
(2011) 07 AP CK 0020

In the Andhra Pradesh High Court

Case No : Writ Petition No. 29401 of 2010

Union of India (UOI) and Others

APPELLANT

Vs

C. Aruna Devi and Another

RESPONDENT

Date of Decision : 07-07-2011

Acts Referred:

All India Services Act, 1951 — Section 3, 3(1)
Constitution of India, 1950 — Article 311, 326
Hindu Adoptions and Maintenance Act, 1956 — Section 16

Citation : (2011) 6 ALD 130 : (2011) 5 ALT 757

Hon'ble Judges : K.G. Shankar, J; Ghulam Mohammed, J

Bench : Division Bench

Advocate : C.V. Rajeeva Reddy and C.V. Vinitha Reddy, S.C. for SC Railways, for the Appellant; K.R.K.V. Prasad, for R-1, for the Respondent

Final Decision : Dismissed

Judgement

Ghulam Mohammed, J.—The writ petition is filed to issue an order, more particularly, one in the nature of Writ of Certiorari to call for the records relating to the order dated 05.08.2010 passed in O.A. No. 553 of 2010 on the file of the Central Administrative Tribunal, Hyderabad and to quash the same as illegal and arbitrary.

2. The brief facts of the case are as follows:

a) One P. Obulesu while working as Senior Gangman under SSE/PW/BG/Ananthapur, one of the units of South Central Railway, Secunderabad died on 18.09.2000. During the lifetime of said P. Obulesu, he executed an affidavit dated 16.09.1995 stating that he has adopted a girl by name C. Aruna Devi, the first Respondent herein, when she was six years old. He submitted the said adoption deed, which was registered by the Joint Sub-Registrar, Anantapur on 13.04.1995, before the Senior Divisional Personnel Officer, South Central Railway, Guntakal Division seeking permission to recognize her as his adopted daughter. The said Senior Divisional Personnel Officer vide letter dated

13.05.1998 informed that the request of P. Obulesu has been agreed to by the competent authority. In terms of the said approval, P. Obulesu has included the name of her adopted daughter in the family declaration form and submitted for drawing privilege passes and accordingly her name was included in the privilege passes drawn from time to time. Consequent to the death of P. Obulesu, the firstRespondent herein, who is her adopted daughter and who is the applicant in O.A. No. 553 of 2010, submitted an application for a suitable appointment on compassionate grounds. Thereafter, she was appointed as Ticket Collector on production of adoption deed. She was also paid the pensionary benefits as per Rules. She was later promoted to the post of Senior Travelling Ticket Examiner.

b) While the matter stood thus, a complaint was received by the Senior Deputy General Manager (Vigilance), South Central Railway, Secunderabad stating that the firstRespondent was not adopted daughter of P. Obulesu and she had managed to produce a fake adoption deed as if she was adopted by P. Obulesu. Thereafter, the Railway Vigilance Branch conducted detailed investigation. In the investigation, all relevant documents were scrutinized viz., adoption deed dated 13.04.1995, affidavit of P. Obulesu dated 16.09.1995, affidavit of firstRespondent dated 22.02.2001, nomination dated 17.01.2003 executed by the firstRespondent, copy of divorce petition of the firstRespondent seeking for divorce from her husband and school/college certificates obtained by her during the years 1994, 2001 & 2004. On the scrutiny of above documents, it was noticed that as per adoption deed dated 13.04.1995, Sri C.Obulesu, S/o.C.P.Obulesu, r/o.D. No. 13/440-A, Srinivasanagar, Ananthapur is the party, who adopted C. Arunadevi, firstRespondent herein, whereas as per affidavit dated 16.09.1995 of Sri P. Obulesu, s/o. Pedda Obulesu Chakala, r/o. D. No. 13/678, C-117-2, Sreenivasanagar, Ananthapur, he is the party who adopted her. By which it was evident that Sri P. Obulesu, s/o. Pedda Obulesu Chakala did not adopt the firstRespondent. Therefore, the firstRespondent was issued with a show cause notice dated 27.10.2009 by the Assistant Personnel Officer (Traffic), Guntakal calling upon her to establish her relationship as adopted daughter of the deceased employee, failing which to submit her explanation as to why her services should not be terminated. In response to the show cause notice, the firstRespondent by letter dated 11.12.2009 sought time for 90 days for submitting relevant documents in proof of her adoption to Sri P. Obulesu. Despite time was granted up to 10.03.2010, she had not produced the relevant documents and therefore, she was terminated with immediate effect vide order dated 28.05.2010.

