

IN THE HIGH COURT OF JHARKHAND AT RANCHI

W.P.(S) No. 177 of 2023

Suresh Kumar Singh, Aged about 54 years, son of late Rameshwar Singh, Resident of Quarter No. B – 161, Central Colony, P.O. Makoli, P.S. Chandrapur, District – Bokaro

... .. **Petitioner**

Versus

1. Central Coalfields Limited, a subsidiary of Coal India Limited through its Chairman-cum-Managing Director having office at Darbhanga House, P.O. G.P.O., P.S. Kotwali, District-Ranchi
2. Director (Personnel), Central Coalfields Limited having office at Darbhanga House, P.O. G.P.O., P.S. Kotwali, District-Ranchi
3. General Manager, Dhori Area, Central Coalfields Limited, P.O. Dhori, P.S. Bermo, District-Bokaro.
4. Project Officer/Disciplinary Authority, AADOCM, Dhori Area, Central Coalfields Limited, P.O. Dhori, P.S. Bermo, District-Bokaro.
5. Manager (Personnel), AADOCM Dhori Area, Central Coalfields Limited, P.O. Dhori, P.S. Bermo, District- Bokaro.
6. Project Officer, Amlo Project, Central Coalfields Limited, P.O. Dhori, P.S. Bermo, District-Bokaro.
7. Chief Manager (Civil), Central Coalfields Limited/Enquiry Officer, Dhori Area, Central Coalfields Limited, P.O. Dhori, P.S. Bermo, District-Bokaro

... .. **Respondents**

CORAM :HON'BLE MRS. JUSTICE ANUBHA RAWAT CHOUDHARY

For the Petitioner : Mr. Atanu Banerjee, Advocate
: Mr. Suman Kumar Ghosh, Advocate
For the Respondents : Mr. Amit Kumar Das, Advocate

10/08.04.2024

Heard the learned counsels for the parties.

2. This writ petition has been filed for the following reliefs:

“(i) For issuance of an appropriate writ(s)/order(s)/direction(s) more particularly a writ in the nature of certiorari for quashing of the order issued vide Reference No.PD/D.IsC/Appeal/22/3475 dated 08.12.2022 (Annexure – 16/1) issued under the signature of the appellate

authority/Director (Personnel), Central Coalfields Limited dated 03.12.2022 whereby the appeal dated 16.05.2022 made by the petitioner against the order of dismissal from the service by order dated 11/12.4.2022 issued under the signature of Disciplinary Authority/Project Officer, AADOCM, Dhori Area, Central Coalfields Limited has been disposed of while upholding the order of dismissal passed by the disciplinary authority.

And

(ii) For issuance of an appropriate writ(s)/order(s)/direction(s) more particularly a writ in nature of certiorari for quashing of the original order issued vide Reference No. P.O. (AADOCM)/PD/Disc. Action/Dismissal/ 2022/ 155 dated 11/12.4.2022 (Annexure-14) issued under the signature of the Disciplinary Authority/Project Officer, AADOCM, Dhori Area, Central Coalfields Limited whereby penalty of dismissal from the service of the company awarded and imposed upon the petitioner with immediate effect.

AND

(iii) For issuance of an appropriate writ(s)/order(s)/direction(s) more particularly a writ in nature of certiorari for quashing of the enquiry report dated 15.12.2021 (Annexure 12/1) issued under the signature of Enquiry Officer/Chief Manager (Personnel), Central Coalfields Limited, Ranchi whereby the report of the enquiry in matters of charge-sheet dated 1/2.2.2017 in respect of the petitioner submitted holding the petitioner guilty of misconduct imputed against him in terms of Clause 26.22 and 26.41 of the certified standing order of the Respondent Company as applicable to the petitioner.

AND

(iv) For issuance of an appropriate writ(s)/order(s)/direction(s) more particularly a writ in nature of mandamus commanding upon the concerned respondents to reinstate the petitioner in service of the respondent company with full back wages and treating the period of break in service i.e. from 11/12.4.2022, the date of dismissal till the date of reinstatement as period of continuous service without any break for the purpose of applicable service/terminal/retiral benefits.

AND/OR

(v) For further issuance of an appropriate writ(s)/order(s)/direction(s) as Your Lordships may deem fit and proper in the facts and circumstances of the case and in the interest of justice.”

3. Arguments of the petitioner

A.Learned counsel for the petitioner has submitted that primarily the petitioner is aggrieved by the order of dismissal of appeal by the appellate authority as contained in Annexure-16/1 dated 08.12.2022 and also the order of dismissal passed by the disciplinary authority dated 11.04.2022 (Annexure-14).

B.When the petitioner was 14 years of age, he was adopted by Rameshwar Singh and his biological father was the full brother

of Rameshwar Singh. The deed of adoption was registered subsequently on 25.01.1985 and the ex-employee of the respondent i.e Rameshwar Singh declared the petitioner as his dependent in his service excerpts also. The learned counsel submits that sometime in the year 1988, Rameshwar Singh applied for voluntary retirement on account of medical unfitness and as per the provision of the National Coal Wage Agreement, the petitioner was offered employment. The petitioner had taken his Class-X examination in the year 1985 and all formalities for taking the exams were completed before adoption wherein he had declared the name of his biological father.

