



NEUTRAL CITATION NO. 2026:MPHC-IND:9045

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W.P. No. 14875/2024

**IN THE HIGH COURT OF MADHYA
PRADESH
AT INDORE
BEFORE
HON'BLE SHRI JUSTICE JAI KUMAR PILLAI**

WRIT PETITION No. 14875 of 2024

MOHIT GOUD

Versus

THE STATE OF MADHYA PRADESH AND OTHERS

Appearance:

Shri Ramkrishna Shastri - Advocate for the petitioner.

Shri Sudeep Bharhgav - Deputy Advocate General for the
respondent/State.

Reserved on :- 31.03.2026

Post on :- 06.04.2026

ORDER

This Writ Petition under Article 226 of the Constitution of India has been filed by the petitioner challenging the impugned order dated 10.12.2021 (Annexure P/1) passed by Respondent No. 4.

2. By way of the impugned order, the claim of the petitioner



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for compassionate appointment in place of his deceased adoptive father, Late Dharmendra Parikh, has been declined. The petitioner seeks a writ of mandamus quashing the said order and directing the respondents to appoint him on the post of Superior Field Worker (SFW) or any other equivalent post.

Facts of the Case

3. The petitioner's father, Late Dharmendra Parikh, was working in the Malaria Department on the post of Superior Field Worker (SFW). He unfortunately succumbed to COVID-19 on 29.04.2021. The Death Certificate is annexed as Annexure P/2.

4. The petitioner was adopted by Late Dharmendra Parikh and his wife, Smt. Kiran Parikh, in the year 2010. An adoption deed to this effect was executed on 15.06.2020, which is annexed as Annexure P/3. Since 2010, the petitioner has been living with his adoptive parents and was completely dependent upon the deceased for his basic necessities and educational needs.

5. Following the death of his father, the petitioner submitted an application for compassionate appointment before Respondent No. 4, supported by an affidavit from his adoptive mother (Annexure P/4). To avoid future legal complications, a registered adoption deed was subsequently executed on 23.10.2021 (Annexure P/6) between the



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adoptive mother and the natural father.

6. By the impugned order dated 10.12.2021 the respondent No. 4 rejected the petitioner's application. Subsequently, the petitioner filed a suit for succession before the Civil Judge Class-I, Mandsaur (Annexure P/7), which was rejected by the trial Court (Annexure P/8).

7. Aggrieved by the trial Court's order, the petitioner preferred an appeal before the Principal District Judge, Mandsaur (Annexure P/9). The Appellate Court also dismissed the appeal in MCA No. 143/2023 (Annexure P/10), leading to the filing of the present Writ Petition.

Contentions of the Petitioner

8. The petitioner contends that respondent No. 4 committed a grave legal and factual error by rejecting the claim for compassionate appointment. It is submitted that the deceased was a government employee and the petitioner, being his legally adopted son, was solely dependent upon the income of the deceased for his survival. Following the demise of his father, there is no one else in the family to claim the said appointment.

9. It is vehemently argued that the respondents are estopped from taking a stand contrary to the Government Circular dated 29.09.2014 (Annexure P/11). The petitioner emphasizes that the adoption deed



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executed on 15.06.2020 (Annexure P/3) conclusively establishes that the legal adoption took place during the lifetime of the deceased employee, squarely bringing his case within the protective ambit of the Government policy which was subsequently notarized on 15.06.2020.

10. The petitioner further asserts that his adoptive mother has submitted an explicit affidavit (Annexure P/4) relinquishing her claim and supporting his appointment. Despite this, respondent No. 4 failed to evaluate the application in its correct perspective and rejected the same on hyper-technical grounds without assigning any valid legal reason as to why an unregistered, yet valid, adoption deed cannot be considered under the 2014 Circular.

11. It is additionally submitted that the notarized adoption deed was subsequently registered dated 23.10.2021 merely out of abundant caution to avoid procedural hurdles and was a reiteration of the pre-existing adoption. This subsequent registration does not nullify the factum of the original adoption that occurred during the lifetime of the deceased government servant.

