



IN THE HIGH COURT OF MADHYA PRADESH
AT INDORE
BEFORE
HON'BLE SHRI JUSTICE SUBODH ABHYANKAR
ON THE 28th OF NOVEMBER, 2024
WRIT PETITION No. 26357 of 2021
PRAVEEN KOCHAK
Versus
THE STATE OF MADHYA PRADESH AND OTHERS

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Appearance:

Shri Hitesh Sharma, learned counsel for the petitioner.

Ms. Bhagyashree Gupta, learned Govt. Advocate appearing on behalf of Advocate General.

Shri Anand Agrawal, learned counsel for the respondents no.4 & 6.

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ORDER

1] This petition under Article 226 of the Constitution of India has been filed by the petitioner, seeking the following reliefs:-

“7. a) To allow this petition by issuing appropriate writ, order or direction and to direct the respondent no.3 to accept the petitioner’s application and appoint him as per his qualification.

b) To quash the impugned action of the respondent no.3.

c) Any other relief which this court may deem fit in the interest of justice.”

2] The case of the petitioner is that he happens to be the son of late Hiralal Kochak, who was employed as a Class-III employee on the post of Hand Pump Technician in the Public Health &



Engineering Department, Rajgarh (Biaora), who died in harness, on 17.05.2021, during the Covid-19 pandemic period.

After the death of his father Hiralal, the petitioner being the son of the deceased Hiralal applied for compassionate appointment on 19.07.2021, which was rejected by the respondent vide order dated 04.08.2021, informing that there is nothing on record to prove that the mother of the petitioner was the wife of the deceased Hiralal, as in his nomination Form of Hiralal, the name of Shanti bai is not mentioned, neither there is any reference that the petitioner is his son (Annexure P/2).

3] The aforesaid order has been challenged by the petitioner in the present petition, and subsequently, on account of appointment of respondent no.6 on compassionate basis on 16.02.2023, by way of amendment, the second wife of the deceased Hiralal and his children were also arrayed as respondents and the following relief was sought in the amended petition:-

“7. d) That, the appointment order dated 16.02.2023 in favour of respondent no.6 may kindly be set aside and petition may kindly be given compassionate appointment..”

4] The petitioner's contention is that he happens to be the son of the first wife of the deceased Hiralal, who was Shanti Bai, and without taking any divorce from his mother, Hiralal solemnized another marriage with Usha Bai, whose son Yuvraj/respondent no.6 has been subsequently granted the compassionate appointment vide order dated 16.02.2023, which is also under challenge in the present petition.



5] In support of his contentions, counsel for the petitioner has relied upon the decision rendered by the Supreme Court in the case of *Khursheed Ahmad Khan vs. State of Uttar Pradesh and others* reported as (2015) 8 SCC 439; the decision rendered by the Madras High Court in the case of *M. Muthumadasamy vs. The Accountant General and others { W.P.(MD) no.2831 of 2022 decided on 11.02.2022*, and the decision rendered by the High Court of West Bengal in the case of *Sk. Jahiruddin & another vs. The State of West Bengal and others (WPST 57 of 2021}*.

6] Counsel for the petitioner has also drawn the attention of this Court to the judgment dated 22.12.2007, passed by the Judicial Magistrate, First Class Dharampuri in Criminal Case no.3/2007 whereby on an application for maintenance u/s.125 of Cr.P.C., Shanti bai, the first wife of Hiralal and his son-Praveen, have been awarded maintenance to the tune of Rs.1,000/- and 500/- respectively.

7] The prayer is vehemently opposed by shri Anand Agrawal, the counsel for the respondent nos.4 & 6/ the second wife and her son, as the respondent no.6 has been granted compassionate appointment.

