

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.15152 of 2019

Arun Kumar, aged about 41 years, Sex-Male, Son of late Rajeshwar Pandit,
Resident of Mohalla-S.C.E.R.T. Campus, Post Office-Mahendru, Police
Station-Sultanganj, District-Patna.

... .. Petitioner/s

Versus

1. The State of Bihar through Principal Secretary, Education Department,
Government of Bihar, Patna.
2. The Principal Secretary, Education Department, Government of Bihar,
Patna.
3. The Director, State Council of Educational Research and Training,
Mahendru, Patna- 800006.
4. The Deputy Director, State Council of Educational Research and Training,
Mehendru, Patna- 800006.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. S.N. Yadav, Adv. Mr. Umesh Prasad, Adv.
For the State	:	Mr. Jai Prabhat Kishore, Adv.

CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR
ORAL JUDGMENT
Date : 01-08-2019

Heard the counsel for the parties.

2. The petitioner has challenged the order dated
14th February, 2019, contained in Memo No. 264, passed by
the Director, State Council of Educational Research and
Training, Mahendru, Patna, whereby the claim of the
petitioner for being appointed on compassionate ground has
been rejected on the ground that the evidence offered on



behalf of the petitioner belies the fact that he has been adopted by an employee who has died in harness.

3. The petitioner had approached this Court earlier *vide* C.W.J.C. No. 13279 of 2014 when his claim for being appointed on compassionate ground, as being the adopted son of the deceased employee, was rejected.

4. This Court *vide* order dated 14th August, 2018, passed in C.W.J.C. No. 13279 of 2014, and relying upon a judgment of this Court in ***Union of India & Ors. Vs. Most. Shitali Devi & Anr.; 2002 (4) PLJR 62,*** directed the concerned respondent to consider the case of the petitioner afresh, taking into account that compassionate appointment is for the purposes of solving human problems and when there should not be any unnecessary adherence to technical issues.

5. Pursuant to the aforesaid order passed by this Court, the petitioner made an application before the Director, State Council of Educational Research and Training, Mahendru, Patna, seeking his appointment on compassionate appointment.



6. In support/proof of the fact that the petitioner has been adopted by the late employee, *viz.*, Rajeshwar Pandit, a sale-deed was produced in which the petitioner has been shown as the son of late Rajeshwar Pandit. An adoption certificate, countersigned by the *Mukhiya* of the Panchayat as well as the biological father of the petitioner, has also been brought on record.

7. The claim of the petitioner was negatived because of the fact that he was found to have been adopted, according to his claim, in the year 1991, when he was slightly above 12 years of age, but the matriculation certificate of the petitioner shows that he had passed the same in the year 1994 and in which his father's name has been shown as Harikishun Pandit, who is his biological father. In other educational certificates also, the name of the father of the petitioner is shown as Harikishun Pandit, who is his biological father. However, in all other documents which were furnished by the petitioner, *viz.*, Aadhar Card and Voter Identity Card etc., the petitioner father's name is shown as Rajeshwar Pandit, who has adopted the petitioner.



8. It is necessary to be noted that the late employee/Rajeshwar Pandit is the own brother of the biological father of the petitioner, who remained issueless for a long time. Under the aforesaid circumstance, the petitioner was given in adoption by his biological father with the consent of his mother to Rajeshwar Pandit. Had it not been the case, late Rajeshwar Pandit would not have named the petitioner as his nominee in his Pension papers.

9. The wife of late Rajeshwar Pandit has also given a 'No Objection' and has certified that the petitioner is the adopted son of late Rajeshwar Pandit and her (Meena Devi).

10. Thus, the only set of documents which has been relied upon by the respondent in rejecting the claim of compassionate appointment are the educational certificates of the petitioner.

11. For an adoption to be valid, it must conform to the requisites set-forth in Section 6 of the Hindu Adoptions and Maintenance Act, 1956. For any adoption to be valid, it is necessary that the person adopting has the



capacity as also the right to take in adoption and there is a corresponding right of the person giving a child in adoption. The person adopted also is required to have the capacity for being taken in adoption. The other conditions of valid adoption which have been enumerated in Section 11 of the Act veers around the unconditional giving and taking of a person/child in adoption where both the parties, *i.e.*, the one who is adopting and the other who is giving in adoption, have the capability and the right to do so.

12. The effect of adoption has been defined in Section 12 of the Act, which mandates that any adopted child would be deemed to be child of his adoptive parents for all purposes, with effect from the date of the adoption and from such date, all the ties of the child in the family of his or her birth shall be deemed to be severed and replaced by those created by adoption in the adoptive family.

13. Certain other conditions are attached to the person who is taken in adoption and such condition become operative from the date of such adoption. To recount a few, the adopted child cannot marry any person whom he or she



could not have married, if he or she had continued in the family of his or her birth and any property which vested in the adopted child before the adoption shall continue to vest in such person, subject to the obligations, if any, attaching to the ownership of such property, including the obligation to maintain the relatives in the family of his or her birth.

14. A document depicting adoption is not compulsorily to be registered. However, a presumption follows, if the document relating to adoption is registered. Section 16 of the Act attaches such presumption on registered documents relating to adoption.

