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HIGH COURT OF CHHATTISGARH, BILASPURWPS No. 1078 of 2005

- Sanjay Yadav S/o Arjunlal Yadav Aged About 25 Years R/o Village Pandadh, Tahsil Kawardha, District Rajnandgaon Chhattisgarh

---- Petitioner

Versus

1. State of Madhya Pradesh Now Chhattisgarh, Through Secretary, Higher Education Department, Mantralaya, Police Station Rakhi Tahsil and District Raipur (C.G.).
2. Shri P.K. Verma Joint Director, Lok Shikshan (School Education), Durg., District : Durg, Chhattisgarh.
3. Harish Kumar (Died) Through Legal Heirs As Per Honble Court Oder Dated 26-07-2019.

(3-A). Smt. Asha Yadu, aged about 45 years, W/o Late Harish Kumar, R/o Village Pandadah, Tehsil Khairagarh, Dist. Rajnandgaon, Chhattisgarh.

(3-B). Rahi Yadu S/o Late Harish Kumar Aged About 25 Years.

(3-C). Kumari Khusbu D/o Late Harish Kumar Aged About 19 Years

(3-D). Kumari Devika D/o Late Harish Kumar Aged About 13 Years

Through her Mother, Smt. Asha Yadu All R/o Village Pandadah, Tehsil Khairagarh, Dist. Rajnandgaon, Chhattisgarh.

4. Dy. Director Lok Shikshan (School Education) Kawardha,
District Rajnandgaon, Chhattisgarh.

---- Respondents

For Petitioner	:-	Shri Rupesh Shrivastava, Advocate
For Respondent-State	:-	Shri Avinash Choubey, PL
For Respondent No.3	:-	Shri C.K. Sahu, Advocate

Order On Board

By

Prashant Kumar Mishra, J.

05/09/2019

- Petitioner would call in question the appointment of deceased-Respondent No.3, Harish Kumar, on compassionate ground upon death of his adoptive father Lakhanlal who *died-in-harness* on 26.12.1991 while working as Head Master. Petitioner would also challenge the orders dated 25.01.1995 and 24.02.1995 whereby his appointment on compassionate ground was set aside on the ground that respondent No.3 is entitled to seek compassionate appointment instead of the petitioner.
- Learned counsel for the petitioner would draw attention of the Court to the contents of the application for amendment of the petition together with the documents filed therewith to

submit that petitioner had moved Civil Suit No.91A of 1997 for a declaration that the deed of adoption dated 14.10.1992 through which Harish Kumar claimed to be adopted by Rama Bai wife of Lakhanlal be declared illegal and void. The suit was allowed by judgment and decree dated 07.05.2008 passed by Civil Judge Class-I, Khairagarh. Appeal against the said judgment has also been dismissed by Additional District Judge, Khairagarh in Civil Appeal No 12A of 2008 decided on 23.06.2008. Although Second Appeal No.611 of 2016 is still pending yet, as on date, the decree passed by the Civil Court against Harish Kumar being operative, the said Harish Kumar was not entitled to secure employment on compassionate ground upon death of Lakhanlal. He would submit that Harish Kumar himself died on 15.05.2005 during the pendency of the writ petition and his legal heir, his widow, Asha Yadu, has been granted compassionate appointment, therefore, her appointment also deserves to be quashed.

3. Even if the judgment and decree declaring the deed of adoption dated 14.10.1992 is illegal and void, is intact as on date, the fact remains that there is no declaration by any Court that petitioner was adopted by Lakhanlal and Rama Bai. Admittedly, petitioner was the nephew of Lalkhanlal, therefore, he was not entitled for compassionate

appointment.

4. It is worth notice that Harish Kumar was offered appointment way back on 09.11.1994 thus, Harish Kumar remained in service for about 20 years till his death in the year 1995 and thereafter his widow Asha Yadu is presently in service on compassionate ground after death of Harish Kumar. It will be taking the issue too far away if it is held that Harish Kumar was not entitled for appointment in 1995, therefore, after his demise his widow is not entitled for appointment on compassionate ground in 2015-16. More so when petitioner himself is not the adopted son of Lakhanlal and Rama Bai. Jurisdiction under Article 226 of the Constitution of India being equitable jurisdiction, the same cannot be invoked in favour of a person whose eligibility for the subject post is in doubt. It cannot be invoked also to set aside an order of appointment issued more than 20 years back. The present is not a case wherein both the parties are claiming appointment on merits pursuant to a recruitment process. Appointment on compassionate ground is an exception to the rule of equality and the principle of selection through a competitive recruitment. That being the case, in the facts and circumstances of the present writ petition, quashing the appointment of Harish Kumar for academic purposes and thereafter on the said basis quashing the compassionate

appointment of his widow-Asha Yadu, would not serve any purpose.

5. Accordingly, the writ petition deserves to be and is hereby dismissed.

Sd/-
(Prashant Kumar Mishra)
Judge

Ankit