8] Counsel for the respondents no. 4 & 6 has also drawn attention of this Court to the same judgment dated 22.12.2007, passed by the learned Judge of the trial Court to submit that even in the aforesaid judgment, it has been observed by the trial court that in the year 1992, the marriage/*Natra* of Shantibai was solemnized with Hiralal. However, in the year 1994, she was driven out, of the



house by Hiralal, and thus, he solemnized the marriage with Ushabai and are residing together as husband and wife, and the court has also taken note of the reply filed by Hiralal that he has not married to Shantibai, and entered into Natra only, and also that when Shantibai got employment, she left him as he was unemployed at that time and she also refused to reside with him.

9] Attention of this Court has also been drawn by the counsel for the respondents no. 4 & 6 to para 14 of the judgment dated 22/12/2007 in which, it is also observed that Hiralal has three children from his marriage with Ushabai, and thus, it is submitted the since Ushabai was validly married wife of Hiralal, and in all the certificates of the respondent no.6, the name of his father is mentioned as Hiralal only, as also in the nomination Form of the deceased Hiralal, Ushabai's name is mentioned as his nominee, and in the death certificate, which has also been filed by the petitioner himself, the name of Hiralal's wife is stated to be Ushabai.

10] Counsel for the respondents no.4 & 6 has also submitted that the application of the petitioner has been rejected by the respondents not only on the ground that he has not been able to prove that he happens to be the son of Hiralal, but also on the ground that he has not filled the application form in proper format.

11] Counsel for the respondents no. 4 & 6 has also relied on the decision rendered by the Supreme Court in the case of *Union of India and another vs. V.R. Tripathi* reported as *AIR 2019 SC 666* to submit that a child born out of second marriage is legitimate.



12] Counsel for the respondent/State has also opposed the prayer and it is submitted that in all the Departmental documents, the name of Ushabai is mentioned as the wife of the deceased Hiralal, and thus, the respondents have not erred in granting compassionate appointment to her son-respondent no.6/Yuvraj.

13] Counsel for the respondent/State has also opposed the prayer on the ground that the petitioner is 28 years old and he cannot be said to be in dire need of employment. It is also submitted that the application has also been rejected on the ground that the details as required have not been mentioned in it. It is also reiterated that even in the death certificate of the deceased employee, the name of his wife is mentioned as Usha Bai, and in such circumstances, the State has not erred in granting her son the compassionate appointment, and has rightly passed the order in favour of the respondent no.6 for compassionate appointment on 16.02.2023, which does not call for any interference.

14] Heard the counsel for the parties and also perused the record.

15] From the perusal of the record, this Court finds that the facts of the case are not disputed. Even otherwise, from the judgment dated 22.12.2007, filed as Annexure P/5 with the petition, it is apparent that the petitioner Praveen Kochak was born out of his mother's marriage with the deceased Hiralal Kochak in the year 1992. In the aforesaid judgment, it is also observed that Hiralal had started residing with Ushabai soon after a couple of months from his marriage with Shantibai, and also that both of them were



residing separately as husband and wife, and both of them have also solemnized marriage.

16] The aforesaid decision relates to a proceeding under section 125 of the Cr.P.C. filed by Shantibai, the mother of the petitioner along with the petitioner, when he was only 14 years old in the year 2007. Thus, it is apparent even from the aforesaid decision that the deceased Hiralal Kochak started residing with Usha Bai either from 1992 or at the most from 1994.

17] It is also found that in all his service record, Hiralal has mentioned his second wife Ushabai by as his wife, and the respondent no.6/Yuvraj as his son. It is also found that from various documents of the petitioner as also the respondent no.6, both of them have mentioned the name of their father to be Hiralal Kochak. Even if Hiralal belonged to Scheduled Tribe in which, they also have tradition of *Natra* also, in which, a woman resides with a man under contract, but, undoubtedly the petitioner was born out of a relationship between Hiralal Kochak and his first wife Shantibai, and thus, the petitioner was the legitimate son of Hiralal Kochak.