Contentions of the Respondents

12. *Per contra*, the respondents defend the impugned order and categorically deny the entitlement of the petitioner. The primary objection raised is that the initial adoption deed dated 15.06.2020



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(Annexure P/3) was an unregistered document and lacked legal sanctity. The respondents argued that this lack of validity was implicitly confirmed when the competent civil Court rejected the petitioner's succession suit, an order subsequently affirmed by the Appellate Court in MCA No. 143/2023.

13. The respondents strongly contend that the subsequent registered adoption deed dated 23.10.2021 is a clear after thought, executed almost seven months after the death of Late Dharmendra Parikh on 29.04.2021. This deed was executed between the widow, Smt. Kiran Parikh, and the natural father, Jagdish Goud, indicating that the legal formalities of adoption were only completed post-demise to secure employment.

14. To substantiate this defence, the respondents heavily relied on the judgment of a Coordinate Bench of this Court in **Jitendra Kumar Sen vs. State of M.P. & Others (W.P. No. 3156/2020)**. It is argued that the Court in the said case crystallized the position of law that an adopted child, to be eligible for compassionate appointment, must be legally adopted by the deceased employee during his lifetime, and a child adopted later by the widow is ineligible.

15. Furthermore, the respondents submit that the rejection is strictly in consonance with Clause 2.5 of the applicable policy dated



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29.09.2014 (Annexure P/11). This Clause explicitly demands that the adoption must have been done during the lifetime of the employee by following due legal procedure.

16. According to the respondents, since the petitioner failed to produce either a registered adoption deed executed prior to the employee's death or a valid succession certificate from a competent Court, Respondent No. 4 acted well within his administrative jurisdiction to decline the application.

Analysis and Conclusion

17. Heard the rival contentions and perused the record.

18. This Court's jurisdiction under Article 226 of the Constitution in matters of compassionate appointment is limited to examining the decision-making process, ensuring that the authorities have not acted arbitrarily, and verifying whether the statutory rules and relevant policies have been correctly interpreted and applied.

19. The core of the controversy stems from the rejection order dated 10.12.2021 passed by respondent No. 4, which explicitly states:

“उपरोक्त विषय एवं संदर्भ में आपके आवेदन का अवलोकन किया गया, तदनुसार:- नियमों के संदर्भ में अनुकंपा नियुक्ति/ शासकीय सेवक पति/पत्नी की मृत्यु की स्थिति में पति के प्रकरण में पत्नी एवं पत्नी के



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प्रकरण में पति को सर्व प्रथम पात्रता है। आवेदन अनुसार आपके द्वारा दत्तक नामा रजिस्ट्री दिनांक 23.10.2021 का प्रस्तुत किया है। जबकि शासकीय सेवक धर्मेन्द्र पारिख की मृत्यु दिनांक 29.04.2021 को हो चुकी थी। उक्त स्थिति में आपका रजिस्ट्री दत्तक नामा शासकीय सेवक की मृत्यु के बाद की दिनांक होने से एवं उसके रजिस्ट्री दत्तक नामों की वैधता / माननीय सक्षम न्यायालय द्वारा उत्तराधिकारी प्रमाण पत्र के अभाव में नियमों से अनुकम्पा नियुक्ति आवेदन स्वीकार / प्रदाय करने का प्रावधान परिलक्षित नहीं होता है। माननीय सक्षम न्यायालय का वैध उत्तराधिकारी प्रमाण पत्र उपलब्ध कराने पर आपके आवेदन पर नियमानुसार कार्यवाही की जा सकेगी। सूचनार्थ।“

20. From the pleadings and the reasoning contained in the impugned order, two pivotal questions arise for the determination of this Court: First, whether any registration or succession certificate is compulsorily required for a valid adoption under the Hindu Adoptions and Maintenance Act, 1956; and Second, whether respondent No. 4 was legally justified in rejecting the petitioner's application on the grounds stated therein.

