

22/2/99

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

Original Application No: 504/98

Date of Decision: 18/2/99.

Ms. Sangita L. Parmar

Applicant.

Shri G. S. Walia

Advocate for
Applicant.

Versus

Union of India & 3 Ors.

Respondent(s)

Shri V. S. Masurkar - R-1 to 3.

Advocate for
Respondent(s)

Shri Suresh Kumar - R-4.

CORAM:

Hon'ble Shri. Justice R.G. Vaidyanatha, Vice Chairman.

Hon'ble Shri.

- (1) To be referred to the Reporter or not?
- (2) Whether it needs to be circulated to other Benches of the Tribunal?

R. G. Vaidyanatha
(R.G. VAIKYANATHA)
VICE CHAIRMAN

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL

GULE STAN BLDG. NO. 6, 4th FLR, PRESCOT RD, FORT,

MUMBAI - 400 001.

ORIGINAL APPLICATION NO:504/98.

DATED THE 18TH DAY OF FEBRUARY, 1999.

CORAM: Hon'ble Shri Justice R.G. Vaidyanatha, Vice Chairman.

Ms. Sangita M Parmar
daughter of
Motilal Bhagwandas Parmar
since deceased
Residing at
Railway Quarter No.101/16,
Western Railway Colony,
Matunga Road,
Mumbai - 400 019.

... Applicant.

By Advocate Shri G.S. Walia.

V/s.

1. Union of India, through
General Manager,
Western Railway,
Head Quarters Office,
Churchgate,
Mumbai - 400 020.
2. Divisional Railway Manager,
Mumbai Division,
Western Railway,
Mumbai Central,
Mumbai - 400 008.
3. Medical Director,
Jagjiwan Ram Hospital,
Mumbai Central,
Mumbai - 400 008.

By Advocate Shri V.S. Masurkar.

4. Smt. Laxmiben Manilal,
Makwana,
Residing at
Vill. : Kasor
Tal. : Petlad
Dist. : Kheda
Gujarat.

... Respondents.

By Advocate Shri Suresh Kumar

I O R D E R

¶ Per Shri R.G. Vaidyanatha, V.C ¶

This is an application filed by applicant for a declaration that the adoption deed of the applicant is legal and valid and on that basis she is entitled to Compassionate Appointment under the respondent Nos. 1 to 3 and for a direction to respondent Nos 1 to 3 to give her

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a compassionate appointment in Group 'C'.

Respondents 1 to 3 on the one side and respondent No. 4 on the other have filed separate written statements opposing the application.

I have heard learned counsels appearing on both sides.

2. One Mr. Motilal Bhagwandas Parmar was a Railway employee. He died in harness on 1/6/97. The applicants' case is that she came to be adopted by deceased Motilal Parmar under Registered adoption deed dated 21/6/84. Since she has become the adopted child of her father, she has a right to claim compassionate appointment from the Railway Administration. She has also alleged that respondent No. 4 was the wife of the deceased but her marriage with the deceased was dissolved long back and she is living with some other person since many years. She also says that she was living in the quarters alongwith her father since she was adopted and continued after his death and she is entitled to continue in the quarters till she gets compassionate appointment.

3. Respondent Nos. 1 to 3 have filed reply stating that the application is not maintainable since there is serious dispute about the relationship of the applicant with the deceased. According to them, the deceased has nominated respondent No. 4 as the nominee as late as 25/4/92 regarding provident fund. It is stated that unless the applicant obtains succession certificate from a Civil Court she is not entitled to the reliefs prayed for in the present OA.

Respondent No. 4 has filed a separate written statement asserting that she is still the wife of deceased Shri Motilal Parmar and she is the nominee for the Provident Fund and for other service benefits of her husband. She denies the alleged adoption of the applicant.

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She also says apart from denying the factum of adoption she also says that her consent was not taken for the said adoption. The alleged adoption is illegal. She also alleges that she was living in the quarters till the death of the deceased., and that the applicant is not entitled to any of the reliefs.

4. The learned counsel for applicant contended that the applicant is validly and legally adopted daughter of deceased Shri Motilal Parmar and entitled for ~~xxxxxx~~ compassionate appointment and placed reliance on a legal presumption which can be raised under section-16 of the Hindu Adoption and Maintenance Act 1956. According to him, it is for the respondent-4 to approach ~~civil~~ Civil Court and get a declaration on the factum and validity of applicants' adoption. He therefore submits that in view of the registered adoption deed and the legal presumption available she is entitled to reliefs prayed for in the present application. But the counsels for the Railway Administration and respondent No.4 have contended that this Tribunal has no jurisdiction being a service Tribunal and cannot go into the question of legality and validity and factum of adoption.

5. After hearing both sides, I find that the present OA as brought is not maintainable in this Tribunal. This Tribunal cannot give a declaration that x applicant is legally and validly adopted daughter of the deceased as per prayer (a) in para-8 of the application. It is only a Civil Court which has jurisdiction and competence to give such a declaration about the factum ~~is~~ ^{and} validity of adoption.

I am not impressed by the arguments urged on behalf of applicant that the Court should raise a presumption under section-16 of the Act and on that basis allow the application. The presumption under section-16 of Hindu Adoption and Maintenance Act 1956 is a ~~rebuttable~~ ^{able} presumption.

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It is not a case of conclusive presumption. Presumption can be raised unless and until is rebutted. Here, the admitted fact is that the wife has not given consent for adoption and therefore the Court cannot raise a presumption that the adoption has been done according to law which is inclusive of consent of wife., regarding not only the factum of adoption but also the validity of adoption. The jurisdiction of the Service Tribunal is very limited. It cannot consider disputed question of Civil rights of parties. Whether the applicant was validly adopted or not is a matter to be decided by Civil Court. Unless it is settled by a Civil Court as to whether the adoption deed is legal or not, particularly when there is serious dispute, this Tribunal cannot grant any relief to applicant.

6. It is for the applicant to approach the Civil Court and get a declaration regarding validity or otherwise of applicant's adoption. If she is successful, she may approach the Railway Administration for appropriate reliefs according to law. It is brought to my notice that applicant has already approached Bombay High Court for appropriate relief. Since the Civil Court is seized of the matter, it is for the Civil Court to give appropriate directions in this matter. Since the applicant is admittedly in possession of the quarter subject to payment of Normal rent or penal rent as per Interim order dated 25/6/98 and modified by order dated 30/8/98, I feel that the Interim order should be continued for a period of two months from today so that either party can move the Civil Court for appropriate directions.

7. Let me make it clear that I am not expressing any opinion on merits on the rival contentions. I have mentioned the facts briefly only to show that there is serious dispute between parties on the question of validity of adoption deed which cannot be decided by a



• Tribunal which has limited jurisdiction.

All questions on merits are left open.

8. In the result, the OA is disposed of without prejudice to the rights of both the parties subject to observations in para-6. No orders as to costs.

abp.

R.G. Vaidyanatha
(R.G. VAIDYANATHA)
VICE CHAIRMAN