upon the proof that the respondent was the adopted son of Chittaranjan Singh Sengar. He not only failed to do so, the materials brought on record by the parties would clearly suggest otherwise. His application for grant of appointment on compassionate ground was rejected by the Joint Director of Education. He did not question the legality or validity thereof. He, it can safely be said, by suppressing the said fact obtained the offer of appointment from an

authority which was lower in rank than the Joint Director, viz., the Deputy Director. When such a fact was brought to the notice of the Deputy Director that the offer of appointment had been obtained as a result of fraud practiced on the Department, he could, in our opinion, cancel the same.

Respondent keeping in view the constitutional scheme has not only committed a fraud on the Department but also committed a fraud on the Constitution. As commission of fraud by him has categorically been proved, in our opinion, the principles of natural justice were not required to be complied with.

22. Mr. Gupta has relied upon a large number of decisions of this Court, viz., Inderpreet Singh Kahlon and Others v. State of Punjab and Others [(2006) 11 SCC 356], Mohd. Sartaj and Another v. State of U.P. and Others [(2006) 2 SCC 315], Jaswant Singh and Others v. State of M.P. and Others (2002) 9 SCC 700 and State of M.P. and Others v. Shyama Pardhi and Others [(1996) 7 SCC 118] to contend that *audi alteram partem* doctrine should have been complied with. In these cases, requirement to comply with the principles of natural justice has been emphasized. The legal principles carved out therein are unexceptional. But, in this case, we are concerned with a case of fraud. Fraud, as is well known, vitiates all solemn acts. [See Ram Chandra Singh v. Savitri Devi and Others (2003) 8 SCC 319, Tanna &

Modi v. CIT, Mumbai XXV and Others (2007) 7 SCC 434 and Rani Aloka Dudhoria and others v. Goutam Dudhoria and others [JT 2009 (3) SC 616]

23. The High Court, therefore, must be held to have committed a serious error in passing the impugned judgment.

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 to 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 representatives.

24. The very fact that the respondent had filed an application for grant of succession certificate along with his father, showing themselves to be the heirs and legal representatives of the deceased, is itself sufficient proof to

show that he did not claim any benefit in regard to the debts of the deceased as his adopted son or otherwise.

25. For the reasons aforementioned, the impugned judgment cannot be sustained, which is set aside accordingly. The appeal is allowed with costs. Counsel's fee assessed at Rs. 10,000/-.

…….J.
[S.B. Sinha]

……J.
[Dr. Mukundakam Sharma]

New Delhi;
May 5, 2009