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IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) NO.36932 OF 2025

In the matter of an application under Articles 226 & 227 of the Constitution of India, 1950.

Union of India and others .... ***Petitioners***

-versus-

K. Manoj Patra and others .... ***Opposite Parties***

Advocates Appeared in this case

For Petitioners - Mr. R.K. Kanungo, Sr. Panel Counsel

For Opp. Parties - M/s. D.K. Mohanty, S. Nayak, B.N. Behera & S. Das, Advocates

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HON'BLE MR. JUSTICE DIXIT KRISHNA SHRIPAD
HON'BLE MR. JUSTICE SIBO SANKAR MISHRA

Date of Hearing & Judgment : 06.01.2026

***PER* KRISHNA S. DIXIT,J.**

Central Government and South Eastern Railway are knocking at the doors of Writ Court for assailing the order dated 29.01.2025 made by the Central Administrative Tribunal at Cuttack (Annexure-1), whereby OA No. 260/00256 of 2022 filed by OPs has been favoured. The Tribunal has quashed the order dated 14.12.2021, by which the

claim for compassionate appointment was negative, and further it has directed to consider the claim afresh, within an outer limit of sixty days.

II. The brief facts of the case are as under:

(a) One Mr. Late K. Sadhu Patra was working as Ex-Technician (C&W) in the Railway Department. He died in harness on 02.04.2008. OP No.2 being an adopted son had staked his claim for appointment on compassionate ground. The same having been turned down, vide order 14.12.2021, he along with his mother, who is OP No.1 herein, had approached the Tribunal through the subject OA, that was resisted by the Petitioners by filing the Statement of Objections.

(b) The OA was resisted essentially on the ground that there was no adoption; even otherwise, the alleged adoption deed was executed on 08.02.2010 after the death of employee; in support of this Petitioners had pressed into service Railway Board's Policy vide RBE No.106/1988, Railway Board's Letter No.E(NG)II/86/RC-1/1 dated 20.05.1988; the alleged adoption was not made with the consent of Railways, as required by the Policy Circulars; lastly, the decree obtained in adoption case in Civil Suit No.1 of 2012 does not bind the Railways. This contention having been rejected, the Tribunal handed the impugned order, which is put in challenge at our hands. Learned counsel

appearing for the OPs resists the petition making submission in justification of the impugned order and the reasons on which it has been constructed.

III. Having heard learned counsel for the parties and having perused the petition papers, this Court declines indulgence in the matter for the following reasons:

(1) As to what is not in dispute:

There is no dispute about the employee dying in harness on 02.04.2008. There is no dispute that OP No.1-Smt. K. Subhadra Patra is the widow of said employee. The essential dispute is whether OP No.2 is the adoptive son of the couple. This question of fact need not detain the Court for long, there being a judgment & decree obtained by OPs in C.S. No.1 of 2012, decreed on 27.02.2013 to the effect that OP No.2 is the adoptive son. It is apparent from the said judgment & decree that the rival claimants were parties to the suit, and that the judgment has attained finality, there being no further challenge thereto.

(2) As to judgment in *rem* vis a vis judgment in *personum*.

(i) The contention of learned Senior Panel Counsel appearing for the Petitioners that the said judgment & decree, being in *personum* as

against in *rem*, do not bind his clients, is attractively true. Section 41 of the erstwhile Indian Evidence Act, 1872 speaks of binding nature of judgments in *rem*. Such judgments are rendered only in four jurisdictions, namely, Matrimonial, Insolvency, Probate & Admiralty. These judgments bind every one whether party *eo nomine* or not. To put in differently a kind of *res judicata* applies *de hors* Section 11 of CPC 1908, which broadly incorporates the said doctrine. Apparently, the judgment secured by OPs in the subject suit has not been rendered in one of these jurisdictions and therefore, the same being not a judgment in *rem*, would not bind the Petitioners, who were not parties to the same.

