

**HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR**

S.B. Civil Writ Petition No. 9577 / 2016

Mayur Saxena adopted son of Shri Buddi Prakash Saxena, aged about 23 years, resident of Village Ghorawar, Tehsil Jaitaran, District Pali (Raj.)

----Petitioner

Versus

1. State of Rajasthan through Secretary, Public Works Department, Government of Rajasthan, Secretariat, Jaipur.
2. Executive Engineer, Public Works Department, Baran.
3. Assistant Engineer, Public Works Department, Sub-Division Baran.
4. Director, Pension Department, Jaipur.
5. Joint Director, Pension and Pensioners Welfare, Regional Office, Kota.

----Respondents

For Petitioner(s) : Mr. Manoj Bohra

For Respondent(s) : Mr. N.S.Rajpurohit, AGC

Mr. Mukesh Dave, Dy. G.C.

HON'BLE MR. JUSTICE SANGEET LODHA

Order

11/10/2017

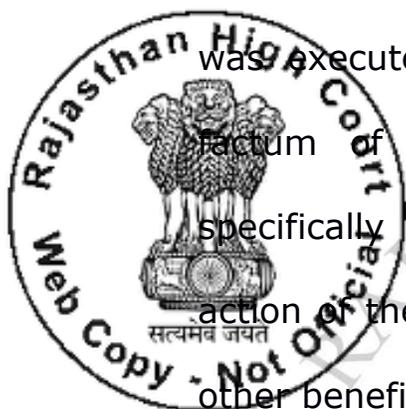
1. By way of this writ petition, the petitioner is seeking directions to the respondents to make payment of amount of gratuity of his deceased father as also the family pension.

2. Precisely, the case set out by the petitioner is that late Shri Buddi Prakash Saxena, who was employed as Store Attendant in the Department of Public Works, Government of Rajasthan, expired on 18.7.14. The petitioner claiming himself to be adopted son of the deceased employee, raised claim for the payment of

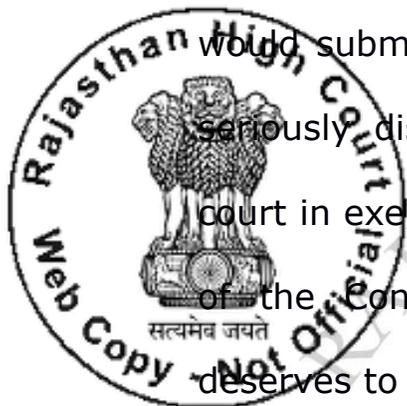
gratuity amount of his adoptive father as also the family pension, by way of notice for demand of justice, but to no avail. Hence, this petition.

3. Learned counsel appearing for the petitioner contended that the petitioner was adopted by his adoptive father late Shri Buddhi Prakash when he was 5 years of age, however, the adoption deed was executed on 29.1.14. Learned counsel submitted that the factum of adoption when the petitioner was still minor is specifically mentioned in the adoption deed and therefore, the action of the respondents in denying the payment of gratuity and other benefits to the petitioner is ex facie illegal and arbitrary.

4. On the other hand, learned Government Counsel submitted that late Shri Buddhi Prakash Saxena, who was unmarried had nominated his brother Shri Ravindra Kumar Saxena as his nominee and accordingly, the payment of gratuity and insurance has already been made by the respondents to the nominee of deceased employee. Learned Government Counsel submitted that the petitioner claims that he was adopted when he was still minor but there is no explanation as to why the adoption deed was executed in the year 2014. Drawing the attention of the court to the mark sheet of Senior Secondary Examination of the petitioner, learned Government Counsel submitted that even in the year 2011 in the mark sheet issued by the Board of Secondary Education, the name of petitioner's father is mentioned as Bhagwan Swaroop Saxena. That apart, in the Certificate in Information Technology (RS-CIT) issued to the petitioner in the year 2013, the name of the petitioner's father is mentioned as



Bhagwan Swaroop Saxena and thus, the fact that the petitioner is adopted son of the deceased employee is highly suspicious. It is submitted that at the time of execution of adoption deed, the petitioner was 21 years of age and thus, the adoption being violative of the provisions of Section 10 & 11 of Hindu Adoption & Maintenance Act is ex facie invalid. Learned Government Counsel would submit that the factum of adoption of the petitioner being seriously disputed question of fact, cannot be decided by this court in exercise of its extra ordinary jurisdiction under Article 226 of the Constitution of India and therefore, the writ petition deserves to be dismissed for this reason alone.



5. I have considered the submissions of the learned counsels for the parties and perused the material on record.

6. Indisputably, the deceased employee who was unmarried had nominated his brother Ravindra Kumar Saxena as his nominee to receive the amount of gratuity. Even after alleged adoption of the petitioner, the brother of the deceased employee continued to be his nominee on the record of the respondents. If the petitioner had already been adopted by the deceased employee when he was 5 years of age, there is no explanation set out as to why in the mark sheet issued in the Board of Secondary Education and the certificate issued by Vardhman Mahaveer Open University, Kota, the petitioner father's name is mentioned as Bhagwan Swaroop Saxena. In any case, in absence of change of nomination on record, the action of the respondents in making the payment of gratuity to the nominee of the deceased employee cannot be faulted with.

7. Further, on the facts and in the circumstances noticed above, in the considered opinion of this court, the factum of adoption of the petitioner remains a seriously disputed question of fact, which cannot be adjudicated by this court in exercise of its extraordinary jurisdiction under Article 226 of the Constitution of India.

It is always open for the petitioner to avail the remedy available under the general law seeking declaration of his being adopted son of the deceased employee.

8. No case for interference by this court is made out.

9. The writ petition is therefore, dismissed. No order as to costs.

aditya/

(SANGEET LODHA), J.



सत्यमेव जयते