



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 15.02.2018

CORAM:

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THE HONOURABLE **MR. JUSTICE S.M.SUBRAMANIAM**

W.P. (MD) No.3653 of 2013

R.Arumugapandian,
Junior Assistant,
Town Panchayat,
Coutrallam,
Tirunelveli District.

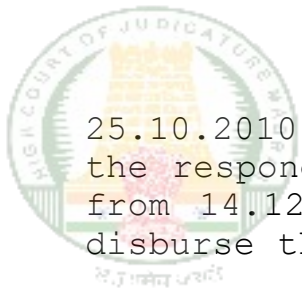
... Petitioner

Vs.

1. The Government of Tamil Nadu,
Rep. by its Secretary to Government,
Municipal Administration Department,
Fort St. George,
Chennai - 600 009.
2. The Government of Tamil Nadu,
Rep. by its Secretary to Government,
Personnel & Administration Department,
Fort St. George,
Chennai - 600 009.
3. The Director of Town Panchayat,
Kuralagam,
Chennai - 600 109.
4. The District Collector,
Tirunelveli District,
Tirunelveli.
5. The Joint Director of Panchayat,
Tirunelveli Region,
Tirunelveli.
6. The Executive Officer,
Courtallam Town Panchayat,
Tirunelveli District.

... Respondents

PRAYER: Writ Petition is filed under Article 226 of the
Constitution of India, to issue a Writ of Certiorari
calling for the records relating to the Impugned Letter dated



25.10.2010 of the 1st Respondent and to quash the same and direct the respondents to regularize the Petitioner's service with effect from 14.12.1998 and consequently re-fix the scale of pay and to disburse the arrears of salary with all other attendant benefits.

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For Petitioner : Mr.J.Ashok
For Respondents R1 to R5 : Mr.R.Sethuraman
For R6 : Mr.N.S.Karthikeyan

O R D E R

The relief sought for in this writ petition is to call for the records relating to the impugned letter dated 25.10.2010 issued by the first respondent and quash the same and direct the respondents to regularize the services of the writ petitioner with effect from 14.12.1998 and consequently, re-fix the scale and disburse the arrears or salary with all other attendant benefits.

2.The learned counsel appearing on behalf of the writ petitioner states that the writ petitioner was born on 20.04.1977 out of the wedlock between Mr.M.Ramaiah, S/o Late Mayandi Devar and Shanmuga Vadivu. While so, the petitioner was an adopted as son of Mr.M.Irulappan, S/o Late Mayandi Devar (brother of M.Ramiah Biological Father) as per Hindu Rites and Customs prevailed in that locality. The adopted father of the writ petitioner Mr.M.Irulappan was working as Executive Officer in north Valliyoor Town Panchayat and passed away on 05.11.1996.

3.The adoptive father of the writ petitioner Late Mr.M.Irulappan nominated the writ petitioner as co-nominee for receiving the death-cum-retirement gratuity in his service register while he was in service. This apart, the name of the writ petitioner was included in the Family Card of the adoptive father in the year 1989. Even in the Disability Certificate, the name of the father of the writ petitioner was shown as Mr.M.Irulappan. Mr.M.Irulappan nominated the name of the writ petitioner as co-nominee in various social welfare scheme.

4.The adoptive father Mr.M.Irulappan passed way on 05.11.1996 and the mother of the writ petitioner E.Kuthalam W/o Mr.M.Irulappan submitted an application for appointment on compassionate ground along with the legal heir certificate issued by the Revenue Tahsildar, Tenkasi. The deed of adoption was registered after the death of Mr.M.Irulappan on 28.04.1998 and succession certificate was also obtained from the competent court. The documents which are all in possession of the writ petitioner were submitted and accordingly, the fourth respondent in his proceedings dated 14.12.1998 appointed the writ petitioner as ~~Subordinate~~ Assistant in Sundarapandiapuram Town Panchayat. The writ petitioner is working as such in the said panchayat.