c) Questioning the termination order, she filed O.A. No. 553 of 2010 before the Central Administrative Tribunal, Hyderabad seeking to reinstate her as Senior Ticket Collector. After considering the matter in detail, the Tribunal by order dated 05.08.2010 allowed the said O.A. setting aside the termination order dated 28.05.2010 and the railway authorities are directed to reinstate the firstRespondent immediately and grant all consequential benefits within one month from the date of receipt of a copy of said order. Further, in regard to

validity of the registered adoption deed, the Respondents are, however, at liberty to approach the appropriate authority/forum to declare the registered adoption deed, which was accepted by the administration as void with due notice to the first Respondent. Assailing the Tribunal order dated 28.05.2010, the South Central Railway filed the present writ petition.

3. Along with the writ petition, the South Central Railway filed WPMP No. 37444 of 2010 seeking to suspend the order dated 05.08.2010 of the Tribunal pending disposal of the writ petition. While admitting the writ petition on 26.11.2010, this Court granted interim suspension as prayed for. Aggrieved by the order of interim suspension, the first Respondent filed vacate stay petition seeking to vacate the interim suspension granted by this Court on 26.11.2010.

4. When the vacate stay petition came up for hearing, with the consent of both the counsel, the writ petition is taken up for final disposal.

5. Heard Sri C.V. Rajeeva Reddy, learned Counsel appearing on behalf of C.V. Vinitha Reddy, learned Standing Counsel for the writ Petitioner-South Central Railway, Secunderabad and Sri K.R.K.V. Prasad, learned Counsel for the first Respondent.

6. Now, the points that arise for our consideration is

a) Whether the impugned order of the Tribunal dated 05.08.2010 passed in O.A. No. 553 of 2010 is perverse or not; and

b) Whether there is any fraud or misrepresentation committed by the first Respondent.

7. The learned Standing Counsel for the Petitioner-South Central Railway contended that the statutory presumption u/s 16 of the Hindu Adoption and Maintenance Act, 1956 ("the Act" for brevity) is a rebuttable presumption and mere producing the registered adoption deed is not a conclusive proof of adoption; that the legal presumption u/s 16 of the Act stood rebutted in the facts and circumstances of the case rendering the first Respondent not entitled for appointment in South Central Railway and that the impugned order of the Tribunal is contrary to the decision rendered by the Supreme Court in *Jai Singh Vs. Shakuntala*, wherein, it was observed thus:

The issue thus arises as to whether the High Court was justified in laying emphasis on the conduct of the adopted son. While it is true that the registered instrument of adoption presumably stands out to be taken to be correct but the Court is not precluded from looking into it upon production of some evidence contra the adoption. Evidence, which is made available to the court for rebutting the presumption, can always be looked into.

8. The learned Standing Counsel for the Petitioners further contended that the finding of the Tribunal that after the death of her adopted father, the first Respondent has declared Smt. Ch. Narayanamma, who is her natural mother,

as her nominee on 17.01.2003 and in her school certificates obtained by her during 1994, 2000 and 2001, her father's name is shown as C. Ranganayakulu, is not sufficient reason to declare that the registered adoption deed, is not legally valid and is perverse and such a finding is liable to be set aside. He further contended that the adoption deed dated 13.04.1995 is sham and is brought into existence only for the purpose of her claiming compassionate appointment; that the firstRespondent secured the appointment on compassionate grounds by fraudulent means by playing fraud on Railway administration and also committed fraud on the Constitution and therefore, the order under challenge in this writ petition is liable to be set aside.

