

HON'BLE SRI JUSTICE SURESH KUMAR KAIT

AND

HON'BLE Dr. JUSTICE SHAMEEM AKTHER

WRIT PETITION No.3504 OF 2015

ORDER: (*Per Hon'ble Dr. Justice Shameem Akther*)

1. This Writ Petition, under Article 226 of the Constitution of India, is filed challenging the order dated 10.07.2014 passed in O.A. No.938 of 2012 on the file of the Central Administrative Tribunal, Hyderabad Bench, Hyderabad (for short, 'the Tribunal'), whereby the O.A. filed by respondent No.1 herein was allowed by the Tribunal setting aside the impugned order No.B/P563/I/5Vol.XIV dated 06.06.2012 passed by the writ petitioners and further directed the writ petitioners to reinstate respondent No.1 herein forthwith as Ticket Examiner with all consequential benefits like back wages, continuity of service, etc.

2. Heard Smt. Pushpinder Kaur, learned Standing Counsel for the writ petitioners, and Sri K.R.K.V. Prasad, learned counsel for respondent No.1, apart from perusing the material available on record.

3. The case and contention of the writ petitioners is that the father of respondent No.1, namely, Sri K.Venugopal, Ex. Chief Booking Supervisor, Akiveedu, expired on 04.05.2008, who executed a family declaration, while he was in service, declaring respondent No.1 as his daughter. Consequent on his demise, his wife-Smt. Raja Rajeswari sought appointment of respondent No.1, on compassionate grounds, producing relevant documents along with an attested copy of registered adoption deed dated 14.11.1992. Basing on the same, the writ petitioners gave temporary appointment to the post of Pro-Ticket Examiner, subject to certain terms and conditions, vide letter dated 05.05.2011, in Vijayawada Division of South Central Railway and, pursuant to the same, she had completed training. A complaint was received by petitioner No.2 from one Swathi stating that the adoption of respondent No.1 is invalid. Thereafter,

Railway Administration inquired about the genuineness of the photostat copy of adoption deed, which was registered on 14.11.1992 from the Registrar Office, and found that the adoption deed is not valid. In furtherance to the same, on 23.01.2012, the Railway Administration had issued a show cause notice to respondent No.1 giving 15 days time to show cause as to why her appointment should not be cancelled and take action under provisions of the Indian Penal Code. On 07.02.2012, the respondent No.1 submitted an explanation duly enclosing a duplicate copy of the adoption deed registered under document No.2404/1991/BKL Vol.No.73 page 125, contrary to the earlier one which is dated in the year 1992, obtained from Sub-Registrar II, Vijayawada, and an affidavit dated 07.02.2012 affirmed by the widow explaining the reason for variation in the adoption deed now produced. On comparing both the copies, it has come to notice that the contents are varying. On 05.03.2012, when questioned about the variation in the said documents, they agreed that both the adoption deeds are varying and they failed to establish their claim through proper documents. Once the basis of appointment of respondent No.1 in the Railways, *i.e.*, adoption deed, is found to be fake, it will not confer any right on respondent No.1, and, on the other hand, it invites penal action for getting fraudulent appointment. The respondent No.1 altered the year '1991' as '1992' in the copy of adoption deed to suit her date of birth *i.e.*, 18.02.1992, which amounts to misrepresentation before the authorities and played fraud on them. Therefore, there is no other alternative to the Railway Authorities except to terminate her employment and, accordingly, the service of respondent No.1 was terminated by the impugned letter dated 06.06.2012.

4. The case and the contention of respondent No.1 herein is that the writ petitioners have admitted that during the lifetime of the deceased employee while he was in service, he had declared the respondent No.1 as his adopted daughter and that her adopted mother sought compassionate appointment in her favour.

At the outset, her identity as adopted daughter is not in doubt, in all records including educational documents, her adoptive father's name i.e., K.Venugopal was recorded. By the time the impugned proceedings of termination was issued, respondent No.1 had already completed her training and joined the working post, thereby, in terms of the law already settled, even a temporary employee is entitled for protection under Article 311 of the Constitution of India and without conducting a regular disciplinary enquiry, by following the due procedure prescribed in the Railway Servants (Discipline and Appeal) Rules, 1968, discharge simplicitor in a shortcut manner is not permissible under law. Even after receiving the original adoption deed containing the correct date as '14.11.1991', the petitioner No.3 did not make any enquiry about its genuineness, but stuck to the previous enquiry conducted based on photostat copy of adoption deed submitted at the time of seeking employment. The inconsistency in the date of birth is a new ground taken by the authorities in O.A. does not warrant termination from service.

5. Learned counsel appearing on behalf of respondent No.1 further contended that the learned Tribunal had appreciated all the facts and circumstances of the case and held that respondent No.1 is the adopted daughter of the deceased railway employee by name, K.Venugopal; there is ample record to establish that respondent No.1 was adopted by late K.Venugopal and his wife; on the demise of K.Venugopal, the respondent No.1, being his sole daughter (adopted), is entitled for appointment on compassionate grounds; there is no infirmity in the order under appeal; and ultimately, prayed to dismiss the writ petition.

6. In view of the contentions put forth by both sides, the point for determination is, whether the impugned order dated 10.07.2014 passed in O.A. No.938 of 2012 by the learned Tribunal is liable to be set-aside and whether the

impugned proceeding No.B/P563/I/5Vol.XIV dated 06.06.2012 passed by the writ petitioners/railway authorities terminating the services of respondent No.1 is liable to be confirmed?

