

**IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH**

CWP No. 8364 of 2016 (O&M)
Date of decision: 28.3.2017

Gurdeep Singh and another

...Petitioners

Versus

State of Punjab and others

...Respondents

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present: Mr. Hitesh Verma, Advocate,
for the petitioners.

Mr. Pankaj Mulwani, DAG, Punjab,
for respondent No.1.

Mr. Guninder Singh Brar, Advocate,
for respondents No. 2 and 3.

JAISHREE THAKUR, J.

1. The petitioners herein are aggrieved against the denial of compassionate appointment to be offered to them on account of death of Sh. Lal Singh.

2. In brief, the facts are that Sh. Lal Singh, husband of petitioner No. 2, was working as Auction Recorder at Market Committee, Bhagta Bhai Ka. Since they were childless they adopted petitioner No. 1, who was born on 27. 6.1993, in the year 1993 itself. The government servant, Sh. Lal Singh expired on 16.12.2008 and thereafter petitioner No. 2 approached the respondents seeking appointment to be offered to petitioner No. 1 on compassionate grounds on his attaining majority. She was informed that she would require to have the adoption registered, as a result she got an adoption

deed registered on 25.03.2009. Petitioner No. 2 again approached the respondents for appointment of petitioner on compassionate grounds in place of her late husband and on this application a resolution dated 25.05.2009 was passed by the Market Committee in which it was resolved to send the case of petitioner No 1 for compassionate appointment to respondent No. 2, the Mandi Board. Petitioner No. 1 approached the Department on 9.7.2015 for appointment on the post of Clerk as one post had been kept vacant for him by resolution dated 25.05.2009. However, as appointment was not offered to him, petitioner No. 2 again submitted an application dated 23.12.2015 praying for appointment as Peon to be given to her on compassionate grounds. The matter was considered in the meeting held on 04.01.2016 in which it was noted that an application had been preferred by the widow of the deceased government employee for reserving a post for her son and in resolution No. 14 dated 25.05.2009 the Market Committee had reserved one post of Clerk for Sh. Gurpreet Singh son of late Sh. Lal Singh, the deceased government employee, but the said post could not be offered to him as he was not the legal heir of Sh. Lal Singh. It was also noted that the Deputy Commissioner had issued a dependent certificate dated 17.08.2010 only in the name of Smt. Baljeet Kaur widow of late Sh. Lal Singh. In the said resolution also, it was decided that appointment could not be offered to Smt. Baljeet Kaur as she had not preferred an application seeking appointment on compassionate ground for herself within specified time. It is in this background that the instant writ petition has been filed seeking appointment on compassionate grounds.

3. Mr. Hitesh Verma, learned counsel appearing on behalf of the petitioners, submits that the ground of rejection of their application for compassionate appointment is unjustified on account of the fact that immediately after the death of late Sh. Lal Singh, an application had been moved for reserving one post for petitioner No. 2, being the adopted son of Lal Singh and if at that time it had been decided to reserve a post, there was no occasion for them not to grant him appointment. It is further argued that petitioner No. 1 is legally adopted son of petitioner No. 2 and there is a registered adoption deed and, therefore, there is no occasion for the respondents not to treat petitioner No. 1 as the adopted son of late Sh. Lal Singh.

4. Per contra, Mr. Guninder Singh Brar, learned counsel appearing on behalf of the Mandi Board, submits that the adoption cannot be treated to be a valid adoption, as the adoption deed is registered after the death of the government servant Sh. Lal Singh. It is also argued that the Deputy Commissioner had issued a dependent certificate in 2010 and that too only in the name of Mrs. Baljeet Kaur, the widow of the deceased government servant. It is argued that there is no mention of petitioner No. 1 being a dependent of late Sh. Lal Singh.

5. I have heard both the counsels for the parties and with their assistance have gone through the record of the case.

6. There is no dispute to the fact that Sh. Lal Singh had worked in the office of the Market Committee as an Auction Recorder who expired on 16.12.2008. It is also an admitted fact that petitioner No. 2 widow of the

deceased government employee preferred an application seeking reservation of a post for her adopted son. These facts were noted in the resolution proceedings No. 14 dated 25.05.2009, wherein the Committee itself recommended that one post be kept vacant. There was a specific noting in resolution that Sh. Lal Singh the deceased government employee and Smt. Baljeet Kaur had no issue of their own and a reservation was sought for adopted son. The argument raised that the adopted son cannot be given appointment as the adoption deed is registered after the death of the deceased government servant is not sustainable, in view of the law as settled in the case of **Sawan Ram versus Mst. Kalawati and others reported in AIR 1967 Supreme Court page 1761** wherein it has been held that an adopted child will be deemed to be the child of his or her adoptive father or mother for all intents and purposes from the date of adoption and from such dates all ties will be severed with his birth family and shall be replaced by those created by the adoption in the adopted family. While interpreting section 5 (i) of the Hindu Adoption And Maintenance Act 1955, which lays down *“no adoption shall be made after the commencement of this act by or to a Hindu except in accordance with the provisions contained in this chapter, and any adoption made in contravention of the said provisions shall be void.”* It was held that the section provided for two kinds of adoption, “adoption by a Hindu” or “to a Hindu”. It was concluded that adoption to a Hindu was intended to cover cases wherein an adoption is by one person, but the child adopted becomes the adopted son of another person also. An instance was taken when a female Hindu who is married or

whose husband is dead or has completely and finally renounced the world or has been declared by a court of competent jurisdiction to be of unsound mind, the actual adoption would be by the female Hindu, while the adoption will be not only to herself but also to her husband who is dead or has completely and finally renounce the world or has been declared to be of unsound mind. It was finally concluded in the judgment referred to above, that a child adopted by a widow will be deemed to be the adopted son of her deceased husband. Therefore, once it has been authoritatively held that adoption by a widow will not be deemed to be adoption only to her, but will relate back to her husband, who is deceased, petitioner No. 1 for all intents and purposes will have to be treated as the adopted son of the deceased government servant and his legal heir.

7. Another argument raised that dependent certificate issued by the office of the Deputy Commissioner does not reflect the name of petitioner No. 1 and thus he cannot be treated to be a dependent is wholly fallacious. The meeting of the Market Committee noted the contents of the application moved by the widow of the deceased government servant which clearly mentioned that they had adopted son. The Market Committee in its resolution had approved of keeping one post vacant for the adopted son. Just because the dependent certificate has been issued in the name of the widow that would not take away the right of the petitioner No. 1 for consideration for appointment, if all other eligibility criteria is met.

8. Therefore, in view of the discussion held above the present writ petition is allowed and the respondents are hereby directed to consider the

case of petitioner No. 1 for the purpose of compassionate appointment, as per his entitlement, as expeditiously as possible, preferably within a period of two months from the date of receipt of certified copy of this order.

28.3.2017
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(JAISHREE THAKUR)
JUDGE

Whether speaking/reasoned	Yes
Whether reportable	No