

REPORTABLE

IN THE HIGH COURT OF MANIPUR

AT IMPHAL

WP(C) No. 315 of 2016

Miss Ruby Soram, aged about 20years, D/O (Late) Soram Indubala Devi, resident of Uripok Sorbon Thingel, P.O. & P.S. Imphal, Imphal West District, Manipur.

..... Petitioner/s

- Versus -

1. The State of Manipur represented by the Commissioner/Secretary/Add. Secretary (Labour & Emp.) Government of Manipur.
2. The Accountant General (A & E) Manipur.
3. The Director, Directorate of Employment, Government of Manipur.
4. The Joint Secretary (Pension Cell), Government of Manipur.
5. The Additional Director, Directorate of Employment Exchange, Lamphelpat, Manipur, Imphal.

.....Respondent/s

6. Smt. Lairenmayum Ningol Akoijam Ongbi Roma Devi, aged about 41 years, W/O Akoijam Kiran Singh, resident of Kwakeithel Lonjeng Leikai, P.S. Singjamei, Imphal West District, Manipur.

.....impleaded as R-6 vide order dated 21.09.2016 passed in MC(WP(C) NO. 198 of 2016.

B E F O R E

HON'BLE MR. JUSTICE A. GUNESHWAR SHARMA

For the petitioners :: Mr. K. Roshan, Adv.

For the respondents :: Mr. Th. Sukumar, G.A. & Mr. S. Suresh, Adv.

Date of Hearing :: 02.08.2024/17.12.2024

Date of Judgment and Order :: 27.12.2024

JUDGMENT & ORDER (CAV)

[1] Heard Mr. K. Roshan, learned counsel for the petitioner, Mr. Th. Sukumar, learned G.A. for the State respondent and Mr. S. Suresh, learned counsel for respondent No. 2. None appeared on behalf of the respondent No.6 at the time of hearing after filing of counter affidavit.

[2] The brief fact of the case is that the petitioner is the daughter of Shri Soram Ranjit Singh and Soram Ongbi Surnalata Devi both resident of Uripok Sorbon Thingel, Imphal West District. The petitioner's adopted mother, namely, late Soram Indubala Devi, the elder sister of Shri Soram Ranjit Singh was unmarried and she died as a spinster. Further, Soram Indubala Devi was physically handicap, suffering from "SLE affecting her whole body with Bil-THL" affecting mobility and stability. During the lifetime of late Smt. Soram Indubala Devi, she worked as Technical Assistant, in the Directorate of Employment, Lamphelpat, Imphal and she had never entered into wedlock with anybody and as such, being handicap and having no one to look after her, she adopted the present petitioner by performing adoption ceremony according to the Hindu Meitei customary rites and rituals on 03.03.2007 in the presence of Sagei (Clan) elderly members and relatives validating adoption. Since the adoption of the petitioner was not disputed, late Soram Indubala Devi, in compliance of the requirements of law, registered the adoption in the year 2012 vide Deed of Adoption dated 12.09.2012 in the office of the Sub-Registrar (HQ), Imphal, Manipur. The petitioner has become the daughter of late Soram Indubala Devi for all intent

and purposes by the execution of the adoption on 03.03.2007 and the Deed of adoption dated 12.09.2012 and the adoption of the petitioner has been intimated to the authorities concerned by submitting Form No. 3 as per the requirements of Rule 54 (12) (ii) of the Central Civil Services (Pension) Rules, 1972.

[3] Due to physical conditions, the petitioner's mother i.e. Soram Indubala Devi sought voluntary retirement and the Department concerned consented to her request for voluntary retirement and she was allowed to retired voluntarily vide order dated 28.09.2012 with effect from 30.09.2012. Vide letter dated 02.02.2013, the petitioner's adoptive mother submitted her pension papers to the authorities concerned alongwith the required documents including Form No. 3 intimating the authorities the petitioner as her daughter and on the basis of the submission of the pension papers, process of pension was intimated. The petitioner's name was shown in Form No. 3 submitted for the purpose of the pension as daughter. During the process, Ms. S. Indubala died unfortunately on 06.02.2013 and the Registrar Birth & Death, Imphal Municipal Council issued Death Certificate dated 18.02.2013 to that effect and after the expiry of the petitioner's mother, she approached the respondents for payment of the family pension of her late mother's service. However, the petitioner came to know of a Letter dated 23.05.2013 communicated by the Accountants Officer to the Addl. Director, Directorate of Employment Exchange, Lamphel, Imphal demanding for certain documents to be furnished.