18] In this contest, it would be relevant to referred to the decision rendered by the Supreme Court in the case of ***Khursheed Ahmad Khan*** (supra), whereby the Court has held as under:-

8. As regards the charge of misconduct in question, it is patent that there is no material on record to show that the appellant divorced his first wife before the second marriage or he informed the Government about contracting the second marriage. In absence thereof the second marriage is a misconduct under the Conduct Rules. The defence of the appellant that his first marriage had come to an end has been disbelieved by the disciplinary authority and the High Court. The learned counsel for the State has pointed out that not only the appellant admitted that his first marriage was continuing when he



performed the second marriage, the first wife of the appellant herself appeared as a witness during the enquiry proceedings and stated that the first marriage was never dissolved. On that basis, the High Court was justified in holding that the finding of proved misconduct did not call for any interference.

9. The learned counsel for the State also submits that the validity of the impugned Conduct Rules is not open to question on the ground that it violated Article 25 of the Constitution in view of the law laid down by this Court in *Sarla Mudgal v. Union of India* [(1995) 3 SCC 635 : 1995 SCC (Cri) 569]. He further submitted that the High Court was justified in holding that the punishment of removal could not be held to be shockingly disproportionate to the charge and did not call for any interference.

10. We have given due consideration to the rival submissions. We are of the view that no interference is called for by this Court in the matter.

11. As already mentioned above, there is adequate material on record in support of the charge against the appellant that he performed the second marriage during the currency of the first marriage. Admittedly, there is no intimation in any form on record that the appellant had divorced his first wife. In service record she continued to be mentioned as the wife of the appellant. Moreover, she has given a statement in enquiry proceedings that she continued to be the wife of the appellant. The appellant also admitted in inquiry conducted on directions of the Human Rights Commission that his first marriage had continued. In these circumstances, the finding of violation of the Conduct Rules cannot be held to be perverse or unreasonable so as to call for interference by this Court. In these circumstances, the High Court was justified in holding that the penalty of removal cannot be held to be shockingly disproportionate to the charge on established judicial parameters.”

19] A perusal of the aforesaid decision would reveal that the Supreme Court has clearly deprecated the practice of polygamy holding that it is not an integral part of religion, and also that it is necessary for a person to take permission to solemnize second marriage if their custom permits the same, and the fact that in the present case also, there is nothing on record to suggest that Hiralal Kochak divorced his first wife Shantibai before contracting second marriage, or that he had informed the Government about contracting the second marriage, if his customs permit the same.



20] In such circumstances, this Court is of the considered opinion that merely mentioning of the name of any person in the official documents referring the same to be the nominee of the employee is of no avail to such person to claim compassionate appointment on account of death of deceased employee in the face of a rival claim by the other family members of the deceased employee, as the compassionate appointment is provided under a policy formulated by the State Government and such policy would never promote the polygamy.

21] So far as the decision relied upon by the counsel for the respondents. no. 4 & 6 in the case of *V.R. Tripathi* (supra) is concerned, which provides that a child born out of in the second wife is a legitimate child, and is entitled for grant of compassionate appointment is concerned, the same would be of no avail to the respondent no.6 and in fact supports the claim of the petitioner, whose mother's relationship with Hiralal Kochak is alleged to be contractual in nature.

22] On due consideration of the aforesaid factual and legal aspects of the matter, this Court is of the considered opinion that the petitioner has made out a case for compassionate appointment being the son of Hiralal Kochak, born out of his first wife and the fact that Hiralal though mentioned the name of his second wife Ushabai and his son in all his service record, but did not inform his department regarding the factum of his second marriage with Ushabai which was a condition necessary as has been held by the Supreme Court in the case of *Khursheed Ahmad Khan* (supra).



23] In such circumstances, the writ petition stands *allowed* and the appointment order the respondent no.6-Yuvraj dated 16.02.2023 is hereby set aside.

24] With the aforesaid observation, the present petition stands allowed.

(SUBODH ABHYANKAR)
JUDGE

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