

**HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR**

S.B. Civil Writ Petition No. 12002/2023

Narendra Singh S/o Late Shri Shankar Singh, Aged About 37
Years, Jalwala Chhota Near Pipli Chowk, Bhinmal District Jalore.
At Present Plot No. 8, Roopnagar, Digadi, Jodhpur.

----Petitioner

Versus

1. State Of Rajasthan, Through Secretary, Department Of
Secondary Education, Secretariat, Rajasthan, Jaipur.
2. The Director, Secondary Education, Rajasthan, Bikaner.
3. The District Education Officer, Head Quarter (Secondary
Education) Jalore, District Jalore.

----Respondents

For Petitioner(s) : Mr. J.S. Bhaleria

For Respondent(s) : Mr. Sharwan Kumar

HON'BLE MR. JUSTICE ARUN MONGA**Order****02/05/2024**

1. The grievance of the petitioner herein is that he has not been
accorded compassionate appointment, though he is adopted son
of the deceased government servant.
2. Brief by speaking, relevant facts of the case are that the
petitioner is the adopted son of late Shankar Singh. His father
died on 25.09.2021 while working as Teacher Grade III in the
respondent-department. An adoption-deed in this regard was
registered by his father on 13.12.2013. After death of Shankar
Singh on 25.09.2021, the petitioner being his adopted son,
applied for compassionate appointment by submitting an
application well within time. Same was rejected by the



respondents vide order dated 25.04.2023 on the ground that the alleged adoption-deed is illegal.

3. The defence taken by the respondents in their reply is that the name of the petitioner is not there as nominee in the service record of the deceased Shri Shanker Singh and that as per the provisions of Section 10(iv) of the Hindu Adoption and Maintenance Act, 1956, the adoption cannot be said to be legal. Thus, the petitioner is not entitled to seek compassionate appointment.

4. In the aforesaid backdrop, I have learned counsel for the parties and perused the case file.

5. Learned counsel for the petitioner relies upon the judgment of this Court in **Mohan Singh Bhati Vs. The State of Rajasthan & Ors. : S.B. Civil Writ Petition No.9943/2022**, decided on 11.08.2023. The relevant part of the judgment is reproduced hereunder:-

"15. The entire basis of denial of compassionate appointment to the petitioner is that the adoption was not in terms of the provisions of the Act, 1956 and that after the death of Smt. Shakuntala Bhati, Shakti Singh also received the retiral benefits as her legal representative.

16. The respondents apparently have not taken into consideration the provisions of Section 16 of the Act, 1956, which deals with presumption as to registered documents relating to adoption and the same reads as under:

"16. Presumption as to registered documents relating to adoption.- Whenever any document registered under any law for the time being in force is produced before any court purporting to record an adoption made and is signed by the person giving and the person taking the child in adoption, the court shall presume that the adoption has been made in compliance with the provisions of the Act unless and until it is disproved."

17. The provision is very clear which provides for a presumption in case of a registered document relating to





adoption and creates a presumption that the adoption has been made in compliance of the provisions of the Act and the burden has been cast on the person questioning the adoption to disprove the said aspect.

18. Hon'ble Supreme Court in *Deu & Ors. vs. Laxmi Narayan & Ors.* : (1998) 8 SCC 701, after quoting the provisions of Section 16 of the Act, 1956 has laid down as under:

“3. In view of Section 16 aforesaid whenever any document registered under any law for the time being in force is produced before any court purporting to record an adoption made and is signed by the persons mentioned therein, the court shall presume that the adoption has been made in compliance with the provisions of the said Act unless and until it is disproved. According to us, it was not open to the defendants of the said suit for partition to collaterally challenge the said registered deed of partition. In view of Section 16 of the aforesaid Act it was open to them to disprove such deed of adoption but for that they had to take independent proceedings. The High Court was fully justified in directing that the respondent be substituted in place of Smt. Phulla on the basis of the registered deed of adoption produced before the court.”

19. In view of the above, in face of a registered adoption deed executed way back in the year 2011 i.e. 10 years prior to the death of Smt. Shakuntala Bhati, and the fact that this is not even the case of the respondents that the document (Annex.2) relating to adoption is a made up document, rejection of the plea of giving Shakti Singh in adoption by Smt. Shakuntala Bhati cannot be sustained.”

6. I have seen the judgment rendered in Mohan Singh Bhati (ibid). I am of the view that it is per incurium in view of the clear provision explained by the Division Bench of this Court at Jaipur Bench in the case of **Kumari Vinita Sharma Vs. Union of India & Ors.**, decided on 15.01.2014 read with the judgment of the Supreme Court rendered in the case of **Atluri Brahmanandam (D) Thr. LRs Vs. Anne Sai Bapuji [AIR 2011 SC 545]**. In any case, the Division Bench view taken in **Kumari Vinita Sharma** judgment has to take precedence over that of the Single Bench judgment in **Mohan Singh Bhati**.





