In the High Court of Madhya Pradesh
WP 6503/2011(S)
Pawan Jadon vs. The State of MP & Others

Gwalior, dtd. 14/02/2019

Shri D.S. Raghuvanshi, Counsel for the petitioner.

Shri S.N. Seth, Government Advocate for the respondent No.1/ State.

Shri Kehar Kaurav, Counsel for the respondent no.2.

Shri R.K. Mishra, Counsel for the respondent no.3.

This petition under Article 226 of the Constitution of India has been filed challenging the order dated 29-8-2011 passed by Chief Municipal Officer, Nagar Panchayat, Kailaras, Distt. Morena, thereby rejecting the application of the petitioner on the ground that the adopted son is not entitled for appointment on compassionate ground.

The necessary facts for the disposal of the present petition in short are that Shivnath Singh Jadon, was working as Driver in Municipal Council, Kailaras, Distt. Morena and died in harness on 27-11-2007. It is further pleaded that since Shivnath Singh Jadon was issue-less, therefore, he had adopted the petitioner as his son on 16-5-2007 by notarized adoption deed.

After the death of Shivnath Singh Jadon, the petitioner filed an application for grant of appointment on compassionate ground. The Deputy Director, Urban Administration Department issued a recommendation in favour of the petitioner. Accordingly, a resolution dated 29-5-2008 was also passed by the Municipal Council. Even then, the Chief Municipal Officer, by order dated 16-9-2008, rejected the claim of the petitioner. Being aggrieved by the order of the Chief Municipal Officer, the petitioner filed a

writ petition, which was registered as W.P. No. 5389 of 2008 and the same was disposed of by order dated 11-5-2011 by directing the Nagar Panchayat, Kailaras to reconsider the claim of the petitioner in terms of policy dated 22nd January 2007. It is submitted that once again the Chief Municipal Officer, by order dated 29-8-2011 has rejected the claim of the petitioner on the ground that the adopted son cannot be granted appointment on compassionate ground.

Challenging the order of the Chief Municipal Officer, it is submitted by the Counsel for the petitioner, that in view of definition of "family" as given in Fundamental Rule 9 (8), the adopted child has been considered to be a legitimate child if, under the personal law of the Government Servant, adoption is legally recognized as conferring on if the status of a natural child. It is submitted that therefore, it is incorrect to say that the "adopted son" would not be included in the category of "Son".

Per contra, it is submitted by the Counsel for the State that "adopted son" was not included in the category of "son", therefore, the State Govt. by policy dated 29-9-2014, has included "adopted son" if the deceased employee has no child. It is further submitted that Fundamental Rules are not applicable in the case of appointment on compassionate ground. The appointment on compassionate ground is not a vested right.

Heard the learned Counsel for the parties.

The moot question for determination is that whether the definition of "family" as given in Fundamental Rule 9 (8) of Fundamental Rules would apply to the appointment on compassionate ground or not?

F.R. 2,3 and 4 reads as under :-

"F.R. 2. (1) The Fundamental Rules apply, subject to the provisions of rule 3, to all Government servants whose pay is debitable to civil estimates in India, and to any other class of Government servants in India to which the Secretary of State in Council may by general or special order declare them to be applicable. In relation to services under its administrative control, other than all-India services a local Government may make rules modifying or replacing any of the Fundamental Rules; provided that-

(a) no such rule shall adversely affect any person who is in Government service at the time when the Fundamental Rules come into force; and

(b) any such rule which grants any privilege or concession not admissible under the terms of the Fundamental Rules, or of the Civil Service Regulations as they stand at the time when the Fundamental Rules are introduced, shall require the sanction of the Secretary of State in Council.

(2) Where the application of any rule in the Fundamental Rules is expressly or by implication limited by the provisions of any rule made under section 45-A of the Act, the limitation shall prevail and the rule in the Fundamental Rules shall be subject to the rule made under section 45-A of the Act.

F.R. 3 Unless in any case it be otherwise distinctly provided by or under these rules, these rules do not apply to Government servants whose conditions of service are governed by Army or Marine Regulations.

F.R. 4. The powers specifically granted by these rules to local Government may be exercised by them in relation to those Government servants only who are under their administrative control. These powers may be exercised by the Governor-General in Council in respect of all other Government servants, and may be delegated by him, without regard to the limitations of rule 6 and subject to any conditions which he may think fit to impose, to a Chief Commissioner, and to the Governor of North-West Frontier Provinces in his capacity as Agent to the Governor-General.

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F.R. 9. Unless there be something repungant in the subject or context, the terms defined in this chapter are used in the rules in the sense here explained:-

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> **S.R.** Unless there is something repugnant in the subject or context, the terms defined below are in the Supplementary Rules in the sense here explained:-
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> (8) Family (a) means a Government servant's wife or husband, as the case may be, residing with the Government servant and legitimate children and step children residing with and wholly dependent upon the Government servant. Except for purposes of Section XVI-A of the Supplementary Rules in Appendix V, it includes, in addition, parents, sisters and minor brothers, if residing with and wholly dependent upon the Government servant.
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> (b) For the purpose of Section XI, it includes in addition unmarried and widowed sisters and minor brothers if residing with and wholly dependent upon the Government servant.]
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> Note.- Government servant's wife or husband, as the case may be, legitimate children, step children, father, mother, step mother, unmarried and widowed sisters, minor brothers who reside with the Government servant and whose income from all sources including pension (inclusive of temporary increase/relief in pension and pension equivalent to death-cum-retirement gratuity benefits) does not exceed [Rs. 500 p.m.] may be deemed to be wholly dependent upon the Government servant.]
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> [Notes.- (1) Not more than one wife is included in the term 'family' for the purposes of these rules.
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> (2) An adopted child shall be considered to be a legitimate child if, under the personal law of the Government servant, adoption is legally recognized as conferring on it the status of a natural child.]"