9. The learned Standing Counsel for the writPetitioners further contended that as per adoption deed dated 13.04.1995, Sri C. Obulesu, s/o.C.P. Obulesu residing in Door No. 13/440-A, Srinivasanagar, Ananthapur is the party who adopted the firstRespondent, whereas as per the affidavit dated 16.09.1995, P. Obulesu, s/o. Peda Obulesu Chakala residing in D. No. 13/678-C-117-2, Srinivasa Nagar, Ananthapur, is the party who adopted the firstRespondent and therefore, as per the adoption deed dated 13.04.1995, P. Obulesu Chakala working as a Senior Gangman is not the person who adopted the firstRespondent. He further submitted that as per notarised affidavit sworn and signed by the firstRespondent on 20.02.2001, P. Obulesu adopted her, vide registered deed No. 188/98 dated 13.04.1998 and whereas in terms of the adoption deed, it was registered on 13.04.1995, vide deed No. 188/95, which is indicative of lack of bona fides and therefore, the impugned order is liable to be set aside.

10. The learned Standing Counsel for the writPetitioners further contended that the firstRespondent has declared one Ms. C. Maheswari aged 22 years, who is her natural unmarried sister in the declaration of family members in the year 2008; the firstRespondent availed three railway privilege passes including her natural sister, even though P. Obulesu adopted her and therefore, the firstRespondent remained in her natural parents house rendering the adoption deed legally not valid. He further contended that the Tribunal committed a serious error in not going into the factual matrix and the entire proceedings of the firstRespondent in securing appointment on compassionate grounds in the South Central Railway as Ticket Collector consequent to the death of P. Obulesu, is void ab initio and the firstRespondent was rightly terminated from service.

11. In support of his contentions, the learned Standing Counsel for the writPetitioners placed the following citations:

a) In Meghmala and Others Vs. G. Narasimha Reddy and Others, the Supreme Court in paras 28 to 36 & 52 observed thus:

Fraud/Misrepresentation:

28. It is settled proposition of law that where an applicant gets an order/office by making misrepresentation or playing fraud upon the competent Authority, such order cannot be sustained in the eyes of law. "Fraud avoids all judicial acts

ecclesiastical or temporal." (Vide S.P. Chengalvaraya Naidu (dead) by L.Rs. Vs. Jagannath (dead) by L.Rs. and others, In Lazarus Estate Ltd. v. Besalay 1956 All. E.R. 349), the Court observed without equivocation that "no judgment of a Court, no order of a Minister can be allowed to stand if it has been obtained by fraud, for fraud unravels everything.

29. In Andhra Pradesh State Financial Corporation Vs. M/s. GAR Re-Rolling Mills and another, and State of Maharashtra and Others Vs. Prabhu, this Court observed that a writ Court, while exercising its equitable jurisdiction, should not act as to prevent perpetration of a legal fraud as the courts are obliged to do justice by promotion of good faith. "Equity is, also, known to prevent the law from the crafty evasions and subtleties invented to evade law."

30. In Smt. Shrisht Dhawan Vs. M/s. Shaw Brothers, it has been held as under:

Fraud and collusion vitiate even the most solemn proceedings in any civilized system of jurisprudence. It is a concept descriptive of human conduct.

31. In United India Insurance Co. Ltd. Vs. Rajendra Singh and Others, this Court observed that "Fraud and justice never dwell together" (fraus et jus nunquam cohabitant) and it is a pristine maxim, which has never lost its temper over all these centuries.

32. The ratio laid down by this Court in various cases is that dishonesty should not be permitted to bear the fruit and benefit to the persons who played fraud or made misrepresentation and in such circumstances the Court should not perpetuate the fraud. (See District Collector & Chairman, Vizianagaram Social Welfare Residential School Society, District Collector and Chairman, Vizianagaram Social Welfare Residential School Society, Vizianagaram and Another Vs. M. Tripura Sundari Devi, ; Union of India and Ors. v. M. Bhaskaran (1995) 4 SCC 100; Vice Chairman, Kendriya Vidyalaya Sangathan and Anr. v. Girdharilal Yadav (2004) 6 SCC 325 ; State of Maharashtra and Others Vs. Ravi Prakash Babulalsing Parmar and Another, ; Himadri Chemicals Industries Ltd. Vs. Coal Tar Refining Company, ; and Md. Ibrahim and Others Vs. State of Bihar and Another,