7. In the case of Kumari Vinita Sharma (ibid), it was held as under:-

"11. In the instant case, apart from the adoption deed, which the petitioner claimed to have been registered (much before the death of the Government employee) the petitioner, in succession got all the retiral dues of late Government employee and there was no other person dependent upon the deceased employee except the petitioner, in view of the principles laid down by the Apex Court one cannot claim compassionate appointment in due course of time or after the crisis is over, in the instant case as well, when the petitioner additionally got all retiral dues of the late Government employee, in succession and no other family member was dependent upon the deceased employee, at least, she cannot be said to be under financial crunch or distress even at the relevant point of time when she approached to the Tribunal for seeking compassionate appointment and apart from it, the petitioner for the first time approached by filing of original application in the later part of 2004 after two years of the death of the deceased employee which took place in February, 2002, and in our considered view as well, when the compassionate appointment cannot be claimed as a matter of right and sufficient means were available with the petitioner being an adopted daughter of the deceased-employee, as alleged and as regards Sec. 16 of the Act, 1956 has not been looked into by the Tribunal, suffice it to say that Sec.10 (4) of the Act, 1956 ordinarily debars an incumbent to take in adoption a child who have crossed the age of 15 years and indisputably, the petitioner was 25 years of age and from the material which has come on record even before this Court regarding the customs and usage prevalent in the society/community of the petitioner, we too are not satisfied and merely because it was a registered adoption deed, no presumption could be drawn that may be helpful for the petitioner to seek compassionate appointment."

In the case of **Atluri Brahmanandam (D) Thr. LRs** (ibid),

Hon'ble the Supreme Court has held as under:-

"12. We are concerned for the purpose of this case with clause (iv) of Section 10 which provides that a person to be adopted should not have completed the age of 15 years. But there is also an exception provided therein to the aforesaid required qualification which provides that if there is a custom or usage applicable to the parties permitting persons who have completed the age of 15 years being taken in adoption, such a person could also be validly adopted. On the other hand, the effect and the implication of Section 16 of the Act is that if there is any document purporting to record an adoption made





and is signed by the person giving as well the person taking the child in adoption is registered under any law for the time being in force and if it is produced in any Court, the Court would presume that the adoption has been made in compliance of the provisions of the Act unless and until it is disproved.

13. *There is no denial of the fact in the present case that the respondent was more than 15 years of age at the time of his adoption. But the respondent has relied upon the exception provided in section 10 (iv) and has proved by leading cogent and reliable evidence like Ex. A-8 that there is a custom in the "Kamma" community of Andhra Pradesh for adoption of a boy even above the age of 15 years. Therefore, the aforesaid exception which is engrafted in the same part of the provision of Section 10 of the Act was satisfied. Since the aforesaid custom and aforesaid adoption was also recorded in a registered deed of adoption, the Court has to presume that the adoption has been made in compliance with the provisions of the Act, since the respondent has utterly failed to challenge the said evidence and also to disprove the aforesaid adoption.*

"

8. The aforesaid two judgments were not brought to the notice of the learned Single Judge while deciding the case of Mohan Singh Bhati (ibid). The said Single Bench judgment in Mohan Singh Bhati, therefore, cannot be applied to the facts of the present case where the conceded position is that at the time of adoption, petitioner was of 18 years, which is in direct conflict with the statutory requirement provided in Section 10(4) of the Act of 1956. For ready reference, Section 10(iv) is reproduced hereunder:-

"10. Persons who may be adopted.—

No person shall be capable of being taken in adoption unless the following conditions are fulfilled, namely:—

(i) xxx xxx;

(ii) xxx xxx;

(iii) xxx xxx;

(iv) *he or she has not completed the age of fifteen years, unless there is a custom or usage applicable to the parties which permits persons who have completed the age of fifteen years being taken in adoption."*





9. The aforesaid Section has to be read homogeneously with Section 16. No doubt, under Section 16, presumption has been envisaged in favour of the biological parents but the said presumption has to be in compliance with the requirement of Section 10(iv) *ibid*.

10. In the present case, it is borne out from the certificate of the petitioner (Annex.1) that he was aged **18** years at the time of his adoption on 13.12.2013. It is not even the case of the petitioner that there is certain special custom, which permits adoption of a child regardless of his age so as to seek applicability of **Atluri Brahmanandam (D) Thr. LRs** judgment, *ibid*.

11. In view thereof, there is no ground to interfere.

12. Dismissed accordingly.

(ARUN MONGA),J

162-skm/-

Whether fit to be reported : Yes/No