

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH
JABALPUR

Original Application No.200/00056/2014

Jabalpur, this Wednesday, the 16th day of May, 2018

HON'BLE SHRI NAVIN TANDON, ADMINISTRATIVE MEMBER
HON'BLE SHRI RAMESH SINGH THAKUR, JUDICIAL MEMBER

Navin David
aged about 40 years,
S/o Late Shri T.R. David,
Chief Office Superintendent (Statistical Branch),
Head Quarter, West Central Railway Jabalpur
R/o Flat No.B-5
Ankit Classic Apartment
Opposite Gulatee Petrol Pump,
Madan Mahal,
Jabalpur (M.P.) 482001

-Applicant

(By Advocate –**Shri Sanjay Singh**)

V e r s u s

1. The Union of India,
Through the Secretary,
Ministry of Railway,
Government of India,
New Delhi PIN 110001
Rafi Marg, New Delhi

2. The General Manager,
Department of Personnel,
West Central Railway
Jabalpur (M.P.) PIN 482001

- Respondents

(By Advocate –**Shri Vijay Tripathi**)

(Date of reserving the order: 23.01.2018)

ORDER

By Ramesh Singh Thakur, JM:-

This Original Application has been filed against the letter dated 01.08.2013 (Annexure A-6) whereby the adoption deed has been declared as void.

2. The applicant in this Original Application has prayed for the following reliefs:-

“8(i) This Hon’ble Tribunal may kindly be pleased to set aside the impugned letter dated 01.08.2013 Ann. “A-6” and direct the Respondents to insert the name of adopted daughter of applicant Ku. Shipora David as family member of employee and further to provide all applicable facilities accordingly.

8(ii) Any other relief or relief’s, order or order’s, direction or directions, which this Hon’ble Tribunal deems fit and proper, may kindly be issued including cost of the petition.”

3. Precisely the case of the applicant is that the applicant was appointed in the establishment of respondents and presently posted as Chief Office Superintendent in Statistical Branch at headquarter of West Central Railway, Jabalpur. The marriage of applicant was performed on 08.12.2004 at Bhopal with Smt. Smita David according to customs and traditions of Christian religion. Since, there was no issue from the wedlock for about more than five years, therefore, the applicant and his wife have decided to adopt a child. They have adopted a female baby who was born on

12.11.2008 at Bina District Sagar, copy of birth certificate is annexed as Annexure A-1. The name of said female baby is Ku. Shipora David, the name of her father is Shri Winsent David s/o Shri J.F. David and name of her mother is Mahima David. An adoption deed was executed and registered on 09.03.2009 (Annexure A-2) before the Deputy Registrar Bina District Sagar by both the parties namely Winsent David-Mahima David and Navin David-Smita David in presence of two witnesses. After completing legal formalities in regard to adoption of female child namely Ku. Shipora David, the applicant has submitted an application dated 28.04.2009 to the competent authority of respondents department requesting therein to include his adopted daughter in his service record as a family member and also to provide her applicable facilities treating her family member of railway employee. The applicant has supplied copy of the adoption deed dated 09.03.2009 along with the application. The same was forwarded on 28.04.2009 (Annexure A-3) to the higher authorities for needful action. The respondents have not recorded the name of adopted daughter of the applicant in service record as family member for about four years. Thereafter, when the daughter of the applicant become five years of age, the applicant has again submitted an application dated 17.01.2013 (Annexure A-4) along with adoption deed to the

competent authorities of respondents to include the name of his adopted daughter as family member in service record. The same was forwarded vide letter dated 17.01.2013 (Annexure A-5) by the Senior Statistical Officer, Statistics Department, Zonal I.T. Centre Jabalpur to Chief Personnel Officer (Administration) Head Quarter, West Central Railway Jabalpur. The applicant has been informed vide letter dated 01.08.2013 (Annexure A-6) that opinion of Railway Advocate Shri James Anthony was obtained in the matter and according to his opinion the adoption deed is illegal. The applicant has challenged the in action of the respondents on the ground that the adoption deed was executed and registered in the office of Sub-Registrar, Bina, District Sagar on 09.03.2009 whereby the applicant has legally adopted a female baby namely Shipora David in presence of two witnesses. Since, the adoption deed was executed after following legal process of law. The adoption deed is still in force as neither it was declared null and void by any judicial order nor the said deed is subject matter before any Court of law. It is submitted by the applicant that the respondent-department has no lawful right or jurisdiction or authority to declare the adoption deed illegal.