33. Fraud is an intrinsic, collateral act, and fraud of an egregious nature would vitiate the most solemn proceedings of courts of justice. Fraud is an act of deliberate deception with a design to secure something, which is otherwise not due. The expression "fraud" involves two elements, deceit and injury to the person deceived. It is a cheating intended to get an advantage. (Vide Dr. Vimla Vs. Delhi Administration, ; Indian Bank Vs. M/s. Satyam Fibres (India) Pvt. Ltd., ; The State of Andhra Pradesh and Another Vs. T. Suryachandra Rao, ; K.D. Sharma Vs. Steel Authority of India Ltd. and Others, ; and Regional Manager, Central Bank of India Vs. Madhulika Guruprasad Dahir and Others,

34. An act of fraud on court is always viewed seriously. A collusion or conspiracy with a view to deprive the rights of the others in relation to a property would render the transaction void ab initio. Fraud and deception are synonymous.

Although in a given case a deception may not amount to fraud, fraud is anathema to all equitable principles and any affair tainted with fraud cannot be perpetuated or saved by the application of any equitable doctrine including res judicata. Fraud is proved when it is shown that a false representation has been made (i) knowingly, or (ii) without belief in its truth, or (iii) recklessly, careless whether it be true or false. Suppression of a material document would also amount to a fraud on the court. (Vide *Gowrishankar and Another Vs. Joshi Amba Shankar Family Trust and Others*, ; *Ram Chandra Singh Vs. Savitri Devi and Others*, ; *Roshan Deen Vs. Preeti Lal*, ; *Ram Preeti Yadav v. U.P. Board of High School & Intermediate Education AIR 2003 SC 4628*; and *Ashok Leyland Ltd. v. State of Tamil Nadu and Anr. AIR 2004 SC 2836*).

35. In *kinch v. Walcott* (1929) AC 482, it has been held that:

....mere constructive fraud is not, at all events after long delay, sufficient but such a judgment will not be set aside upon mere proof that the judgment was obtained by perjury.

Thus, detection/discovery of constructive fraud at a much belated stage may not be sufficient to set aside the judgment procured by perjury.

36. From the above, it is evident that even in judicial proceedings, once a fraud is proved, all advantages gained by playing fraud can be taken away. In such an eventuality the questions of non-executing of the statutory remedies or statutory bars like doctrine of res judicata are not attracted. Suppression of any material fact/document amounts to a fraud on the court. Every court has an inherent power to recall its own order obtained by fraud as the order so obtained is non est.

52. The High Court failed to take all aforesaid factors into consideration before passing impugned judgment and order.

b) In *R. Vishwanatha Pillai v. State of Kerala*³ the Supreme Court in paras 12, 13 & 15 observed thus:

12. Article 311 provides that a member of a civil service of the Union or the State shall not be dismissed or removed by any authority subordinate to that by which he was appointed. That the employee shall not be dismissed or removed or reduced in rank except after an inquiry, in which he has been informed of the charges against him and a give a reasonable opportunity of being heard in respect of those charges. In exercise of the power conferred by Sub-section (1) of Section 3 of the All India Services Act, 1951, the Central Government, in consultation with the Governments of the States concerned, framed the All India Services (Discipline and Appeal) Rules, 1969. These Rules lay down the detailed procedure as to the manner in which the action is required to be taken against a delinquent public servant. Relying upon the Article 311 and provisions of the Rules, it was contended by Shri Ranjit Kumar, learned senior counsel for the Appellant, that the service of the Appellant could not be terminated without

following the procedure laid therein.