21. To address the first issue, a meticulous examination of Chapter II of the Hindu Adoptions and Maintenance Act, 1956 (hereinafter referred to as ' *the Act of 1956* ') is imperative. Section 5 of the Act of 1956 unequivocally mandates that no adoption shall be made except in



accordance with the provisions of this Chapter, and any adoption made in contravention shall be void, creating no rights in the adoptive family.

22. Section 6 of the Act of 1956 prescribes the strict requisites of a valid adoption. It lays down four mandatory conditions:-

“6. Requisites of a valid adoption.—No adoption shall be valid unless—

(i) the person adopting has the capacity, and also the right, to take in adoption;

(ii) the person giving in adoption has the capacity to do so;

(iii) the person adopted is capable of being taken in adoption; and

(iv) the adoption is made in compliance with the other conditions mentioned in this Chapter.”

23. Expanding upon these capacities, Section 7 clarifies that any male Hindu of sound mind, who is not a minor, has the capacity to take a son or daughter in adoption. Crucially, if he has a living wife, the adoption cannot proceed without her consent, unless she has entirely renounced the world or has been declared of unsound mind by a competent court. Section 7 of the Act of 1956 reads as under:-

“7. Capacity of a male Hindu to take in adoption.—Any male Hindu who is of sound mind and is not a minor has the capacity to take a son or a daughter in adoption:



Provided that, if he has a wife living, he shall not adopt except with the consent of his wife unless the wife has completely and finally renounced the world or has ceased to be a Hindu or has been declared by a court of competent jurisdiction to be of unsound mind.

Explanation.—If a person has more than one wife living at the time of adoption, the consent of all the wives is necessary unless the consent of any one of them is unnecessary for any of the reasons specified in the preceding proviso.”

24. Regarding the child to be adopted, Section 10 stipulates that the person must be a Hindu, must not have been already adopted, must be unmarried, and must not have completed the age of fifteen years, unless recognized customs or usages applicable to the parties permit otherwise. Section 10 of the Act of 1956 reads as under:-

“10. Persons who may be adopted.—No person shall be capable of being taken in adoption unless the following conditions are fulfilled, namely—

(i) he or she is a Hindu;

(ii) he or she has not already been adopted;

(iii) he or she has not been married, unless there is a



custom or usage applicable to the parties which permits persons who are married being taken in adoption;

(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.”

25. Most importantly, Section 11 of the Act of 1956 lays out the operational conditions for a valid adoption which reads as under:-

*“11. **Other conditions for a valid adoption.**—In every adoption, the following conditions must be complied with:*

(i) if any adoption is of a son, the adoptive father or mother by whom the adoption is made must not have a Hindu son, son's son or son's son's son (whether by legitimate blood relationship or by adoption) living at the time of adoption;

(ii) if the adoption is of a daughter the adoptive father or mother by whom the adoption is made must not have a Hindu daughter or son's daughter (whether by legitimate blood relationship or by adoption) living at the time of adoption;

(iii) if the adoption is by a male and the person to be adopted is a female, the adoptive father is at least



twenty-one years older than the person to be adopted;
(iv) if the adoption is by a female and the person to be adopted is a male, the adoptive mother is at least twenty-one years older than the person to be adopted;

(v) the same child may not be adopted simultaneously by two or more persons;

(vi) the child to be adopted must be actually given and taken in adoption by the parents or guardian concerned or under their authority with intent to transfer the child from the family of its birth [or in the case of an abandoned child or a child whose parentage is not known, from the place or family where it has been brought up] to the family of its adoption:

Provided that the performance of datta homan, shall not be essential to the validity of an adoption."

26. A cumulative and harmonious reading of Sections 5, 6, 7, 10, and 11 of the Act of 1956 leads to an inescapable legal conclusion: the statute places absolute primacy on the capacity of the parties, the consent of the spouse, and the actual physical act of "giving and taking" the child with the requisite intent. Nowhere in Chapter II does the Act of 1956 prescribe the registration of an adoption deed as a mandatory statutory pre-condition for the validity of an adoption.



