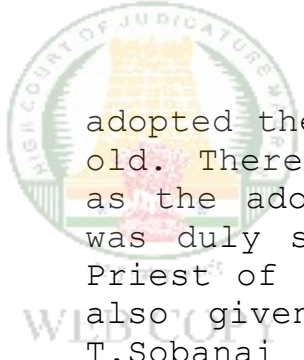
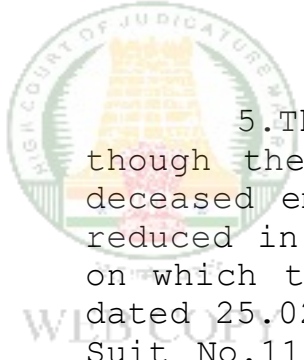




adopted the petitioner as her daughter when she was about 10 years old. Thereafter, the petitioner had been fostered and brought up as the adoptive daughter of the said T.Sobana Bai. Such adoption was duly supported by Adoption Deed dated 13.12.2006. The Parish Priest of St.Aloysius Church, Elavuvilai, Kanyakumari District had also given a certificate to that effect. After the death of T.Sobana Bai, the death cum retirement benefits of her had been disbursed to the petitioner by proceedings of the second respondent dated 08.07.2008. Thereafter, the petitioner had applied to the respondents department seeking compassionate appointment on the ground that the petitioner is the only legal heir of the deceased Sobana Bai, who was the erstwhile employee of the respondents. The said application made by the petitioner to the respondents had been rejected through the impugned order of the second respondent dated 11.12.2008. In the said impugned order, the second respondent had cited reason for rejecting the application filed by the petitioner for appointment on compassionate ground that the petitioner is not the adopted daughter of the deceased employee, since the respondents Board Regulations would recognise the adoption made in Hindu religion and not other religions and therefore, the adoption made in the family of the petitioner, through which the petitioner was said to have been adopted by the late employee of the respondents Board, cannot be accepted and accordingly, the request of the petitioner was rejected. Similarly, by further order dated 15.12.2008, the first respondent also rejected the request of the petitioner, however with different reason. According to the said order dated 15.12.2008, the first respondent has given a reason that the said adoption claimed by the petitioner cannot be accepted, as the legal documents to that effect are not available with the official records of the respondents Board and unless the same are recorded in the official records, the request of the petitioner for compassionate appointment cannot be considered. Challenging both the orders, the present Writ Petition has been filed.

3.Heard both sides.

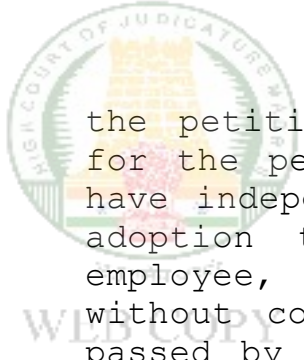
4.The learned counsel appearing for the petitioner would make his contention that the reasons pointed out by the second respondent in his order dated 11.12.2008 is totally unsustainable. In this regard, the learned counsel appearing for the petitioner relied on the judgment of this Court reported in **(2009) 8 MLJ 309** in the matter of **R.R.George Christopher** and another, judgment of a Division Bench of this Court reported in **(2010) 3 MLJ 417** in the matter of **Oriental Insurance Co. Ltd., v. Jayapriya**, and the judgment of the Hon'ble Supreme Court reported in **AIR 1996 Supreme Court 1011** in the matter of **Valsamma Paul v. Cochin University** and the judgment of the Kerala High Court reported in **AIR 1999 Kerala 187** in the matter of **Philips Alfred Malvin v. Y.J.Gonsalvis**.



5. The learned counsel for the petitioner would submit that though the petitioner had been adopted at the age of 10 by the deceased employee of the respondents Board, the said adoption was reduced in writing through the document dated 13.12.2006 and based on which the concerned Parish Priest had also given a certificate dated 25.02.2007. Thereafter, the petitioner had filed an Original Suit No.114 of 2007 on the file of I Additional District Munsif, Kuzhithurai, seeking for a declaration and pursuant to which Succession Certificate under Section 372 of Indian Succession Act had been issued in Succession O.P.No.36 of 2007. So, based on these documents, the claim of the petitioner that she is the adopted daughter of Sobana Bai, in fact had been accepted by the respondents, and in this regard the death cum retirement benefits of the deceased employee had been disbursed by the respondents Board by their proceedings dated 08.07.2008, in favour of the petitioner only, wherein it has been specifically mentioned that the petitioner is the adopted daughter of the said T.Sobana Bai, who expired on 28.01.2007.