5.The writ petitioner made several representations to regularize his services in accordance with the rules. The writ petitioner states that the Special Government Pleader, High Court, Chennai also provided a legal opinion in respect of the validity of the adoption in favour of the writ petitioner. Taking note of the legal opinion of the Special Government Pleader, High Court, Chennai and based on the documents provided, the third respondent had recommended the case of the writ petitioner for regularization of his services in letter Na.Ka.No.17744/2004/A2 dated 09.09.2009 to the first respondent. In turn, the first respondent through letter dated 15.10.2009 directed the writ petitioner to furnish certain additional documents and accordingly, the same were also furnished by the writ petitioner. Then the fact remains that the proposal was submitted in full format by the writ petitioner and the same was duly recommended by the first respondent. However, the impugned proceedings was issued on 25.10.2010 stating the petitioner's initial appointment was irregular and accordingly, the benefit of regularization is denied. The rejection order passed on the ground that the adoption deed was registered after the death of the deceased adoptive father Late. Mr.Irulappan. In other words, the deceased employee passed away on 05.11.1996 and the deed of adoption was executed on 20.04.1998. Thus, the same cannot be accepted in view of the Government Order issued in G.O.Ms.No.2899, dated 23.12.1988.

6.The learned counsel for the writ petitioner contended that the writ petitioner is fully eligible for regularization and he was the adopted son of late.Mr.M.Irulappan who was employed as Executive Officer in Valliyoor Town Panchayat. Thus, his appointment was regular and accordingly, the respondents are to be directed to regularize the services of the writ petitioner.

7.In support of the above contention, the learned counsel initially referred to the Family Card, which is enclosed in page No.17 of the typed set of papers filed along with the writ petition. The particulars of the members of the family are stated in the said family card. The name of late employee Mr.M.Irulappan finds placed first and his wife's name is placed in serial No.2 and in serial No.3, the name of Mr.Arumugam is entered. However, on seeing the very document, this Court is able to draw an inference in relation to handwriting in all the three names and in respect of the usage of different pen. Though this Court is not inclined to send the same for handwriting expert or forensic analysis, this Court is able to find some differences in entering the name of Mr.Arumugam, son, aged about 12 in the said Family Card. The genuinty or otherwise of the document need not be gone into at this point of time in view of the fact that mere services by courts govt in the service Family Card will not confer any authenticity to the genuinity of the adoption. The valid adoption has to be recognized only through the deed of adoption or any other



acceptable documents under law.

8. Thereafter, the learned counsel for the writ petitioner referred to the documents in relation to the investment made by the deceased employee Mr. M. Irulappan in the social welfare schemes including investment in pearlless general finance. The learned counsel represented that the writ petitioner was nominated as co-nominee. This apart, the writ petitioner referred to the legal heir certificate and other related certificates and the subsequent Family Card to establish that the name of the writ petitioner was entered as the adopted son of the deceased employee Mr. M. Irulappan.

9. Relying on these documents, the learned counsel for the writ petitioner states that the writ petitioner was actually adopted in the year 1977 and the deed of adoption alone is registered on 20.04.1998. Thus, the sanctity of the adoption cannot be questioned by the respondents. In this regard, the learned counsel referred to the Judgment of the High Court of Madras dated 11.10.2002 passed in the case of **S.S. Mohanraj vs. Government of Tamil Nadu in W.P.No.20200 of 1998**. The learned counsel states that in para No.2, the Court observed that "employment assistance on compassionate ground is provided with a view to give immediate relief to the family of the deceased Government servant after taking into account the indigent circumstances of the family prevailing at the time of the death of the Government Servant. Though the adoption made and registered by the Widow after the death of the Government servant may be valid in law. Adopted member was not a member of the family of the deceased Government servant at the time of the death of Government servant. If employment assistance is provided to a person adopted after the death of the Government servant it would only encourage to circumvent the orders governing the scheme and drive unintended benefits under the above said scheme. It is therefore, clarified that the legally adopted son/unmarried adopted daughter of the deceased Government servant is eligible for compassionate appointment only if the adoption was made and registered by the deceased Government servant during the life time of the Government servant and also subject to other conditions prescribed by the Government for such compassionate appointment being fully satisfied." [emphasis supplied].

10. Further, the Judgment states that if a person is adopted during the life time of the employee, but there is no registered deed of adoption, such person would not be entitled to claim employment on compassionate ground in view of the clarification dated 23.12.1988. It has to be remembered that "for any adoption to be valid, the ceremony of adoption that is to say, giving and taking have to take place and mere execution of a registered deed of adoption is not sufficient. The registration of document



relating to adoption only raises a statutory presumption regarding adoption itself as apparent from the provisions contained in Section 16 of the Hindu Adoption and Maintenance Act". Therefore, the registered deed of adoption signed in the manner indicated in Section 16 only raises the statutory presumption but does not constitute adoption by itself. The insistence of the Government for the registered document is only for the purpose of satisfying itself regarding adoption because at the stage of considering whether benefit should be given or not the employer would not be in a position to find out about the actual adoption and it is expected to act only if there is a registered document. The learned Judge further contended that "if there is sufficient material regarding adoption, it would not be proper to ignore the application for appointment on compassionate grounds because there is no registered deed of adoption".