C.The application for the appointment of the petitioner in terms of NCWA on account of the voluntary retirement of Rameshwar Singh on medical grounds was filed by the petitioner on 03.05.1989 and ultimately the petitioner was granted appointment and by this time the petitioner had attained the age of 18 years. The petitioner passed Class-X examination in the year 1985, Class- XII examination in the year 1987, and passed his Bachelor of Arts in the year 1989. In the year 1993, the petitioner was issued the College Leaving Certificate. As per Class-X certificate, the date of birth of the petitioner is 05.12.1969.

D.The learned counsel submits that the petitioner continued to work and on 8/9.06.2016, the petitioner was issued a show cause as contained in Annexure-4 to which the petitioner responded and ultimately charge-sheet dated 1/2.02.2017 as contained in Annexure-5 was issued to the petitioner wherein two allegations were made against the petitioner; (i) the deed of adoption as son by Shri Rameshwar Singh was signed on 25.01.1985 and on that date the petitioner had already crossed the legal age (fifteen years) for valid adoption, which makes the petitioner's adoption void as per Clause 10(iv) of the

Adoption Act 1956; (b) The educational certificates obtained by the petitioner in the year 1987, 1989 and 1993 after the adoption bears the name of the biological father of the petitioner, namely, Ram Lakhan Singh.

E. With these allegations, it was alleged that the available records established that the petitioner cheated the company and managed to get employment in CCL through an invalid and pseudo-adoption deed. The petitioner responded to the same vide Annexure-6 dated 09.02.2017 and denied the charges.

F. The learned counsel has referred to the show cause reply dated 09.02.2017 and has submitted that Section 16 of the Hindu Adoption and Maintenance Act, 1956 was specifically referred to in the show cause reply which deals with presumption as to registered documents relating to adoption. He has also submitted that the reason for maintaining the name of the biological father in the certificates of educational qualification has been given on internal page 6 of the show cause reply by stating that the petitioner was registered for appearing in Class-X before the date of adoption and as such the name of biological father appeared in his certificates.

G. The learned counsel has submitted that the inquiry report was submitted. The findings of the inquiry officer are from running page No. 141 of the writ records. The learned counsel has submitted that the arguments of the petitioner were not accepted by the inquiry officer and the inquiry officer recorded a finding that the petitioner continued to maintain dual identity as son of his biological father also. The authorities have recorded that any adoption made in contravention of the provision of the Adoption Act is null and *void ab initio* and that the petitioner could not prove any custom or usage applicable to him that permitted adoption beyond 15 years of age.

H. The learned counsel submits that the second show cause was

issued to the petitioner and ultimately the disciplinary authority passed the impugned order of dismissal. The learned counsel submits that the disciplinary authority also recorded that the appointment file could not be placed during the inquiry as the same was missing and this itself created reasonable doubt to a prudent mind which led to irresistible inference that the file was misplaced capriciously to conceal the irregularity. The learned counsel has submitted that there was no such charge against the petitioner.

- I. The learned counsel has further submitted that the petitioner filed appeal and the appeal was also dismissed *inter alia* by referring to some legal opinion wherein it was opined that the deed of adoption does not create any valid adoption, firstly for the reason that the petitioner could not have been taken adoption on 25.01.1985 as he had already crossed the age of 15 years on that day, secondly as per his own showing, even after several years, the petitioner continued declaring biological father as his father in all the documents and the educational certificates which were obtained in the subsequent years i.e. 1987, 1989 and 1993.
- J. The learned counsel submits that both the impugned orders are *ex-facie* perverse, since, the date of registration of the adoption deed is not the date of adoption. The date of adoption was preceded by the date of registration. He has further submitted that the continuation of the biological father of the petitioner in the educational certificates was well explained. The learned counsel has also submitted that there is no allegation of misrepresentation or fraud on the part of the petitioner. The document based on which the petitioner was taken into employment is the adoption deed. The petitioner had worked for more than 32 years before he was dismissed from service.
- K. The learned counsel has also referred to Section 31 of the Special Relief Act which deals with cancellation of

instruments. He submits that no steps were taken for the cancellation of the adoption deed. The adoption deed continues to be legal, valid and enforceable.

L. The learned counsel for the petitioner has relied upon the judgment passed by the Hon'ble Supreme Court in the case of *Smt. Ramti Devi vs. Union of India* reported in (1995) 1 SCC 198, paragraph 2 to impress upon the validity of the adoption deed. The learned counsel has further referred to the judgment passed by the Hon'ble Supreme Court in the case of *Md. Zamil Ahmed vs. State of Bihar & Others* reported in (2016) 12 SCC 342 to submit that there is no justification to wake up after long years to make an allegation that is not based on any suppression, misrepresentation, or fraud on the part of the petitioner. The learned counsel has also submitted that when the adoptive father himself disclosed that the petitioner was duly adopted by him, there was no question of challenging the adoption deed itself.

