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HIGH COURT OF CHHATTISGARH AT BILASPUR

WPS No. 4673 of 2023

Judgment Reserved On : 12.03.2026

Judgment Delivered On : 15.04.2026

Sunil Kumar Gupta S/o Shri L.B. Gupta, Aged 24 Years R/o House No.51, Near Old Commerce Collage, Kirodimal Colony, District : Raipur, Chhattisgarh

... Petitioner(s)

versus

1 - State Of Chhattisgarh Through The Secretary, Department Of School Education, Mahanadi Bhawan, New Mantralaya, Atal Nagar, District : Raipur, Chhattisgarh

2 - District Education Officer Ambikapur, District : Surguja (Ambikapur), Chhattisgarh

3 - Block Education Officer, Ambikapur Dist- Surguja (C.G.) Superintendent Of Police (SP), S.P. Office, Raigarh, District : Raigarh, Chhattisgarh

4 - Kishan Prasad Sahu S/o Shri Rajendra Sahu Aged About 45 Years Vill- Balishankara, District : Sundargarh, Orissa

... Respondent(s)

(Cause Title downloaded from CIS Periphery)

For Petitioner(s)	: Ms. Anamika Jain, Advocate on behalf of Mr. Devershi Thakur, Advocate
For Respondent/ State	: Mr. Ashutosh Shukla, Panel Lawyer
For Respondent No.4	Ms. Bharti Khunte, Advocate on behalf of Mr. Mr. Vivek Kumar Agarwal, Advocate

SB: Hon'ble Mr. Justice Amitendra Kishore Prasad

C A V Order

1. The petitioner has filed this petition under Article 226 of the Constitution of India against the impugned order dated 13.5.2022 (Annexure P/7). By way of the said order, the petitioner's compassionate appointment was cancelled on the allegation that he has obtained the same on the basis of a forged '*Godnama*' (Adoption Deed). It is further alleged that the said deed is in violation of the Hindu Adoptions and Maintenance Act, 1956 (in short "the Act, 1956") as well as the Hindu Adoption Regulations, 2017 (in short "the Regulations 2017") and the Hindu Adoption (Amendment) Regulations, 2021 (in short "the Regulations, 2021").
2. The petitioner has prayed for the following reliefs in the petition :

10.1 That the Hon'ble Court may kindly be pleased to call for the entire records pertaining to the case of the petitioner.

10.2. That, Hon'ble Court may kindly be pleased to quash the impugned order dated 13.05.2022 (Annexure P/7) issued by the respondent and direct the respondent authorities to appoint the petitioner as per order dated 29.05.2021

10.3 Any other relief/reliefs which the Hon'ble Court may deem fit and proper in the facts and circumstances of the case may also kindly be granted.

3. The factual matrix of the case is that the petitioner was appointed as a Peon on compassionate ground on account of death of Smt. Rajkumari Gupta vide order dated 29.5.2021. Late Rajkumari Gupta was married to respondent No.4-Kishan Prasad Sahu, who allegedly deserted her in 2011 on account of her prolonged sickness and hospitalization. During her illness, Late Rajkumari Gupta was looked after by the grandfather of the petitioner and her own father. The petitioner is the biological son of Shri Lal Bahadur Gupta and Smt. Mitlangini Devi. The said Mitlangini Devi was the elder of sister of late Rajkumari Gupta. From the time of his birth, the petitioner was brought by late Rajkumari Gupta and was cared for as his own son. Late Rajkumari Gupta was deserted by her husband -respondent No.4, who subsequently solemnized a second marriage with one Smt. Neelam in the year 2013-14. They reside separately and have two children from the said marriage. Consequently, the petitioner is the only son (adopted) and the only legal heir of the deceased. Late Rajkumari Gupta served as an Assistant Teacher (LB) at the Government Primary School, Laxmipur, Development Block, Ambikapur. After her demise, an application for appointment on compassionate