15. Thus, from the facts of this case, few things emerge without any dispute, *viz.*, (i) the adoptive father is the own uncle of the petitioner; (ii) the certificate of adoption which has been countersigned by the biological father of the petitioner and the *Mukhiya* of the locality has not been questioned or held to be a spurious document; (iii) the document relating to purchase of a property, which in a lower-middle class family is an important acquisition for life, displays that the petitioner is the son of late Rajeshwar



Pandit, who had adopted the petitioner; (iv) the Aadhar Card and the Voter Identity Card which are most necessary documents also show that the petitioner is the son of his adoptive father/Rajeshwar Pandit.

16. With these evidence and the presumption under Section 11 of the Act, read with the effect of such adoption as mandated in Section 12 of the Act, even if in the matriculation certificate and other educational certificates, no care has been taken to get the name of the father of the petitioner corrected and insert the name of the adoptive father, it would not be sufficient to reject/negative the claim of the petitioner which would attach to him as the adopted son of his adoptive father.

17. The Director, State Council of Educational Research and Training, Mahendru, Patna, it appears, misdirected himself in assessing the evidence and deciding the matter on the basis of probability of evidence. The preponderance of evidence is in favour of the petitioner that he is the adopted son of the late employee.

18. While the matter was remitted to the



Director to pass a reasoned order in accordance with law, the Bench of this Court took special care to quote an instructive paragraph from the judgment in ***Union of India Vs. Most. Shitali Devi*** (supra), which is also being extracted here for ready reference:-

"4. The Court is of the view that this matter should not be made an issue and the logic of a regulation is not going to solve any human problem. If the employees, who are being considered, are class IV employees then regard being had to the realities it is unlikely that in that strata of the society issueless couples go through the formality of the law and make an adoption and have it duly registered. This is a common law concept. An oriental society such as ours containing an amalgam of many cultures does by practise and custom resort to resolving problems within the family and society, and adoption is one such modality. Indian marriages in generality do not see a registration but are conducted on custom. The case before the railway was one such circumstance. If the railway takes the posture that the



strictness of the regulation must apply, then it is clear that no Class IV employees' wards may get an employment if adopted. Nobody apprehends death of an earning member so as to keep papers as a record, to be made available for such an eventuality. The eventuality is to seek employment on the rule of harness. In India amongst economically weaker sections of the society, and at times the middle class not excluded, the generality is that children are adopted and are brought up by foster parents without the rigours of a registered document. This is one such matter where a hard or fast rule or a rigid interpretation of the regulation may, perhaps provide a soul-less escape for the railway administration but it will defeat the rule of harness and not solve a problem of life for a class for whom the rule was meant. Fraud, mischief, misrepresentation may by all means be inquired, so as not to render the Rule of Harness in service nugatory. But if the relationship of adoption and foster parents be bonafide and not manufactured to defeat a regulation, such a relationship, exceptions



apart as pointed out, should be accepted.”

19. The Division Bench in the aforesaid judgment laid stress on the financial conditions of a family in ordinary setting of life where such requirements of getting a deed of adoption registered is neither taken seriously nor any attempt is made to act in such prudent manner. The amalgam of various cultures in a society of which the petitioner is an integral part has to be understood in its true spirit and undue adherence to the technicalities which shall be counter-productive.

20. Apart from this, the order impugned can also be faulted on the ground that even when such meticulous assessment and weighing of evidence was being carried out, which was not required, the concerned respondent ought to have seen that the balance, even in that case, lay over the fulcrum to the side of the petitioner.

21. The claim of the petitioner can further be tested on the basis of the principles of appreciating evidence.

22. The burden of proof of any legal right or liability which is dependent on the existence of the fact,



which is asserted by a person, lies on such person who is to prove the existence of such fact. Along with the burden, onus is also on him. With respect to the particular fact of the petitioner having been taken in adoption by the late employee, who died in harness, is on the petitioner and the same was discharged in the best possible manner by bringing on record the certificate of adoption, though unregistered and other documents which are of immense importance and which a person uses in daily course of life, viz., the Aadhar Card and the Voter Identity Card. Many important rights flow from these documents. Once the burden of proof is on the claimant and the initial onus was discharged by him for staking his claim for being considered for compassionate appointment, the onus shifted on the authority to dispel/disprove the same, which has not been done in the present case. Merely because in the educational certificates, relevant correction with respect to the name of the father of the petitioner was not carried out, the claim of the petitioner could not be rejected.

23. For the aforesaid reasons and discussion,



this Court finds that the issue requires a re-look by the Director, State Council of Education Research and Training, Mahendru, Patna (respondent No. 3).

24. The order impugned is, therefore, set-aside.

25. The matter is remitted to the Director, State Council of Education Research and Training, Mahendru, Patna (respondent No. 3) to look at the claim of the petitioner in the correct perspective, as has been explained in the order, and not to look at the case of the petitioner with a tunnel vision of testing the correctness of the claim only on the basis of the rules/regulations governing such aspect of grant of compassionate appointment.

26. A fresh order shall be passed within a period of eight weeks from the date of receipt/production of a copy of this order before the concerned respondent.

27. With the aforesaid observation/direction, the writ petition stands disposed off.

(Ashutosh Kumar, J)

Praveen-II/-

AFR/NAFR	AFR
CAV DATE	N/A
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