[4] Subsequent to and in consequence of the letter dated 23.05.2013, another letter dated 21.10.2013 was communicated to the Additional Director of Employment, the Head of Office requesting inter-alia for taking actions to authorise pension/gratuity. However, till date no actions have been taken for paying the pension of late Soram Indubala to the petitioner. As such, the petitioner approached this Court by way of the present writ petition.

[5] Respondent Nos. 1, 3 & 5 have filed counter affidavit stating that as per the letter of the Sr. Accounts Officer (Pension) Office of the Accountant General (A & E), Manipur, it is intimated that adoption took place on 03.03.2007 and if the present petitioner deemed to be the child of Ms. Soram Indubala Devi for all purpose with effect from the date of adoption, the name of the her adoptive mother in HSLC certificate should be Soram Indubala Devi (adoptive mother). However, there was no name of the adoptive mother in the HSLC certificate except those of real parents name i.e. Shri S. Ranjit Singh and S (O) Surnalata Devi. It is also stated that there is no official record prior to 11.12.2012 which is the date of preparation of pension papers stating Ms. Ruby Soram was adopted by (Late) Ms. Soram Indubala Devi, Ex-Technical Assistant in the Directorate and as such, there is no question of payment of family pension to the petitioner. It is further stated that Form No. 3 was submitted at the time of pension preparation. However, controversy arose only when another claimant Smt. AK. (O) Lairenmayum Roma Devi came to know that she is the only daughter of late Ms. Indubala Devi. It is also stated that the HSLC certificate of the petitioner

was issued in the year 2012, the adoptive mother's name was not there in spite of adoption ceremony performed on 03.03.2007 and as such, the adoption was not effective till the issue of HSLC certificate.

[6] Respondent No. 6 also filed counter affidavit wherein it is stated that the two certificates dated 21.02.2008 and 12.06.2013 annexed at Annexures – A/1 & A/2 in the writ petition have all been fabricated and Annexure – A/2 regarding unmarried status of late Soram Indubala Devi is unacceptable and not authentic for want of authority on the part of the SDC to issue any such certificate. It is stated that respondent No. 6 i.e. Roma Devi is the only natural daughter of L. Surendro Singh and (late) Soram Indubala Devi. It is stated that as on the date of execution and registration of the deed of adoption dated 14.09.2012, the age of the petitioner i.e. Ruby Soram was 16 years and 8 months as the date of her birth recorded in the said HSLC Examination, 2012 i.e. 10.01.1996. Under Section 10(iv) of the said Hindu Adoption and Maintenance Act, 1956, the age of the adoptee child (present petitioner) should have been below 15 years.

[7] Respondent No. 2 filed counter affidavit stating on 11.02.2013, the office of the Accountant General (the respondent No. 2) received pension papers and application for commutation of S. Indubala Devi together with a copy of Adoption Deed and other related documents furnished by the Department of Personnel (Pension Cell), Government of Manipur vide letter dated 07.02.2013 and on scrutiny of pension papers and Service Book, the name of the present petitioner (Ruby Soram) was found recorded in Form-3 (List of family members) as adopted daughter, supported by Adoption Deed

dated 12.09.2012. However, one A.K. (O) Roma Devi submitted an application to the Additional Director of Employment, Government of Manipur requesting not to give any financial benefit to any other person without her knowledge by stating therein that she is the only daughter of (late) Soram Indubala Devi. Vide letter dated 23.05.2013, the respondent No. 2 requested the Additional Director, Directorate of Employment to furnish certain documents/clarification so as to enable the office of the respondent No.2 to finalise the matter and in response thereof, the Additional Director of Employment, Government of Manipur, vide letter dated 31.08.2013 furnished the documents sought for including an affidavit duly signed by one Shri L. Surendro Singh declaring that S. Indubala Devi was his wife and in the said affidavit, Shri L. Surendro Singh also stated that A.K (O) Roma Devi was the daughter of S. Indubala Devi. Vide letter dated 21.10.2013, respondent No. 2 sought for further clarification from the Additional Director, Directorate of Employment however no convincing reply is received till date.

