



**HIGH COURT OF ANDHRA PRADESH**  
TUESDAY ,THE FIFTEENTH DAY OF JUNE  
TWO THOUSAND AND TWENTY ONE

**PRSENT**

**THE HONOURABLE SRI JUSTICE D.V.S.S.SOMAYAJULU**

**WRIT PETITION NO: 16602 OF 2020**

**Between:**

1. KONDAMURI VIJAY AMBEDKAR Father Name. Prakash,  
Age. 32, Resident of House No. 1-141, 3rd Lane, Gopal Nagar, Ongole  
Town, Prakasam-District. .

**...PETITIONER(S)**

**AND:**

1. THE STATE OF AP Rep. by its Secretary, Department of Social Welfare  
Secretariat, Velagapudi, Amaravathi, Guntur District
2. The Director of Social Welfare Department Govt. Junior College for Girls  
Campus, Payakapuram, Near Nunna Police Station Vijayawada
3. The Collector and District Magistrate Prakasam District. Ongole.

**...RESPONDENTS**

**Counsel for the Petitioner(s): S A RAZAK**

**Counsel for the Respondents: GP FOR SOCIAL WELFARE**

**The Court made the following: ORDER**

**HON'BLE SRI JUSTICE D.V.S.S.SOMAYAJULU****W.P.No.16602 of 2020****ORDER :**

This writ petition is filed seeking a writ of Mandamus declaring that the endorsement dated 19.06.2020 passed by respondent No.3 rejecting the claim of the petitioner for employment as illegal, unjust, contrary to the award passed by the Legal Services Authority.

This Court has heard Sri S.A.Razzaak, learned counsel for the petitioner and the Government Pleader for Social Welfare.

The petitioner before this Court claims to be the adopted son of one late Sri K.Deena Dayal. Sri K.Deena Dayal was murdered on 08.04.2013. A case was registered under section 302 IPC., but after the investigation, the Police closed the case as undetectable and a final report dated 04.02.2016 was also filed in the Court. The petitioner, who claims to be the adopted son of the deceased, is claiming for compensation and also employment as per the provisions of the Scheduled Caste, Scheduled Tribes (Prevention of Atrocities) Act, 1989 and the Amendment in 2015 (hereinafter referred to as the Act). Apart from that, he submits that he has also entered into a compromise with the other legal heir of K.Deena Dayal in a Lok Adalat and as per the compromise, the petitioner is entitled to compassionate appointment under the provisions of the Act.



Learned counsel for the petitioner argued the matter at length and pointed out the various facts, the correspondence that took place between the parties and argued that in view of the amendment to the Act and Rules, the petitioner is entitled to compassionate appointment. The contention of the learned counsel is that the enactment itself and its amendments are beneficial/welfare legislations which should be liberally interpreted and would entitle the petitioner to seek compassionate appointment under the relevant Government Orders by which the rules have been framed. Learned counsel argues that the award of the Lok Adalat is also binding on the respondents and it is a valid compromise. He points out that the petitioner, being the adopted son, is entitled to the employment under G.O.Ms.No.3 dated 16.01.1996 as modified later.

Relying upon the definition of 'Family' in G.O.Ms.No.43 dated 15.04.2015, the learned counsel argues that even if the adoption is not correct, he fits within the definition of 'family' under clause 2 (e) since, he is Sri Deen Dayal's brother's son. The contention of the learned counsel for the petitioner is therefore to the effect that the petitioner is entitled to appropriate employment and the rejection of the same by the respondent is not correct.

In reply to this, learned Government Pleader for Social Welfare argues in line with the counter affidavit that has been filed. It is his contention essentially that the provision of law on



which the petitioner is relying would only apply, if the adoption is valid. In the case on hand, the learned Government Pleader points out that the adoption deed is not valid and that on the date of adoption, the petitioner was aged 18 years.

It is also his contention that after obtaining legal opinion, the State has come to the conclusion that the petitioner is not entitled to employment as the adoption itself is not valid. He also submits that a declaration of “status” that is being sought by the petitioner cannot be granted in a writ of this nature. The validity of the adoption is the essential defense that is urged by the learned Government Pleader for Social Welfare. The adoption and its validity should be clearly pleaded and proved as per him in an appropriate proceeding. He does not dispute the existence of the provisions of the Act, or the facts which are detailed by the petitioner. It is his essential contention that the adoption is not valid and that consequently the petitioner is not entitled to any relief in this writ.