4. Arguments of the respondents

- I. The learned counsel appearing on behalf of the respondents, on the other hand, while opposing the prayer of the petitioner has submitted that the petitioner had cheated and managed to get an appointment based on an invalid and pseudo-adoption deed. Since the petitioner was more than 15 years old on the date of execution of the adoption deed, the same itself is *void ab initio* and cannot be relied upon by the petitioner.
- II. The learned counsel has placed the adoption deed to submit that the adoption was made to seek employment with the respondents. He has also submitted that in the registered deed, the age of the petitioner has been mentioned as 14 years which is also incorrect if the age of the petitioner concerning his clause-X certificate is taken into consideration.
- III. The learned counsel has relied upon the judgment passed by this Court in L.P.A. No. 719 of 2015 decided on 20th September

2016 reported in *2016 SCC OnLine Jhr. 2695 (Gopi Ram vs. CCL)*, paragraphs 7 and 8, and has submitted that the employment secured through fraud is vitiated. He has further relied upon the judgment reported in *(2020) 3 SCC 423 (State of Karnataka & Anr. vs. N. Gangaraj)*, paragraphs Nos. 12, 13, and 15 to submit that the scope of judicial review is very limited. There is no scope for reconsideration of materials on record and coming to a different finding once there are concurrent findings recorded by two authorities. He has also relied upon the judgment reported in *(2004) 2 SCC 105 (R. Vishwanatha Pillai vs. State of Kerala & Others)*, paragraphs 16, 17, and 19 to submit that long tenure of service is irrelevant and in the said case, there was 27 years of service. He has submitted that in case of giving false certificates, there is no protection of Article 311 of the Constitution of India. The learned counsel has also relied upon the judgment passed in L.P.A. No. 332 of 2020, paragraph 12, 13 and 14 to submit that in case of fraud/misrepresentation/impersonation, no relief can be given to the employee. The learned counsel has also relied upon the judgment reported in *(2013) 9 SCC 363 (Devendra Kumar vs. State of Uttaranchal & Others)*, paragraphs 12 to 16 to submit that the said judgment deals with the appointment obtained by misrepresentation and also the scope of judicial review.

Findings of this Court.

5. The recorded date of birth of the petitioner is 05.12.1969. The petitioner attained the age of 15 years on 04.12.1984 and a registered deed dated 25.01.1985 (Annexure-1) regarding adoption was executed mentioning that the petitioner was taken in adoption by Rameshwar Singh following the customs regarding adoption prior to 25.01.1985. A certified copy of the registered deed has also been produced before this Court and the narration in connection with the ceremony regarding adoption prior to date of registration of the deed has been mentioned by stating that the petitioner is 14 years of age and prior to

the date of registration of the deed the process of adoption was already completed by performing ceremony. It was also mentioned therein that the wife of Rameshwar Singh had already expired and Rameshwar Singh had no son to perform his last rites and his elder brother namely Ram Lakhan Singh and his wife have voluntarily given the petitioner by way of adoption to Sri Rameshwar Singh at an earlier point of time which was duly accepted by Rameshwar Singh. It was also mentioned in the registered deed that the petitioner would have full right to obtain employment upon retirement of Rameshwar Singh and the petitioner would be known as the son of Rameshwar Singh and the properties will also devolve upon the petitioner accordingly.

6. It is not in dispute that on 19.04.1987, while the petitioner was still a minor and less than 18 years of age, service excerpts issued to Rameshwar Singh showed the petitioner as one of his dependents; in the month of October 1988, Rameshwar Singh opted for voluntarily retirement in terms of National Coal Wage Agreement (NCWA-IV) and offered the petitioner for employment as his adopted son and the voluntary retirement of Rameshwar Singh was duly accepted; as a part of voluntary retirement scheme, the petitioner was issued appointed letter dated 03.05.1989 upon due verification. In the meantime, the petitioner attained the age of 18 years on 04.12.1987 and thus Rameshwar Singh during his life time and prior to the petitioner attaining the age of 18 years had declared the petitioner as his dependent son on 19.04.1987 and not only Rameshwar Singh but also the respondents acted accordingly and the offer of employment to the petitioner in the option of voluntary retirement by the respondents by issuance of appointment letter to the petitioner on 03.05.1989. By 03.05.1989, the petitioner had already passed the Class-XII examination in the year 1987 which was also produced by the petitioner while considering his employment where the name of father of the petitioner was shown as Ram Lakhan Singh (the biological father of the petitioner and full brother of Rameshwar Singh- the ex-employee of respondents).

7. Thus, this Court finds that even on the date of appointment on 03.05.1989 it was within the knowledge of the respondents that the educational certificate of the petitioner issued in the year 1987 showed the name of his biological father Sri Ram Lakhan Singh and not the name of the ex-employee, namely, Rameshwar Singh who had claimed to have adopted the petitioner . In spite of this, the petitioner was given appointment for the reasons best known to the respondents which could come on record only upon production of employment file of the petitioner which the respondents never produced before the enquiry officer by stating that the file was missing due to the petitioner although no such charge was levelled against the petitioner.

8. However, even without the employment file of the petitioner , the fact remains that there was no concealment from the side of the petitioner and the registered deed dated 25.01.1985 was admittedly considered by the respondents while giving VRS to Rameshwar Singh and accepting the petitioner as his adopted son in-spite of the fact that the educational certificate of the petitioner issued in the year 1987 showed the name of his biological father and not the name of adoptive father , Rameshwar Singh, the ex-employee of the respondents.

9. The specific case of the petitioner before the enquiry officer was that he was offered employment on 03.05.1989 only after acceptance of registered adoption deed by the legal department but the enquiry officer considered the date of registration of adoption deed i.e. 25.01.1985 as date of adoption of the petitioner and calculated that on 25.01.1985, the petitioner was more than 15 years of age. It was the case of the petitioner that the enquiry officer did not look into the recitals made in the registered adoption deed at all which clearly mentioned that the ceremony of adoption was completed prior to the date of registration although at the time of registration of the deed the petitioner was admittedly more than 15 years of age. The petitioner attained the age of 15 years on 04.12.1984 i.e just about one and half month before execution of the registered adoption deed dated 25.01.1985 by mentioning that the ceremonies for adoption was already performed earlier in point of time.