13. We do not find any substance in this submission. The misconduct alleged against theAppellant is that he entered the service against reserved post meant for the Scheduled Caste/Scheduled Tribe on the basis of a false caste certificate. While appointing theAppellant as Deputy Superintendent of Police in the year 1977, he was considered as belonging to the Scheduled Caste. This was found to be wrong and his appointment is to be treated as cancelled. This action has been taken not for any misconduct of theAppellant during his tenure as civil servant but on the finding that he does not belong to the Scheduled Caste as claimed by him before his appointment to the post. As to whether the certificate produced by him was genuine or not was examined in detail by the KIRTADS and the Scrutiny Committee constituted under the orders of this Court.Appellant was given due opportunity to defend himself. The order passed by the Scrutiny Committee was upheld by the High Court and later on by this Court. On close scrutiny of facts we find that the safeguards provided in Article 311 of the Constitution that the Government servant should not be dismissed or removed or reduced in rank without holding an inquiry in which he has been given an opportunity to defend himself stands complied with. Instead of departmental inquiry the inquiry has been conducted by the Scrutiny Committee consisting of three officers, namely, (1) an Additional or Joint Secretary or any officer higher in rank of the Director of the department concerned, (II) The Director, Social Welfare/Tribal Welfare/Backward Class Welfare, as the case may be, and (III) in the case of Scheduled Castes another officer having intimate knowledge in the verification and issuance of the social status certifies, who were better equipped to examine the question regarding the validity or otherwise of the caste certificate. Due opportunity was given to theAppellant to put-forth his point of view and defend himself. The issuance of a fresh notice under the Rules for proving the same misconduct which has already been examined by an independent body constituted under the direction of this Court, the decision of which has already been upheld up to this Court would be repetitive as well as futile. The second safeguard in Article 311 that the order of dismissal, removal and reduction in rank should not be passed by an authority subordinate to that by which he was appointed has also been met with. The impugned order terminating the services of theAppellant has been passed by his appointing authority.

15. This apart, theAppellant obtained the appointment in the service on the basis that he belonged to a Scheduled Caste community. When it was found by the Scrutiny Committee that he did not belong to the Scheduled Caste community, then the very basis of his appointment was taken away. His appointment was no appointment in the eyes of law. He cannot claim a right to the post as he had usurped the post meant for a reserved candidate by playing a fraud and producing a false caste certificate. Unless theAppellant can lay a claim to the post on the basis of his appointment he cannot claim the constitutional guarantee given under the Article 311 of the Constitution. As he had obtained

the appointment on the basis of a false caste certificate he cannot be considered to be a person who holds a post within the meaning of Article 311 of the Constitution of India. Finding recorded by the Scrutiny Committee that theAppellant got the appointment on the basis of false caste certificate has become final. The position, therefore, is that theAppellant has usurped the post, which should have gone to a member of the Scheduled Caste. In view of the finding recorded by the Scrutiny Committee and upheld up to this Court he has disqualified himself to hold the post. Appointment was void from its inception. It cannot be said that the said void appointment would enable theAppellant to claim that he was holding a civil post within the meaning of Article 311 of the Constitution of India. AsAppellant had obtained the appointment by playing a fraud he cannot be allowed to take advantage of his own fraud in entering the service and claim that he was holder of the post entitled to be dealt with in terms of Article 311 of the Constitution of India or the Rules framed thereunder. Where an appointment in a service has been acquired by practising fraud or deceit such an appointment is no appointment in law, in service and in such a situation Article 311 of the Constitution is not attracted at all.

c) In *Bank of India v. Avinash D. Mandivikar*⁴ the Supreme Court in paras 6, 9 and 12 observed thus:

6. Respondent 1 employee obtained appointment in the service on the basis that he belonged to a Scheduled Tribe. When the clear finding of the Scrutiny Committee is that he did not belong to the Scheduled Tribe, the very foundation of his appointment collapses and his appointment is no appointment in the eye of law. There is absolutely no justification for his claim in respect of the post he usurped, as the same was meant for a reserved candidate.

9. A similar plea about long years of service was considered by this Court in *R. Vishwanatha Pillai v. State of Kerala* to be inconsequential.

