

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

2025:PHHC:021875-DB



LPA No. 102 of 2023 (O&M)

Reserved on : 30th January, 2025Date of Pronouncement : 15th February, 2025

Nirdesh Devi

... Appellant

Versus

Union of India and others

... Respondents

**CORAM: HON'BLE MR. JUSTICE SANJEEV PRAKASH SHARMA
HON'BLE MRS. JUSTICE MEENAKSHI I. MEHTA**

Present: Mr. Pankaj Nanhera, Advocate and
Mr. Yogesh Vashista, Advocate, for the appellant.

Mrs. Anita Balyan, Advocate, for the respondents.

SANJEEV PRAKASH SHARMA, J.

This appeal is preferred by the writ petitioner assailing the judgment dated 23.08.2022, whereby her writ petition has been dismissed.

2. Brief facts, which need to be noticed, are that the appellant – writ petitioner is the widow of late Sepoy Shri Ramesh Kumar of Jat Regiment, who suffered battle causality on 25.02.2000. As the appellant had been recently married to Shri Ramesh Kumar on 05.02.1999, there was no child, born from their wedlock. Being issueless and facing societal difficulties, she adopted two children, namely, Nikhil and Nancy, of the elder brother of her husband, who was having two more children besides the above named children, adopted by the appellant. An adoption deed was also registered on 05.10.2013. As per the provisions of the Government of India instructions, the concession for educational scholarship is provided to the children of Armed Forces/ Personnel Below Officer Rank (PBOR) killed/ permanently disabled in action, who are studying in various educational

institutions. They are granted the preference in Sainik schools/ Army schools for admission. The adopted children of the appellant were also, therefore, entitled to receive the said benefit and the prayer to this effect was made by her to the Army Authorities. The representation was forwarded by the Zila Sainik Board to the Records officer, JAT Regiment. The appellant received an order on 06.02.2014, whereby her prayer was rejected on the basis of the letter issued by the Ministry of Defence (Army) dated 28.08.2002 which reflected that only the living Ex-servicemen and serving persons are eligible to adopt a child. At the same time, the appellant received another order dated 02.07.2014 declining her request for publication of Part-II order for adoption of the children on the ground that adoption was not to be recognized after the demise of the soldier or an Ex-serviceman. The appellant challenged the said action which was non-suited by learned Single Judge.

3. Learned counsel appearing for the appellant submits that in terms of Section 8 (c) of the Hindu Adoption and Maintenance Act, 1956, a widow is entitled to take a son or daughter in adoption even after her husband is dead and the validity and legality of such an adoption, which has acquired sanctity in terms of the Hindu Adoption and Maintenance Act, on account of the deed executed for this purpose having been duly registered, cannot be gone into to deny the benefits to the children adopted by the widow, who has all the rights which may ensue from her husband to her and to her children as well. The condition, which has been laid down by the respondents in rejecting the claim of the appellant has, therefore, been assailed before us.

4. Learned counsel for the appellant also impugns the judgment, passed by learned Single Judge, on the ground that it has failed to take into notice that the challenge has been made to the entitlement policy framed by

the Ministry of Defence. Learned counsel submits that no distinction can be drawn between the natural children and the adopted children of an Ex-serviceman who has died in war and therefore, the scholarship for education of the children of PBOR serving in army and the facilities of preference in admission are required to be given to the adopted children of the appellant. It is to be noticed that on 09.12.2016, considering the pendency of the writ petition, the Army Authorities published Part-II order, recognizing the adoption of the appellant's children and also issued Scholarship Entitlement Card for both the children and the amount of scholarship was also transferred in her account. However, the same was cancelled later on. An affidavit of Senior Record Officer, the JAT Regiment, was filed before this Court in appeal wherein he made depositions to the effect that due to human error, the Part-II order was published on 05.12.2016 but on noticing the error, the said Part-II order was withdrawn, vide Part-II order dated 16.09.2017 and the Certificates and Cards issued to the appellant, i.e. Education Scholarship Entitlement Cards, have also become invalid but the son of the appellant was admitted in Rashtriya Military School, Dholpur and they would be taking suitable action and have also made necessary correspondence with Civil Police and Zila Sainik Board, Jind.

5. Learned counsel for the appellant has also relied on judgment passed by the Supreme Court in **Sawan Ram vs Mst. Kalawanti and others** 1967 AIR (SC) 1761. However, the learned Single Judge has distinguished the case on the ground that the issue involved in the said case pertained to succession to the properties of the deceased person.

6. The respondents have also relied on a letter dated 28.08.2002, issued by the Additional Director General, Adjutant General's Branch, Army Headquarters, which reflects that they would accept adoption of a child only

from the serving PBOR or living Ex-servicemen and moreover, a person having a son or a daughter of his own cannot adopt the child of same sex as per Hindu Adoption and Maintenance Act, 1956. She, thus, submits that the adoption of two children by the widow, i.e. the appellant, would be unacceptable to the Armed Forces and they would not be treated as children of the deceased Army personnel and, would, therefore, be not entitled to the scholarship available for education of the children of PBOR, serving in army or for the members of the family of a deceased army personnel, who might have lost life in battle or war.