10. The specific case of the petitioner at the time of enquiry and throughout was that the petitioner was adopted at the age of 14 years following religious rituals that on the basis of adoption deed all the documents were duly verified and considered and sent to the legal department and after due examination of every aspect of the matter, the employment was offered to the petitioner.

On the other hand, it was the case of the respondents before the enquiry officer that even if the statement made in the adoption deed is believed to be true that the petitioner was adopted at the age of 14 years which he completed on 04.12.1983 but his educational certificate ought to have mentioned the name of his adoptive father rather than his biological father.

11. The petitioner joined the post on 03.05.1989 and lastly, the petitioner was promoted to the post on Clerk Grade-I in 2015. On 02.02.2017, charge-sheet was issued to the petitioner on the allegation that the adoption deed is illegal as the petitioner had crossed the age of 15 years for valid adoption and his educational certificates were bearing the name of his biological father.

12. Annexure-5 to the writ petition is the charge sheet dated 01/02.02.2017 and is quoted as under: -

“CHARGE SHEET

After Shri Rameshwar Singh, Security Guard, Kalyani Project, Dhori Area, CCL was declared medically unfit, you as his adopted son applied and were appointed in the year 1989 in CCL as a Typing Trainee, Cat. I under the provisions of clause 9.4.2. of National Coal Wage Agreement (NCWA). On scrutiny of the records, it is seen that: -

i) The deed of your adoption as son by Shri Rameshwar Singh was signed on 25.01.1985 and on this date you had already crossed the legal age (fifteen years) for valid adoption, which makes your adoption void as per Clause 10 (iv) of the Adoption Act 1956.

ii) The educational certificates obtained by you in 1987, 1989 and 1993, after the adoption bears the name of your biological father, Shri Ram Lakhan Singh.

The available records establish that you cheated the company and managed to get employment in CCL through invalid and pseudo adoption deed.

Hence the Charge:

The above omissions and commissions on your part, if proved, would tantamount to misconduct in terms of Clause 26.22, 26.41 of the certified standing order of CCL as applicable to you. The details of which are as follows: -

26.22: Any wilful and deliberate act which is subversive of discipline or which may be detrimental to the interest of the company.

*26.41: Violation of any clause of this standing order.
You are, therefore directed to submit your explanation in writing within a week of receipt hereof stating as to why appropriate disciplinary action should not be taken against you for the aforesaid misconducts.
Should you fail to submit your explanation within the time stipulated above, it will be presumed that you have no explanation to offer in your defence and thereafter the Management will initiate further appropriate action as it may deem fit without any further reference to you.
Receipt of this charge-sheet should be acknowledged.”*

13. The petitioner objected to the charge-sheet and filed a writ petition being W.P. (S) No. 6725/2017 questioning the jurisdiction of the authority initiating the disciplinary proceedings wherein interim order dated 07.02.2018 was passed in favour of the petitioner and the proceeding was stayed. However, the writ petition was dismissed on 05.11.2020 (annexure-8) mentioning that it was open to the petitioner to demonstrate their point in the departmental proceedings. The petitioner filed L.P.A. No. 371/2020 which was dismissed vide order dated 18.10.2021 (Annexure-9) and thereafter the petitioner filed a detailed representation before the enquiry officer on 11.10.2021 (Annexure-10). Ultimately, the enquiry report dated 15.12.2021 was submitted by the enquiry officer as contained in Annexure 12/1 of the writ petition.

14. The enquiry report reveals that the respondent produced two witnesses and the petitioner examined himself. Certain documents were also exhibited. The petitioner recorded his own defense stating that the adoption deed produced by him at the time of appointment was sent to CCL Headquarters including legal department and he was offered employment on 03.05.1989 only after acceptance of the deed by Headquarters, Legal department. He was adopted as per rituals at the age of 14 years as per adoption deed. Para 4 and discussing other paragraphs of the adoption deed stated that the adoption took place with the consent of both adoptee and adoptive parents. The appointment of the petitioner was delayed due to examination of his case by Legal department. The petitioner stated that employment file was not provided to him for examination which violated the principles of natural justice and has prejudiced his defense. It was submitted that the adoption deed cannot be questioned after 28 years as he was

adopted at the age of 14 years and there is no violation of Section 10 of the Adoption Act, 1956. He admitted that the name of his biological father was mentioned in school educational certificate and explained that registration for examination was done in March 1984 on that basis the name of his biological father appearing in the matriculation certificate followed by same recording his intermediate certificate of 1987 and he did not conceal anything from the respondents . He got the registered adoption deed on 04.01.1986 which was submitted but no objection was raised by any authority at the time of his appointment.