(ii) The above being said, we hasten to clarify that the binding nature of a judgment is one thing and its evidentiary value, is another. Section 43 of the 1872 Act broadly deals with this aspect of the matter. In the Law of Evidence by Sir John Woodroffe & Syed Amir Ali 15th Edn-1991, Vol.-2 at pages 352 & 353 it is observed as under:

> *"Though judgments, other than those mentioned in Secs. 40-42, are relevant qua judgments, this section does not make them absolutely inadmissible when they are the best evidence of something that may be proved aliunde. The existence of such judgments maybe a fact in issue, or it may be a relevant fact, otherwise than in its character of a judgment.*
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> *Where a judgment is admissible, it is "conclusive evidence for or against all persons, whether parties, privies or strangers, of its own existence, date and legal effect as distinguished from the accuracy of the decision rendered." With regard to the existence of the judgment, its date or its legal consequences, the production of record or of a certified*

> *copy is conclusive evidence of the facts against all the world, the reason being that a judgment, as a public transaction of a solemn nature, must be presumed to be faithfully recorded."*

The law is well settled that a judgment in *personum* although does not bind non-parties, can be a piece of evidence that would throw light on the matter in debate. What evidentiary weight needs to be attached to such a judgment, is a matter of judicial prudence.

(3) As to adoption of OP No.2.

(i) A perusal of the judgment & decree, copies whereof were part of the record before the Tribunal, would show that OP No.2 was adopted by the deceased employee and his wife-OP No.1 on 04.07.2003. The question of Petitioners being made parties to the case in C.S. No.1 of 2012 would not arise, inasmuch as they were was neither necessary parties nor proper parties in the light of Apex Court decision in ***Razia Begum v. Sahebzadi Anwar Begum***[1]. Had they been parties to the said suit, they would have been bound by the decree, hardly needs to be stated. As already mentioned, the judgment is only evidentiary of the factum of adoption. In any event, it excludes claim of the defendants for appointment on compassionate ground.

(ii) As to essentials of adoption:

[1]. AIR 1958 SC 886.

Adoption is a matter of personal law applicable to Hindus. Mulla's Hindu Law, 21st Edition, paragraph 445, page 660 discusses about the requirement of valid adoption. The same is as under:

> *"445. Requirements of a valid adoption.- No adoption is valid unless:*
>
> *(1) the person adopting is lawfully capable of taking in adoption;*
>
> *(2) the person giving in adoption is lawfully capable of giving in adoption;*
>
> *(3) the person adopted is lawfully capable of being taken in adoption;*
>
> *(4) the adoption is completed by an actual giving and taking;*
>
> *(5) the ceremony called datta homam (oblation to fire) has been performed. It is however, doubtful, whether the datta homam ceremony is essential is all cases for the validity of adoption."*

The contents of judgment in the subject suit demonstrate that these requisites have been complied with and the event of adoption was accomplished way back on 04.07.2003.

(iii) As to significance of Adoption Deed of Feb. 2010

Learned Senior Panel Counsel appearing for the petitioners vehemently contends that, the adoption deed having been registered on 08.02.2010 i.e. after the demise of employee on 02.04.2008, the claim of OP No.2 for compassionate appointment does not fit into the parameters of Railway Board policy which requires the accomplishment of adoption before the death of employee. This is difficult to agree with and reasons for the same are not far to seek: firstly, a valid adoption comes into existence once the rites & rituals obtaining the community are

performed. The requisites of adoption as stated by Mulla's Hindu Law *supra* are complied with, the Adoptee becomes the son/daughter of Adopters. The Adoption Deed is registered long after the demise of employee concerned, is not much relevant to validity of adoption. It needs no mentioning that performance of prescribed rites is constitutive of adoption and subsequent execution & registration of Deed of Adoption is only evidentiary. In other words, the subject Deed only records the event of adoption. This subtle difference between accomplishment of adoption and the subsequent execution of document of adoption cannot be ignored, be it under the *shaastrik* process or under the provisions of the Hindu Adoption & Maintenance Act, 1956, more particularly when there is a civil court judgment.