4. The respondent-department has filed the reply wherein it has been stated that the applicant has produced adoption deed

(Annexure A-2) wherein it has not been mentioned that the wife of applicant Mrs. Smita David is unable to give birth to any child in future. Likewise, she has also not disclosed any medical certificate showing her inability to give birth to a child. The date of proposal and acceptance for the adopted child has not been mentioned in the adoption deed. It appears that the aforesaid deed has been registered under the Hindu Law but the parties mentioned in the deed are Christian. The adoption deed registered at O/o Sub Registrar, Bina, does not mention that under what law and rules the adoption of Christian child has been carried out. Therefore the adoption deed is not a legal and valid deed. It is submitted that Indian Christians do not have codified law for adoption. There is no specific statute enabling to regulate the adoption amongst the Christian. Thus, the adoption deed furnished by the applicant is not legal and proper. Therefore, the adopted child is not entitled to get any facility from the Railway.

5. The applicant has filed rejoinder to the reply filed by the respondent-department. It is submitted by the applicant that respondent-department in their reply has used abuse language to deny the legitimate and lawful claim of the applicant. It has been reiterated by the applicant that respondent-department has no right to question the adoption deed which was duly executed before the

competent authority. The respondents are not appellate authority regarding execution of deed. The applicant has further submitted that his case is squarely covered by judgment passed by Hon'ble Supreme Court in the matter of Shabnam Hasmi vs/ Union of India and others in Writ Petition (Civil) No.470/2005 dated 19.02.2014 and as per Railway Servant (Pass) Rules, 1986 (1993 Edition) his case is covered under the Rule. It has been further submitted by the applicant that as per Railway Servant (Pension) Rules, 1993 adopted sons and daughters are also entitled to get the benefits. As per State Railway Gratuity Rules, 'Children' means legitimate children and step-children and also include children at the description of the controlling officer according to the circumstances of each case irrespective of whether the adoption was valid under the personal law. Extracts of pension Rules and Gratuity Rules are annexed as Annexure RJ-2 and RJ-3. As per the memo (Annexure RJ-4) of Government of India, (Bharat Sarkar) Ministry of Railways/Rail Mantralaya (Railway Board) I.R.E.M. Chapter XXII-Para 2204, education assistance and schooling facilities shall be provided to the child of a Railway Servant including a step-child and adopted child who is wholly dependent on the Railway Servant.

6. We have heard the learned counsel for the parties and have also gone through the documents annexed with the pleadings.

7. In the instant case, the applicant has submitted that the case of the applicant has been wrongly rejected by the respondent-department. It is an admitted fact that the applicant has adopted a child namely Shipora David and adoption deed was executed and registered on 09.03.2009 (Annexure A-2). This adoption deed has been registered by the Sub Registrar Bina District Sagar. This adoption deed has been registered by the competent authority under the Indian Registration Act. If this document is seen, it has been signed by both the parties and having duly witnessed by two persons. Until and unless this adoption deed is set aside by the competent court of law, it has a presumption to the fact that it is valid in eyes of law. Moreover, it has been duly executed before the competent authority i.e. Sub Registrar as per the Indian Registration Act. As per contention of the applicant the adoption deed is valid and has been duly executed by the witness and as further been registered before the competent authority of law. We agree with the contention of the counsel for the applicant that it is valid until or unless set aside / declared illegal by competent court of law.

8. On the other side the contention of the counsel for the respondents is that the parties belongs to Christian religion and adoption is permitted only in Hindu law only. The contention of the learned counsel for the respondents, that adoption deed there is no specific date of proposal of acceptance of adoption of a child. The contention of the counsel for the respondents is not sustainable due to the fact that the adoption deed (Annexure A-2) is itself clear and it has been mentioned in this document that the ceremony of adoption has been done in social function in 2009.

9. Regarding other contention of the fact that there is no specific statute to regulate the adoption in Christian and adoption deed furnished by the applicant is not proper and adopted child is not entitled for any facilities in the Railway. So in the present case the issue is regarding the validity of adoption deed.

10. In the present case, the applicant has sought for the facility being provided to the family members of railway employee and the respondents are denying such facility to the adopted child of the applicant. The applicant has annexed the Railway Servants (Pass) Rules, 1986 (1993 Edition) (Annexure RJ-1) wherein the adopted child has been defined as under:-

2. Definitions: In these Rules, unless the context otherwise requires:-

a. 'adopted child means a child for whom there is satisfactory proof of adoption irrespective of the fact

whether such adoption is permissible or not under the personal law governing the railway servant concerned."

As it is clear from the said Rule (Annexure RJ-1), these Rules provide some facility to the children of the Railway Employees. In the said Rule adopted child means a child for whom there is satisfactory proof of adoption irrespective of the fact whether the adoption is permissible or not under the personal law governing the railway servant concerned.

11. In the present case, the applicant has annexed the adoption deed and the same has been executed by the natural parents and the adoptive parents. Moreover, this adoption deed has been witnessed by two persons. Furthermore, the adoption deed has been duly registered by the Sub-Registrar under the Indian Registration Act.

