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**IN THE HIGH COURT OF MADHYA PRADESH  
AT JABALPUR**

**BEFORE  
HON'BLE SHRI JUSTICE VIVEK AGARWAL**

**ON THE 28<sup>th</sup> OF FEBRUARY, 2024**

**WRIT PETITION No. 12753 of 2011**

**BETWEEN:-**

**PAWAN KUMAR MASURKAR S/O LATE SHRI PRAVEEN  
KUMAR MASURKAR (ADOPTED SON), AGED ABOUT 32  
YEARS, R/O VILL. PATHARWADA POST & TEH. KATANGI  
DISTT. BALAGHAT (MADHYA PRADESH)**

**.....PETITIONER**

***(BY SHRI PRAMOD SINGH TOMAR - ADVOCATE)***

**AND**

- 1. THE STATE OF MADHYA PRADESH THROUGH  
SECRETARY WATER RESOURCE DEPARTMENT  
VALLABH BHAWAN BHOPAL (MADHYA PRADESH)**
- 2. THE ENGINEER IN CHIEF, W.R.D. NARMADA  
BHAWAN BHOPAL (MADHYA PRADESH)**
- 3. THE CHIEF ENGINEER OCCUPATION: BAN GANGA  
KACHHAR W.R.D. SEONI DISTT. SEONI (MADHYA  
PRADESH)**
- 4. THE COLLECTOR, BALAGHAT, DISTT. BALAGHAT  
(MADHYA PRADESH)**
- 5. THE EXECUTIVE ENGINEER, W.R.D. BAN GANGA  
DIVN. BALAGHAT (MADHYA PRADESH)**
- 6. THE S.D.O., BAN GANGA DIVN. VILL. AALEJHARI  
WARASEONI DISTT. BALAGHAT (MADHYA  
PRADESH)**

**.....RESPONDENTS**

***(BY SHRI T.K. KHADKA - PANEL LAWYER)***

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*This petition coming on for orders this day, the court passed the  
following:*

**ORDER**

This petition is filed seeking compassionate appointment representing petitioner to be the adopted son of late Praveen Kumar Masurkar who was working in Water Resources Department.

2. Petitioner's contention is that succession certificate as contained in Annexure-P/5 was issued by the Court of learned Civil Judge Class-I, Waraseoni, District Balaghat in Succession Case No.06/1999 whereby learned trial Court has declared petitioner to be the successor of late Praveen Kumar Masurkar on the basis of he being a adopted son and held him to be entitled to payment of arrears of dues of late Praveen Kumar Masurkar, medical claim, and has also declared him to be a successor for purposes of grant of compassionate appointment.

3. Two issues emerge namely, in the impugned order passed by the Chief Engineer, it is mentioned that the adoption deed on a stamp paper of Rs.20/-, is not a valid adoption deed approved by the Court and it was executed after death of Praveen Kumar Masurkar on 31/12/1996 on 07/07/1998 by wife of Praveen Kumar Masurkar namely Smt. Bhavika Masurkar.

4. In view of such facts and also recording a fact that as per the GAD circular No.C-3-7/2000/3/One/Bhopal dated 23/07/2001 there is no provision for grant of compassionate appointment to the adopted son, rejected the application.

5. The issues which emerge herein are two fold; namely, whether a person can seek succession certificate in regard to grant of compassionate appointment inasmuch as that issue is to be determined in terms of the provisions contained in Sections 370 and 374 of the Indian Succession Act, 1925. Section 370 of the Indian Succession Act deals with the restriction on grant of certificates

under this Part i.e. Part-X dealing with succession certificates.

6. Sub-section (1) of Section 370 of the Indian Succession Act provides that -

"(1) A succession certificate (hereinafter in this Part referred to as a certificate) shall not be granted under this Part with respect to any debt or security to which a right is required by Section 212 or Section 213 to be established by letters of administration or probate :

Provided that nothing contained in this section shall be deemed to prevent the grant of a certificate to any person claiming to be entitled to the effects of a deceased Indian Christian, or to any part thereof, with respect to any debt or security, by reason that a right thereto can be established by letters of administration under this act."