From the plain reading of F.R. 2, it is clear that the Fundamental Rules are applicable to the Govt. Employees only and not to any other person, who is seeking recruitment on the ground of compassionate ground.

The Supreme Court in the case of **Feroze N. Dotivala v. P.M. Wadhwani,** reported in **(2003) 1 SCC 433** has held as under :-

> **"13.** The legislature, while defining a word or a term, is fully competent even to assign an artificial meaning to the word (see *Kishan Lal* v. *State of Rajasthan*). It can also restrict the meaning of a word by defining it in that

manner. Generally, when the definition of a word begins with "means" it is indicative of the fact that the meaning of the word has been restricted; that is to say, it would not mean anything else but what has been indicated in the definition itself. There can also be extensive definitions when the definition starts with "includes". This Court, in the case reported in *P. Kasilingam* v. *P.S.G. College of Technology* observed at AIR p. 1400: (SCC p. 356, para 19)

> "A particular expression is often defined by the legislature by using the word 'means' or the word 'includes'. Sometimes the words 'means and includes' are used. The use of the word 'means' indicates that 'definition is a hard-and-fast definition, and no other meaning can be assigned to the expression than is put down in definition'. (See *Gough* v. *Gough*; *Punjab Land Development and Reclamation Corpn. Ltd.* v. *Presiding Officer, Labour Court*.)"

A reference may also be made to *IRC* v. *Joiner*-All ER at p. 1061.

14. Generally, ordinary meaning is to be assigned to any word or phrase used or defined in a statute. Therefore, unless there is any vagueness or ambiguity, no occasion will arise to interpret the term in a manner which may add something to the meaning of the word which ordinarily does not so mean by the definition itself, more particularly, where it is a restrictive definition. Unless there are compelling reasons to do so, meaning of a restrictive and exhaustive definition would not be expanded or made extensive to embrace things which are strictly not within the meaning of the word as defined."

The Supreme Court in the case of **Mukund Dewangan v. Oriental Insurance Co. Ltd., reported in (2017) 14 SCC 663** has held as under :-

"31. It is a settled proposition of law that while interpreting a legislative provision, the intention of the legislature, motive and the philosophy of the relevant provisions, the goals to be achieved by enacting the same, have to be taken into consideration.

* * * *

38. The words cannot be read into an Act, unless the clear reason for it is to be found within the four corners of the Act itself. It is one of the principles of statutory

> interpretation that may matter which should have been, but has not been provided for in a statute, cannot be supplied by courts, as to do so will be legislation and not construction as held in *Hansraj Gupta* v. *Dehra Dun-Mussoorie Electric Tramway Co. Ltd.*, *Kamalaranjan Roy* v. *Secy. of State* and *Karnataka State Financial Corpn.* v. *N.Narasimahaiah*. The court cannot supply *casus omissus*."

Thus, where the word used by legislature is clear and unambiguous, then the Courts cannot supply *casus omissus,* and the Court cannot supply, what has not been provided for in a statute. While interpreting any provision of law, the intention of the legislature and philosophy of the relevant provisions and goals to be achieved by enacting the same are also required to be kept in mind.

The Supreme Court in the case of **State of Gujarat v. Arvindkumar T. Tiwari,** reported in **(2012) 9 SCC 545** has held as under :-

> **"8.** It is a settled legal proposition that compassionate appointment cannot be claimed as a matter of right. It is not simply another method of recruitment. A claim to be appointed on such a ground, has to be considered in accordance with the rules, regulations or administrative instructions governing the subject, taking into consideration the financial condition of the family of the deceased. Such a category of employment itself, is an exception to the constitutional provisions contained in Articles 14 and 16, which provide that there can be no discrimination in public employment. The object of compassionate employment is to enable the family of the deceased to overcome the sudden financial crisis it finds itself facing, and not to confer any status upon it. (Vide *Union of India* v. *Shashank Goswami*.)"

Thus, the very object of compassionate appointment is to support the family of the deceased employee to overcome the sudden financial crisis and it is not a regular mode of recruitment. The appointment on compassionate

ground is not a vested right of a person.

It is submitted by the Counsel for the petitioner, that the intention of the legislature was to include the "adopted son" also, as there is nothing to indicate that the legislature ever wanted to exclude the "adopted son".

The submission of the Counsel for the petitioner, cannot be accepted as the same is misconceived.

The State Govt. has formulated a new policy for appointment on compassionate ground on 29-9-2014 and in that policy, the "adopted son" has also been included. If in the previous policies, the intention of the Legislature was that the "son" would include "adopted son" then instead of including the "adopted son" in the policy dated 29-9-2014, the State Govt. could have issued a clarification thereby expressing its intention to include "adopted son" also, in the previous policies. Thus, the specific inclusion of "adopted son" in the policy dated 29-9-2014, clearly shows that it was never the intention of the legislature to include the "adopted son" in the category of "son" in the previous policies. Thus, the definition of "son" in the policy for appointment on compassionate ground was *"exclusive"* in nature and not *"inclusive"* in nature.

Further, in the present case, it is the claim of the petitioner that he was adopted by the deceased employee by a notarized adoption deed executed on 16-4-2007, whereas the deceased had died on 27-11-2007. No document has been filed to show that the adoption was ever acted upon. The petitioner has not filed any document to show that after the adoption, in any document, the

name of the deceased was recorded as his adopted father. Thus, it is clear that the respondents have not committed any mistake by rejecting the claim of the petitioner for appointment on compassionate ground, being the "adopted son" of the deceased employee.

Thus, the petition fails and is hereby **dismissed.**

(G.S. Ahluwalia)
Judge

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