

**IN THE HIGH COURT OF MADHYA PRADESH AT JABALPUR
BEFORE
HON'BLE SHRI JUSTICE SUSHRUT ARVIND DHARMADHIKARI
ON THE 15th OF FEBRUARY, 2022**

WRIT PETITION No. 3156 of 2022

Between:-

**JITENDRA KUMAR SEN S/O LATE
SHRI KISHORILAL NAPIT , AGED
ABOUT 19 YEARS, OCCUPATION:
UNEMPLOYED R/O NEAR MISHRA
PETROL PUMP ANANTPURA TEHSIL
AND DISTRICT TIKAMGARH M.P.
(MADHYA PRADESH)**

.....PETITIONER

**(BY SHRI SAMARTH GUPTA, LEARNED COUNSEL FOR THE
PETITIONER)**

AND

- THE STATE OF MADHYA PRADESH
THROUGH ITS PRINCIPAL
SECRETARY SCHOOL EDUCATION
1. DEPARTMENT MANTRALAYA
VALLABH BHAWAN BHOPAL MP
(MADHYA PRADESH)
THE DISTRICT EDUCATION OFFICER
2. TIKAMGARH DISTRICT TIKAMGARH
M.P. (MADHYA PRADESH)**

.....RESPONDENTS

**(BY SHRI ADITYA KHANDEKAR, LEARNED PANEL LAWYER, FOR
THE RESPONDENTS/STATE)**

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

ORDER

By filing this writ petition, under Article 226 of the Constitution of India, the petitioner has assailed the legality, validity and propriety of order dated 17.11.2021 (Annexure P-1); whereby the claim of the petitioner for being appointed on compassionate ground in lieu of his deceased father Late Shri

Kishori Lal Napit has been turned down on the ground that the petitioner is not a legally adopted son of the deceased-employee and, therefore, in view of Clause 2.5 of the Circular dated 29.9.2014, the petitioner is not eligible for appointment on compassionate ground.

2. The core issue involved in this petition is whether a son adopted after the death of an employee, has a right of consideration for compassionate appointment ?

3. The brief facts necessary for adjudication of this case are that the petitioner is claiming himself as adopted son of the deceased Government employee Shri Kishori Lal Napit, who was working as Assistant Teacher at Government Primary School, Dushyara, District Tikamgarh. The deceased-employee died in harness on 5.10.2020. The petitioner, herein, was dependent on the earning of the deceased employee since the time he was 5 years old till his death. The biological father of the deceased herein was the younger brother of the deceased employee. The deceased-employee and his wife Smt. Pushpa Napit were childless and, therefore, the petitioner was residing as Dattak Putra/adopted son after proper agreement in presence of the elder members of the society. It is clearly stated that there was no adoption deed at the relevant time. After the death of the Government employee, the petitioner being the sole dependent, applied for grant of compassionate appointment on 15.3.2021. Thereafter, the respondent-department communicated to the petitioner that a valid adoption deed is required for the purpose of consideration of his application. On receiving such letter, the wife of Late Shri Kishori Lal Napit as well as the petitioner took proper steps before the competent Court of Law vide MJC GW No.09/2021, decided on 9.10.2021; wherein it was admitted that the petitioner has been residing with Late Shri Kishori Lal Napit

since he was 5 years old and declared the petitioner as the adopted son of Smt. Pushpa Napit.

4. Learned counsel appearing for the petitioner criticized this order by contending that "son includes the adopted son". By placing reliance on the Circular dated 29.9.2014, it is submitted that the respondents themselves realized that the adopted son is also entitled for the compassionate appointment.

5. Per contra, learned counsel appearing for the State opposed the prayer and submitted that in Clause 2.5 of the Circular dated 29.9.2014, it is provided that if the employee is not having his own child, then the couple ought to have adopted a child during the life time of the deceased-employee. In the present case, the deceased-employee died on 5.10.2020 but by that time, the petitioner was not adopted by the deceased-employee and it is only after his death, adoption deed of petitioner was made. The wife of deceased-employee Smt. Pushpa Napit moved an application for adoption of the petitioner, which was allowed on 9.10.2021, which is after the death of the deceased-employee, therefore, the claim of the petitioner has been rightly rejected placing reliance on Clause 2.5 of the Policy dated 29.9.2014. In view of aforesaid, the petitioner has no right of consideration. No other point is pressed by the learned counsel for parties.

6. In reply, learned counsel for the petitioner has placed reliance on the order of the Co-ordinate Bench of this Court in ***Writ Petition No.14521/2012 (Manoj Kumar Nagre Vs. The Commissioner of M.P. & others)***, in which the impugned order was set aside and the petitioner was directed to resubmit his candidature for grant of compassionate appointment with relevant documents to show that his adoption is legal and valid. In turn,

the respondents were also directed to consider the application of petitioner for grant of compassionate appointment in accordance with law with the liberty to the respondents to examine the validity of adoption while considering the claim of the petitioner for grant of compassionate appointment. In view of the aforesaid order, as well as looking to the fact that wife of the deceased-employee Smt. Pushpa Napit has already adopted the petitioner vide judgment dated 9.10.2021, the case of the petitioner may be relegated to the respondents for reconsideration.

7. Heard the learned counsel for parties.

8. The issue involved in this case is not that the son has been adopted by the deceased-employee during his life time or while in service but the issue is as to whether a son adopted by the widow of the deceased-employee would be eligible for consideration or not ?

9. Clause 2.5 of the policy dated 29.9.2014 reads as under :-

“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।”

10. In my view the order passed in the case of **Manoj Kumar (supra)**, would not be applicable in the facts and circumstances of this case, since in that case the child was already adopted during the life time of the deceased-employee; whereas in the present case the petitioner has been adopted by the widow of the deceased-employee after his death, therefore, this judgment is distinguishable on facts.

11. Moreover, there is a specific provision under Clause 2.5 of the Circular dated 29.9.2014 with regard to adoption while in service. The relevant policy dated 29.9.2014 is also not under challenge in the writ petition.

12. In view of the foregoing discussion, it is held that an adopted child, to be considered for compassionate appointment, must be legally adopted by the deceased-employee during his life-time and a child adopted later on by the widow of the deceased-employee, is not eligible for the purpose of compassionate appointment, in view of Clause 2.5 of the Policy dated 29.9.2014.

13. Therefore, no relief can be granted to the petitioner. Accordingly, this writ petition is without any merit or substance and, therefore, the same is dismissed at the admission stage itself.

(S.A.Dharmadhikari)
Judge

TG/-

IN THE HIGH COURT OF MADHYA PRADESH AT JABALPUR

Case No.	Writ Petition No.3156 of 2022
Parties Name	<i>Jitendra Kumar Sen</i> <i>Vs,</i> <i>The State of Madhya Pradesh & another</i>
Date of Order	15/02/2022
Bench Constituted	Justice S.A.Dharmadhikari
Order passed by	Justice S.A.Dharmadhikari
Whether approved for reporting	Yes
Name of counsel for parties	For Petitioner : Shri Samarth Gupta, learned counsel. For Respondents/State : Shri Aditya Khandekar, learned Panel Lawyer.
Law laid down	An adopted child, to be considered for compassionate appointment, must be legally adopted by the deceased-employee during his life-time and a child adopted later on by the widow of the deceased-employee, is not eligible for the purpose of compassionate appointment.
Significant paragraph numbers	Para Nos.8, 9, 10, 11 & 12

(S.A.DHARMADHIKARI)
JUDGE