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27. The only reference to registered documents is found in Section 16 of the Act of 1956, which embodies a Rule of evidence. It states that whenever a registered document recording an adoption is produced, the Court "shall presume" that the adoption has been made in compliance with the Act, unless and until it is disproved.

Section 16 creates a rebuttable presumption to ease the evidentiary burden; it does not render an unregistered, yet factually compliant adoption, void or illegal. Section 16 of the Act of 1956 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 this Act unless and until it is disproved.”

28. This legal position has been conclusively settled by the Hon’ble Supreme Court in **Param Pal Singh v. National Insurance Co., (2013) 3 SCC 409. The Apex Court held:**

“14. In this context, it will be worthwhile to note the requirement of registration of an adoption deed. Section



17 of the Registration Act specifically refers to the documents of which registration is compulsory. The deed of adoption is not one of the documents mentioned in sub-section (1) of Section 17 which mandatorily requires registration. Sub-section (3) of Section 17 only refers to the mandatory requirement of registration of an authorisation that may be given for adopting a son executed after 1-1-1872 if such authorisation was not conferred by a will. Dealing with the said provision relating to authorisation, it has been held in the decision in Vishvanath Ramji Karale v. Rahibai Ramji Karale [AIR 1931 Bom 105] that a deed of adoption as distinguished from authority to adopt does not require registration.”

29. Furthermore, dealing with the presumption under Section 16, the Hon'ble Supreme Court in **Jai Singh v. Shakuntala, (2002) 3 SCC 634**, observed:

“The matter under consideration pertains to the effect of statutory presumption as envisaged under Section 16 of the Hindu Adoptions and Maintenance Act, 1956. For convenience sake, it would be worthwhile to note the provision for its true purport. Section 16 reads as below:

“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.”

30. Applying these settled principles to the present factual matrix, the petitioner was legally adopted by the deceased and his wife in 2010. This physical "giving and taking" was subsequently reduced to writing via an adoption deed executed on 15.06.2020 (Annexure P/3), during the lifetime of the deceased employee. The deed is duly stamped, notarized and signed by the necessary parties including two witnesses witnessing the adoption before the notary officer and fulfils all substantive requirements of Sections 6, 7, 10, and 11 of the Act of 1956. Consequently, the adoption was valid in the eyes of the law, irrespective of the lack of registration at that time. The subsequent registration on 23.10.2021 (Annexure P/6), which merely reiterated the contents of the 2020 deed, does not erase or invalidate the original, valid adoption that occurred prior to the employee's death. Furthermore, this adoption has not been challenged or disproved by any competent authority or interested party.

31. Turning to the second issue regarding the justification of the rejection order, it is necessary to examine the legal effect of a valid adoption. Section 12 of the Act of 1956 categorically defines the effects



of adoption, stating:-

“12. Effect of adoptions.—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.”

32. The language of Section 12 is unambiguous and profound. It creates a legal fiction whereby the adopted child is completely transplanted into the adoptive family, acquiring the same legal status, rights, and privileges as a biological child "for all purposes" from the



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date of the adoption. The provisos to Section 12 merely restrict marriage within the birth family and protect previously vested properties, but do not dilute the absolute nature of the parent-child relationship established by the adoption.

33. Concurrently, the State Government's Compassionate Appointment Policy dated 29.09.2014, which governs the present case, is explicitly clear on the inclusion of adopted children. Clause 2.5 of the said policy provides:

“अनुकंपा नियुक्ति के लिए आश्रित सदस्य से तात्पर्य (क्रमानुसार)

2.5 यदि मृतक शासकीय सेवक की प्राकृतिक संतान न हो तो ऐसी दत्तक संतान जिन्हें शासकीय सेवक (दम्पति) द्वारा शासकीय सेवक के जीवित रहते हुए वैधानिक रूप से गोद लिया हो। “

34. A plain reading of Clause 2.5 reveals that a legally adopted child is entitled to compassionate appointment, subject to two conditions: first, the deceased must not have a biological child, and second, the adoption must have been done "legally" during the lifetime of the government servant. Notably, the policy deliberately uses the phrase "वैधानिक रूप से गोद लिया हो" (legally adopted) and does not stipulate that the adoption must be evidenced strictly by a "registered" deed.