It was then contended by Shri Ranjit Kumar, learned Senior Counsel for theAppellant that since theAppellant has rendered about 27 years of service, the order of dismissal be substituted by an order of compulsory retirement or removal from service to protect the pensionary benefits of theAppellant. We do not find any substance in this submission as well. The rights to salary, pension and other service benefits are entirely statutory in nature in public service. TheAppellant obtained the appointment against a post meant for a reserved candidate by producing a false caste certificate and by playing a fraud. His appointment to the post was void and non est in the eye of the law. The right to salary or pension after retirement flows from a valid and legal appointment. The consequential right of pension and monetary benefits can be given only if the appointment was valid and legal. Such benefits cannot be given in a case where the appointment was found to have been obtained fraudulently and rested on a false caste certificate. A person who entered the service by producing a false caste certificate and obtained appointment for the post meant for a Scheduled Caste, thus depriving a genuine Scheduled Caste candidate of appointment to

that post, does not deserve any sympathy or indulgence of this Court. A person who seeks equity must come with clean hands. He, who comes to the court with false claims, cannot plead equity nor would the court be justified to exercise equity jurisdiction in his favour. A person who seeks equity must act in a fair and equitable manner. Equity jurisdiction cannot be exercised in the case of a person who got the appointment on the basis of a false caste certificate by playing a fraud. No sympathy and equitable consideration can come to his rescue. We are of the view that equity or compassion cannot be allowed to bend the arms of law in a case where an individual acquired a status by practising fraud.

12. Looked at from any angle the High Court's judgment holding that the Respondent 1 employee was to be reinstated in the same post as originally held is clearly untenable. The order of termination does not suffer from any infirmity and the High Court should not have interfered with it. By giving protection for even a limited period, the result would be that a person who has a legitimate claim shall be deprived the benefits. On the other hand, a person who has obtained it by illegitimate means would continue to enjoy it notwithstanding the clear finding that he does not even have a shadow of right even to be considered for appointment.

d) In *Regional Manager, Central bank of India v. Madhulika Guru Prasa Dahir*⁵, the Supreme Court in para 13 observed thus:

13. Similarly, the plea regarding rendering of services for a long period has been considered and rejected in a series of decisions of this Court and we deem it unnecessary to launch on exhaustive dissertation on principles in this context. It would suffice to state that except in a few decisions, where the admission/appointment was not cancelled because of peculiar factual matrix obtaining therein, the consensus of judicial opinion is that equity, sympathy or generosity has no place where the original appointment rests on a false caste certificate. A person who enters the service by producing a false caste certificate and obtains appointment for the post meant for a Scheduled Caste or Scheduled Tribe or OBC, as the case may be, deprives a genuine candidate falling in either of the said categories, of appointment to that post, does not deserve any sympathy or indulgence of this Court. He who comes to the Court with a claim based on falsity and deception can not plead equity nor the Court would be justified to exercise equity jurisdiction in his favour. An act of deliberate deception with a design to secure something, which is otherwise not due, tantamounts to fraud. Fraud is a conduct either by letter or words, which induces the other person or authority to take a definite determinative stand as a response to the conduct of the former either by words or letter.

e) In *State of Chhattisgarh v. Dhirjo Kumar Sengar*⁶ the Supreme Court in paras 9, 15 & 19 observed thus:

9. Chittaranjan Singh Sengar was the Headmaster of a government school. He did not file any nomination in respect of his statutory dues. As he was unmarried,

his brother and theRespondent were his natural heirs. Application for grant of succession certificate was not filed by theRespondent alone. It was filed jointly by him and his father. Had the respdnt been his adopted son, he would have claimed a succession certificate only on that basis. His natural father G.S. Sengar could not have been arrayed as an applicant. No joint succession certificate, thus, could have been applied for and granted. Various other documents have also been brought on record. It appears from the marksheet of the High School examination of the responent that his father's name was shown as Ganesh Singh Sengar. Similar endorsement has been made in the marksheet in his Higher Secondary examination. Even the Principal of the said school while forwarding theRespondent's application for payment of dues of Chittaranjan Singh Sengar did not state that theRespondent was his adopted son.

15. We have noticed herein before that in the application for grant of succession certificate, G.S. Sengar was described as theRespondent's father. Even n the marksheets which had been drawn up on the basis of the record maintained in the school in which he was studying, his father's name was G.S.Sengar. It may be correct that for the purpose of proving that theRespondent was the adopted son of the deceased a registered deed of adoption was not imperative in character, but then, he was required to prove that datta human ceremony or compliance with the other statutory conditions for a vlaid adoption had taken place.