15. Finding of the enquiry officer, interalia, are as under: -

- i. It is sufficiently proved through documentary evidences that the petitioner was appointed in the year 1989 as adopted son of Shri Rameshwar Singh, Security Guard, Kalyani Project, Dhori Area, CCL who was declared medically unfit under the provision of Clause 9.4.2. of NCWA.
- ii. It is further established that the deed of adoption was executed on 25.01.1985 and accordingly, in view of the age recorded in service sheet of the petitioner and also accepted by him i.e. 05.12.1969 he had crossed the legal age of 15 years required for the legal validity of adoption under Sec. 10(iv) of the Adoption Act, 1956.
- iii. That after adoption, the adoptee severs his relationship with his biological parents for all purposed but there are evidences which indicate that the educational certificates of the petitioner pertaining to year 1987, 1989 and 1993 after the adoption bears the name of his biological father Shri Ram Lakhan Singh i.e. he continued to have relations with his original family.
- iv. It is implied that the deed of adoption was executed only for the purpose of grabbing the employment in place Shri Rameshwar Singh as his adoptive son and no more. This way the petitioner cheated the Company and entered into employment in CCL through invalid and pseudo-adoption Deed.
- v. The petitioner availed LTC benefits by declaring Shri Rameshwar Singh as father and Smt. Deobrat Devi as mother though he was the son of Shri Ram Lakhan Singh. As he had crossed the legal age limit as on the date of adoption, the adoption is invalid.
- vi. Smt. Deobrat Devi is the wife of Shri Ram Lakhan Singh and biological mother of the petitioner but she was declared as wife of Shri

Rameshwar Singh. Even in the educational qualification certificates, the father's name of the petitioner is Shri Ram Lakhan Singh and not Shri Rameshwar Singh.

- vii. It is proved that petitioner falsely declared himself as adopted son of Shri Rameshwar Singh solely for the purpose of managing the employment in CCL as dependent son of Shri Rameshwar Singh, though at the same time, he continued to maintain dual identity as son of Shri Ram Lakhan Singh also.
- viii. Though the charged employee submitted that the adoption deed at the time of his appointment was sent to CCL headquarters including legal department and he was offered employment on 03.05.1989 only after acceptance of the adoption deed by headquarters, Legal department, no evidence has been adduced to support his contention and hence the same is rejected.
- ix. The employment file was not been provided to him due to non-availability but he was given all opportunity to defend his case so there is neither violation of natural justice nor the non-availability has prejudiced his defense.
- x. The adoption deed is invalid as it is in violation of Section 10 of the Adoption Act, 1956. No plausible reason has been explained for continuance of his original father's name in educational certificates even after so called adoption.
- xi. Conclusion of the enquiry officer is quoted as under: -

“In the facts and circumstances narrated above, the charge levelled against Shri Suresh Kumar Singh that he cheated the Company and managed to get employment in CCL through invalid and pseudo-adoption deed in place of Shri Rameshwar Singh, Security Guard, Kalyani Project, Dhori Area, CCL as his adopted son in the year 1989 is conclusively proved.

*As such Shri Suresh Kumar Singh is held guilty of misconducts imputed against him in terms of Clause 26.22 Any wilful or deliberate act which is subversive of discipline or which may be detrimental to the interests of the Company) & 26.41 (Violation of clause of the Standing Orders) applicable to him.
This is my considered report.”*

16. The petitioner filed his second show cause (Annexure-13) and reiterated that there is no finding of the enquiry officer that on the date on which the adoption ceremony had taken place, the petitioner had crossed the permissible age of 15 years for a valid adoption. He reiterated that his date of birth as recorded was 05.12.1969 and he completed 15 years of age on 04.12.1984 and in the adoption deed it

was mentioned that religious rituals had taken place at the age of about 14 years and the adoption shall be effective on and from the date of adoption followed by religious rituals and not from the date of its registration and this plea of the petitioner was not taken into account nor any reason was assigned to discard the same.

With regard to continuation of name of his biological father in his educational certificate the petitioner contented that it was well explained in his deposition dated 06.09.2021 and educational certificate was available with the management even at the time of his employment and continuation of the name of biological father of the adoptee in any record would not prevail over the adoption deed. It was asserted by the petitioner that the Relevant documents have been withheld by the management in as much as the employment file was not produced in the inquiry proceedings in spite of his specific request for the same.

17. The disciplinary authority considered the second show cause reply filed by the petitioner and ultimately dismissed the petitioner vide impugned order dated 11/12.04.2022. The findings of the disciplinary authority are as under: -

“(i) Sri Suresh Kumar Singh has raised query as to whether the validity of the adoption deed can be questioned in departmental proceeding after completion of 29 years of service.

This argument is not tenable and no period of limitation is prescribed in law under which there is any bar in initiation of departmental proceedings against any employee on detection of any irregularity committed by him in connection with employment. The cause of action for initiating action arose when the matter was first brought to the knowledge of company’s authorities.

(ii)...

(iii) The EO failed to take into consideration that validity of the adoption deed could only be challenged by filing a civil suit under the law. The departmental authority lacks jurisdiction and authority to exercise scrutiny of a registered adoption deed DE had produced certified copies of Page No. 468 469 and 470 of register procured from the office of Registrar, Aurangabad.

The mere fact that the adoption deed is registered does not raises any presumption that the deed of adoption is valid in law. Any deed

which is in violation of the Hindu Adoption and Maintenance Act cannot be rendered valid only on account of the same being a registered document. As Sri Suresh Kumar Singh had crossed the legal age of adoption on the date of adoption, hence, as per the said Act the same cannot be treated to be legal and valid as per law.

(iv) Sn Suresh Kumar Singh submitted that it is nowhere the findings of the EO that on the date when giving in and taking of adoption ceremony ‘in fact’ had taken place, he had crossed the permissible age of 15 years for a valid adoption. Sri Suresh Kumar Singh further mentioned that in the departmental proceeding dated 06.09.2021, at page No. 3 of his adoption deed it was mentioned that his adoption had taken place following the religious rituals and at the age about 14 years. Further, in paragraph 5 page No 3 of the adoption deed it was mentioned that the adoption shall be effective on and from the date adoption followed by religious rituals in fact was taken place. EO has not taken this fact into consideration nor has assigned any reason to discard the same.

