



WA No. 100362 of 2022

**IN THE HIGH COURT OF KARNATAKA, DHARWAD
BENCH**

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DATED THIS THE 4TH DAY OF NOVEMBER, 2022

PRESENT

THE HON'BLE MR JUSTICE SURAJ GOVINDARAJ

AND

THE HON'BLE MR JUSTICE G BASAVARAJA

WRIT APPEAL NO. 100362 OF 2022 (GM-RES)

BETWEEN:

1. GIRISH S/O VINAYAK KMUTTATTI
AGED ABOUT 32 YEARS,
OCC NIL, R/O. GOURI NILYA,
PINDAR GALLI, TALAWAR LANE,
BEHIND KADSIDDDESHWARA TEMPLE,
BANAHATTI, TQ. JAMAKHANDI,
DIST. BAGALKOT.

...APPELLANT

(BY SRI. SHRAVAN MADHAV K.P., ADVOCATE
AND SMT.DHANYA K.S., ADVOCATE)

AND:

1. STATE OF KARNATAKA
DEPARTMENT OF PERSONAL ADMINISTRATIVE REFORMS,
VIDHANA SOUDHA,
BANGALORE 560001,
REP. BY UNDER SECRETARY TO GOVERNMENT
2. THE DIRECTOR PROSECUTION
DEPARTMENT GOVERNMENT,
LITIGATION, VIKAS SOUDHA,
BENGALURU 560001.



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3. LEGAL OFFICER (SENIOR) DEPARTMENT OF PROSECUTION
BELAGAVI DIVISION,
POLICE BHAVAN, 2ND FLOOR,
PHQ, OLD P B ROAD,
BELAGAVI DISTRICT,
BELAGAVI. 590016
4. ASSISTANT PUBLIC PROSECUTOR
OFFICE OF THE PUBLIC PROSECUTOR,
JMFC COURT, BANAHATTI,
JAMAKHANDI TALUK,
BAGALKOT. 587301

...RESPONDENTS

(BY SRI. PRAVEEN UPPAR, HCGP)

THIS WRIT APPEAL IS FILED U/S.4 OF KARNATAKA HIGH COURT ACT, 1961, PRAYING TO 1) CALL FOR THE RECORDS AND SET-ASIDE THE IMPIGNED ORDER DATED 24.06.2021 PASSED IN WRIT PETITION NO. 107136/2018 (S-RES) PASSED BY LEARNED SINGLE JUDGE OF THIS HON'BLE COURT 2) STRIKE DOWN RULE 3(3) OF KARNATAKA CIVIL SERVICE (APPOINTMENT ON COMPASSIONATE GROUNDS) RULES, 1996 NOTIFICATION NO. DPAR 100 SCA 95 DATED 12/09/1996 ISSUED BY RESPONDENT NO.1 3) ISSUE A WRIT OF MANDAMUS OR ANY OTHER APPROPRIATE WITH OR DIRECTION DIRECTING THE RESPONDENT NO,1 TO 3 TO ISSUE APPOINTMENT ORDER ON COMPASSIONATE GROUND 4) ISSUE A WRIT OF CERTIORARI OR ANY OTHER APPROPRIATE WRIT OR ORDER QUASHING THE ENDORSEMENT DATED 07/08/2018 ISSUED BY RESPONDENT NO.2 (ANNEXURE-F OF THE WRIT PETITION) AND QUASH THE ENDORSEMENT DATED 16/08/2018 ISSUED BY RESPONDENT NO.4 (ANNEXURE-G OF THE WRIT PETITION), 5) GRANT OF SUCH OTHER RELIEF OR RELIEFS AS THIS HON'BLE COURT DEEM FIT TO GRANT UNDER THE FACTS AND CIRCUMSTANCES OR THE CASE, IN THE INTEREST OF JUSTICE AND EQUITY.

THIS WRIT APPEAL COMING ON FOR PRELIMINARY HEARING, THIS DAY, **SURAJ GOVINDARAJ J.**, DELIVERED THE FOLLOWING:



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JUDGMENT

1. Sri.Praveen Uppar, learned HCGP accepts notice for respondent Nos.1 to 4.
2. The appellant is before this Court seeking for the following reliefs:

"1) Call for the records and set-aside the impugned order dated 24.06.2021 passed in Writ Petition No.107136/2018 (S-RES) passed by learned Single Judge of this Hon'ble Court.

2) Strike down Rule 3(3) of Karnataka Civil Service (Appointment on Compassionate Grounds) Rules, 1996 Notification No.DPAR 100 SCA 95 dated 12/09/1996 issued by respondent No.1.

3) Issue a writ of mandamus or any other appropriate writ or direction directing the respondent No.1 to 3 to issue appointment order on compassionate ground.

4) Issue a writ of certiorari or any other appropriate writ or order quashing the endorsement dated 07/08/2018 issued by respondent No.2 (Annexure-F of the writ petition) and quash the endorsement dated 16/08/2018 issued by respondent No.4 (Annexure-G of the writ petition).

5) Grant of such other relief or reliefs as this Hon'ble Court deem fit to grant under the facts and circumstances or the case, in the interest of justice and equity."



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3. Writ Petition in W.P.No.107136/2018 had been filed seeking for the following reliefs:

"To strike down sub Rule (3) of Rule 3 of Karnataka Civil Service (Appointment on Compassionate Grounds) Rules, 1996 Notification to DPAR 100 SCA 95 dated 12.09.1996 issued by the respondent No.1 as per Annexure-H."