6. The learned counsel appearing for the petitioner would further submit that after having scrutinised these documents, the claim of the petitioner, that she has been the adopted daughter of the deceased employee, had been accepted and the retirement benefits have been disbursed to her. While so, the present reason pointed out in the impugned proceedings that such adoption other than in Hindu community (religion) cannot be accepted is totally unjustifiable. In this regard, the learned counsel for the petitioner relied on the above judgments of this Court as well as the Hon'ble Apex Court and also the judgment of the Kerala High Court. By citing these judgments, the learned counsel appearing for the petitioner would submit that the issue raised in the impugned order, by the second respondent, dated 11.12.2008, has already been settled and therefore that reason, being the one and only reason, can no more be a valid reason for rejecting the request of the petitioner for compassionate appointment.

7. The learned counsel appearing for the petitioner also would submit that insofar the other reason cited in the impugned order passed by the first respondent dated 15.12.2008, for the rejection of the petitioner's application for compassionate appointment, it is also un-sustainable because, at the time when service records were prepared the deceased could not have given those documents for having adopted the petitioner as her daughter, as though, such adoption has been taken place long back i.e., when the petitioner was 10 years old, the actual written document was made only in the year 2006 and only thereafter the Succession Certificate had been obtained by the petitioner from the competent Civil Court in the year 2007. Therefore, those documents were not available at the time of making application to the employer of the deceased employee for the purpose of recording the same in the records. Therefore, that cannot be a reason to reject the claim of



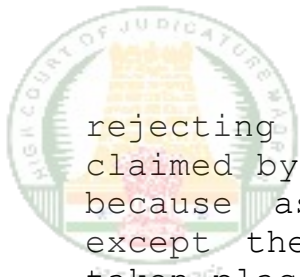
the petitioner and in this regard the learned counsel appearing for the petitioner would submit that both the respondents should have independently considered the application on the basis of the adoption took place between the petitioner and the deceased employee, who is none other than the Aunt of the petitioner and without considering the same, these impugned orders came to be passed by the respondents with cryptic reason and therefore, the same are untenable and assailable.

8. Per contra, the learned Standing Counsel appearing for the respondents would submit that in the Succession Certificate in S.O.P.No.36 of 2007, it has been mentioned that the deceased Sobana Bai D/o. Thomson is the Aunt of the petitioner, namely, D.P.Francy Diana. Therefore, the Succession Certificate was given only in the capacity as the niece of the deceased employee and not as adopted daughter. Moreover, in the application, which has been part of the service records of the deceased employee in the column legal heir or nominee, the name of the father of Sobana Bai had been mentioned. The learned Standing Counsel for the respondents would also submit that insofar as the judgments cited by the learned counsel for the petitioner is concerned the facts of the cases are different and it was decided in a different context not the one which is available before this Court in this writ petition. Insofar as the claim of the petitioner is concerned, unless she prove that she has been adopted in the eye of law as adopted daughter to the deceased employee of the respondents Board, such adoption whatsoever cannot be accepted by the respondents unless and until the adoption is valid in the eye of law. The petitioner cannot enjoy the benefits of adoptive daughter of the deceased employee and in that context the petitioner would also not be included as the exact legal heir of the deceased employee and hence she would not be entitled to claim appointment on compassionate ground. Therefore, the learned Standing Counsel for the respondents would submit that the respondents have rightly rejected the claim of the petitioner and the reason, even though in the first impugned order dated 11.12.2008 is mentioned as that the respondents would not accept the adoption taken place other than Hindu Religion, that cannot be taken as the only reason for rejecting the application of the petitioner. The learned Standing Counsel for the respondents would further submit that mainly the reason for rejecting the application of the petitioner, is that the very adoption claimed by the petitioner was not proved and it does not taken place in the eye of law and no document has been produced by the deceased employee. Therefore, explaining these reasons the respondents have filed their detailed counter.