[8] Mr. K. Roshan, learned counsel for the petitioner submits that there is a presumption of validity for registered adoption deed under Section 16 of HAMA, unless it is disproved in a legal proceeding before a competent court. It is pointed out that mere failure to record the name of the adoptive parents in the school certificate will not automatically invalidate a duly registered adoption deed. Learned counsel draws the attention of this Court to a suit for declaration filed by the respondent No.6 herein before the Family Court, Manipur being Mat.(Decl.) Suit No. 16 of 2017, inter-alia, praying for declaring her as the biological daughter of late S. Indubala Devi and for

cancellation of the Adoption Deed dated 12.09.2012 in favour of the petitioner herein. Prior to the suit filed by the respondent No.6, the petitioner herein also filed a suit being Mat.(Decl.) No. 92 of 2013 to declare her as the adopted daughter of late S. Indubala and the respondent No.6 also filed a counter claim that she was the natural daughter of late S. Indubala. It is pointed out that vide common order dated 02.11.2015, both the suit and counter claim were disposed of as not pressed without any liberty to file fresh ones. In order dated 29.05.2023 passed by a Division Bench of this Court in Mat. App. Case No. 2 of 2019, titled as **Ms. Ruby Soram v. Smt. L. Roma Devi: MANU/MN/0112/2023**, the whole proceeding of Mat.(Decl.) Suit No. 16 of 2019 filed by the respondent No.6 herein was closed as barred by the provisions of Order 23 Rule 1 Sub-Rules (3) & (4) of CPC, as no liberty to filed fresh suit was granted when similar suits were withdrawn. Mr. K. Roshan, learned counsel for the petitioner also relies on the decision of Hon'ble Supreme Court in the case of **Ram Shridhar Chimukar v. Union of India: (2023) 4 SCC 312** to the point that benefit of family pension is restricted only to the child legally adopted by the government employee during his/her lifetime. It is urged that the petitioner herein was adopted by the deceased government employee during her life time. It is prayed that the respondents be directed to release family pension of late S. Indubala in favour of the petitioner as per the provisions of Rule 54 of the Central Civil Services (Pension) Rules, 1972 and in terms of intimation dated 02.02.2013 submitted by the Addl. Director, Employment Exchange, Manipur to the Joint Secretary (Pension), Govt. of Manipur nominating the petitioner as nominee.

[9] Mr. Th. Sukumar, learned GA has pointed out that the petitioner did not use the name of her adoptive mother in the matriculation certificate and names of the biological parents were shown in the certificate even after execution of the alleged adoption. This issue has been raised by the office of the Principal Accountant General, Manipur vide letters dated 23.05.2013 and 21.10.2013 addressed to the Administrative Department. It is submitted that since the presumption under Section 16 of HAMA is rebuttable, non-recording of name of adoptive mother in the school certificate will raise a grave suspicion, when the respondent No.6 has also claimed to be natural daughter of the deceased government employee. It is clarified that the petitioner is not entitled to the family pension as prayed for.

[10] Mr. S. Suresh, learned counsel for the Principal Accountant General, Manipur has pointed out that vide letters dated 23.05.2013 and 21.10.2013, clarification was called from the Administrative Department. Till the same is clarified, the office of AG will not be able to do needful for the release of family pension of late S. Indubala in favour of the petitioner.

[11] In the counter affidavit of the respondent No.6, it is stated that she is the daughter of late S. Indubala and her neighbour L. Surendro, born outside wedlock and denied that the petitioner was the adopted daughter. The alleged adoption was done when the petitioner was 16 years and 8 months in violation of Section 10(iv) of HAMA and the same is not valid.

[12] It is a settled proposition law that a registered adoption deed shall be presumed to be valid unless disproved in a legal proceeding. In the

case of **Jai Singh vs. Shakuntala: MANU/SC/0187/2002: (2002) 3 SCC 634**, Hon'ble Supreme Court discussed the statutory presumption of validity of a registered adoption deed under Section 16 of the Hindu Adoption and Maintenance Act, 1956 and held that such presumption is rebuttable in a legal proceeding before a competent court. Para 1 and 2 are reproduced for clarity.