The submission is not acceptable. The EO in his finding has categorically observed that the date of birth i.e. 05 12 1969 as recorded in the service sheet of Sri Suresh Kumar Singh has been admitted by him as correct date of birth. The adoption deed executed on 25.01. 1985 when Sri Suresh Kumar Singh had crossed the legal age of 15 years for valid adoption Hence, the argument of Sri Suresh Kumar Singh that at Page No. 3 of his adoption deed it is mentioned that adoption had taken place following religious rituals and at the age about 14 years is not reasonable. Any adoption takes place from the date of execution of the adoption deed as it is claimed to have been laid down in paragraph 5 of page No 3 of the adoption deed. It is therefore, documentarily proved that as on the date of adoption Sri Suresh Kumar Singh had crossed the legal age thereby rendering the adoption deed invalid in the eyes of law. He has not been able to prove any rituals, custom or usages to prove that adoption beyond the legal was permissible in his family from time immemorial.

(v) The charge cannot be affirmed without bringing on record the appointment file. This vital documents was not produced in the proceeding. Thus, there was denial of reason opportunity of defense. The appointment file could not be placed during the enquiry as the same had been missing. This itself creates reasonable doubt to a prudent mind which leads to irresistible inference that the file was misplaced to capriciously to conceal the irregularity. The basis of

appointment i.e. the deed of adoption has been adduced during the enquiry and has been subjected to cross examination. Non-production of employment file does not cause any prejudice to the Sri Suresh Kumar Singh in defending the case. Therefore, his argument that charges cannot be affirmed without bringing on record the appointment file is not plausible. The adoption deed based on which appointment was offered in the year 1989 is vital document produced in the proceeding to support the management's case. Thus, there is no case of denial of natural justice made out.

(vii) The educational certificates bearing names of his biological father was available with management even at the time of employment. This will never prevail over the adoption deed. Otherwise also, this alleged misconduct is never a misconduct under Certified Standing Orders of the Company.

It is cardinal and well settled principle of Hindu Adoption Law that on adoption the adoptee severs all relations with his biological parents and gets replaced by the adoptive parents. It is not denied that in the educational certificates bears the names of his biological father but in his own declaration of family details he has declared his biological mother Smt. Deobrat Devi as dependent mother which was not legally permissible. She was the wife of Ram Lakhan Singh. The adoptive father was Sri Rameshwar Singh as his. The names of adoptive parents are to prevail after execution of adoption deed which has been clearly violated by Sri Suresh Kumar Singh. This amounts to giving false declaration by Sri Suresh Kumar Singh willfully which was detrimental to the interest of the company and constitutes misconduct under Certified Standing Orders of the Company.”

18.The appellate authority has also dismissed the appeal on similar lines by, inter alia, recording the following findings: -

“(a) The deed of adoption as son by Shri Rameshwar Singh was signed on 25.01.1985 and on this date, you had already crossed the legal age ie fifteen years on the basis of date of birth shown in educational certificates and other documents submitted by you, for valid adoption which makes deed of adoption void as per clause 10 (iv) of the Adoption Act 1956.

(b) The educational certificates obtained by you in 1987, 1989 and 1993 ie after the year of adoption, which bears the name of your biological father ie Shri Ram Lakhan Singh.

The available records establish that you managed to get employment in CCL through invalid and pseudo adoption deed through fraud. Hence your contention that order of dismissal is not

a reasoned one and decision has been taken on perverse and hypothetical findings ignoring your submissions that at the time of adoption, you were well within prescribed age limit of adoption under the law has no valid ground.

...

In the legal opinion, it has been clearly opined that “Deed of Adoption of AW does not create any valid adoption firstly for the reason that Sri Suresh Kumar Singh could not have been taken adoption on 25.01.1985, as by that time, you had already crossed the continued declaring your biological father as your father in all documents and educational certificates which were in fact obtained in the subsequent years i.e. 1987, 1989 and 1993”. Hence your contention has not valid ground.”

19. There can be no doubt that appointment obtained by misrepresentation/fraud/cheating is a nullity in the eyes of law and therefore the length of service in such matters has no bearing. However, it is required to be seen whether the appointment has been obtained by the petitioner by misrepresentation/fraud/cheating and whether the impugned orders suffer from any perversity or violation of the principles of natural justice and fair play.

20. In the judgment passed by the Hon’ble Supreme Court reported in **(2020) 3 SCC 423 (State of Karnataka and another Vs. N. Gangaraj)** the Hon’ble Supreme Court has considered the scope of judicial review by referring to the earlier judgments. In the said case, the disciplinary authority had taken into consideration the evidences led before the enquiry officer to return a finding that the charge was proved and the Hon’ble Supreme Court was of the view that interference in the order of punishment by the tribunal as affirmed by High Court suffered from patent error. The power of judicial review is confined to the decision-making process and such power conferred on constitutional courts or tribunal is not that of an appellate authority. In the said judgment, reliance has been placed on the judgment passed in the case of **“B.C. Chaturvedi Vs. Union of India” reported in (1995) 6 SCC 749** which had, in turn, relied upon the judgment passed in the case of **“Union of India Vs. H.C. Goel” reported in AIR 1964 SC 364**, wherein it had been held that if the conclusion upon consideration of the evidences reached by the disciplinary authority is

perverse or suffers from patent error on the face of the record or based on no evidence at all, a writ of certiorari could be issued.

