115+202

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-7138-2022 (O&M)
DECIDED ON:10.06.2022

SUKHMANPREET KAUR PANNU .....PETITIONER

VERSUS

UNION OF INDIA AND ORS. .....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Dr. Anand Bishnoi, Advocate for
Mr. Joginder Pal Devgan, Advocate
for the petitioner.

Ms. Shweta Nahata, Advocate
for respondent-UOI.

****

SANDEEP MOUDGIL, J.

CM-8571-CWP-2022

Prayer in this application is for placing on record the photocopy of passport manual i.e. compendium of instructions/guidelines relating to issue of passports in India/Abroad as Annexure P-14 and for exemption from filing the certified as well as typed copy thereof.

For the reasons mentioned in the application, the same is allowed subject to all just exceptions. Passport manual i.e. compendium of instructions/guidelines relating to issue of passports in India/Abroad is taken on record as Annexure P-14.

POONAM NEGI
2022.06.30 17:11
I attest to the accuracy and
authenticity of this document

CM-9124-CWP-2022

Prayer in this application is for placing on record the certified copy of judgment and decree dated 27.05.2022 passed by the learned Civil Judge (Junior Division) Patti, Tehsil Patti, District Tarn Taran as Annexure P-15 and for exemption from filing the typed copy thereof.

For the reasons mentioned in the application, the same is allowed subject to all just exceptions. Judgment and decree dated 27.05.2022 is taken on record as Annexure P-15.

CWP-7138-2022

The petitioner has approached this Court invoking the writ jurisdiction under Article 226 of the Constitution of India seeking a writ of mandamus for re-issuance of her passport after registering the names of her biological parents, which is pending with the respondents since 21.10.2021 as was applied online on the passport portal namely www.passportindia.gov.in.

The factual matrix in the writ petition would culminate into the sequence i.e., petitioner is aged 19 years, whose biological parent's name is Harjit Singh-father and Satwant Kaur-mother, as has been mentioned in the Aadhaar Card No.4315 3794 8529 dated 23.03.2021 and Permanent Account Number KPFPK3259D. Similarly, in the Birth Certificate dated 05.04.2021 as well as in the Secondary School Examination 2018, Certificate dated 29.05.2018 and 23.07.2021 of the petitioner, which shows the name of her biological parents as Harjit Singh-father and Satwant Kaur-mother (Annexures P-1 to P-4).

It is an admitted fact that the petitioner was adopted by her real uncle and aunt namely Sarbjit Singh son of Chatter Singh son of Dalip Singh and Sukhjit Kaur wife of Sarbjit Singh, son of Chatter Singh, residents of village Rure Asal,

POONAM NEGI
2022.06.30 17:11
I attest to the accuracy and
authenticity of this document

Tehsil and District Tarn Taran (Punjab), vide Adoption Deed dated 23.12.2013 (Annexure P-5). However, the said adoption deed on 02.02.2021 (Annexure P-6) was cancelled with the consent of both the parties to the adoption deed.

It is after the execution of the Adoption Deed on 23.12.2013 and before the cancellation of the said Adoption Deed on 02.02.2021, the petitioner got issued a Passport No.T8935948 dated 23.12.2019 (Annexure P-7) being valid upto 26.12.2029. Since the Adoption Deed was in existence on the date, the passport was issued on 23.12.2019, the name of the parents of the petitioner were recorded as that of adoptive parents i.e. Sh. Sarbjit Singh-father and Smt. Sukhjit Kaur-mother.

An application was moved by the biological parents on 16.09.2021 before the Executive Magistrate-cum-Assistant Grade-1, Collector Patti, District Tarn Taran, wherein the adoptive parents were also called and heard. Subsequent thereto, inquiries were made from the local police, apart from the village Numberdar and three other permanent persons of village Rure Asal. The cancellation of Adoption Deed was upheld by the Assistant Collector, Grade-I, District Tarn Taran, observing that in the records, the adoption deed already stood cancelled in the office of Joint Sub-Registrar.