9. This Court has considered the said rival submissions made by both sides.

<https://hcservices.ecourts.gov.in/hcservices/>

10. In respect of the first impugned order dated 11.12.2008 is concerned, the only reason cited by the second respondent for



rejecting the application of the petitioner is that the adoption claimed by the petitioner would not be accepted by the respondents because as per the Regulations of the respondents Department except the adoption taken place in Hindu religion the adoption taken place in other religion would not be accepted.

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11. Whether this reason cited by the second respondent in the impugned order is sustainable one, has to be looked into. In this regard, the learned counsel appearing for the petitioner, as has been pointed out supra, has relied upon the four judgments. In the judgment of the Kerala High Court reported in **AIR 1999 Kerala 187** in the matter of **Philips Alfred Malvin v. Y.J. Gonsalvis** when this kind of issue came up for consideration, the learned Judge of the said High Court after having considered the factual matrix of the said case, has given her finding at paragraph 8 to 10, which reads thus:

"8. The Canon Law does not prohibit adoption. The Code of Canon Law, commissioned by the Canon Law Society of America, goes to show that Canon 110 relates to adoption, which reads as follows:

"Children who have been adopted according to the norm of civil law are considered as being the children of the person or persons who have adopted them.

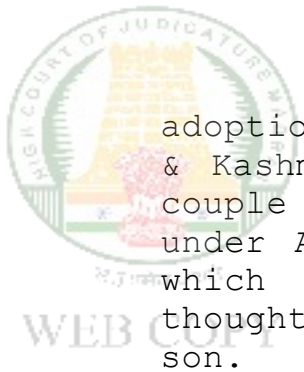
Adopted children are usually not at all, or occasionally not wholly, related to the parents adopting them..... Church law adopts the civil law pertinent to the area and states that adopted children are held to be the equivalent of natural children of an adopting couple in those instances in which adoption has been duly formalized according to the Civil Law."

Canon 111 provides, that-

"A child of parents who belong to the Latin Church is ascribed to it by reception of baptism, or, if one or the other parent does not belong to the Latin Church and both parents agree in choosing that the child be baptized in the Latin Church, the child is ascribed to it by reception of baptism but, if the agreement is lacking, the child is ascribed to the Ritual Church to which the father belongs."

From the above Canon Laws, it can be seen that the Church has adopted civil law pertaining to the area. Therefore, adoption made by Correa couple cannot be said to be invalid.

9. Mohammeden Law also recognise adoption if there is custom prevailing among Mohammeden communities. The custom is accepted to have the force of law, as is held in AIR 1936 Lahore 465. Section 29 of the Oudh Estates Act, 1869 permits a Mohammedan Talukdar to adopt a son. In the State of Jammu & Kashmir, the existence of local custom regarding



adoption has been recognised by virtue of Sri Pratap Jammu & Kashmir Laws Consolidation Act, 1977. The right of the couple to adopt a son is a constitutional right guaranteed under Article 21. The right to life includes those things which make life meaningful. Correa couple might have thought of making their life more meaningful by adopting a son.

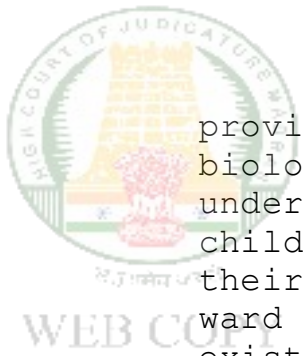
10. Thus, the Hindu Law, Mohammedan Law and Canon Law recognize adoption. Therefore, simply because there is no separate statute providing adoption, it cannot be said that the adoption made by Correa couple is invalid. Since the adopted son gets all the rights of a natural born child, he is entitled to inherit the assets of George Correa couple. The learned Subordinate Judge went wrong in holding that unless adoption is recognised either by personal law, custom or by Canon Law, the first respondent cannot claim right over the plaint schedule property, as the adoption itself is invalid in the eye of law. Therefore, the decree and judgment appealed against are liable to be set aside."