21. The Hon'ble Supreme Court in the judgment of *N. Gangaraj (Supra)*, also referred to the judgment passed in the case of "*High Court of Bombay Vs. Shashikant S. Patil*" reported in (2000) 1 SCC 416 (paragraph 16) wherein it has been held that interference with the decision of departmental authorities can be permitted under Article 226 of the Constitution of India if –

- (a) The principles of natural justice have been violated,
- (b) There has been violation of statutory regulations,
- (c) Decision of the authority is vitiated by considerations extraneous to the evidence and merits of the case.
- (d) Conclusion of the authority on the very face of it is wholly arbitrary or capricious, that no reasonable person could have arrived at such conclusion or grounds very similar to above.

Departmental authority is the sole judge of the facts, if the enquiry has been properly conducted. The settled legal position is that if there is some legal evidence on which the findings can be based, then adequacy or even reliability of that evidence is not a matter for canvassing before the High Court under Article 226 of the Constitution of India.

22. The Hon'ble Supreme Court, in the judgment of *N. Gangaraj (Supra)* also referred to the judgment passed in the case of "*State Bank of Bikaner & Jaipur Vs. Nemi Chand Nalwaya*" reported in (2011) 4 SCC 584 wherein it has been held that question of adequacy of evidence or reliable nature of evidence will not be a ground for interfering with findings of departmental enquiries and it was also held that the Courts will not interfere with findings of fact recorded in departmental enquiries, except such findings are based on no evidence or where they are clearly perverse. The test to find out perversity is to see whether a tribunal acting reasonably could have arrived at such conclusion or finding, on the material on record; the Courts will however interfere with the findings in disciplinary matters, if principles of natural justice or statutory regulations have been violated

or if the order is found to be arbitrary, capricious, *mala fide* or based on extraneous considerations.

23. In the judgment of *N. Gangaraj (Supra)*, the Hon'ble Supreme Court also considered the case of “*Union of India Vs. P. Gunasekaran*” reported in (2015) 2 SCC 610 wherein it was again held that while reappreciating evidences, the High Court cannot act as an appellate authority in the disciplinary proceedings and it was also held in *P. Gunasekaran (Supra)* that High Court, under Article 226/227 shall not:-

- (i) Reappreciate the evidence,
- (ii) Interfere with the conclusions in the enquiry, in case the same has been conducted in accordance with law,
- (iii) Go into the adequacy of the evidence,
- (iv) Go into the reliability of the evidence,
- (v) Interfere, if there be some legal evidence on which findings can be based,
- (vi) Correct the error of fact however grave it may be,
- (vii) Go into the proportionality of punishment unless it shocks the conscience.

24. In the judgment passed by the Hon'ble Supreme Court in the case of “*Allahabad Bank Vs. Krishna Narayan Tewari*” reported in (2017) 2 SCC 308, it has been held that if the disciplinary authority records a finding which is unreasonably arrived at, the writ Court could interfere with the findings of the disciplinary authority.

25. The Hon'ble Supreme Court in the case of *N. Gangaraj (Supra)* considered the aforesaid judgment reported in (2017) 2 SCC 308 (*Supra*) relied upon by the respondent employee and recorded that even on the touch stone of the aforesaid test, the High Court or the tribunal could not interfere with the findings recorded by the disciplinary authority in the facts of the said case and observed that the case before the Hon'ble Supreme Court was not a case of no evidence nor the findings were perverse and the findings were interfered by the order impugned only on the ground that there were

discrepancies in the evidence of the department which will not make it a case of no evidence.

26. This Court finds that in the entire enquiry report, there is no findings in connection with recital of the adoption deed although the petitioner had specifically stated that he was adopted earlier as per the rituals at the age of 14 years as mentioned in the adoption deed itself. The findings of the enquiry officer that the adoption deed executed on 25.01.1985 was invalid and void ab initio as the petitioner had crossed the age of 15 years on the date of registration of the adoption deed as his date of birth was 05.12.1969 is ex-facie perverse inasmuch as the adoption deed dated 25.01.1985 recorded past transaction of ceremony of adoption of the petitioner by the ex-employee Rameshwar Singh and the date of registration of adoption deed dated 25.01.1985 could not be taken as the date of adoption of the petitioner.

27. In reply to the second show cause, the petitioner had reiterated that the adoption was prior to the execution of deed of adoption and that his adoption was questioned with regard to date of execution of deed although the adoption ceremony had taken place prior to the date of execution of deed when he was at the age of 14 years. A plea was also raised that the findings are perverse and it was based on irrelevant consideration and the relevant documents were withheld by the respondents. The disciplinary authority passed the order of dismissal on 12.04.2022 without considering the aforesaid aspects of the matter.

28. This Court also finds that the disciplinary authority considered the argument of the petitioner that the charge could not be formed without bringing on record the appointment file which was withheld by the respondents and in that connection, the disciplinary authority recorded that the appointment file could not be placed during enquiry as the same was missing and this itself created reasonable doubt to a prudent mind which lead to irresistible inference that the file was misplaced capriciously to conceal the irregularity. This Court finds that no such allegation was made against the petitioner in the charge-sheet and putting the blame on the petitioner for the missing appointment file of the petitioner in the impugned order passed by

the disciplinary authority is *ex-facie* arbitrary, capricious and perverse being not based on any material on record. However, the disciplinary authority further proceeded to say that the basis of appointment i.e. the deed of adoption, was adduced and therefore non-production of appointment file did not cause any prejudice to the petitioner in defending his case and thereby rejected the argument of the petitioner that charge could not be formed without bringing on record the appointment file.

