

211 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP No.2937 of 2017 (O&M)
Date of decision : 03.02.2023

Baljit Singh

..... Petitioner

versus

State of Punjab & ors.

..... Respondents

CORAM : HON'BLE MR.JUSTICE PANKAJ JAIN

Present :- Mr. Padamkant Dwivedi, Advocate and
Mr. Naresh Kumar Manchanda, Advocate
for the petitioner.

Mr. Sehajbir S.Aulakh, Asstt. A.G., Punjab.

Mr. Pankaj Bhardwaj, Advocate
for the respondent.

PANKAJ JAIN, J. (ORAL)

Present writ petition has been filed under Article 226/227 of the Constitution of India impugning the letter dated 13.07.2016 whereby the claim of the petitioner for appointment in respondent No.2-Corporation on compassionate basis on account of death of one Karamjit Singh has been declined.

Karamjit Singh an Assistant Lineman worked with respondent No.5 unfortunately died on 09.11.2011. Petitioner herein claimed himself to be the adopted son of Karamjit Singh and applied for compassionate appointment. As per the petitioner his claim stems out from a Panchayti adoption deed dated 11.10.1999, as per which there was ceremony of adoption. In the auspicious presence of *Sri Guru Granth Sahib*, the natural parents of the petitioner namely

Jaswinder Singh and Sukhdev Kaur gave the petitioner in the lap of Karamjit Singh and his wife Sukhpal Kaur. The fact of adoption was reduced in writing which was duly attested by witnesses. However, the same could be registered only on 14.01.2014 after the death of Karamjit Singh. Based upon the aforesaid adoption, succession certificate was also applied by the petitioner which was granted by the concerned Court under Section 372 of the Indian Succession Act. However, vide Annexure P-13 the respondent-Corporation has rejected the claim of the petitioner.

Learned counsel for the petitioner has relied upon judgment passed by this Court in CWP No.24521 of 2015 titled as ***Sukhwinder Kaur Vs. State of Punjab & ors.***, decided on 20.07.2016 to submit that the adoption as per the Hindu Law is not dependent upon the registration of the adoption deed and the Court can gather this factum of the incriminating evidence/documents.

Similar is the law laid down by Single Bench of Patna High Court in **CWJC No.14241 of 2009 titled as Mostt. Sona Devi W/o Late Kishori Paswan and another Vs. The State of Bihar and others decided on 10.11.2009** wherein law laid down by the Division Bench of the Patna High Court was followed holding as under :-

“6. This Court considers it proper to quote Paragraph 4 of the judgement of this Court in the case of Most. Shitali Devi (Supra) referred to above.

“4.The Court is of the view that this matter should not be made an issue and the logic of the 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 be 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 practice 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."

I have heard learned counsel for the parties and have gone through the records of the case.

No doubt the petitioner claims the adoption deed in his favour to be a registered document and the same has presumption attached to it under Section 16 of the Hindu Adoption and Maintenance Act, 1956. However the said presumption is not irrebuttable. Trite it is that a person who seeks to displace the natural succession must discharge the burden that lies upon him by proving the factum of adoption and its validity. Reference can be made to the judgment passed by Supreme Court in *Addagada Raghavamma Vs. Addagada Chenchamma*, AIR 1964 SC 136, the same was reiterated by the Apex Court in judgement passed in *Daulatrao Jairamji V. Harishchandra and others reported in AIR 1972 SC 2446*. The burden of proof of adoption is on the person who claims adoption. This Court cannot be oblivious of the fact that the petitioner claims compassionate appointment and thus onus lays heavily upon him to prove his adoption.

Learned counsel for the petitioner is right in contending that mere registration of the adoption deed post death of Karamjit Singh cannot be read against the petitioner. However, counsel for the petitioner has not been able to deny the fact that even after the alleged adoption deed of the year 1999 there is nothing on record to show by the conduct of the parties that the petitioner was transplanted in the adopted family. He does not dispute the fact that in all the testimonials of the petitioner even in the time post adoption deed of the year 1999, the petitioner continued to be mentioned as son of his natural father and not that of adopted father. All this militates against the entire case put forth by the petitioner. It is in these mitigating facts and circumstances that this Court finds that the adoption deed of the year 1999 cannot be relied upon in acknowledging the right of the petitioner to compassionate employment. The

conduct of the petitioner itself is enough to defeat the same.

Consequently, no ground is made out to interfere in the present writ and the same is ordered to be dismissed.

(PANKAJ JAIN)
JUDGE

03.02.2023
Pooja sharma-I

Whether speaking/reasoned	Yes
Whether Reportable :	No