12. In the subsequent judgment of our High Court reported in **(2009) 8 MLJ 309** in the matter of **R.R. George Christopher**, a learned Judge of this Court after having considered the said judgment of the Kerala High Court has given his own findings in the context of that case, which is similar to the one of the present one. The findings in the said judgment are available from paragraphs 18 to 23 and the same are reproduced hereunder:

"18. The first petitioner, who was an employee of the Air India, approached his employer to get due benefits to the minor child. To their shock, the employer of the first petitioner informed them that since the child was not legally adopted and the petitioners are only the guardians, no benefits will accrue to the adopted child. Hence, the present application has been filed for a direction that the minor child was entitled to all legal rights including the right of inheritance as if it was a biological child.

19. On notice from this Court, the Air India appeared before this Court through a counsel. The General Manager (Personal) has also filed a counter affidavit, dated 20.7.2009. Apart from quoting some materials found in the website, in paragraph 4, the following reason has been given for rejecting the request of the petitioners:

"4. I submit that the Directorate of Social Welfare states on the subject of Child Adoption that of Christian law does not recognize complete adoption. As non-Hindus do not have an enabling law to adopt a child legally, those desirous of adopting a child can only take the child in Guardianship under the provisions of Guardian and Wards Act, 1890. This however, does not



provide the child the same status as the child born biologically to the family. Unlike the child adopted under the Hindu Adoption and Maintenance Act, 1956, the child cannot become their own, take their name or inherit their property by right. The Act confers only a guardian-ward relationship. The legal guardian-ward relationship exist until the child completes 21 years of age."

20.The stand taken by the Air India is not in consonance with the Constitution and the various judicial pronouncements set out above. It is needless to state that the Canon Law, which is applicable to the petitioners, provides for adoption if the Civil Law of that Country permit the same.

21.The applicants having approached this Court and got a guardianship order and subsequently, performed necessary rites for adopting the child, the stand of the respondent is not legally valid. Instead of encouraging people to adopt children with a view to rehabilitate and socially reintegrate, the Air India, which is a Public Sector Undertaking, has come up with a plea that the petitioners are only guardians and therefore, their adopted child cannot get any benefits otherwise available to the children of Air India Staff. It is a spurious argument. Apart from that, their stand is opposed to the law of the land. It is further shows their insensitiveness and ignorance regarding the development of Law in this Country.

22.As can be seen from the preamble to the JJ Act, the Act itself was enacted with 'a view to fulfill the international obligations as well as the constitutional goal envisaged in Part IV of the Constitution. Therefore, this Court thought fit to deal with the issue *in-extenso*. Aspiring parents, who intend to adopt children, without being inhibited by their personal laws, are entitled to adopt a child in terms of the provisions of the JJ Act.

23.Therefore, in the light of the above, this application is allowed. The Air India represented by its General Manager (Personnel), Chennai - 600 027 is hereby directed to recognize the minor Gwyneth Dhanya as the child of the applicants and confer all the service benefits that are available to a child of the staff of Air India forthwith. No costs."

13.The learned counsel also would cite the Division Bench judgment of this Court reported in **(2010) 3 MLJ 417** in the matter of **Oriental Insurance Co. Ltd., v. Jayapriya**, wherein also a Division Bench after having considered the findings given by the learned Judge **(2009) 8 MLJ 309** (supra) has given the following findings almost in a similar circumstance, the relevant portion of



the finding is available from paragraphs 26 to 28, which reads thus:

"26. Insofar as the plea regarding the validity of adoption, as we pointed out earlier, for adopting the female orphan child, Jagadambal made application before District Collector, Salem in 1986 and by Ex.A.5 proceedings dated 15.7.1986, the District Collector has granted permission to adopt the 1st Claimant. Insofar as the plea that there cannot be any valid adoption amongst Christians, and particularly by a woman, whose marriage was in subsistence, in a summary proceedings, validity or otherwise of adoption cannot be gone into. As we pointed out earlier, the Claimants have produced overwhelming documentary evidence to substantiate the plea of adoption.