12. The applicant has relied upon the judgment passed by Hon'ble High Court of Kerala, in the matters of ***Philips Alfred Malvin vs. Y.J. Gonsalvis and others*** reported in AIR 1999 Kerala 187. Hon'ble High Court has held as under :-

"10. Thus, the Hindu Law, Mohammedan Law and Canon Law recognize adoption. Therefore, simply because there is no separate statute providing adoption, it cannot be said that the adoption made by Correa couple is invalid. Since the adopted son gets all the rights of a natural born child, he is entitled to inherit the assets of George Correa couple. The learned Subordinate Judge went wrong in holding that unless adoption is recognised either by

personal law, custom or by Canon Law, the first respondent cannot claim right over the plaint schedule property, as the adoption itself is invalid in the eye of law. Therefore, the decree and judgment appealed against are liable to be set aside.

In the result, the appeal is allowed and the decree and judgment in A.S. No. 92 of 1989 are set aside and the decree and judgment of the trial Court are restored. No costs.

I place on record my appreciation to Mr. V. Giri, Advocate, for the services rendered by him.

Appeal allowed.

13. The applicant has also relied upon the judgment of Hon'ble Apex Court in the matter of Laxmi Kant vs. Union of India (1984) 2 SCC 244.

14. Both these judgments have relied upon by the learned counsel for the applicant has further discussed in the matter of Shabnam Hashmi vs. Union of India and others Writ Petition (Civil) No.470/2005. The Hon'ble Apex Court has held as under:-

“13. Even though no serious or substantial debate has been made on behalf of the petitioner on the issue, abundant literature including the holy scripts have been placed before the Court by the Board in support of its contention, noted above. Though enriched by the lengthy discourse laid before us, we do not think it necessary to go into any of the issues raised. The Fundamental Rights embodied in Part-III of the Constitution constitute the basic human rights which inhere in every person and such other rights which are fundamental to the dignity and well being of citizens. While it is correct that the dimensions and perspectives of the meaning and content of

*fundamental rights are in a process of constant evolution as is bound to happen in a vibrant democracy where the mind is always free, elevation of the right to adopt or to be adopted to the status of a Fundamental Right, in our considered view, will have to await a dissipation of the conflicting thought processes in this sphere of practices and belief prevailing in the country. The legislature which is better equipped to comprehend the mental preparedness of the entire citizenry to think unitedly on the issue has expressed its view, for the present, by the enactment of the JJ Act 2000 and the same must receive due respect. Conflicting viewpoints prevailing between different communities, as on date, on the subject makes the vision contemplated by Article 44 of the Constitution i.e. a Uniform Civil Code a goal yet to be fully reached and the Court is reminded of the anxiety expressed by it earlier with regard to the necessity to maintain restraint. All these impel us to take the view that the present is not an appropriate time and stage where the right to adopt and the right to be adopted can be raised to the status of a fundamental right and/or to understand such a right to be encompassed by Article 21 of the Constitution. In this regard we would like to observe that the decisions of the Bombay High Court in *Manuel Theodore D'souza* (*supra*) and the Kerala High Court in *Philips Alfred Malvin* (*supra*) can be best understood to have been rendered in the facts of the respective cases. While the larger question i.e. *qua* Fundamental Rights was not directly in issue before the Kerala High Court, in *Manuel Theodore D'souza* (*supra*) the right to adopt was consistent with the canonical law applicable to the parties who were Christians by faith. We hardly need to reiterate the well settled principles of judicial restraint, the fundamental of which requires the Court not to deal with issues of Constitutional interpretation unless such an exercise is but unavoidable.”*

So, if all the judgments are seen in totality, the concept of ‘adoption’ varies from facts and circumstances of the case. In the instant case, we are only concerned with the facility provided to the

child of the railway employee, as discussed (supra). The Railway Servants (Pass) Rules, 1986 (1993 Edition) (Annexure RJ-1), provide some facilities to the adopted child of the railway employee. So, in the instant case as per the definition of adopted child has been clearly spelt and it does not permit for further interpretation whether such adoption is permissible under the Christian Law governing by the Railway servant concerned. So, the Rules itself are very clear. The adoption deed has been properly executed by the natural parents and the adoptive parents, witnessed by two persons and has been duly registered by the Sub-registrar under the Indian Registration Act. So, this adoption deed is valid in the eye of law unless declared invalid by the competent court of law.

15. Resultantly, this Original Application is allowed and the impugned letter dated 01.08.2013 (Annexure A-6) is quashed and set aside and the respondents are directed to insert the name of adopted child of the applicant i.e. Ku. Shipora David as family member and provide all applicable facilities accordingly. The said exercise shall be done within 60 days from the date of receipt of certified copy of this order. No order as to costs.

(Ramesh Singh Thakur)
Judicial Member
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(Navin Tandon)
Administrative Member