

CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH

...

MA No.290/00115/2019 IN
OA No.290/00213/2018

Pronounced on : 27.09.2019
(Reserved on : 20.09.2019)

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CORAM: HON'BLE SMT. HINA P. SHAH, MEMBER (J)
HON'BLE SMT. ARCHANA NIGAM, MEMBER (A)

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Wajid Mohd S/o Late Shri Nasir, aged 30 years, R/o D-122, Ratanada,
 Subhash Chowk, Jodhpur.

...APPLICANT

VERSUS

1. Union of India, through the General Manager, Northern Railway, Malviya Nagar, Near Jawahar Circle, Jaipur.
2. The Divisional Railway Manager, North Western Railway, Jodhpur.
3. The Senior Divisional Personal Officer, North Western Railway, Jodhpur.
4. The Senior Divisional Mechanical Engineer (P), North Western Railway, Jodhpur.
5. The Assistant Divisional Engineer, North Western Railway, Jodhpur.

...RESPONDENTS

Present : Shri K.K. Shah, counsel for the applicant.
 Shri Kamal Dave, counsel for respondents for R1 to R5.

ORDER on M.A.

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Hon'ble Smt. Archana Nigam, Member (A):-

1. Heard Mr. K.K. Shah, learned counsel for the applicant on the question of LR.
2. Learned counsel for the applicant has stated in the MA that the applicant is adopted son of Late Shri Nasir (Original applicant). He was not married and hence he adopted the applicant being his nephew in the year 2017. Late Shri Nasir preferred the a/m OA and during pendency of

the same, he died on 25.05.2019. The Death Certificate dated 03.06.2019 is annexed as Annexure MA1. The Adoption Deed dated 05.10.2017 is also annexed as Annexure MA2.

3. Late Shri Nasir remained sick for a very long time since 2015 and remained admitted in Railway Hospital. Due to his illness, he could not enter the name of the applicant in the service record. It is also stated that there is no legal representative of Late Shri Nasir except the applicant and to continue to agitate the cause of Late Shri Nasir, it is necessary to bring the name of the applicant.

4. Based on the above facts, learned counsel for the applicant prays for allowing the MA to bring the name of the applicant Shri Wajid Mohd on record of the OA as legal representative. During hearing on the MA today i.e. on 20.09.2019, the learned counsel reiterated the same facts and submitted that the relief being sought is as detailed Paragraph 8 of the OANo.290/00213/2018. He also drew our attention to the representation made by the applicant dated 11.09.2013 (Annexure A4) of the OA and the second representation dated 14.03.2018 (Annexure A7) of the OA.

5. Learned counsel relied upon the case of **Mukhtar Ahmed Vs. State of Rajasthan & Ors.** in SB Civil Writ Petition No.5745/2006, decided on 03.12.2013. The relevant paragraph is reproduced hereunder:-

"Mr. Narpat Singh Charan, the learned counsel for the petitioner relying upon the decision of Rajasthan High Court in the case of **Mst. Bivi Vs. Syed Ali** reported in 1997 (1) RLR 757 and **Keshar Singh Vs. State of Rajasthan & Ors.** – SBCWP No.7356/2012, decided on 10.05.2013, urged that under the Customary Law, a muslim can be adopted even in absence of any statutory provision in this regard, under the Muslim Personal Law (Sheriat) Application Act, 1937. He submitted that adoption was done much prior to the death of deceased employee Fakhruddin in the year 1999 and the adoption deed of the petitioner as well as others produced before this Court which have not been controverted and rebutted by the respondents, it is clear that it was customary for the sect of Muslims to which the petitioner belongs to make such an adoption.

6. Further, it has been stated in Mukhtar Ahmed (supra) case that:

"This Court in the case of Mst. Bivi (supra) held that if by virtue of customs if Muslims also have system of adoption and subject to same having been proved in accordance with law, such adoption can be taken as valid adoption even under the Muslim Law."

7. Learned counsel stated that the facts of the present applicant were identical to those in the case of **Mukhtar Ahmed Vs. State of Rajasthan & Ors.** and therefore prayed that in view of the adoption being legally valid, the name of the applicant may be brought on record of the OA as legal representative.