27. The contention that the adoption has not been recognised in India among Christians does not merit acceptance. In (2009) 8 MLJ 309 (R.R.GEORGE CHRISTOPHER) , referring to Sections 40 and 41 of Juvenile Justice (Care and Protection of Children Act, 2000, Justice K.Chandru has held that the said Act itself was enacted with a view to fulfil the international obligations as well as the constitutional goal envisaged in Part IV of the Constitution. Aspiring parents who intend to adopt children, without being inhibited by their personal laws, are entitled to adopt a child in terms of the provisions of the said Act. The learned single Judge has further held that Sections 40 and 41 of Juvenile Justice (Care and Protection of Children Act, 2000 are not restricted to persons belonging to particular religion alone and upheld the plea of adoption by the applicants therein, who are Christians and held as under:

".... 13. The JJ Act for the first time provides 'adoption' as a means to rehabilitate and socially reintegrate a child. It had empowered the 'State Government' and the JJ Board to give a child for adoption. This is the first secular law in India providing for adoption. The provision in Sections 40 and 41 are not restricted to persons belonging to particular religion alone..."

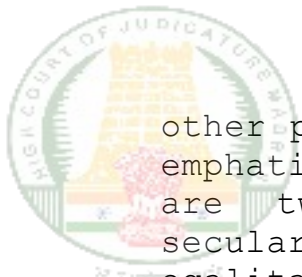
28. In our considered view, the stand taken by the learned counsel for 6th Respondent that there cannot be valid adoption among the Christians is not in consonance with the Constitution and the various judicial pronouncements. As pointed out by the learned single Judge, the Canon Law, which is applicable to Jagadambal and 6th Respondent provides for adoption if the Civil Law of the Country permit the same. In the light of Sections 40 and 41 of Juvenile Justice Act, we do not find any embargo for adoption. In any event, the proceeding, being summary in nature, the validity or otherwise of the adoption needs no



further elaboration."

14. The learned counsel would also rely upon the judgment of the Hon'ble Supreme Court reported in **AIR 1996 Supreme Court 1011** in the matter of **Valsamma Paul v. Cochin University**, where also the learned counsel would invite the attention of this Court to paragraph 30 of the judgment, where it is held that necessity of inter-caste marriages and adoptions are to be encouraged in order to maintain an egalitarian social order under the constitution. The said findings of the Hon'ble Apex Court at paragraph 30 of the said judgment reads thus:

"30. It would thus be seen that the institution of marriage is one of the sound social institutions to bring harmony and integration in social fabric. The Shastric law among Hindus has undergone sea change, in the rigidity of Shastric prescriptions. In relation to intestate succession of property, marriage, adoption and maintenance among Hindus, they are brought under statutory operation appropriately underpinning the rigid shastric prohibitions, restrictions to operate in harmony with Universal Declaration of Human Rights and constitutional rights. The right to divorce which is unknown to Hindu law is made feasible and an irretrievable breakdown of the marriage is made a ground so as to enable the couple to seek divorce by mutual consent. The Hindu Marriage Act, 1956 and Special Marriage Act, 1954 made the marriage between persons belonging to different castes and religions as valid marriage. Even local amendments in Section 7A to the Hindu Marriage Act, 1956 like in Tamil Nadu, removed the rigidity of celebrating the marriages in accordance with shastric prescription like Kanyadan and Saptapadhi being not mandatory, recognised social marriage as valid. Right to maintenance from the divorced husband is provided under the Hindu Adoption and Maintenance Act, 1956 and Section 125 of the Code of Criminal Procedure, 1973 so long as she remains unmarried. Under Hindu Minority and Maintenance Act, she is entitled to maintenance from father-in-law. Similar gender equality is available to other citizens consistent with Human Rights and under Article 15(3) of the constitution. The march of law lays emphasis on the rights of the individual for equality. The form of marriages is relegated to backdoor as unessential. These are matters of belief and practice and not core content. Tying Tali is a must and without it marriage is not complete in South India among all Hindus and in some parts among Harijan Christians, while exchange of rings would do in North India. Ritualistic celebration of marriage would be considered by some as valid, while most people in other sections think that factum of marriage is enough. When in Tamil Nadu such marriage is statutorily, valid would it become invalid in



other parts of the country? The answer would, obviously and emphatically be, "NO". Inter-caste marriages and adoption are two important social institutions through which secularism would find its fruitful and solid base for an egalitarian social order under the Constitution. Therefore, due recognition should be accorded for social mobility and integration and accordingly its recognition must be upheld as valid law."