7. The Tribunal, after considering the submissions of the both sides and after perusal of the material available on record, held that the action on the part of the writ petitioners in terminating respondent No.1 from service by issuing the impugned order dated 06.06.2012 is illegal, arbitrary and unconstitutional and also against the principles of natural justice, and consequently, set aside the impugned order allowing the O.A. and further directed the writ petitioners to reinstate respondent No.1 into service forthwith as Ticket Examiner with all consequential benefits like back wages, continuity of service, etc.

8. The material available on record reveals that respondent No.1 was given appointment as Probationary Ticket Examiner on compassionate grounds, vide order dated 05.05.2011 to work in Vijayawada Division of South Central Railways, on the demise of K.Venugopal. On a complaint alleging that respondent No.1 is not the adopted daughter of K.Venugopal, the writ petitioners/railway authorities issued proceedings No.B/P563/I/5Vol.XIV dated 06.06.2012 terminating respondent No.1 from the service. As per the record, the basis for issuing termination proceedings is that the respondent No.1 and wife of K.Venugopal have filed a fabricated photostat copy of registered adoption deed dated 14.11.1992 *vide* registered document No.2404/92, and on verification of the said document from the Registrar Office concerned, there is no adoption deed with reference to the said document, it is a general power of attorney between persons Sri Jagarlamudi Purna Chandra Rao and Poluru Lalitha. In the letter dated Nil.02.2013 issued by the Joint Sub Registrar-I, Vijayawada to the Senior Divisional Personal Officer, South Central Railway, Vijayawada, on the subject of the "Documents – Certification of genuineness of Document No.2404

of Book No.4 of 1991 Volume No.73, pages 125 and 126 – Information – Submitted – Regarding”, the Joint Sub Registrar-I stated as follows:

"In obedience to the reference cited that I submit that a adoption deed between Smt. Kollamudu Rajerajeswari and her husband Kollamudu Venugopal as one part and A.Penumalli Ravi Babu and her wife Rajeswari as second party a deed registered in this office vide document No.2404 of 1991 copied in this office vide Volume No.73 pages 125 and 126 and for which the copy of the document is enclosed for ready reference.

This is submitted for kind perusal."

9. Above reference and the original adoption deed dated 14.11.1991 registered vide document No.2404/91 in the Office of Sub Registrar, Vijayawada, demonstrates that there was a valid adoption of respondent No.1 by late K.Venugopal and his wife. The photostat copy of the adoption deed filed at the time of securing appointment in the railways on compassionate grounds was dated 14.11.1992. As per the records of the railway authorities, respondent No.1 had been shown as the adopted daughter of the deceased-K.Venugopal and she availed traveling benefits as one of the family member of late K.Venugopal. The other documents *i.e.*, Family Member Certificate Rc.ID.36935/08 dated 01.07.2008 issued by the Tahsildar, Vijayawada Urban Mandal, ration card, etc., also revealed that respondent No.1 is the daughter of the deceased-K.Venugopal. There are also other documents to show that respondent No.1 is the adopted daughter of K.Venugopal. The writ petitioners/railway authorities have passed termination order vide proceedings No.B/P563/I/5Vol.XIV dated 06.06.2012 on the ground that respondent No.1 is not the adopted daughter of late K.Venugopal, Ex-employee of Railways. There is a registered deed of adoption vide document No.2404/91 dated 14.11.1991 registered in the Office of Sub Registrar, Vijayawada, in favour of respondent No.1, establishing her adoption by late K.Venugopal and his wife during his lifetime. When there is a

valid adoption, an adopted daughter will have all the privileges and benefits on par with a natural born daughter. As per the Regulations, an adopted daughter is entitled for compassionate appointment. There is no doubt in our mind to hold otherwise. When the termination of respondent No.1 is made on the ground that she is not the adopted daughter of late K.Venugopal and she filed fake and forged adoption deed, the writ petitioners cannot take other grounds for removal of respondent No.1 from service, such as, fabricating adoption deed, incorrect date of birth etc.

10. It is also pertinent to note that there is a variation with regard to the date of birth of respondent No.1 in the original adoption deed vide document No.2404/91 dated 14.11.1991 and the photostat copy of the adoption deed and the SSC certificate as "18.02.1991 and 18.02.1992". The candidature of respondent No.1 for appointment on compassionate grounds cannot be rejected on this ground. The discrepancy with regard to the date of birth of respondent No.1 in the SSC pass certificate as "18.02.1992" and original adoption deed dated 14.11.1991 registered vide document No.2404/91 as "18.02.1991", the same is required to be corrected to resort to legal remedies available under law by respondent No.1. Overall, it is also not a case of termination simplicitor. The learned Tribunal had dealt with all issues elaborately and gave valid reasons after examining the entire material on record, the original adoption deed and the reference issued by the Sub Registrar concerned with regard to genuineness of adoption deed, respondent No.1 is genuinely adopted by late K.Venugopal and his wife. There is no discrepancy in the impugned order dated 10.07.2014 passed in O.A. No.938 of 2012 by the learned Tribunal. All the contentions raised on behalf of the writ petitioners do fail. The writ petition is devoid of merits and is liable to be dismissed.

11. In the result, the Writ Petition is dismissed. No order as to costs.

12. As a sequel to dismissal of the Writ Petition, *interim* order shall stand vacated and W.P.M.P. No.4659 of 2015 and W.V.M.P. No.1519 of 2015 shall stand closed.

SURESH KUMAR KAIT, J

Dr. SHAMEEM AKTHER, J

Date: 29-06-2017

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