This Court after hearing both the learned counsel notices that the deed of adoption on which both the parties rely upon is not really before this Court. The petitioner in his wisdom has only challenged the action of the respondents in rejecting his request for employment. He also pleaded in his writ affidavit itself that the reliance on the age of the petitioner for deciding on the validity of the adoption is not correct as the restriction of age has no place in the community of Sudras to which the petitioner belongs. He also argues that in the alternative, as the family



member and a relative by birth to the deceased K.Deena Dayal, he is entitled to employment.

The fact that the deceased was murdered and the case was closed is not in dispute. As far as the contention of the learned counsel that age of the adopted child is not very material is concerned, it is not supported by any law. The petitioner admittedly is a Hindu. One of the essentials of a valid adoption is that the child being given in adoption should be below 15 years of age. Section 10 (iv) of the Hindu Adoption and Maintenance Act, 1956 makes this very clear.

This section also shows that if there is a custom or usage applicable to the parties, this upper limit of 15 years is not applicable. In the case on hand, the petitioners have not pleaded let alone proved the existence of any custom or usage applicable either to the petitioner's family or to his community in general. The existence of the custom and its applicability are matters of pleading and proof. The same are totally absent in the present case.

Even if the age of the petitioner is looked into, the writ is filed in the year 2020 and he has been described as a person aged about 32 years. This means he was born in 1988. As per the parties the adoption is performed on 04.10.2004 which means he was 16 on the date of the adoption. The Family Members Certificate filed by the petitioner dated 24.05.2016 shows that he is aged 29 years on the date which means that he



was born in 1987 which makes him 17 years old by the time of adoption in the year 2004. The representations on which the Revenue Department relies upon states that he is aged 18 years. Therefore, the available evidence and the documents do not disclose clearly that the petitioner was aged below 15 years as on the date of the alleged adoption.

The petitioner before this Court is challenging the order of the State rejecting his claim for employment on the ground that he did not fulfill his minimum age criteria prescribed under the section mentioned above. Despite the rejection on this specific ground, the petitioner did not plead or prove that the adoption is valid and did not file any categorical proof of his age more so on the date of adoption. Apart from this, this Court is also of the opinion that the proof of adoption is necessary. The Hindu Adoption and Maintenance Act, 1956 spells out the essential conditions for a valid adoption. Section 4 says that the Act will have overriding effect over any Act/Rule, interpretation of Hindu Act or any custom or usage which is prevalent by then. Any other existing law before the Act was also cease to apply and in addition, Section 5 which is to the following effect makes it clear that any adoption made after the Act except in accordance with the provisions of the shall be void.

5. Adoptions to be regulated by this Chapter- (1) No adoption shall be made after the commencement of this Act by or to a Hindu except in accordance with the provisions contained in this Chapter, and any



adoption made in contravention of the said provisions shall be void.

(2) An adoption which is void shall neither create any rights in the adoptive family in favour of any person which he or she could not have acquired except by reason of the adoption, nor destroy the rights of any person in the family of his or her birth.

In addition, sections 6 to 11 deal with other requisites for a valid adoption. In the opinion of this Court, since an adoption, has the effect of disrupting the natural succession and has the effect of conferring a certain status on the petitioner, it is a matter of pleading and proof. The petitioner, whose claim has been rejected on the ground that there is no valid adoption has to necessarily establish his rights by adequate pleading and proof that there was a valid adoption confirming to the legal and factual requisites mentioned above and that there were actual giving and taking of the child in adoption. These are matters of pleading and evidence which will determine the status of the individual and as such it is only a declaratory suit that can be filed in a civil Court of competent jurisdiction and not a writ, in the opinion of this Court, a writ petition is not a proper proceeding for the relief sought.