15. On a reading of the above referred judgments, this Court is of the considered view that the issue raised in the context of the first impugned order issued by the second respondent dated 11.12.2008 is no more res-integra and enough findings have been given to support the adoption taken place in the religion other than a Hindu Community. Therefore, the reasons cited by the second respondent in the said impugned order can no longer be a valid reason to sustain the order. Moreover, the learned counsel for the petitioner would also rely upon the relevant Board proceedings of the respondent Board i.e., (Per.) B.P. (F.B.) No.27 (Administrative Branch) dated 18.08.2008 of the Tamil Nadu Electricity Board, which reads thus:

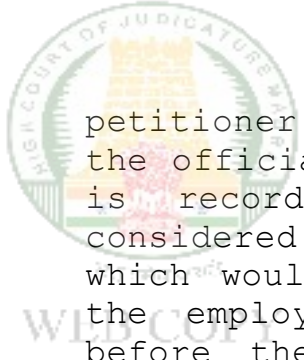
"Proceedings:-

As per the existing orders for providing employment assistance on compassionate grounds to the dependents, any one of the following family members of the deceased employee is being considered for employment assistance.

1) Wife/Husband, son, un-married daughter, married daughter deserted by her husband and living with the family of the deceased employee, widowed or divorced daughter living with the family of the deceased employee and legally adopted son/unmarried daughter."

16. From the above, it can be easily stated that the relevant Board proceedings of the respondents Board also would include the adopted son or un-married daughter as one of the family members of the deceased employee. Nowhere in the Board proceedings it is stated that such adopted son/daughter must belong to Hindu Community only. Even if there is any such proceedings is available in the Regulations of the Board proceedings restricting the acceptance of the adoption only in respect of Hindu Religion alone, in the opinion of this Court it shall not be in tune with the secular fabric of the country and if such prescription is available with the respondents the same can only be treated as illegal as it goes against the spirit of the Constitution. However, in this case no such regulations, as has been claimed by the second respondent, in the impugned order, is available.

<https://hcservices.ecourts.gov.in/hcservices> 17. Insofar as the reason cited in the second impugned order passed by the first respondent dated 15.12.2008 is concerned, the reason given therein is that the adoption taken place between the



petitioner and the deceased employee should have been recorded in the official records of the respondents office and unless the same is recorded, the application of the petitioner cannot be considered. As has been discussed above, the official records, which would have been prepared earlier i.e. before the death of the employee of the respondents and could have been prepared before the adoption taken place between the employee and the petitioner as the reason being, that adoption was documented only on 13.12.2006 and thereafter only Succession Certificate was obtained from the competent Civil Court. Therefore, the deceased employee of the respondents would not have been in a position to produce any such records to record the same in the respondents Board and even in the service records of the employee. Even though the petitioner was not shown as legal heir or nominee in the column meant for, the respondents diligently has accepted the claim of the petitioner as adopted daughter and had disbursed the retirement benefits pursuant to the death of the deceased employee.

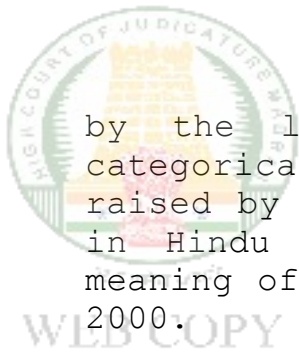
18.The relevant portion of the very proceedings dated 08.07.2008 of the respondents reads thus:

"Under the powers vested in Rule 12 of the Tamil Nadu Electricity Board Employees Family Security Fund Scheme and as per the orders issued in the above Board's proceedings cited (ii). Sanction is hereby accorded for the payment of a lumpsum of Rs.1,40,000/- (Rupees One Lakh Forty Thousand only) to Selvi D.P.Francy Diana, adopted daughter of Selvi T.SobanaBai, Junior Assistant expired on 28/01/2007 while in service."

