

IN THE HIGH COURT OF KARNATAKA
KALABURAGI BENCH

DATED THIS THE 23RD DAY OF FEBRUARY,

2022 BEFORE

THE HON'BLE MR. JUSTICE E.S. INDIRESH

WRIT PETITION NO.211068 OF 2020 (S-RES)

BETWEEN:

KUMARI SWETA
D/O LATE PUSHPA
AGE: 19 YEARS
OCC: NIL,
R/O H.NO. KEB QTR.NO. L-12/2,
KEB COLONY
OLD JEWARGI ROAD,
KALABURAGI

...PETITIONER

(BY SRI SHARANABASAPPA K BABSHETTY, ADVOCATE)

AND

1 . THE MANAGING DIRECTOR
KPTCL, CORPORATE OFFICE
KAVERI BHAVAN
BANGALORE-560009

2 . THE CHIEF ENGINEER (ELCTY)
O & M ZONE
GESCOM
KALABURGI-585101

3 . THE ASST. EXECUTIVE ENGINEER (ELECTY)
O & M CITY SUB-ZONE-II,

GESCOM
KALABURAGI-585101

4 . THE EXECUTIVE ENGINEER (ELE)
O & M CITY DIVISION
GESCOM
KALABURAGI-585101

...RESPONDENTS

(BY SRI)

THIS WRIT PETITION FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA, PRAYING TO ISSUE A WRIT OF CERTIORARI, QUASHING THE ENDORSEMENT DATED 09.12.2019 ISSUED BY THE 2ND RESPONDENT BEARING NO. VIDE ANNEXURE-J AND CIRCULAR DATED 23.09.2011 ISSUED BY THE 1ST RESPONDENT, ONLY IN RESPECT OF AN ADOPTED SON OR DAUGHTER OF THE DECEASED EMPLOYEE ARE NOT ELIGIBLE ARE NOT ELIGIBLE FOR APPOINTMENT ON COMPASSIONATE GROUND, IN NO- KPTCL/ B5/721/80-81 VIDE ANNEXURE-K; AND ETC.

THIS PETITION IS COMING FOR FURTHER HEARING, THIS DAY, THE COURT MADE THE FOLLOWING:-

ORDER

In this writ petition, petitioner has challenged the endorsement dated 09th December, 2019 issued by the respondent-Corporation, declining the claim made by the petitioner for appointment on compassionate ground.

2. It is the case of the petitioner that, mother of the petitioner-Smt. Pushpa, who was working in the respondent-

Corporation was a widow and died issueless. It is further stated that, after the death of her husband, mother of the petitioner Smt. Pushpa, adopted the petitioner by a registered Deed of Adoption dated 30th November, 2001. The name of the petitioner was entered as a nominee for family pension of the mother of the petitioner in the records of the respondent-Corporation. It is further stated that the mother of the petitioner died while in service and as such, the petitioner was constrained to vacate the premises allotted by the respondent-Corporation. It is the case of the petitioner that, the petitioner is the only daughter to the deceased-Pushpa and as such, the petitioner made a representation to the respondent-Corporation seeking appointment on compassionate ground. It is the further case of the petitioner that the petitioner has provided all relevant documents to the second respondent for consideration of her case for appointment on compassionate ground, however, the second respondent issued impugned endorsement dated 09th December, 2019, rejecting the representation made by the petitioner for appointment on compassionate ground by stating that she being an adopted child of the deceased employee-

Pushpa and as per the Circular issued by the first respondent-Corporation, the adopted son/daughter are not eligible of appointment on compassionate ground and accordingly, issued the impugned endorsement that, the petitioner is not entitled for appointment on compassionate ground. Being aggrieved by the same, the petitioner has presented this writ petition.

3. Sri Sharanabasappa K. Babashetty, learned counsel appearing for the petitioner contended that the petitioner has been adopted by the deceased employee (Smt. Pushpa) as per the registered Deed of Adoption dated 30th November, 2001 and the action of the respondent-Corporation in declining to appoint the adopted children on compassionate ground is contrary to Article 14 of the Constitution of India. He further contended that the Circular issued by the respondent-Corporation to that effect has to be read down and effectuate the adopted child to the benefit for appointment under compassionate ground.

4. Sri Ravindra Reddy, learned counsel for the respondent-Corporation submitted that the appointment on compassionate ground has to be made in terms of the Circular

issued by the respondent-Corporation and same cannot be claimed as of right and therefore, he sought to justify the action of the respondent-Corporation.