19. TheRespondent keeping in view the constitutional scheme has not only committed a fraud on the Department but also committed a fraud on the Constitution. As commission of fraud by him has categorically been proved, in our opinion, the principles of natural justice were not required to be complied with.

12. Per contra, the learned Counsel for the firstRespondent contended that the contention of the South Central Railway that the adoption deed is brought into existence for the purpose of claiming compassionate appointment is absurd, as the Railway Department itself issued proceedings dated 13.05.1998 during the life time of the deceased employee to the effect that the adoption is agreed to by the Administration and the adoption deed had taken place for getting compassionate appointment after several years. He further submitted that the South Central Railway after due verification of all facts and documents gave the compassionate appointment to the firstRespondent and in such an event, it cannot be said that the appointment was secured by fraudulent means i.e., by making misrepresentation and by playing fraud on administration.

13. The learned Counsel for the firstRespondent further contended that mere difference in door numbers, mere some typographical errors in the affidavit and mere inclusion of the name of the unmarried sister in the railway privilege pass would not lead to the conclusion that the firstRespondent is not the adopted daughter of P. Obulesu. The adopted father was the maternal uncle who adopted the firstRespondent when she was two years old and who remained unmarried

was living with the natural parents of the firstRespondent at the time of his death. Without examining all the facts thoroughly, drawing adverse conclusion is not proper to contend that the adoption deed had been rendered invalid.

14. The learned Counsel for the firstRespondent further contended that the firstRespondent was appointed on the basis of a registered adoption deed, but not on the mere adoption deed as contended by the railway authorities and they have deliberately mentioned as adoption deed instead of registered adoption deed to justify their malicious act of terminating her services. He further contended that in view of the statutory presumption available u/s 16 of the Act, the South Central Railway has no right to file a Writ of Certiorari under Article 226 of the Constitution of India challenging the impugned order of the Tribunal. He further contended that as per the instructions of Central Vigilance Commission, the railway authorities shall not take any action on anonymous/pseudonymous complaints and basing on the anonymous complaint, the railway authorities cannot terminate the firstRespondent from service. Therefore, the impugned order is liable to be dismissed.

15. We have heard the contentions of both sides at length and we have thoroughly gone through the relevant material and decisions quoted by both parties.

16. As can be seen from the letter dated 13.05.1998 addressed by the Senior Divisional Personnel Officer to the deceased P. Obulesu, it is clear that the competent authority has agreed to his request for consideration of adoption of Kum. Chakala Arunadevi, aged 19 years, who is the firstRespondent herein, on the basis of adoption deed, which was registered by the Joint Sub-Registrar, Anantapur. It is not the case of the South Central Railway that the said letter was subsequently withdrawn or cancelled by the administration. As per Serial Circular No. 24/97, adopted sons/daughters can be considered for compassionate appointment provided such adoption has been accepted for the issue of privilege pass/PTOs as per the provisions under the pass Rules. The deceased employee was issued with privilege pass in favour of his adopted daughter, firstRespondent herein, which goes to show that the said adoption was accepted by the competent authority. In those circumstances, there is no misrepresentation or fraud committed by the firstRespondent, the adopted daughter of deceased in securing the job on compassionate grounds after the death of the deceased. Merely because the name of the adopted father has not changed in the school/colleges records, it cannot be said that the firstRespondent is not the adopted daughter of deceased employee P. Obulesu.

17. The Tribunal while allowing the O.A. observed that when the request of late P. Obulesu for adoption of the firstRespondent was accepted by the South Central Railway on the basis of registered adoption deed and the same has not been withdrawn at any point of time and the deceased employee has been issued with privilege pass in favour of his adopted daughter, the firstRespondent herein is eligible to get compassionate appointment under Serial Circular No. 24/97.

Therefore, such appointment cannot be terminated on the basis of the report of Vigilance Inquiry Report made on the basis of anonymous complaint. The registered adoption deed has to be declared void by the competent authority. The South Central Railway is not competent to declare the registered adoption deed as void for any reason whatsoever. More over, in the show cause notice dated 27.10.2009 and in the termination order 28.05.2010, it is not mentioned under which provision of law the firstRespondent is terminated. Therefore, the termination order has been issued without jurisdiction.