19.At the time of disbursing all death-cum-retirement benefits of the deceased employee, this question was not raised by the respondents. In fact they themselves stated in the following phrase as "Selvi D.P.Francy Diana, adopted daughter of Selvi T.SobanaBai, Junior Assistant expired on 28/01/2007 while in service." Therefore, it shows that the respondents have diligently accepted the claim of the petitioner as adopted daughter of the deceased employee and accordingly the amount payable to the deceased has been paid to the petitioner. When that being the position, after some time, the respondents have now turned around and say that the adoption taken place in respect of the petitioner cannot be accepted for the reason that adoption of the deceased employee is not an adoption in the eye of law and the documents regarding adoption do not find place in the service register of the deceased employee. Both reasons adduced through the impugned orders are not only against the records but also against their own proceedings issued earlier and particularly the Board proceedings, which is related to the disbursement of benefits of deceased employee to the members of the family of the deceased employee of the respondents.

<https://hccases.responddeserve/>

20.Also, all the judgments cited supra as has been produced



by the learned counsel appearing for the petitioner, would categorically and conjointly go to show and strengthen the points raised by the petitioner that the adoption taken place other than in Hindu Families also can very well be accepted within the meaning of Juvenile Justice (Care and Protection of Children) Act, 2000.

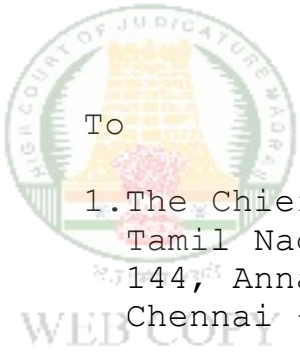
21. In this regard, both the judgment of this Court in **2009 (8) MLJ 309** (cited supra) as well as **2010 (3) MLJ 417** (cited supra) has taken a stand that a person belonging to any religion has got right of adoption of a child within the meaning provided under Sections 40 and 41 of Juvenile Justice (Care and Protection of Children) Act, 2000. Here in this case on hand, since the adoption has been taken place as per procedure to be adopted in Christianity and to that effect the Parish Priest of the Church concerned has also given a certificate and subsequently a succession certificate has been obtained by the petitioner. The further reasons whatsoever other than one cited in the impugned order cannot be put against the petitioner by merely filing counter affidavit by the respondents. In this regard the law is well settled that the impugned order has to be sustained only on the strength of the reasons given therein and the same cannot be improved by the subsequent proceedings or counter affidavit and in this regard the well considered earliest decision of the Hon'ble Apex Court in the case of **Mohinder Singh Gill v. Chief Election Commissioner [(1978) 1 SCC 405 : AIR 1978 SC 851]** can very well be pressed into service.

22. Since both the reasons adduced in the impugned orders passed by the second respondent as well as the first respondent are untenable and liable to be rejected, both the impugned orders are quashed. Now it is open to the petitioner to make a claim immediately for compassionate appointment and in this regard the respondents are directed to take the application of the petitioner for compassionate appointment and still the petitioner feels that she requires an appointment on compassionate ground from the respondents Board the same shall be considered objectively and appointment to that effect can also be given within a period of six weeks from the date of receipt of a copy of this order.

23. With these directions this Writ Petition, as indicated above, is allowed. No costs.

Sd/-
Assistant Registrar (CS-II)

/True Copy/



To

1.The Chief Engineer (Establishment),
Tamil Nadu Electricity Board,
144, Anna Salai,
Chennai - 600 002.

2.The Superintending Engineer,
Kanyakumari Electricity Distribution Division,
Tamil Nadu Electricity Board,
Nagercoil - 629 003.

+1cc to M/s. D.SIVARAMAN Advocate in SR. No.8554

+1cc to M/s .A.U.RAMANATHAN Advocate in SR. No.9039

SJ

JS/KKR/SAR.4/6.6.2017/13P-5C

W.P. (MD) No.5310 of 2011
15.02.2017