Apart from these two issues, this Court finds that the petitioner is also relying upon the decree passed in the Lok Adalat between the daughter of late Deena Dayal and the petitioner. It is important to note that the State is not a party to this proceedings. The judgment/Award that was passed may



be binding between the parties to the said litigation, since it was based upon some concessions. However, it cannot be said that the same is conferring a right on the petitioner qua the State to seek employment. The daughter of late Deena Dayal may not have an objection and the award passed may operate as *res judicata/estoppel* against her, but it does not confer right on the person/petitioner to claim employment with the respondents. The deed of adoption or its validity are not the subject matter of the decision before the Lok Adalat. Therefore, this Court is of the opinion that the award of the Lok Adalat is not binding on the respondent-State.

Learned counsel for the petitioner also argued in the alternative that even if the deed of adoption is not valid, the petitioner is entitled to employment on the ground that he is a blood relative and family member. He relies upon the definition of 'family' clause (2)(e) of G.O.Ms.No.43 to support his argument. However, a close reading of this G.O.Ms.No.43 shows that it is passed/brought into existence only for the purpose of providing funds for the purpose of compensation to the victims or their dependents. These victims or their dependents suffer loss or injury as a result of a crime and they require rehabilitation and help. A dependant who is entitled to such help/assistance is defined in section 2(b). The dependant must prove that he is fully dependant on the victim before claiming the compensation. Family also includes blood relations living in the same household. In the opinion of this Court, Rule 7 of this G.O. clarifies the procedure to be followed before the compensation is





to be granted. It is a matter of proof before the District Legal Services Authority. The genuineness of the claim shall have to be decided by the District Legal Services Authority. Section 9(a) also provides upper limit or time period for filing of an application. Therefore, this Court is of the opinion that G.O.Ms.No.43 will not confer any status on the petitioner to claim the relief particularly in this writ petition. This G.O. came into force on 15.04.2015 itself, but the petitioner did not pursue his claim as per the said G.O.

Relying upon the Amendment Act in 2015 to the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Amendment Act, 2015 (Act 1 of 2016), learned counsel argues that the petitioner falls within the definition of a victim as per the amended clause 2(ec) which as follows:

(ec) “victim” means any individual who falls within the definition of the “Scheduled Castes and Scheduled Tribes” under clause (c) of sub-section (1) of section 2, and who has suffered or experienced physical, mental, psychological emotional or monetary harm or harm to his property as a result of the commission, of any offence under this Act and includes his relatives, legal guardian and legal heirs;

However, this Court has to hold (after considering the purpose for which this sub-section has been inserted) that it is to confer a right to claim compensation on a victim and also his relatives, legal guardian and legal heirs who have suffered or experienced physical, mental, psychological or other harm.



Again in the opinion of this Court, this is a matter which has to be established. The right to claim anything under this amended section would arise if the petitioner is able to establish by virtue of being a relative, he has suffered physical, mental or other harm. The mere fact that the Act has an inclusive definition of victim does not lead to irresistible conclusion that the petitioner can claim employment on the basis of this definition.

Lastly, this Court notices that it is G.O.Ms.No.3 dated 16.01.1996 that gives a right to the petitioner to seek employment. Annexure 1 to the G.O.Ms.No.3 deals with the relief that can be granted for the various offences that are described. Clause 21 deals with the murder and states that in addition to the compensation payable for the murder, pension is payable to the widow or other dependants of the deceased or employment to one member of the family or provision of agricultural land and houses. Therefore, this Rule by itself also does not provide for an absolute right or confer an absolute right on the petitioner to claim employment. In the opinion of this Court, the definition of family in G.O.Ms.No.43 cannot also be applied to the present case. Clause 21 gives the alternatives to the State. The petitioner who wants to seek employment will have to plead and prove that all the other sub sections would not apply and that he fits within the definition of 'member of a family of the deceased' for seeking employment. This basic parameter is not met by the petitioner as he did not prove that the adoption on which he relies is correct and is as per the law.



For all the above mentioned reasons, this Court is of the opinion that the writ is not an appropriate proceeding and that the petitioner has failed to prove that he has the necessary status to claim employment. A declaration of status is the proper remedy in this case. Unless and until the petitioner's status as the legal heir/adopted son is established in a comprehensive civil suit, he is not entitled to any benefits.

The writ petition is misconceived and is dismissed. No order as to costs.

As a sequel, the miscellaneous applications, pending if any, shall stand dismissed.

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D.V.S.S.SOMAYAJULU,J

Date : 15.06.2021  
Note: L.R. copy be marked  
KLP