(iv) It is relevant to see the observation of Tribunal made in Para-5 of the impugned order which treat the subsequent suit proceeding in which the issue of adoption has been decided:

> *"5. We have gone through the provision made in RBE No. 106/1988 circulated as SER Estt. Srl.No.141/1988 providing that adopted sons/adopted daughters can only be eligible for appointment on compassionate ground if the adoption process has been completed and has become valid before the date of death of the employee. On examination of the order dated 31.08.2021 in Civil Suit No. 66/2020, we find that the Learned Senior Civil Judge, Khallikote, after due discussion and deliberation, accepted the fact that the proposal for adoption was accepted on 04.07.2003 after observing the giving and taking ceremony as well as "Dutta Home" and since at the time of adoption, the applicant No.2 was about 5 years which*

> *fulfilled the criteria required u/s.10 of the Hindu Adoption and Maintenance Act, 1956. It was further observed that net down loaded residence certificate digitally signed by the Revenue Officer, Caste Certificate, HSC Certificate and HSC mark sheet, which were exhibited, undisputedly establishes that the husband of applicant No.1 executed some written documents regarding adoption of Applicant No. 2 as he was issueless. The findings so recorded by the competent court of law, stated above, in Civil Suit No. 66/2020, are all unimpeachable evidence in law and, thus, is acceptable by the Tribunal……"*

(4) Is Adoption Deed compulsorily registrable ?

(i) There is another aspect to the matter: the claim of OP No.2 for compassionate appointment is negatived by the petitioners *inter alia* on the ground that the registered adoption deed is dated 08.02.2010 and therefore said adoption being post-demise of the employee, the conditions of Policy Circular render candidature of OP No.2 ineligible. Neither in Section 17(1) of the Registration Act, 1908 nor under the provisions of 1956 Act, we are shown that the registration of the Adoption Deed is a *sine qua non* for validity of adoption. In other words, once the requisites of valid adoption, as discussed by Mulla's Hindu Law *supra,* are met, adoption takes effect, regardless of registration. Similar view is taken by Punjab & Haryana High Court in ***Union of India v. Sukhpreet Kaur***[2] and by the Karnataka High Court in ***N.L. Manjunatha v. B.L. Ananda***[3]. To put it succinctly, registration is

[2] 2025:PHHC:020462-DB
[3] 2023:KHC:23875

optional. However, Section 16 of 1956 Act raises a presumption of validity a registered Adoption Deed, if conditions stipulated therein are satisfied. In the case at hand, those conditions are not satisfied, inasmuch as adoptive father, namely, the employee was dead & gone when the document was presented for registration.

(ii) The Allahabad High Court in ***Shanu Kumar v. The Nagar Ayukt Municipal (Commissioner) Nagar Nigam Lko***[4], has held that Administrative Officer cannot question validity of registered adoption deed for rejecting compassionate appointment. The Apex Court vide ***Chandrasekhara Mudaliar v. Kulnadaivelu Mudaliar***[5], in line with the decisions of Privy Council has expressed the view that the validity of adoption is to be determined by spiritual rather than temporal considerations, devolution of property being only of secondary importance. Mulla's Hindu Law *supra* at paragraph 444 states:

> *"The objects of adoption are twofold: the first is religious, to secure spiritual benefit to the adopter and his ancestors by having a son for the purpose of offering funeral cakes and libations of waters to the soul of the adopter and his ancestors. The second is secular, to secure an heir and perpetuate the adopter's name.*

(iii) As to the burden of proof of adoption:

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[4]. 2025 : AHC-LKO: 77122.
[5]. AIR 1963 SC 185.

The above being said, it needs to be clarified that subject to the presumption of validity of registered Adoption Deed enacted in Section 16 of the 1956 Act, the burden of proof of adoption lies on the person who asserts it, and that obviously it is a heavy burden, inasmuch as adoption has serious implications & consequences qua the adoptive parents, natural parents & the adoptive child in terms of family status and proprietorial interest, which aspect is discussed herein below. In the case at hand, the burden is duly discharged by the OPs by producing the judgments & decrees in two suits, which discussed & decided the factum & legality of adoption. The authorities treating the claim for compassionate appointment of adoptive children, have to exercise due diligence & seriousness, lest fake claims should be favoured, to the prejudice of public employment and to the interest of deserving candidates.