29. This Court is of the considered view that the appointment file was an essential material which was required to be brought on record but the same was withheld at the time of enquiry by stating that the file itself was missing and by putting the blame upon the petitioner for the missing file. This becomes important in view of the fact that what was to be examined by the enquiry officer and the disciplinary authority was whether there was any misrepresentation or fraud or cheating by the petitioner in the matter of seeking employment. It was to be examined as to the nature of scrutiny that was done at the time of appointment of the petitioner which could be brought on record only through the appointment file of the petitioner and could have a serious bearing in the matter. Thus, finding of the disciplinary authority that non production of the appointment file had not caused any prejudice to the petitioner is perverse and cannot be sustained in the eyes of law.

30. An appointment granted way back in the year 1989 after full disclosure and scrutiny cannot be permitted to be disturbed after more than 30 years of service in absence of any act or omission attributable to the petitioner. The appointment of the petitioner cannot be said to be a case of misrepresentation, fraud or cheating on the face of the facts of this case to declare it a nullity. The fact that the name of biological father of the petitioner was appearing in his educational certificate issued in the year 1987 was available to the respondents at the time of his appointment on 03.05.1989 and in the month of October 1988 when the Rameshwar Singh opted for voluntarily retirement and offered the petitioner for appointment as his adopted son itself indicates that there has been no concealment from the side of

the petitioner or Rameshwar Singh. The petitioner had taken a specific plea before the disciplinary authority that the educational certificates bearing the name of his biological father was available with the respondents even at the time of his appointment but this aspect of the petitioner has not been considered by the respondents and has been dealt with by holding that upon adoption the adoptee severs all relations with biological parents and gets replaced by adoptive parents and therefore continuation of name of biological parents of the petitioner in his educational certificates amounted to giving a false information which was detrimental to the interest of the Respondent Company.

31. This court is of the considered view that non production of appointment file has caused serious prejudice to the petitioner and attributing its non-availability to the petitioner is also perverse in as much as neither the petitioner was ever charged for the same nor any steps having taken to trace out the so-called missing file was taken by the respondents.

32. This Court is of the considered view that when the registered document involved in the present case mentioned about the past transactions of adoption when the petitioner was 14 years of age there was no occasion for the respondents to reject the claim of adoption by Rameshwar Singh who had himself acted upon such adoption on 19.04.1987 when he had shown the petitioner as his son and further acted upon the adoption deed in the month of October 1988 when he opted for VRS by offering employment to the petitioner as his adopted son. The respondents acted upon such declaration by Rameshwar Singh and the petitioner was offered employment on 03.05.1989. By this time the petitioner had attained the age of majority and at the time of appointment the petitioner had also produced his educational certificate of the year 1987, though in the said certificate name of his father was shown to be his biological father. Thus, there has neither been any false declaration nor there has been suppression of any material facts for securing employment on the part of the petitioner. The petitioner disclosed every thing as was

available with him at the time of appointment and it was for the respondents at the time of appointment to examine the legality and validity of the adoption deed coupled with the educational certificate of the petitioner. The petitioner cannot be blamed for acts and omissions of the respondents.

33. In the judgment passed by the Hon'ble Supreme Court reported in *(2016) 12 SCC 342 (Md. Zamil Ahmed Vs. State of Bihar)* the compassionate appointment given to brother-in-law was under challenge on the ground that under the scheme of compassionate appointment brother-in-law was not entitled for such appointment. The Hon'ble Supreme Court held that there was no jurisdiction for termination of service when the appellant-employee was not responsible for making any false declaration nor had suppressed any material facts for securing employment and State was not allowed to take advantage of its own mistake. It was held that the position would have been different if the appellant had committed some kind of fraud or manipulation or suppression of material facts for securing appointment. This is over and above the fact that registered deed showed performance of adoption ceremony in the past i.e prior to registration of the deed, when the petitioner was 14 years of age and the recital of the registered deed has not been considered by the respondent authorities while holding the petitioner guilty of the charges.

34. In the present case the respondents have taken the petitioner into employment with open eyes and after due scrutiny and the mistake, if any, has been committed by the respondents and not by the petitioner. This court is of the considered view that the petitioner cannot be dismissed, that too after considerable length of time, for acts and omissions of the respondents regarding scrutiny of the documents and materials produced by the petitioner at the time of appointment.

35. On account of the aforesaid facts and circumstances, the dismissal of the petitioner by alleging cheating on the very face of it is wholly arbitrary, capricious and no reasonable person could have arrived at such conclusion when everything was already disclosed by

the petitioner at the time of appointment itself. Neither the disciplinary authority nor the appellate authority has properly considered the aforesaid aspects of the matter.

36. As a cumulative effect of the aforesaid findings, the impugned order of dismissal passed by the disciplinary authority and the impugned order dismissing the appeal passed by the appellate authority are set-aside and the petitioner is directed to be reinstated with continuity of service and with 25% back wages within 3 months from the date of communication of the judgment.

37. This writ petition is allowed in the aforesaid terms.

38. Pending interlocutory application, if any, is closed.

Binit/Saurav/AFR

(Anubha Rawat Choudhary, J.)