11. Citing this Judgment, learned counsel for the petitioner states that even the deed of adoption may not be required as per the Judgment even mere adoption is also a ground for considering the application for compassionate appointment.

12. The learned Special Government Pleader appearing on behalf of the respondents opposed the contention raised on behalf of the writ petitioner by stating that the deceased employee Late Mr. M. Irulappan was employed as an Executive Officer in North Valliyoor Town Panchayat and died while in service. The writ petitioner is none other than the son of the brother of the deceased employee. Under these circumstances, in order to secure the employment on compassionate ground, the writ petitioner has produced some documents including family card, legal heir certificate and investments made in finance company and secured appointment contrary to the scheme of compassionate appointment. The valid adoption was not established by the writ petitioner while securing the appointment. Based on the certificates produced by the writ petitioner, the appointment order was issued by the authority. However, subsequently, it was found that there was no valid adoption in respect of the writ petitioner. Therefore, the authority refused to grant the benefit of regularization.

13. The learned Special Government Pleader further drawn the attention of this Court in respect of the order issued by the Government in G.O. Ms. No. 2899, Labour and Employment dated 23.12.1988. Paragraph 2 of the order reads as under:-

"2. Employment assistance on compassionate ground is provided with a view to give immediate relief to the family of the deceased Government servant after taking into account the indigent circumstances of the family prevailing at the time of the death of the Government Servant. Though the adoption made and registered by the Widow after the death of the Government servant may be valid in law. Adopted member was not a member

under the

Government letter in force and there is no infirmity.

decision in the present writ petition.

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



have not been established nor stated. Contrarily, the writ petitioner has taken an attempt to establish his adoption only through the Family Ration Card and Legal Heir Certificate and the nominations made as co-nominee in respect of certain investments made in finance company by the deceased employee late Mr.M.Irulappan.

17.The Family Card found in page No.17 of the typed set of papers is not found to be genuine and cannot be trusted upon. This apart, the Family Card entries are made only at the request of the head of the family or on application by the family members. Under these circumstances, the document of family card cannot be trusted upon for the purpose of accepting the adoption as the legally valid one. Secondly, the nomination provided in favour of the writ petitioner as co-nominee by the deceased employee is not a ground to establish that the deceased employee had legally adopted the writ petitioner. In other words, nomination in fixed deposit and financial investments shall be made at the choice of the depositors.

18.In the present case, the writ petitioner is none other than the son of the brother of the deceased employee. Thus, looking after the welfare or including the name of the writ petitioner in family card and in the nomination form of the financial investments cannot be a valid document for the purpose of validating an adoption. This apart, the writ petitioner has not established any legal adoption if any made in accordance with the provisions of the Act. The Adoption Act provides certain procedures and ceremonies to be followed for the purpose of validating the adoption. Contrarily, an adoption deed was registered by the biological parents of the writ petitioner on 20.04.1998, after the death of the deceased employee late Mr.M.Irulappan. The very fact that the registration of the deed of adoption in the year 1998 establishes that the writ petitioner had taken all sincere attempts to validate the appointment secured by him on the basis of certain informations provided by him. When it was questioned by the competent authority that the writ petitioner has to establish a valid adoption then the writ petitioner had taken steps to register the adoption deed. Even looking into the adoption deed, this Court is of the opinion that the adoption deed states that the biological parents of the writ petitioner had given adoption of the writ petitioner to the deceased employee and to his wife. The question arises whether the deceased person can accept the adoption deed. Whether such an adoption can be provided after the death of a person. In other words, if any adoption executed in favour of a father who is no more then what would be the purpose of such adoption. The concept of adoption has got certain purposes and objects. An adoption cannot be given to a deceased person. In the present case, the adoption was given to the wife of the deceased employee. Even in that case, the adoption is not given to the deceased



employee then the compassionate appointment cannot be validated. If the petitioner claims that the deceased employee is the adoptive father as he has stated in his affidavit, the deed of adoption would not be executed after the death of the deceased employee. In either of the case, the adoption cannot be validated. This apart, if a person, who wants to adopt, had crossed the prescribed age limit under the Act then also the adoption is invalid. In all respects, a valid adoption should satisfy the conditions stipulated under law. However, in the present case, it is apparently clear that the adoption deed was executed on 20.04.1998 in order to protect the compassionate appointment already made in favour of the writ petitioner. So also to secure the benefit of regularization, the deed of adoption was submitted to the competent authority.