18. The fact that after the death of her adopted father, the firstRespondent has declared Smt. Ch. Narayanamma as her nominee on 17.01.2003 and that in her school/college certificates obtained by her during 1994, 2000 and 2001 her father's name is shown as C. Ranganayakulu is not sufficient reason to declare that the registered adoption deed is not valid. Moreover, the railway authorities cannot declare the registered adoption deed as not valid. In case they are convinced with the Vigilance Committee Report, they have to approach the appropriate authority to declare the registered deed as void.

19. In Dhirjo Kumar Sengar's case (6 supra), the adoption deed was not registered one, however, in the present case the adoption deed is a registered one, which was accepted by the administration during the lifetime of the deceased adopted father and therefore, the facts of the present case are different from the facts of above case and the Tribunal rightly held that the cited case has no application to the facts of the present case. It is not a case where the firstRespondent herein has failed to establish her relationship with the deceased employee.

20. After considering the relevant documents and contentions and after considering the statutory presumption u/s 16 of the Act in respect of registered Adoption Deed, the Tribunal allowed the O.A. reinstating the firstRespondent into service. It is relevant to extract Section 16 of the Hindu Adoptions and Maintenance Act, 1956, which reads thus:

16. Presumption as to registered documents relating to adoptions:-Whenever any document registered under any law for the time being in force is produced before any Court purporting to record an adoption made and is signed by the person giving and the person taking the child in adoption, the Court shall presume that the adoption has been made in compliance with the provisions of this Act unless and until it is disproved."

A perusal of the above section shows that whenever any document registered under any law for the time being in force is produced before any Court purporting to record an adoption made and is signed by the person giving and the person taking the child in adoption, the Court shall presume that the adoption has been made in compliance with the provisions of this Act unless and until it is disproved.

21. The statutory presumption u/s 16 of the Act is certainly a rebuttable

presumption. However, the investigation done by the Vigilance Department by mere looking into certain documents does not amount to rebuttal of the presumption u/s 16. Mere not changing of the name of firstRespondent in the school/college records subsequent to the registered adoption deed, it cannot be said that she is not adopted daughter of the deceased employee. More over, the impugned order of the Tribunal is bound by the decision rendered by the Supreme Court in Jai Singh's case (stated supra). Without examining all the facts and circumstances thoroughly, drawing adverse conclusions against the firstRespondent is not proper and basing on the anonymous complaint, the railway authorities cannot terminate the firstRespondent.

22. As stated supra, the typographical errors, inadvertent mentions made in the documents do not decide the adoption deed as valid or not when the adoption is supported by a registered adoption deed. The Vigilance Commission of South Central Railway has no jurisdiction to decide that the registered adoption deed as invalid in law. Therefore, terminating the services of firstRespondent by ignoring that the adoption is supported by a registered adoption deed is patently an illegal act, which was committed by the railway authorities. Having accepted the relationship of the firstRespondent as adopted daughter of P. Obulesu way back in 1998 and released all the pensionary benefits relating to the said P. Obulesu after thorough verification, it cannot be said that the firstRespondent has not established her relationship as adopted daughter of P. Obulesu.

23. The employment of the firstRespondent cannot be terminated on the basis of the report of a Vigilance Department, which was done on the basis of an anonymous complaint without there being any declaration by a competent authority that the adoption deed is void. As rightly observed by the Tribunal, neither in the show cause notice dated 27.10.2009 nor in the termination order dated 28.05.2010, the administration has mentioned any Rule. Therefore, the ground urged that a registered adoption deed is not a conclusive proof of adoption, since the presumption is rebuttable, is liable to be rejected, as such a rebuttal has to be by following due process of law and not by a mere executive action of issuance of a show cause notice.

24. Having regard to the facts and circumstances of the case and in view of the above legal position, we find that there are no grounds to allow the writ petition. There is no irregularity or illegality in the impugned order and the Tribunal rightly set aside the termination order of the firstRespondent.

25. Accordingly, the writ petition is dismissed. There shall, however, be no order as to costs.