At that stage, after cancellation of the Adoption Deed as per law, the petitioner said to have applied for re-issuance of passport while depositing the requisite fee, vide File No.AS1075742980421 dated 21.10.2021 to the Passport Sewa Kendra, Amrtisar and Regional Passport Office i.e. respondents No.4 and 5.

Since, no action was initiated, it is averred that the petitioner approached respondents No.1 to 3 via e-mail dated 08.02.2022 (Annexure P-11). However, the grievance raised by the petitioner in the present writ petition which

POONAM NEGI
2022.06.30 17:11
I attest to the accuracy and
authenticity of this document

compelled her to approach this Court for writ of mandamus, is inaction on the part of the authorities with corrected names of parents due to which she could not pursue her studies abroad as the passport was required to apply for Study Visa and to take admission. It has been averred that on various occasions, while keeping track of the status on the official weblink of respondents No.4 and 5, it is read as 'Passport application is under review at Regional Passport Office'.

Felling the inaction on the part of the respondents, the petitioner having left with no other way has invoked the extra-ordinary writ jurisdiction of this Court for a direction to rectify the parental name and to re-issue the passport enabling her to apply for a Study Visa so that her academic career does not get affected on this account.

Learned counsel for the petitioner has contended that once the adoption deed stands cancelled on 02.02.2021 by the competent authorities, vide cancellation of adoption deed (Annexure P-6) along with the order dated 14.10.2021 passed by the Court of Execution Magistrate-cum-Assistant Grade-1, Collector, Patti, District Tarn Taran, it is arbitrary and unjustified on the part of respondents No.4 and 5 in particular in not re-issuing the passport with the rectified name of biological parents in place of adoptive parents.

Learned counsel for the petitioner concluded with reliance upon a judgment and decree dated 27.05.2022, vide which a declaration has been issued to the effect that Sukhmanpreet Kaur Pannu-petitioner is the natural/biological daughter of Harjit Singh-father and Satwant Kaur-mother. The adoption deed dated 23.12.2013 allegedly executed by biological parents of the petitioner in favor of Sarabjit Singh as an adoptive father and Sukhjit Kaur as an adoptive mother is illegal. The trial Court has also recorded the finding that Sarabjit Singh and Sukhjit Kaur, adoptive parents have got no right or concern with

POONAM NEGI
2022.06.30 17:11
I attest to the accuracy and
authenticity of this document

Sukhmanpreet Kaur Pannu (petitioner in the present writ petition) while setting aside the adoption deed dated 23.12.2013. The Civil Court has further restrained the adoptive parents from asserting any right over the petitioner namely Sukhmanpreet Kaur Pannu and also from interfering in the peaceful life of the biological parents and the petitioner.

Attention of this Court has also been drawn to the compendium of instructions/guidelines relating to issue of passports in India/abroad with the relevant Chapter 3 i.e. change of entries in passports wherein Clause 4 reads as under:-

> **" 4. CHANGE IN THE NAME OF PARENT(S)**
>
> 4.1 Request for change in parents name should normally not be entertained. However, the following cases could be considered:
>
> a) The parents themselves change the name (e.g., parent of a person after following the prescribed procedure, change his/her name and a new passport was issued in the changed name to the parent. Now the child of that parent is seeking change of parents name in his passport.
>
> b) There was some clerical error in respect of the parents name and an applicant provides documentary proof showing the correct name (spelling) of his parent(s).
>
> c) In adoption cases (see IX. Adopted Children (change in name and change of parent's name)."

A perusal of the aforesaid clause makes it crystal clear that change in the name of parents though normally is not to be entertained but in various

POONAM NEGI
2022.06.30 17:11
I attest to the accuracy and
authenticity of this document

circumstances including such cases where the adoptive child seeks change, can be considered. The present case is also of the kind, where the petitioner is the adoptive child at the time when the passport was originally got issued in the year 2019 but subsequently, the adoption deed stood cancelled, and now, she has attained the age of majority of being 19 years old, got the adoption deed cancelled who is now seeking rectification to keep the records straight by change of name from the adoptive parents to that of biological parents in the passport, which is rather a bona fide and fair act on her part.