grounds was duly submitted by the petitioner. An Adoption Deed (*Godnama*) dated 25.4.2018 was executed in favour of the petitioner during the lifetime of late Rajkumari Gupta. During the process of compassionate appointment, respondent No.4-earlier husband of late Rajkumari Gupta, submitted a letter of consent in favour of the petitioner and on the basis of the *Godnama* as well as such consent letter given by respondent No.4, the petitioner was appointed to the post of Peon on compassionate ground vide order dated 29.5.2021. A dispute arose among the parties regarding the service benefits of late Rajkumari Gupta. Both respondent No.4 and the father of the deceased-Rajkumari Gupta filed separate applications for the release of her service dues. Consequent to the above dispute, respondent No.4 preferred a complaint against the petitioner, which resulted in issuance of a show cause notice dated 7.2.2022. The petitioner submitted a reply to the said notice supported by relevant documents, clarifying that the complaint arose from the inter-se dispute between respondent No.4 and the father of the deceased, and that the allegations levelled against the petitioner were false and malicious. The petitioner's appointment on compassionate grounds was processed in a regular manner, based on the Adoption Deed and the consent letter submitted by respondent No.4. Respondent No.4 actively participated in and cooperated with the entire appointment process after the demise of Rajkumari Gupta. The present allegation that the Adoption Deed is not in accordance with law or was executed belatedly in 2018

when the petitioner was a major are untenable, as the petitioner was adopted during his childhood and was reared in the household of late Rajkumari Gupta, who had been deserted by respondent No.4. Respondent No.4 ceased to have any functional or legal interest in the affairs of the late Rajkumari Gupta, having abandoned her to contract a second marriage with another woman, with whom he has two children. Due to his long-standing desertion and establishment of a separate family, respondent No. 4 has no locus to challenge the petitioner's status. Hence, the appointment of the petitioner was made in accordance with law and the same cannot be cancelled without a due enquiry and granting an opportunity of being heard. Hence, this petition.

4. Learned counsel for the petitioner submits that the order impugned is per se illegal. The impugned order is stigmatic in nature, as it contains grave allegation that the petitioner obtained his appointment through a forged "Adoption Deed" in violation of the Act, 1956 as well as the Regulations, 2017 and the Regulations, 2021. However, no enquiry was conducted in this regard nor was the petitioner afforded an opportunity of being heard. In support of his submissions, learned counsel for the petitioner would place reliance on a judgment rendered in the matter of **Swati Priyadarshini Vs. State of Madhya Pradesh and others** reported in **2024 SCC Online SC 2139**.
5. Conversely, learned counsel for the State submits that the very initiation of his appointment itself is flawed. He submits that the petitioner was not the legally adopted son of late Rajkumari

Gupta, as the alleged adoption failed to comply with the mandatory provisions contained in the Act, 1956 as well as the Regulations, 2017 and the Regulations, 2021. Hence, the respondent authorities were well within their rights to cancel the compassionate appointment. Furthermore, the petitioner was afforded a due opportunity of hearing through the issuance of a show cause notice, therefore, the impugned order suffers from no illegality or procedural infirmity.

6. I have heard learned counsel for the parties and have also perused the documents annexed with the petition carefully.
7. Admittedly, the impugned order cancelling the petitioner's compassionate appointment was passed by levelling grave allegations against the petitioner. The order explicitly states that the appointment was obtained on the strength of a forged Adoption Deed in violation of the Act, 1956 as well as the Regulations, 2017 and the Regulations, 2021. Such an asseveration renders the order stigmatic in nature, entailing serious civil consequences for the petitioner, therefore, an opportunity of hearing ought to have been afforded to the petitioner.
8. Furthermore, the Hon'ble Supreme Court in **Swati Priyadarshini (supra)** observed that before passing any stigmatic order for removal of any employee from service, a departmental enquiry must be conducted. The following was held in para 34 :

“34. It is profitable to refer to what five learned Judges of this Court laid down in *Parshotam Lal Dhingra v. Union of India*, 1957 SCC OnLine SC 5:

"28. The position may, therefore, be summed up as follows: Any and every termination of service is not a dismissal, removal or reduction in rank. A termination of service brought about by the exercise of a contractual right is not per se dismissal or removal, as has been held by this Court in *Satish Chander Anand v. Union of India* [(1953) 1 SCC 420: 1953 SCR 655]. Likewise the termination of service by compulsory retirement in terms of a specific rule regulating the conditions of service is not tantamount to the infliction of a punishment and does not attract Article 311(2), as has also been held by this Court in *Shyam Lal v. State of Uttar Pradesh* [(1954) 1 SCC 572: (1955) 1 SCR 26]. In either of the two above mentioned cases the termination of the service did not carry with it the penal consequences of loss of pay, or allowances under Rule 52 of the Fundamental Rules. It is true that the misconduct, negligence, inefficiency or other disqualification may be the motive or the inducing factor which influences the Government to take action under the terms of the contract of employment or the specific service rule, nevertheless, if a right exists, under the contract or the rules, to terminate the service the motive operating on the mind of the Government is, as Chagla, C.J., has said in *Shrinivas Ganesh v. Union of India*, [58 Bom LR 673: AIR 1956 Bom 455] wholly irrelevant. In short, if the termination of service is founded on the right flowing from contract or the service rules then, prima facie, the termination is not a punishment and carries with it