5. It is evident from the writ papers that the petitioner has been adopted by Pushpa-deceased employee of the respondent-Corporation as per the Registered Adoption Deed dated 30th November, 2001. Scheme of the respondent-Corporation provide for employment under compassionate ground by way of Circular dated 23rd September, 2011 (Annexure-K). Clause 2 of the said Circular provides for eligibility for appointment. Paragraph 3 of the Clause 2 reads as under:

"2. Eligibility for appointment:

3. An adopted son or daughter of the deceased employee are not eligible for compassionate ground appointment under the said Regulations. Further the dependents of the employee who were missing while in service and whose whereabouts are not known are not eligible for appointment under the said Regulations, even though the jurisdictional Court has declared them as deemed dead."

(emphasis supplied)

6. Perusal of the aforementioned clause disentitles the adopted son/daughter to make an application to the respondent-Corporation seeking appointment on compassionate ground. It is well established principle of law that appointment on compassionate ground is an exception to an appointment by regular recruitment. The said benefit of appointment on compassionate ground shall be extended to the family of the deceased employee by the employer as per the Rules or by a separate scheme to enable the family of the deceased to get over the sudden financial crisis and therefore, there is no vested right with the applicant seeking employment under compassionate ground as of right. In other words, it is a compassion shown by the employer to the family of the deceased employee to meet the sudden/unexpected departure of the bread earner and the consequent difficulties created by the said unanticipated death of the employee. It is nothing but a benevolent right conferred upon the dependent of an employee who dies in harness.

7. In this regard, it is useful to refer the law declared by the Hon'ble Apex Court in the case GURSHARAN SINGH v. NEW DELHI MUNICIPAL COMMITTEE reported AIR 1996 SC 1175, wherein at paragraph 9 of the judgment, it is held as follows:

“Apart from that even if it is assumed that concession was shown to such stall-holders by the N.D.M.C. the appellants cannot make grievance in respect of discrimination under Article 14 of the Constitution. Having agreed to the terms of allotment they cannot legitimately claim that they should also be treated in the same manner. There appears to be some confusion in respect of the scope of Article 14 of the Constitution which guarantees equality before law to all citizens. This guarantee of equality before law is a positive concept and it cannot be enforced by a citizen or court in a negative manner. To put it in other words, if an illegality or irregularity has been committed in favour of any individual or a group of individuals, the others cannot invoke the jurisdiction of the High Court or of this Court, that the same irregularity or illegality be committed by the State an authority which can be held to be a State within the meaning of Article 12 of the Constitution, so far such petitioners are concerned, on the reasoning that they have been denied the benefits which have been extended to others although in an irregular or illegal manner. Such petitioners can question the validity of orders which are

said to have been passed in favour of persons who were not entitled to the same, but they cannot claim orders which are not sanctioned by law in their favour on principle of equality before law. Neither Article 14 of the Constitution conceives within the equality clause this concept nor Article 226 empowers the High Court to enforce such claim of equality before law. If such claims are enforced, it shall amount to directing to continue and perpetuate an illegal procedure or an illegal order for extending similar benefits to others. Before a claim based on equality clause is upheld, it must be established by the petitioner that his claim being just and legal, has been denied to him, while it has been extended to others and in this process there has been a discrimination. None of the 98 stall-holders were impleaded as parties to the writ petitions. The appellants questioned the validity of the allotment of 98 shops on concessional rates, without trade zoning restrictions in favour of the stall-holders of Panchkuian Road, but they were primarily interested that same concessions in respect of licence fee and relaxation in trade zoning restrictions, be also extended to them. Any such claim on their behalf cannot be entertained on the basis of concept of equality before law as enshrined in Article 14 of the Constitution.”

8. Insofar as appointment on compassionate ground is concerned, the Hon'ble Supreme Court in UMESH KUMAR

NAGPAL v STATE OF HARYANA reported in (1994) 4 SCC 138, at paragraph 2 held as follows:

"2. The question relates to the considerations which should guide while giving appointment in public services on compassionate ground. It appears that there has been a good deal of obfuscation on the issue. As a rule, appointments in the public services should be made strictly on the basis of open invitation of applications and met-it. No other mode of appointment nor any other consideration is Neither the Governments nor the public authorities are at liberty to follow any other procedure or relax the qualifications laid down by the rules for the post. However, to this general rule which is to be followed strictly in every case, there are some exceptions carved out in the interests of justice and to meet certain contingencies. One such exception is in favour of the dependants of an employee dying in harness and leaving his family in penury and without any means of livelihood. In such cases, out of pure humanitarian consideration taking into consideration the fact that unless some source of livelihood is provided, the family would not be able to make both ends meet, a provision is made in the rules to provide gainful employment to one of the dependants of the deceased who may be eligible for such employment. The whole object of granting compassionate employment is thus to enable the family to tide over the sudden crisis. The object is not to give a member of such family a post

much less a post for post held by the deceased. What is further, mere death of an employee in harness does not entitle his family to such source of livelihood. The Government or the public authority concerned has to examine the financial condition of the family of the deceased, and it is only if it is satisfied, that but for the provision of employment, the family will not be able to meet the crisis that a job is to be offered to the eligible member of the family. The posts in Classes III and IV are the lowest posts in non-manual and manual categories and hence they alone can be offered on compassionate grounds, the object being to relieve the family, of the financial destitution and to help it get over the emergency. The provision of employment in such lowest posts by making an exception to the rule is justifiable and valid since it is not discriminatory. The favourable treatment given to such dependent of the deceased employee in such posts has a rational nexus with the object sought to be achieved, viz., relief against destitution. No other posts are expected or required to be given by the public authorities for the purpose. It must be remembered in this connection that as against the destitute family of the deceased there are millions of other families which are equally, if not more destitute. The exception to the rule made in favour of the family of the deceased employee is in consideration of the services rendered by him and the legitimate expectations, and the Change in the status and affairs, of the family

engendered by the erstwhile employment which are suddenly upturned.”

9. The aforementioned dictum was reiterated by the Hon'ble Apex Court in UNION BANK OF INDIA AND ORS. v. M.T. LATHEESH reported in (2006)7 SCC 350. In a celebrated case of N.C. SANTOSH v. STATE OF KARNATAKA AND OTHERS reported in (2020)7 SCC 617, Hon'ble Supreme Court, summarised the principle governing the grant of appointment on compassionate ground and same has been reiterated in the case of STATE OF UTTAR PRADESH AND OTHERS v. PREMLATA reported in AIR 2021 SC 4984, wherein at paragraphs 8 and 9 of the judgment, the Hon'ble Supreme Court observed thus:

“8. After referring to the decision of this court in N.C. Santhosh vs. State of Karnataka and Ors. reported in (2020) 7 SCC 617, this Court has summarized the principle governing the grant of appointment on compassionate ground as under:-

- (i) that the compassionate appointment is an exception to the general rule;
- (ii) that no aspirant has a right to compassionate appointment;
- (iii) the appointment to any public post in the service of the State has to be made on the

basis of the principle in accordance with Articles 14 and 16 of the Constitution of India;

- (iv) appointment on compassionate ground can be made only on fulfilling the norms laid down by the State's policy and/or satisfaction of the eligibility criteria as per the policy;
- (v) the norms prevailing on the date of the consideration of the application should be the basis for consideration of claim for compassionate appointment.

9. As per the law laid down by this court in catena of decisions on the appointment on compassionate ground, for all the government vacancies equal opportunity should be provided to all aspirants as mandated under Article 14 and 16 of the Constitution. However, appointment on compassionate ground offered to a dependent of a deceased employee is an exception to the said norms. The compassionate ground is a concession and not a right."

10. In the present case, undisputedly, petitioner has been adopted by deceased Puspha, an employee of respondent corporation, and adoption of the petitioner is witnessed by registered Deed of Adoption. The adoption is not disputed by any person related to deceased Pushpa and the Deed of Adoption is not questioned in any proceedings and therefore, when there is no dispute about the deed of adoption being the

registered document, the presumption as to the said document relating to adoption as engrafted by the legislature in Section 16 of the Hindu Adoption and Maintenance Act, 1956 (for short hereinafter referred to as the 'Act'), becomes relevant.

“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 this Act unless and until it is disproved.”

11. It is also relevant to extract Section 12 of the Act.

The same reads thus:

“12 Effects of adoption.— An 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 and 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: Provided that—

- (a) the child cannot marry any person whom he or she could not have married if he or she had continued in the family of his or her birth;

- (b) any property which vested in the adopted child before the adoption shall continue to vest in such person subject to the obligations, if any, attaching to the ownership of such property, including the obligation to maintain relatives in the family of his or her birth;
- (c) the adopted child shall not divest any person of any estate which vested in him or her before the adoption.

(emphasis supplied)

12. It is evident from the aforesaid Section that after adoption takes place, the ties of the adopted person are permanently disconnected with his family for all intents and purposes.