19. The compassionate appointment is a concession. Appointment on compassionate ground can never be claimed as a matter of right. Parties submitting application to secure appointment on compassionate ground must be genuine. The scheme of compassionate appointment otherwise is in violation of the Article 14 and 16 of the Constitution of India. Scheme being a special one has to be restricted in all sense. Scheme cannot be expanded so as to provide appointment to the legal heirs of the deceased employee in all circumstances so as to defeat the equity clause enshrined under the Constitution of India. Equal opportunity in public employment is the constitutional mandate. Any scheme affecting the philosophy and ethos of Constitution cannot be upheld by the Court of law. The scheme introduced by the Government has to be in compliance with the constitutional mandates and prospective. Even if the State introduces certain schemes for the welfare of its employees or to a class of people, the Court have to test the validity under the constitutional perspective. Ultimately, the philosophy and ethos of the Constitution alone should prevail and the scheme introduced in contravention to the rights of the other citizen also to be struck down. Thus, this Court is of the opinion that the scheme being an exceptional one, the scheme being violative of the equity clause, the person securing employment under the special scheme must be genuine and the scheme to be extended only to the most deserving people and within a reasonable duration of period. The object of the scheme is to mitigate the indigent circumstances arising on account of the sudden demise of the Government employee. Thus, the scheme is to be implemented without any further delay.

20. The Hindu Adoption and Maintenance Act, 1956 provides the requisites of valid adoption in Section 6 and the same reads under:-

<https://hcservices.ecourts.gov.in/hcservices/> Requisites of a valid adoption.--No adoption shall be valid unless--

(i) the person adopting has the capacity, and also the



right, to take in adoption;

(ii) the person giving in adoption has the capacity to do so;

(iii) the person adopted is capable of being taken in adoption; and

(iv) the adoption is made in compliance with the other conditions mentioned in this Chapter."

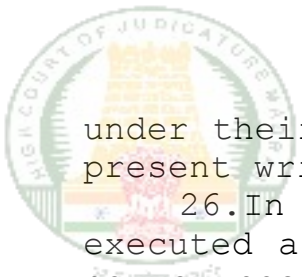
21. Section 7 of the Act enumerates capacity of a male Hindu to take in adoption.

22. In the present case, the deceased employee cannot adopt any son or daughter under the provisions of the Act. Section 7 of the Act is made clear that capacity of a male Hindu to take adoption and therefore, the dead person cannot be claimed as an adoptive father when the deed of adoption was executed after the death of such person. In other words, no adoption can be made nor a dead person can be claimed as an adoptive father if the deed of adoption was executed after the death of such person. Section 8 of the Act provides capacity of a female Hindu to take adoption.

23. The learned counsel for the writ petitioner states that the adoption was made in favour of the wife of the deceased employee. Therefore, the deceased employee is not a party to the adoption deed. If that is so, then the scheme of compassionate appointment cannot be provided to the writ petitioner. The wife of the deceased employee alone is eligible to claim appointment on compassionate ground. In other words, the wife of the deceased employee after the death of her husband cannot adopt a son and seek an appointment on compassionate ground to the son. This circumstance is clearly established that the adoptions are made in order to secure the public employment by circumventing the scheme.

24. This Court is of the opinion that now people are indulging in activity of securing public employment through so many ways. The ways some time is unacceptable in law. However, such practices are continuing contrary to the Rule and sometime with the support of the authorities. Such attitude of the candidates in securing the public employment to be deprecated and actions of such authorities also deserves to be taken note of and those officials, who are indulging in such illegal activities to be prosecuted under the discipline and appeal rule or under the relevant law.

25. Section 11 of the Hindu Adoption and Maintenance Act provides other conditions for valid adoption. Section 11(6) states that "the child to be adopted must be actually given and taken in adoption by the parents or guardian concerned or under their authority with an intend to transfer the child from the family of his birth or in the case of an abundant child or a child is not known from the place or family where it has been brought up to the family of its adoption". Thus, actually given and taken in adoption by the parents or guardian concerned



under their authority is mandatory performance to be done. In the present writ petition, no such instances were established.

