District Primary School Council Vs Sanjay Sarkar

Court: Calcutta High Court

Date of Decision: July 8, 2009

Citation: (2009) 123 FLR 127

Hon'ble Judges: Md. Abdul Ghani, J; Kalyan Jyoti Sengupta, J

Bench: Division Bench

Advocate: Subir Sanyal, Arabinda Bhattacharjee and Ms. Sujata Saxena, for the Appellant;Debabrata Saha Roy and Indranath Mitra, for the Respondent

Judgement

Kalyan Jyoti Sengupta and Md. Abdul Ghani, JJ.
This judgment and order of the learned Trial Judge dated 5th July, 2005 though brief but

with reason is challenged.

2. The learned Trial Judge directed the school Council concerned to consider the writ petitioner/appellant for appointment on compassionate

ground taking into consideration of the issue of hardship. The learned Judge then observed that if it is found that the writ petitioner and the

members of his family is in financially distress condition, he must be given appointment.

3. The learned Trial Judge has held that writ petitioner is entitled to be considered for compassionate appointment. His Lordship is of the view that

there is no distinction between adopted son and natural son under Rule 14 which provides for compassionate appointment. The aforesaid decision

of interpretation of Rule 14 of the learned Trial Judge is under challenge.1

4. Mr. Sanyal learned lawyer appearing on behalf of the Appellant submits that before the final rule was brought in to existence, a draft rule was

prepared where specifically adopted son was included but thereafter at the time of finalisation of the rule, the Legislature in its wisdom has

excluded the word "adopted", so, he urges that we should infer that Legislature has excluded word "adopted".

5. We are of the view that when the Legislature has not expressly excluded the adopted son from the definition of son, discerning the provision of

Hindu Adoption and Maintenance Act as well as the General Clauses Act we view the son includes an adopted one.

6. The writ petitioner/respondent got a decree from Civil Court whereby a declaration has been given that he was validly adopted. The

consequence of adoption has been provided in Hindu Adoption and Maintenance Act that all the rights and obligations are created the moment a

child is validly adopted and this will appear from section 12 which is set out hereunder:

S.12. An adopted child shall be deemed to be the child of his 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.

7. Ironically the department concerned has accepted the writ petitioner being eligible to get all the terminal benefits including pension treating him as

being natural son.

8. Of course, there cannot be any estoppel as against the statute just because there has been acceptance of this position. As we have discussed

above, the position of law is also the same as has been accepted and acted upon by the department.

9. We, therefore, hold that learned Trial Judge though did not discuss the position of law in details but has come to a legal correct conclusion, and

we uphold the same. We do not see any reason to interfere with the same. We dismiss the appeal and uphold the judgment and order of the

learned Trial Judge.

10. We direct the District Primary School Council concerned to decide the matter within eight weeks from the date of communication of this order.

11. Urgent xerox certified copy of this order shall be supplied to the applicants, if applied for.