4. It is the case of the appellant that the petitioner is the adopted son of one Vinayak M Muttatti, who was working as Class-IV employee (dalayat) in the office of Assistant Public Prosecutor, JMFC, Banahatti. The appellant being adopted on 08.12.2011 by way of an adoption deed, the adoption was made on account of natural born son of the said Vinayak M Muttatti having expired in a road traffic accident on 08.11.2010.

5. The adoptive father Vinayak M Muttatti expired on 27.03.2018, the appellant had submitted a representation on 07.06.2018 seeking for compassionate appointment. The said representation



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was rejected by respondent No.2 vide endorsement dated 07.08.2018 and by respondent No.4 on 16.08.2018 on the ground that the appellant was a adopted son and the Rules do not provide for consideration of adopted son for compassionate appointment. It is in that background that the Writ Petition was filed.

6. The learned Single Judge by way of his order dated 24.06.2021 dismissed the said challenge on the ground that the Rules do not provide for an adopted son to be considered for compassionate appointment. It is in that background that the appellant is before this Court challenging the order of the learned Single Judge.

7. Another Single Judge of this Court in W.P.No.211068/2020 has considered all the issues and by judgement dated 23.02.2022 by taking into consideration the amendment to the Rules made on



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09.04.2021, has come to the conclusion that there cannot be a distinction made between a natural born son and an adopted son.

8. That decision Sri.Shravan Madhav, learned counsel for the appellant fairly submits that the amendment made on 09.04.2021 was not brought to the notice of the learned Single Judge when the order dated 24.06.2021 was passed. But however, he presses the said amendment into service by relying upon the judgement of another learned Single Judge in W.P.No.211068/2020 and submits that the Writ Appeal ought to be allowed.
9. Sri.Praveen Uppar, learned HCGP who has entered appearance for the respondents submits that consideration of the application is required to be made on the basis of the applicable Rules as on the date of the application and the subsequent amendment would not have any impact and the



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benefit given by way of amendment cannot be extended to the petitioner. On these grounds he submits that the judgement of the learned Single Judge is proper and correct and does not require any interference from our end.

10. Heard Sri.Shravan Madhav, learned counsel for the appellant and Sri.Praveen Uppar, learned HCGP for the respondents, perused papers.
11. In the present matter, the short question which is raised apart from the amendment made to the Rules on 09.04.2021 is as regards whether an adopted son would have to be treated equally to that of a natural son while considering an application for compassionate appointment.
12. The aspect of ground of compassionate appointment arises only on account of any financial difficulty and or stringency faced by the family on account of the death of the earning family member who was



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employed in the Government service. It is in that background that an effort is made to provide compassionate appointment to one of the family members so as to enable that family member to take care of the entire family. This being the object and intention of compassionate appointment, it is in that background that an application made would have to be considered.

13. Admittedly, the deceased left behind his wife and son and adopted son and a daughter who is mentally retarded and physically handicapped. It is in the background of those facts that the appointing authority would have to consider the application of compassionate appointment if indeed there is financial stringency or difficulty requiring compassionate appointment.
14. Respondent Nos.2 and 4 in the present matter have sought to make a distinction between an adopted son



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and a natural son so as to deprive the adopted son of compassionate appointment. In the present case, the daughter being a natural daughter, would have been entitled to a compassionate appointment if not for her being mentally retarded as also physically handicapped. In such a situation, it is the adopted son who was so adopted by the deceased to take care of the family on account of the death of a natural-born son who has applied for a compassionate appointment.

15. In the above circumstances, we are therefore of the considered opinion that the application made by the adopted son for compassionate appointment is bonafide and is required to be considered in the background of the difficulties faced by the family. The distinction made between the adopted son and a natural son by respondent Nos.2 and 4 either on the basis of the existing Rules in our considered opinion would not have any impact or role to play in the



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matter, a son is a son or a daughter is a daughter, adopted or otherwise, if such a distinction is accepted then there would be no purpose served by adoption. Be that as it may, apparently taking into account that the same would violate Article 14 of the constitution, the said Rules have been amended so as to do away the artificial distinction.

16. Therefore, the contention of Sri.Praveen Uppar, learned HCGP that the application has to be considered on the basis of the Rules applicable on the date on which the application was made is liable to be rejected since the artificial distinction between adopted son and a natural son was the basis for a such endorsement being issued.

17. In the above circumstances, we pass the following:

ORDER

- i. The appeal is allowed.



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- ii. The order dated 24.06.2021 passed by the learned Single Judge in W.P.No.107136/2018 is set aside.

- iii. The endorsement dated 07.08.2018 issued by respondent No.2 at Annexure-F to the writ petition and endorsement dated 16.08.2018 issued by respondent No.4 at Annexure-G to the writ petition are quashed and a mandamus is issued directing respondent No.2 to consider the representation submitted by the petitioner dated 07.06.2018 for compassionate appointment as if the petitioner is a natural born son without making distinction between an adopted son and a natural son, which shall be so considered within a period of 12 weeks from the date of receipt of a certified copy of this order.



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- iv. Respondent No.2 shall act on a print out of the uploaded copy of this order, without insisting on a certified copy. In the event of Respondent No.2 having any doubt about the order, Respondent No.2 can cross-check the same by scanning the QR code on this judgement, which would lead the person to the judgement webhosted on the website of the High Court.
- v. Learned counsel for the appellant is permitted to furnish a print out copy of this order to respondent No.2.

**Sd/-
JUDGE**

**Sd/-
JUDGE**

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