26. In the present case, the deed of adoption itself was executed after the death of the deceased employee. Then there is no possibility of executing an adoption by the deceased employee. When such is the position, by citing the deceased employee, the writ petitioner cannot secure public employment. Ultimately, the appointment on compassionate ground was made only on the ground that the deceased employee died while in service. Such being the appointment provided, the deceased employee is not a party to the adoption deed nor a valid adoption was established under the provisions of the Act, the order of appointment is to be vitiated.

27. This Court out of caution repeats the circumstances by stating that the adoption deed was executed on 20.04.1998 by the biological parents of the writ petitioner and on the date of execution of adoption deed, the deceased employee through whom the writ petitioner secured compassionate appointment was not alive and further, the deceased employee had not validly adopted the writ petitioner as his son. This being the factum, the appointment secured by the writ petitioner on the ground that he is an adoptive son of the deceased employee late Mr.M.Irulappan cannot have any sanctity in the eye of law.

28. In respect of adoption, the Government cannot go by certain theories and statements made by the parties concerned. The Government necessarily have to go by the legal documents provided by the candidates for the purpose of providing appointments. Under these circumstances, the Government issued G.O.Ms.No.2899, dated 23.12.1988 stating that the adoption deed must be executed prior to the death of the deceased employee. The Government Order has got certain practical purposes because in order to secure public employment, the people will be indulging in executing adoption deed after the death of the deceased employee. The Government has got a specific purpose in issuing such Government Order in order to prevent such execution of adoption deed after the death of the deceased employee. The party may make an attempt to say that they have got ration card, legal heir certificate and other documents. However, those documents cannot be a valid one for the purpose of establishing a valid legal adoption. Thus, the Government Order has got certain purposes and the same cannot be neglected.

29. In every family, when the Government servant has no issue then the other members of the family may take an attempt to secure public employment by registering such kind of adoption deed. In order to prevent such circumstances, the Government issued order. Therefore, the order has got certain nexus and purpose. This petitioner had secured employment only based on the family card and legal heir certificate. Legal heir certificates are normally issued based on the statement provided



by the family member. Even if the verification is done in certain circumstances, the same cannot be accepted in view of the fact that the appointment on compassionate ground requires the valid legal adoption under the provisions of the act and rules. Otherwise, it would be very difficult for the Government to prevent such kind of illegal appointments.

30. The learned counsel for the petitioner states that the writ petitioner had been adopted long back by the deceased employee and his wife. However, those facts are irrelevant for the purpose of securing public employment. The fact in relation to bringing up a child is one thing and the fact in respect of legal and valid adoption is another thing. For the purpose of securing public employment, the adoption must be genuine and the same must be in accordance with law. Merely keeping a child and bringing the child up cannot be the ground to say that the same is a valid adoption. This being the factum and considering current social circumstances prevailing amongst the people that the public employment to be secured in one way or other. It is necessary for the Government to ensure that the scheme of compassionate appointment is provided only in respect of the cases where the valid adoption is executed in accordance with the provisions of the Act. In all other cases, the statements and theories and certain other documents provided cannot be trusted upon. Valid adoption has got its own ingredients and those ingredients are to be established under the provisions of law. Thus, the non-regularization of the services of the writ petitioner on the ground that the valid adoption was not established is in order and there is no infirmity. This apart, when a person secured appointment based on the reason that he is an adopted son of the deceased employee, he has no authority to continue in the service when the adoption itself is not established and proved beyond the reasonable doubt. Under these circumstances, this Court is not inclined to consider the case of the writ petitioner for regularization of his services. The Writ Petition is dismissed. No costs.

Sd/-

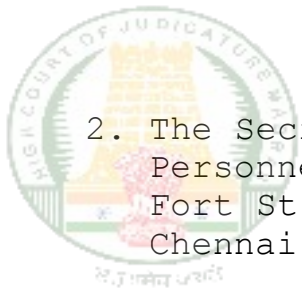
Assistant Registrar (RTI)

/True Copy/

Sub Assistant Registrar

To

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+ 1 cc TO Mr.J.Ashok , Advocate in SR No. 49221
+ 1 cc TO Mr.N.S.Karhikeyan , Advocate in SR No. 48813
+ 1 cc TO The Special Government Pleader in SR No. 49386

skn

AE/GT/SAR1/03.04.2018/12P/10C

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