no evil consequences and so Article 311 is not attracted. But even if the Government has, by contract or under the rules, the right to terminate the employment without going through the procedure prescribed for inflicting the punishment of dismissal or removal or reduction in rank, the Government may, nevertheless, choose to punish the servant and if the termination of service is sought to be founded on misconduct, negligence, inefficiency or other disqualification, then it is or a punishment and the requirements of Article 311 must be complied with. As already stated if the servant has got a right to continue in the post, then, unless the contract of employment or the rules provide to the contrary, his services cannot be terminated otherwise than for misconduct, negligence, inefficiency or other good and sufficient cause. A termination of the service of such a servant on such grounds must be a punishment and, therefore, a dismissal or removal within Article 311, for it operates as a forfeiture of his right and he is visited with the evil consequences of loss of pay and allowances. It puts an indelible stigma on the officer affecting his future career. A reduction in rank likewise may be by way of punishment or it may be an innocuous thing. If the government servant has a right to a particular rank, then the very reduction from that rank will operate as a penalty, for he will then lose the emoluments and privileges of that rank. If, however, he has no right to the particular rank, his reduction from an officiating higher rank to his substantive lower rank will not ordinarily be a punishment. But the mere fact that the servant has no title to the post or the rank and the Government has, by contract, express or implied, or under the rules, the right to reduce him to a

lower post does not mean that an order of reduction of a servant to a lower post or rank cannot in any circumstances be a punishment. The real test for determining whether the reduction in such cases is or is not by way of punishment is to find out if the order for the reduction also visits the servant with any penal consequences. Thus if the order entails or provides for the forfeiture of his pay or allowances or the loss of his seniority in his substantive rank or the stoppage or postponement of his future chances of promotion, then that circumstance may indicate that although in form the Government had purported to exercise its right to terminate the employment or to reduce the servant to a lower rank under the terms of the contract of employment or under the rules, in truth and reality the Government has terminated the employment as and by way of penalty. The use of the expression "terminate" or "discharge" is not conclusive. In spite of the use of such innocuous expressions, the court has to apply the two tests mentioned above, namely, (1) whether the servant had a right to the post or the rank, or (2) whether he has been visited with evil consequences of the kind hereinbefore referred to? If the case satisfies either of the two tests then it must be held that the servant has been punished and the termination of his service must be taken as a dismissal or removal from service or the reversion to his substantive rank must be regarded as a reduction in rank and if the requirements of the rules and Article 311, which give protection to government servant have not been complied with, the termination of the service or the reduction in rank must be held to be wrongful and in violation of the constitutional right of the servant."

9. Reverting to the facts of the present case, in light of the principles laid down in the aforementioned judgment, it is manifest that the impugned action was based only upon the allegations levelled by respondent No.4. The authorities proceeded to cancel the appointment on the ground that the subject Adoption Deed (*Godnama*) was executed after the petitioner had attained the age of majority. Such a finding cannot be sustained particularly when the appointment itself was originally granted on the strength of the same registered instrument. If the authorities are of the opinion that the Adoption Deed is legally infirm or forged, they are mandated to conduct a regular enquiry and afford the petitioner an opportunity of being heard. Since the impugned order involves cancellation of a subsisting appointment, it entails severe civil consequences and cannot be allowed to stand. The requirement of transparency and adherence to the principle of *audi alteram partem*, are celebrated legal tenets, relied upon since time immemorial, which must be strictly followed.
10. Consequently, the impugned order dated 13.5.2022 (Annexure P/7) of cancellation of appointment of the petitioner is hereby quashed. The respondents are directed to reinstate the petitioner forthwith, however, such reinstatement shall be without back wages. His services shall be treated as continuous for all other consequential service benefits. In the meantime, liberty is reserved in favour of the respondent authorities to conduct a fresh enquiry in accordance with law, after providing a due opportunity

of hearing to the petitioner and thereafter, to pass a reasoned order, if so advised.

11. With the aforesaid observations/directions, the Petition is finally disposed of.

Sd/-

(Amitendra Kishore Prasad)
Judge

Shyna Ajay