8. Per contra, the learned counsel for the respondents began his submissions by stating that the Central Administrative Tribunals do not have the jurisdiction to decide the legality or otherwise of the adoption of the applicant under the Muslim Personal Law. He stated that only a Civil Court has jurisdiction to adjudicate on matters of legality of adoption.

9. Counsel for the respondents further stated that Islam only permits persons to cover needy namely orphaned children with protection and financial support. In other words, any parent can give the parental care and affection to a child without granting him any legal obligations such as inheritance. Islamic Rules emphasize to the adoptive family that they are not taking the place of the biological family but are rather serving as trustees and caretakers of someone else's child. Further the Muslim Law provides that when the child is grown, members of the adoptive family are not considered blood relatives, and are therefore not muhrim to him or her.

10. On the issue of Customary Law, he relied upon the judgment of the Hon'ble Apex Court in **Dr.Surajmani Stella Kujur vs Durga Charan Hansdah & Anr**, in Appeal (crl.) 186 of 2001 Special Leave Petition

(crl.)2436 of 2000, decided on 14 February, 2001, wherein the relevant paragraph is reproduced hereunder:-

"For custom to have the colour of a rule or law, it is necessary for the party claiming it to plead and thereafter prove that such custom is ancient, certain and reasonable. Custom being in derogation of the general rule is required to be construed strictly. The party relying upon a custom is obliged to establish it by clear and unambiguous evidence. In Ramalakshmi Ammal v. Sivanatha Perumal Sethuraya, [14 Moo. Ind. App. 570 at p.585] held: "It is of the essence of special usage modifying the ordinary law of succession that they should be ancient and invariable; and it is further essential that they should be established to be so by clear and unambiguous evidence. It is only by means of such evidence that the courts can be assured of their existence, and that they possess the conditions of antiquity and certainty on which alone their legal title to recognition depends."

11. The submission of the respondents counsel was that customs can be relied upon but applicant has not shown that any such customs were being followed. Learned counsel for the respondents also countered the claim of the applicant of his case being identical to that of Mukhtar Ahmed which he is relying upon. Based on the above, the respondents made a case that the applicant cannot be taken on record as LR.

12. Heard Shri K.K. Shah, counsel for the applicant and Shri Kamal Dave, counsel for respondents for R1 to R5 and perused the pleadings placed on MA.

13. Admittedly, there is no adoption under the Muslim Law and if Customs are to be relied upon they must need the benchmark of being "ancient and unambiguous" as stated in the judgment of Surajmani. Since the applicant has been unable to establish the custom by which adoption is regulated for the applicants' community. It would be correct to state that the case of adoption under Customary Law is not made out by the applicant.

14. In **Moulvi Mohammed Vs. Mohaboob Begum (AIR 1984 Mad. 7)** Single Bench of Madras high Court indicated thus:-

"It is needless to point out that custom must be ancient and the burden of proof lies upon the party who set up the custom. The custom to hold good in law must be reasonable and the majority atleast of any given class of persons must look upon it as binding and it must be established by a series of well known concordant and on the whole continuous instances."

15. From the above, it is clear that it is first necessary to establish the legality of the adoption of Shri Wajid Mohd. by the applicant Late Shri Nasir under the relevant Personal Law. Only after this legality has been established can this Bench consider the issue regarding taking Shir Wajid Mohd. as legal representative in the case of Nasir Vs. UOI & Ors. Also, a bare reading of the Central Administrative Tribunals Act, 1985, makes it quite clear that the Central Administrative Tribunal has to concern itself with Service Matters, its jurisdiction does not extend to adjudicating upon matters of Personal Laws and therefore the case of adoption has to be settled in terms of the relevant Law at the appropriate Forum.

16. In view of the discussions as above, the MA No.290/00115/2019 in OA No.290/00213/2018 is not allowed for the reason that the applicant has not been established the legality of the adoption which is pre-requisite for bringing on record Shri Wajid Mohd. as LR in the OA.

17. List the OA No.290/00213/2018 on 18.12.2019.

(ARCHANA NIGAM)
MEMBER (A)

(HINA P. SHAH)
MEMBER (J)

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