

**Government of Jammu and Kashmir  
Revenue Department  
Civil Secretariat, Jammu/Srinagar**

**Subject:-Instructions regarding issuance of the dependent/ legal heir certificate, based on adoption.**

**CIRCULAR**

It has been observed that the legal heirs certificate/Dependent certificates are being issued by the authorized revenue authorities i.e. Tehsildars without observing the prescribed norms/ rules. On examination of some cases referred to the Revenue Department for advice, especially where the dependent is adopted son or adopted daughter, it has been found that the legal heir certificates/ dependent certificates for the purpose of seeking the benefit of SRO 43 of 1994 have been issued by the authorities without having a valid proof.

In one of such cases where a similar issue was under examination, the Learned Advocate General has conveyed a detailed opinion, which is annexed with this circular for information and compliance. The relevant extracts of the said opinion are excerpted herein under:-

**The Hindu Adoption and Maintenance Act, 1956 itself is a complete code regarding the realm of adoption etc. The relevant provision of this Act including Sections 6, 7, 8, 9 and 10 clearly indicate that no adoption shall be valid in law unless it satisfies the requisite essentials contained under these provisions.**

**Even otherwise, neither alleged will nor the consent decree passed by the civil court, can be a substitute for a proper and valid adoption under law.**

It is, therefore, enjoined upon all the concerned Revenue Authorities to be extra cautious and show due diligence and adherence to the relevant provisions of law/rules governing the field while issuing the dependent / legal heir certificate henceforth.

**By order**

**Sd/-**

(Shaleen Kabra)IAS

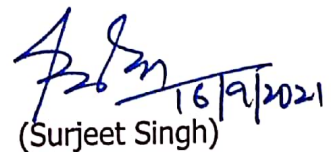
**Principal Secretary to the Government**

Dated: 16 .09.2021

No: REV-NG/21/2021 (20461)

Copy for information to the:-

1. Financial Commissioner, Revenue, J&K.
2. Divisional Commissioner, Kashmir/Jammu
3. All Deputy Commissioners.
4. All Sub Divisional Magistrates
5. All Tehsildars.
6. Incharge Website
7. Master file

  
(Surjeet Singh)

**Under Secretary to the Government**

LEGAL OPINION

Quite a plain and simple issue pertaining to eligibility or otherwise of the applicant (Rakesh Kumar) for appointment on compassionate basis in terms of SRO 43 of 1994 has been referred to the undersigned in view of the clear mandate of the SRO 43 of 1994 read with Sections 6, 7, 8, 9 and 10 of the Jammu and Kashmir Hindu Adoption and Maintenance Act, 1956. The application ought to have been dealt with, at the threshold, without delaying the same, however, since the issue has been referred to the undersigned for legal opinion, the same is accordingly advanced in the light of the following factual background.

One Shri Rakesh Kumar S/o: Kaku Ram R/o: village Janu Tehsil Basholi submitted an application seeking compassionate appointment in terms of SRO 43 of 1994 on the ground that said Rakesh Kumar is allegedly adopted son of Smt Bimla Devi who expired on 05-10-2011 while serving as Helper in the Forest Department. The claim of the applicant is based upon execution of will allegedly executed by Smt. Bimla Devi W/o: Bhagt Ram in his favour on the basis of which he is claiming to be adopted son of late Smt. Bimla Devi.

In order to substantiate his claim, the applicant has relied upon the alleged will dated 1<sup>st</sup> October, 2011 as well as the collusive/consent decree dated 17-07-2013 passed by the court of learned Munsiff First Class Jammu in a civil suit titled Rakesh Kumar S/o: Kaku Ram. In addition to above, the applicant has also placed on record the legal heir certificate issued by the Tehsildar Basholi.

Let it be clarified at the threshold that the claim of the applicant does not fall within the purview of sub-clause (d) of Rule 2 of SRO 43 of 1994 which explicitly indicates the definition of a family member. In order to make position clear, sub-clause (d) of Rule 2 of SRO 43 of 1994 is reproduced hereinbelow:-

***"Family member means Spouse, son, daughter, adopted son, adopted daughter, sister or brother dependent on the deceased.***

The Jammu and Kashmir Hindu Adoption and Maintenance Act, 1956 itself is a complete code regarding the realm of adoption etc. The relevant provision of this Act including Sections 6, 7, 8, 9 and 10 clearly indicate that no adoption shall be valid in law unless it satisfies the requisite essentials contained under these provisions.

The applicant cannot assume the status of an adopted son in accordance with the various provisions of the Jammu and Kashmir Hindu Adoption and Maintenance Act, 1956. Even otherwise, neither alleged will nor the consent decree passed by

the civil court, can be a substitute for a proper and valid adoption under law.

The record reveals that Smt. Bimla Devi W/o: Baghat Ram was serving as a Helper in the Forest Department and she expired on 15<sup>th</sup> October 2011 while serving in the Department. The date of execution of the alleged will is 1<sup>st</sup> October, 2011, that is, ten days prior to death of Smt. Bimla Devi, which even otherwise raises a doubt.

Perusal of the documents viz. PRC Certificate, and Legal Heir certificate further indicate the parentage of the applicant as Kaku Ram, even after the death of Smt. Bimla Devi, which is more than enough to dispel claim of the applicant.

A composite reading of various provisions of Jammu and Kashmir Hindu Adoption and Maintenance Act, 1956 read with SRO 43 of 1994 makes it abundantly clear that the applicant does not satisfy the conditions which are requisite for acquiring the status of an adopted son. It may further be made clear that the decree passed by the Civil Court on 1<sup>st</sup> October 2012 does not bind the third party especially, when the same is collusive in nature and based upon consent between father and the son. A further perusal of the decree would indicate that neither the Government nor any of its functionary was party to such proceedings, therefore, in the totality of circumstances, it becomes clear that the application is completely devoid of any merit and does not deserve to be considered at all for the reasons mentioned above. It may be quite apt to notice that while issuing the dependency certificate on 1<sup>st</sup> October 2012, the concerned Tehsildar has not applied his bare minimum mind while issuing certificate. This is so because Rakesh Kumar even in 2012 was claiming to be son of Kaku Ram and there was no valid proof before Tehsildar concerned for issuing certificate for the purpose of legal heirship of late Smt. Bimla Devi. A note of caution needs to be sent to all the concerned to remain cautious while issuing certificates.

I opine accordingly.

  
**Advocate General**  
21-06-21