35. Since the requirements of a "legal adoption" are entirely



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governed by the Act of 1956, and as analyzed above, the Act of 1956 does not mandate registration for an adoption to be legal, an adoption fulfilling the physical and capacity requirements under Sections 6 to 11 of the Act of 1956 perfectly satisfies the condition laid down in Clause 2.5 of the 2014 Policy.

36. In light of the aforesaid extensive analysis, the action of respondent No. 4 in rejecting the application is found to be patently erroneous and legally unsustainable. Respondent No. 4 acted mechanically and misdirected himself in law by insisting upon a registered adoption deed executed prior to the death, or alternatively, a succession certificate. It must be emphasized that there is no explicit provision in the Act of 1956 or the 2014 Policy that specifies a registered adoption deed or a succession certificate as a mandatory precondition for a valid adoption or for claiming compassionate appointment. By demanding these documents, respondent No. 4 is adding strict requirements that do not exist in the law or the policy.

37. The petitioner had produced the valid, albeit unregistered, deed of 2020, which conclusively proved that the adoption occurred during the lifetime of Late Dharmendra Parikh. The reliance placed by the respondents on the **Jitendra Kumar Sen** (*supra*) case is misplaced, as that case dealt with an adoption initiated after the death of the



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employee, whereas in the present case, the adoption was complete and documented in 2020, well before the employee's demise in April 2021.

38. Regarding the principles governing compassionate appointment, it is pertinent to refer to the authoritative pronouncement of the Hon'ble Supreme Court in **The State of West Bengal v. Debabrata Tiwari & Ors. (Civil Appeal Nos. 8842–8855 of 2022, decided on March 3, 2023)**, wherein the Court summarized the established legal position as under:-

“7.2. On consideration of the aforesaid decisions of this Court, the following principles emerge:

i. That a provision for compassionate appointment makes a departure from the general provisions providing for appointment to a post by following a particular procedure of recruitment. Since such a provision enables appointment being made without following the said procedure, it is in the nature of an exception to the general provisions and must be resorted to only in order to achieve the stated objectives, i.e., to enable the family of the deceased to get over the sudden financial crisis.

ii. Appointment on compassionate grounds is not a source of recruitment. The reason for making such a benevolent scheme by the State or the public sector undertaking is to see that the dependants of the deceased are not deprived of



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the means of livelihood. It only enables the family of the deceased to get over the sudden financial crisis.

iii. Compassionate appointment is not a vested right which can be exercised at any time in future. Compassionate employment cannot be claimed or offered after a lapse of time and after the crisis is over.

iv. That compassionate appointment should be provided immediately to redeem the family in distress. It is improper to keep such a case pending for years. v. In determining as to whether the family is in financial crisis, all relevant aspects must be borne in mind including the income of the family, its liabilities, the terminal benefits if any, received by the family, the age, dependency and marital status of its members, together with the income from any other source.”

39. Consequently, the respondents materially erred in ignoring the mandate of Section 12 of the Act of 1956 and Clause 2.5 of the 2014 Policy. The impugned order suffers from the vice of arbitrary exercise of administrative power based on a flawed understanding of adoption laws.

40. The Writ Petition is, accordingly **allowed**. The impugned order dated 10.12.2021 (Annexure P/1) passed by Respondent No. 4 is hereby **quashed and set aside**.

41. The respondents are directed to reconsider the application of the



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petitioner for compassionate appointment strictly in accordance with the provisions of the Compassionate Appointment Policy dated 29.09.2014. The respondents shall treat the adoption as valid and having occurred during the lifetime of the deceased employee, and shall pass appropriate orders granting the consequential appointment and benefits within a period of **sixty days** from the date of receipt of a certified copy of this order.

42. Pending applications, if any, shall also stands **disposed of** .

No order as to costs.

(Jai Kumar Pillai)
Judge

Rashmi*PS