7. We have carefully considered the facts as narrated by both the sides.

8. In Sawan Ram's case (supra), one Ramji Dass died leaving behind his widow Smt. Bhagwani, who, thereafter, executed an adoption deed on 24.08.1959 and thereby, adopted Deep Chand. In the aforesaid case, Hon'ble the Supreme Court observed as under:-

"7. We are unable to accept this interpretation of the provisions of the Act by the Andhra Pradesh High Court as it appears to us that the High Court ignored two important provisions of the Act and did not consider their effect when arriving at its decision. The first provision, which is of great significance, is contained in Section 5(1) of the Act which lays down:

"No adoption shall be made after the commencement of this Act by or to a Hindu except in accordance with the provisions contained in this Chapter, and any adoption made in contravention of the said provisions shall be void."

It is significant that, in this section, the adoption to be made is mentioned as "by or to a Hindu". Thus, adoption is envisaged as being of two kinds. One is adoption by a Hindu, and the

other is adoption to a Hindu. If the view canvassed on behalf of the appellant be accepted, the consequence will be that there will be only adoptions by Hindus and not to Hindus. On the face of it, adoption to a Hindu was intended to cover cases where an adoption is by one person, while the child adopted becomes the adopted son of another person also. It is only in such a case that it can be said that the adoption has been made to that other person. The most common instance will naturally be that of adoption by a female Hindu who is married and whose husband is dead, or has completely and finally renounced the world, or has been declared by a court of competent jurisdiction to be of unsound mind. In such a case, the actual adoption would be by the female Hindu, while the adoption will be not only to herself, but also to her husband who is dead, or has completely and finally renounced the world or has been declared to be of unsound mind.

8. *The second provision, which was ignored by the Andhra Pradesh High Court, is one contained in Section 12 itself. 'The section, in its principal clause, not only lays down that the adopted child shall be deemed to be the child of his or her adoptive father or mother for all purposes with effect from the date of the adoption, but, in addition, goes on to define the rights of such an adopted child. It lays down that 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 the adoption in the adoptive family. A question naturally arises what is the adoptive family of a child who is adopted by a widow, or by a married woman whose husband has completely and finally renounced the world or has been declared to be of unsound mind even though alive. It is well-recognized that, after a female is married, she belongs to the family of her husband. The child adopted by her must also, therefore, belong to the same family. On adoption by a widow, therefore, the adopted son is to be deemed to be a member of the family of the deceased husband of the widow. Further still, he loses all his*

rights in the family of his birth and those rights are replaced by the rights created by the adoption in the adoptive family. The right, which the child had, to succeed to property by virtue of being the son of his natural father, in the family of his birth, is, thus, clearly to be replaced by similar rights in the adoptive family and, consequently, he would certainly obtain those rights in the capacity of a member of that family as an adopted son of the deceased husband of the widow, or the married female, taking him in adoption. This provision in Section 12 of the Act, thus, itself makes it clear that, on adoption by a Hindu female who has 'been married, the adopted son will, in effect, be the adopted son of her husband also. This aspect was ignored by the Andhra Pradesh High Court when dealing with the effect of the language used in other parts of this section.'"

9. Thus, from the afore-discussed verdict, it is culled out that a child, who may be adopted by father or mother singly after the death of spouse, becomes the member of the family of the husband and would be deemed to be a member of the family of the husband for all purposes. The rights, which are available to a naturally born child, would also be available to such adopted child and any provisions, which would defeat such a right, would be contrary to the provisions of the Hindu Adoption and Maintenance Act, 1956 and would not be sustainable in law.

10. Adopting the aforesaid principles, if we examine the provisions of the letter dated 28.08.2002, as issued by the respondents, it is apparent that the said letter does not deal with the cases where the PBOR has died while in action and the widow adopts a child. Since it does not deal with such aspect, we don't need to consider the said letter for denying the benefit to an adopted child, who was adopted after the death of the PBOR. We also notice that the letter dated 28.08.2002 does not refer to publication of such occurrence in Part-II order. However, the concerned letter, of course, deals

with the cases of marriage after retirement, birth of children out of such wedlock and death of spouse or child but the cases of adoption by the widow have not been specifically barred in the said order. In these circumstances, the publication of Part-II order qua the appellant's adopted children by the authorities cannot be said to be wrongful or illegal and, therefore, there was no occasion for the respondents to cancel/ withdraw the publication dated 09.12.2016 regarding Part-II order. Learned Single Judge has also failed to take notice of the aforesaid facts.

11. We also find that the children were admitted in the school on the basis of Part-II order and they were continuing their studies and the action of the respondents might have resulted in disturbing the young children. The approach adopted by the authorities is found to be against the public policy. A widow has a right to adopt the children, as noticed above, under the Hindu Adoption and Maintenance Act, 1956. Once such an adoption is legal and justified, consequences thereof will have to follow.

12. No officer or the Ministry of Defence can be allowed to deny the benefit of such a scheme, which is available to the wards /children of the PBOR serving in army or would have died while in action, by way of scholarship or preferred admission in schools. The adoption of the children is found to be reasonable, more so, for the reason that the elder brother has two other children and was also an army personnel, as has come on affidavit before this Court.

13. In the circumstances, we are unable to sustain the order passed by learned Single Judge dated 23.08.2022 and quash the same. We also set aside the order dated 06.02.2014 denying the benefit to the widow. So far as letter dated 28.08.2002 is concerned, as we have already examined it above, we find that the said letter has to be read down to include the benefit of

issuance of Part-II order for children adopted by the widow of an Army Personnel, who has died in battle.

14. In view of the above, the appeal is allowed.
15. All pending applications stand disposed of.
16. No costs.

(SANJEEV PRAKASH SHARMA)

JUDGE

15th February, 2025
vs

(MEENAKSHI I. MEHTA)
JUDGE

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No