13. Section 3(57) of the General Clauses Act, 1977 provides as under:

"3. Definitions:

(1) to (56) xxx xxx xxx

(57) "son", in the case of any one whose personal law permits adoption, shall include an adopted son."

(emphasis supplied)

14. In view of the amendment made by the State Government to the aforementioned Rules which is applicable to the government servants therein and therefore, extending similar benefits to respondent-Corporation being an "other authority" under Article 12 of the Constitution of India cannot be ruled out and therefore, I am of the opinion that extending the very same benefit to the dependent (adopted son/daughter) of the deceased employee of the respondent-Corporation would satisfy the intent of Article 14 of the Constitution of India, if not, it would be arbitrary to say that only natural children would be dependent and adopted children, who are treated to be as natural children under Section 12 of the Act for all intents and purposes, not to be dependents under a particular Scheme or Rules or Circular or Regulations, amounts to discrimination under Article 14 of the Constitution of India.

15. Reading of the aforementioned Section 16 with Section 12 of the Act in consonance with Section 4 of the Indian Evidence Act, 1872, makes it clear that it was a presumption that, whenever any document is registered and produced before

the Court recording adoption made thereunder, the Court shall presume that adoption is in compliance with the provisions of the Act, until it is disproved. (see NAYANKUMAR RAJNIKABEN TRIVEDI v. DISTRICT EDUCATION OFFICER, ANAND AND OTHERS (AIR 2004 GUJ 53.).

16. This Court, in the case of K. SANTHOSHA v. THE KARNATAKA POWER TRANSMISSION CORPORATION LIMITED, BANGALORE AND OTHERS reported in 2022(1) Kar.L.J. 154 (DB), extended the benefit of appointment under compassionate ground to an illegitimate child in the very same respondent-Corporation. At paragraphs 51 and 57 of the judgment, it is held thus:

“51. Having regard to the broad interpretation given to the expression 'son' and 'daughter' so as to include even on illegitimate son and daughter by the Hon'ble Supreme Court for the purpose of consideration for compassionate appointment, we find that Regulation 2(1)(b) cannot restrict the expression 'family' in relation to a deceased Board employee to mean only his or her legally wedded spouse and their sons and daughters who were jointly living with him. Such a definition would run counter to Section 16 of the Act, which is a Parliamentary

legislation and also Articles 14, 15(1) and 16(1) as well as the Directive Principles of State Policy concerning children which would include all children, whether legitimate or illegitimate, to have equal opportunities. When the Parliament under Section 16 of the Act, has treated legitimate and illegitimate children on par and given them equal status, Regulation 2(1)(b) cannot restrict the expression family in relation to deceased employee to mean only his or her legally wedded spouse and children jointly living with him.

52 to 56 xxx xxx xxx

57. We add that no child is born in this world without a father and a mother. A child has no role to play in his/her birth. Hence, law should recognise the fact that there may be illegitimate parents, but no illegitimate children. Therefore, it is for the Parliament to bring about uniformity in law vis-à-vis legitimacy of children. Thus, it is for the Parliament to determine in what way protection could be extended to children born outside a valid marriage."

17. The Hon'ble Supreme Court in the case of PAWAN KUMAR PATHAK v. MOHAN PRASAD reported in (2016)12 SCC 672, at paragraphs 13 and 15 of the judgment, held as follows:

"13. Once the law recognizes adopted son to be known as son, we fail to understand why it was necessary for the appellant to plead that he was the adopted son. His averment to the effect that he was the only son, according to us, would be sufficient to lay the claim of inheritance on that basis. No doubt, the respondent has denied the appellant being the son of late Hira Lal. It is for this reason, the appellant wants to prove that he is the adopted son and in support of this plea, the appellant had summoned the original of Adoption Deed dated 29.03.1974 from the office of Sub-Registrar.

14. xxx xxx xxx

15. There was no justifiable reason for the trial court to reject the aforesaid plea in view of the provisions of Section 3(53) of the General Clauses Act. In fact, it was not even necessary for the appellant to move an application under Order VI Rule 17 of the Code of Civil Procedure, 1908, with an attempt to take a specific plea that he was the adopted son as, we say at the cost of repetition, his plea to the effect that he was the son of late Hira Lal was an adequate plea and to prove that he was the son, he could also place on record the document, i.e., the adoption deed in the instant case, to show that he was the adopted son."