7. Sub-section (2) of Section 370 of the Indian Succession Act, 1925 defines "security" as under :

"(2) For the purposes of this Part, "security" means -

(a) any promissory note, debenture, stock or other security of the Central Government or of a State Government;

(b) any bond, debenture, or annuity charged by Act of Parliament [of the United Kingdom] on the revenues of India;

(c) any stock or debenture of, or share in, a company or other incorporated institution;

(d) any debenture or other security for money issued by, or on behalf of, a local authority;

(e) any other security which the State Government may, by notification in the Official Gazette, declare to be a security for the purposes of this Part."

8. Section 372 of the Indian Succession Act, 1925 deals with the application for certificate and provides that it shall be filed in the manner prescribed by the Code of Civil Procedure, 1908 for signing and verification of a plaint by or on behalf of a plaintiff, and setting forth the following particulars, namely :-

- "(a) the time of the death of the deceased;
- (b) the ordinary residence of the deceased at the time of his death and, if such residence was not within the local limits of the jurisdiction of the Judge to whom the application is made, then the property of the deceased within those limits;
- (c) the family or other near relatives of the deceased and their respective residence;
- (d) the right in which the petitioner claims;
- (e) the absence of any impediment under Section 370 or under any other provision of this Act or any other enactment, to the grant of the certificate or to the validity thereof if it were granted; and
- (f) the debts and securities in respect of which the certificate is applied for."

9. Section 374 of the Indian Succession Act, 1925 provides that what will be contents of the certificate. It provides that -

**"374. Contents of certificate.-** When the District Judge grants a certificate, he shall therein specify the debts and securities set forth in the application for the certificate, and may thereby empower the person to whom the certificate is granted -

- (a) to receive interest or dividends on, or
- (b) to negotiate or transfer, or
- (c) both to receive interest or dividends on, and to negotiate or transfer, the securities or any of them."

10. Debt is defined in Section 3(c) of the Transfer of Property Act as that which is owed and due. Chapter-VII of Indian Succession Act deals with the duties of an executor or administrator. Section 319 of the Indian Succession Act provides that -

**"319. As to property of, and debts owing to, deceased.-** The executor or administrator shall collect, with reasonable diligence, the property of the deceased and the debts that were due to him at the time of his death."

Section 320 provides "expenses to be paid before all debts". Section 321 provides "expenses to be paid next after such expenses". Section 322 provides "wages for certain services to be next paid and then other debts". Section 323 provides "Save as aforesaid, all debts to be paid equally and rateably". Section 325 says "debts to be paid before legacies".

11. Thus, when these aspects are examined, then it is evident that as per Section 374 of the Indian Succession Act, the District Judge granting a certificate is required to specify the "debts and securities" set forth in the application for the certificate and by no stretch of imagination compassionate appointment is either a 'debt' or a 'security' as defined in the Indian Succession Act. Therefore, issuance of a succession certificate by the concerned Civil Judge may be an act of naivety but it will not bind the High Court while considering the application for grant of compassionate appointment.

12. Thus, after clearing the clouds that on the strength of succession certificate, compassionate appointment is not admissible, it is necessary to note down other circumstances, i.e. widow of the deceased employee late Praveen Kumar Masurkar did not apply for compassionate appointment. She opted to

settle down for family pension. After death of Praveen Kumar Masurkar, she adopted younger brother of late Praveen Kumar Masurkar and on his attaining the age of majority, made an application for grant of compassionate appointment. In view of payment of family pension in favour of widow, elements of penury is not available so to show any compassion while issuing a direction to grant of compassionate appointment.

13. Admittedly, petitioner had moved an application for compassionate appointment on 07/01/1997. The fact of the matter is that Section 10(iv) of the Hindu Adoptions and Maintenance Act, 1956 provides that person who may be adopted if 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. Thus, adoption in the year 1997 or 1998 when the petitioner had crossed the age of 15 years, becomes an issue which is to be viewed with circumspectus.

14. This Court is conscious that it is not dealing with the aspect of adoption but only that of compassionate appointment.

15. Thus, looking to the fact that there was no aspect of penury and family pension was available to the widow of the deceased, and compassionate appointment is not an alternate mode of recruitment, and thirdly, compassionate appointment is not an estate of deceased, this Court has no hesitation to hold that petitioner was neither entitled on the basis of the so called adoption deed or on the basis of a succession certificate to be granted compassionate appointment nor any right was created in his favour.

16. Accordingly, this writ petition fails and is the same is hereby dismissed.

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