(5) As to the consequences of valid adoption:

(i) Ordinarily, a strong belief obtains amongst Hindus, अपुत्रस्य गतिर्नास्ति तस्मात् पुत्रं प्रजायेत् नरः literally meaning that for a sonless person there is no heaven/salvation/destination; therefore, man should have a son. This is how the institution of adoption is developed by the ancient *smrutikaraas*. The Privy Council in ***Bal Gangadhar Tilak v.***

Sriniwas Pandit[6], observed *under the Hindu law, adoption has the effect of transferring the boy from the family of his birth to that of his adoption, and he becomes, for all legal purposes, the son of his adoptive father.* दत्तस्य पुत्रस्य पित्रोः पूर्वं सम्बन्धो नश्यति । स एव दत्तकपितुः पुत्रो भवति धर्मतः ॥ literally means that in the case of a son who is given in adoption, the former relationship with his natural parents is extinguished, and he becomes, in law, the son of the adoptive father. In ***Kishori Lal v. Chaltibai,***[7] the Apex Court observed that *the effect of adoption is to sever the child adopted from the natural family and to graft him into the adoptive family for all purposes, including succession & inheritance.* Of course, right to public employment does not have proprietary character, is also true.

(ii) Substantial alterations and modifications in the *shaastrik* law relating to adoption have been brought about by the legislative process. The Parliament has enacted the Hindu Adoption and Maintenance Act, 1956, which has the overriding application. Adoptions made after the commencement of this Act must be in accordance with the provisions thereof. Any adoption done in violation of the provisions of this Act is a

[6]. (1915) 42 IA 135 PC.
[7]. AIR 1959 SC 504.

nullity and therefore would not bring into existence the sonship/ daughtership. Section 12 of the Act has the following text:

> *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."*

(iii) The above provision deals with the effect of valid adoption. Mayne's Hindu Law & Usage, 16th Edition Bharat Law House, New Delhi at Page 602 has succinctly stated the effect of adoption in terms of Section 12 of the 1956 Act as under:

> *"...This section deals with the effects of a valid adoption. The main effect of an adoption is to transplant the child adopted from the family of his birth to the adoptive family. As from the date of adoption the child will be considered to be the natural child of the adoptive family and all the ties with the original family are severed. However, this section is subject to three exceptions: (1) that the adopted child cannot marry any person whom he could not have married had he continued in the original family; (2) that the adopted child is not deprived of the estate vested in him or her prior to his adoption when he lived in his natural family subject to any obligations arising from*

> *such vesting of the estate, (3) that the adopted child shall not divest any persons in the adoptive family of any estate vested in that person prior to the date of adoption. The main object of the present section is to modify the old Hindu law which considered doctrine of 'relation back'. The Act does away with the theory of relation back and confers on the child adopted a status equivalent to that of a natural born child in the adoptive family only from the date of adoption. The expression "effects of adoption" refers to all the legal consequences flowing from an adoption."*

The aforementioned view broadly gains support from *Daniraiji v. Chandraprabha*[8]. It is also relevant to mention Clause 57 of Section 3 of the General Clauses Act, 1897, that reads as under:

> *"...son, in the case of any one whose personal law permits adoption, shall include an adopted son;"*

We hasten to add that in the domain of public employment, it is open to the employer to regulate the terms & conditions of appointment on compassionate grounds. The subject Policy Circular promulgated by the Railway Department does this, cannot be disputed. If the stipulation in the Circular is complied with, there is no justification whatsoever for denying rehabilitatory appointment, when breadwinner of the family dies in harness, as has happened in the case at hand. The Tribunal has structured the impugned order with this inarticulate premise, some of it being articulate to.

[8]. AIR 1975 SC 784.

In the above circumstances, this petition being devoid of merits is liable to be rejected and accordingly it is, costs having been made easy. The impugned order of the Tribunal shall be given effect to within two months reckoned from this day. Non-compliance shall be viewed very seriously in the next level of legal battle.

Web copy of the judgment to be acted upon by all concerned.

(Dixit Krishna Shripad)
Judge

(S.S. Mishra)
Judge

Orissa High Court, Cuttack
The 6th day of January 2026/Anisha