"1. The matter under consideration pertains to the effect of statutory presumption as envisaged under Section 16 of the Hindu Adoption and Maintenance Act, 1956. For convenience sake, it would be worthwhile to note the provision for its true purport. Section 16 reads as below:

"16. Presumption as to registered documents relating to adoption. - Whenever any document registered under any law for the time being in force is produced before any Court purporting to record an adoption made and is signed by the person giving and the person taking the child in adoption, the Court shall presume that the adoption has been made in compliance with the provisions of this Act unless and until it is disproved."

*2. The Section thus envisages a statutory presumption that in the event of there being a registered document pertaining to adoption there would be a presumption that adoption has been made in accordance with law. Mandate of the Statute is rather definite since the Legislature has used "shall" instead of any other word of lesser significance. Incidentally, however the inclusion of the words "unless and until it is disproved" appearing at the end of the statutory provision has made the situation not that rigid but flexible enough to depend upon the evidence available on record in support of adoption. It is a matter of grave significance by reason of the factum of adoption and displacement of the person adopted from the natural succession - thus onus of proof is rather heavy. Statute has allowed some amount of flexibility, lest it turns out to be solely dependent on a registered adoption deed. The reason for inclusion of the words "unless and until it is disproved" shall have to be ascertained in its proper perspective and as such the presumption cannot but be said to be a rebuttable presumption. Statutory intent thus stands out to be rather expressive depicting therein that the presumption cannot be an irrebuttable presumption by reason of the inclusion of the words just noticed above. On the wake of the aforesaid the observations of the learned single Judge in *Modan Singh v. Sham Kaur and Ors.* MANU/PH/0171/1973 stands confirmed and we record our concurrence therewith."*

[12] In a recent case, Hon'ble Supreme Court has examined the presumption of validity of a registered adoption deed under Section 16 of HAMA in the case of **Moturu Nalini Kanth vs. Gainedi Kaliprasad (Dead) through L.Rs.: MANU/SC/1240/2023**. Para 45 is reproduced below.

“45. In Dhanno wd/o. Balbir Singh v. Tuhi Ram (Died) represented by his LRs. MANU/PH/0035/1996 : AIR 1996 P & H 203, a learned Judge of the Punjab & Haryana High Court, faced with the argument that Section 16 of the Act of 1956 required a registered adoption deed to be believed, held that the presumption thereunder, if any, is rebuttable and by merely placing the document on record without proving the ceremony of due adoption, it could not be said that there was a valid adoption. The learned Judge rightly noted that the factum of adoption must be proved in the same way as any other fact and such evidence in support of the adoption must be sufficient to satisfy the heavy burden that rests upon any person who seeks to displace the natural succession by alleging an adoption.”

[13] The necessary corollary of the above decisions is that the statutory presumption of a valid registered adoption deed under Section 16 HAMA is rebuttable, until disproved in a legal proceeding before a competent court. This Court is of the view that mere failure to record names of adoptive parents in the matriculation certificate will not, ipso facto, render the adoption as invalid without any proper adjudication. It may also be clarified that the writ court is not a competent jurisdiction to examine the validity of a registered adoption deed even when this issue arises as a collateral point. As held by this Court in a previous case of **Ruby Soram (supra)** about the adoption of the petitioner herein, the suit for declaration filed by the respondent No.6 herein challenging the adoption of the petitioner was closed as not maintainable. It is admitted fact that no court has till date declared the

adoption of the petitioner as invalid. The presumption under Section 16 of HAMA will still operate and mere failure to record name of the adoptive parents in the matriculation certificate cannot be consider as a rebuttal specially when no court of competent jurisdiction has declared the adoption as invalid. Rather, the suit for declaring the adoption of the petitioner as filed by the respondent No.6 was closed by this Court as barred by law in the case of **Ruby Soram (supra)**.

[14] In view of the above factual positions and settled proposition of law, the petitioner is deemed to be adoptive daughter of late S. Indubala, as no court has declared the adoption as invalid. Accordingly, she is entitled to receive family pension as prayed for. The Administrative Department is directed to forward the necessary documents for preparation of the family pension of late Indubala in favour of her adopted daughter Ms. Ruby Soram to the office of Principal Accountant General Manipur, within a period of one month from the date of receipt of a copy of this order and on receipt of the necessary papers, the office of Principal Accountant General, Manipur shall issue family pension authority within further period of one month.

[15] With the above observations and directions, the writ petition is allowed. No cost. Send a copy of this order to the respondent Nos. 1 & 2 for doing needful.

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JUDGE

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