

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.12934 of 2019

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Prakash Kumar Son of Late Ishwar Dayal Singh Resident of At Amar Chhataui, Motihari, P.S. Muffasil, District- East Champaran.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Revenue and Land Department, Government of Bihar, Patna.
2. The District Magistrate-cum-Chairman, District- Compassionate Appointment Committee, East Champaran at Motihari.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Karandeep Kumar, Advocate
For the Respondent/s : Mr. Sajid Salim Khan (SC 25)

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CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR
ORAL JUDGMENT

Date : 03-07-2019

Heard the learned counsel for the parties.

2. The petitioner has challenged the order dated 04.04.2013 passed by the respondent no. 2 contained in Memo No. 114 whereby the claim of the petitioner for being appointed on compassionate ground has been rejected.

3. It appears that the adoptive father of the petitioner died on 18.11.2006 while serving as Peon in the District Legal Cell, Motihari. Within five years of the death of the adoptive father, the petitioner made an application for being considered for compassionate appointment. The



aforesaid application was filed after the petitioner attained majority on 29.07.2011.

4. It has been urged on behalf of the petitioner that his date of birth is 10.09.1991 and he was adopted by the deceased employee and his wife viz. Girija Devi on 04.05.2003. However there is no document of such adoption nor the petitioner has been able to bring on record any evidence in support of the petitioner having been adopted in the year 2003, when he was of the age when any child could have been adopted under the *Hindu Adoption and Maintenance Act, 1956*. It has been urged by the petitioner that in the year 2003, the petitioner was 12 years and 4 months of age. The registered deed of adoption is dated 07.05.2009.

5. These aspects were gone into by the District Compassionate Committee and it was found that at the time of the deed of adoption being registered, the petitioner was 18 years of age and therefore was not being capable of adopted. The establishment committee also



came to the conclusion that the factum of the petitioner having been adopted in the year 2003 cannot be accepted for the reason that there is no evidence with respect to such adoption. Therefore, the only date which could be considered by the committee was the date of registration of such deed.

6. Looking into these aspects of the matter, the establishment committee came to the conclusion that the claim of the petitioner has been put up only for the purposes of seeking appointment on compassionate ground.

7. Hence the claim was rejected by the order impugned.

8. Section 16 of the *Hindu Adoption and Maintenance Act, 1956* deals with the 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 as a record of adoption made and is signed by the person giving and the person



taking the child in adoption, it shall be presumed by the court that the adoption has been made in compliance with the provisions of the Act unless and until it is disproved. A person could be adopted if he is given in adoption by a person who is capable of giving his child in adoption and the person adopting also has the capability to adopt.

9. Section 11 deals with conditions which would be essential for a valid adoption. The proviso to Section 11 of the Act further describes that performance of any religious ceremony would not be essential for the validity of an adoption. However Section 12 of the Act which deals with effects of adoption, enunciates that an adopted child shall be deemed to be the child of his or her father or mother for all purposes with effect from the date of adoption and from such date all the ties of the child with the family of his or her birth shall be deemed to be severed and replaced by those created by the adoption in the adoptive family.



10. From a reading of the aforesaid Sections of the *Hindu Adoption and Maintenance Act, 1956*, there does not appear to be any mandate with respect to the reckonable date of adoption. A registered adoption deed only raises a presumption in favour of the contention that a particular person has been adopted. From what date the adoption would be reckonable is not clear under the Act.

11. In the case in hand, the registered adoption deed does not refer to any written arrangement or agreement between the parties but statement of the mother of the adoptive child/the petitioner that it was the desire of her late husband/deceased employee to adopt the petitioner and the petitioner was adopted in the year 2003 when he was slightly more than 12 years of age. The registered deed of adoption further discloses that the father of the adoptive child/the petitioner, unfortunately died and therefore the deed could not be registered. The registered deed does not contain the signature of the



parents of the petitioner who had given him in adoption to the deceased employee and his wife.

12. Under these circumstances, the registered deed of adoption cannot be accepted to be an unimpeachable document which could give rise to the entitlement of the petitioner for being appointed on compassionate ground.

13. The aforesaid exercise was done by this Court in order to find out whether with such registered deed of adoption, was it justified for the authorities to reject the claim of the petitioner on the adoption being under doubt.

14. There is thus no reason why the order of the District Compassionate Appointment Establishment Committee be interfered with.

15. There is no merit in this petition and the same is dismissed.

(Ashutosh Kumar, J)

krishna/-

AFR/NAFR	NAFR
CAV DATE	NA
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