On issuance of notice of motion, a short reply came to be filed on behalf of respondents by way of an affidavit of Shamsher Bahadur Singh, Regional Passport Officer at Passport Office, Amritsar, wherein it is admitted that the petitioner applied on 21.10.2021 for passport facilities under the re-issuance category vide File No.AS1075742980421 with the following particulars:-

"A. Date of Birth: 21.01.2003

B. Father's Name: Harjit Singh (Biological Father)

C. Mother's Name: Satwant Kaur (Biological Mother)

D. Documents Submitted: Old Passport, Matric Certificate, Adhaar Card, Parents Passport, Self Declaration,Cancellation of Adoption Deed, Affidavit by Natural Parents, Affidavit by Applicant, Birth Certificate."

The respondents have also admitted the genuineness of the above documents aftergetting examination from the office of Joint Sub-Registrar, Khem

POONAM NEGI
2022.06.30 17:11
I attest to the accuracy and
authenticity of this document

Karan, Tarn Taran, vide letter dated 16.11.2021, and the case was referred to the Ministry of External Affairs, Patiala House, New Delhi to look into the matter and to give necessary directions in the same. However, para 8 of the said affidavit refers to Section15 of the Hindu Adoption and Maintenance Act, 1956, wherein a stipulation has been made that no adoption which had been validly made can be cancelled by the adoptive father or mother or any other person nor can the adoptive child renounce his or her status as such and returned to the family of his or her birth.

Having heard learned counsel for the parties after perusal of case file, it is evident that the factum of adoption thereafter, cancellation of adoption, and application for re-issuance of passport with the rectification of parental name with that of biological parents, are not disputed and also stands verified with record and there genuinity vide letter dated 16.11.2021 issued by the Joint Sub-Registrar, Khem Karan, Tarn Taran. However, the sole reason for such delay and for not re-issuing the passport so far, as per respondents stand, is the basis of Section 15 of the Hindu Adoption and Maintenance Act, 1956, which is totally misreading of the said provision by respondent authorities while examining the case of the petitioner. The bare reading of the said provision makes it ample clear that valid adoption deed cannot be cancelled only by the adoptive father or mother or any other person. But such provision does not put an embargo for such rectification on attaining the age of majority by the adoptive child at any stage in life that to with the consent of adoptive parents as well as biological parents.

In the present case, the perusal of order dated 14.10.2021 (Annexure P-8) depicts that the adoptive parents, the biological parents and other respectables of the said village were called and given a hearing, showing that all were associated in the proceedings and only thereafter, the adoption deed was held

POONAM NEGI
2022.06.30 17:11
I attest to the accuracy and
authenticity of this document

to be null and was cancelled. Moreover, thereafter, a suit for declaration was preferred by the adoptive parents along with the petitioner which stand decreed vide judgment and decree dated 27.05.2022 (AnnexureP-15). Therefore, once the adoption deed stands cancelled after following due process of law and none of those orders are under challenge by any of the parties, which have attained finality in the eyes of law, it is absolutely arbitrary and illegal on the part of respondents No.4 and 5 in particular, for not re-issuing the passport with rectified names of biological parents in place of adoptive parents.

We are of the considered view in such circumstances, it would not only arbitrary and illegal but will also be violative of Article 21 of the Constitution of India, which guarantees protection of life and liberty as well as equal protection of the law.

The writ petition is, therefore, allowed with a direction to respondents No.1, 4 and 5 to consider the case of the petitioner and to re-issue the passport after making necessary corrections and rectifications, in the name of biological parents instead of adoptive parents. Needful shall be done within a period of two weeks from the date of receipt of the certified copy of this order.

Ordered accordingly.

(SANDEEP MOUDGIL)
JUDGE

10.06.2022
poonam negi

Whether speaking/reasoned Yes/No
Whether reportable Yes/No

POONAM NEGI
2022.06.30 17:11
I attest to the accuracy and
authenticity of this document