(emphasis supplied)

18. Applying the declaration of law made by the Division Bench of this Court and the Hon'ble Apex Court in the cases referred to above in consonance with the language employed under Section 12 and 16 of the Act, it may be held that, after adoption takes place, the relationship of the adopted person is permanently disconnected with his natural family for all intents and purposes. The legislative intent in Section 12 of the Act equates the right of the adopted child with that of the natural born child to inherit the property of the adopted parents. The object underlying Section 12 of the Act is to equate the adopted child with that of the natural son/daughter and they inherit the property of the adopted parent and if that being so, then excluding of adopted child from providing employment under compassionate ground, amounts to violation of Article 14 and 16 of the Constitution of India.

19. For the foregoing reasons, I am of the view that the impugned endorsement issued by the respondent-Corporation is liable to be set aside and for all purposes of the Circular dated 23rd September, 2011 (Annexure-K), 'son/daughter' includes the

adopted son/daughter and accordingly, paragraph 3 to Clause 2 of Annexure-K has to be read down accordingly, and extend the benefit to the adopted son/daughter. Accordingly paragraph 3 to Clause 2 of the Circular dated 23rd September, 2011 of the respondent-Corporation is read down. That apart, the provisions of the Act, cannot be superseded, nullified or modified in any manner by the State or Corporation, much less by way of executive Circulars. Recently, the Government of Karnataka by its notification dated 09th April 2021, amended Section 3(2)(a) of Karnataka Civil Services (Appointment on Compassionate Grounds) (Amendment) Rules, 1996 and extended the benefit to the son/daughter who has been chosen by the widow/widower of the deceased government servant who was dependent on the deceased employee and was living with him. The amended provision reads thus:

“3. Amendment of Rule 3.- In Rule 3 of the said Rules,

(i) in sub-rule (2), -

(1) for clause (i), the following shall be substituted namely:-

“i) in the case of the deceased male married Government Servant,-

- (a) the widow; and;
- (b) son or daughter who is chosen by the widow of the deceased Government servant, if the widow is not eligible or for any valid reason she is not willing to accept the appointment”.

who were dependent on him and were living with him.

Note: In case spouse is pre-deceased then preference shall be given in the order of age of the children.

(2) for clause (ia), the following shall be substituted, namely:-

“(ia) in the case of the deceased male unmarried Government Servant, his brother or sister, who is chosen by father and mother or in case of difference in their opinion, chosen by mother, who were dependent upon him and were living with him”.

Note: In case parents are pre-deceased then preference shall be given in the order of age of brother/sister.

(3) for clause (ii), the following shall be substituted, namely:-

“(ii) in the case of the deceased female married Government Servant;

- (a) son or daughter who is chosen by the widower of the deceased Government Servant; and
- (b) Widower; if the son or daughter are not eligible or for any valid reason they are not willing to accept the appointment”.

Who were dependent on her and were living with her.

Note: in case spouse is pre-deceased then preference shall be given in the order of age of children.

(4) for clause (iia), the following shall be substituted, namely:-

“(iia) in the case of the deceased female unmarried Government Servant, her brother or sister, who is chosen by father and mother or in case of difference in their opinion, chosen by mother, who were dependent upon her and were living with her”.

Note: In case parents are pre-deceased then preference shall be given in the order of age of brother/sister.

(5) after clause (iia), the following clause shall be inserted,

“(iii) in the case of deceased married Government Servant whose spouse is also no more and who has minor children, certified guardian of the minor children who is living with them and takes care of the minor children as per the provisions of relevant law.

(ii) sub-clause (3) shall be omitted.”

(emphasis supplied)

20. In the light of the discussion made above, the action of the respondent-Corporation making distinction between the adopted child and a natural child and not treating the former as “dependent” for the purposes of appointment on compassionate

ground, is totally illogical and arbitrary and therefore, said action cannot form the basis for denying the right of appointment on compassionate ground to the petitioner herein, if she is otherwise qualified. Accordingly, the respondent-Corporation is directed to reconsider the case of the petitioner for the purpose appointment on compassionate ground in accordance with law. In the result, I pass the following:

O R D E R

- (1) Writ petition is allowed;
- (2) Endorsement dated 09th December, 2019 (Annexure-J) passed by the second respondent is set aside;
- (3) Circular/Regulation dated 23rd September, 2011 issued by the first respondent declining to appoint the adopted son/daughter on compassionate ground is quashed;
- (4) Respondent-Corporation is directed to reconsider the case of the petitioner afresh in the

light of the observation made above within an outer limit of three months from the date of receipt of certified copy of this order.

Ordered accordingly.

Sd/-
JUDGE

Inn