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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 2874 OF 2020

Kiran Tukaram Shelke	}	Petitioner
Versus		
Union of India & Ors.	}	Respondents

Mr. S. N. Pillai, Advocate for the Petitioner.
Mr. Suresh Kumar, Advocate for the Respondents.

CORAM: MAHESH CHANDRA TRIPATHI, CJ. & ADVAIT M. SETHNA, J.

RESERVED ON: 29th SEPTEMBER, 2026
PRONOUNCED ON: 9th OCTOBER, 2026

JUDGMENT: (Per Chief Justice)

1. Rule. Rule is made returnable forthwith. With the consent of the learned Counsel for the parties, heard finally.

2. The instant Writ Petition is preferred against the Judgment and Order dated 9th October, 2018 passed by the Central Administrative Tribunal, Mumbai Bench, Mumbai (for short, "**the Tribunal**") in Original Application No.525 of 2017.

Facts:

3. The facts in brief are set out as under:-

3.1 The Petitioner was working as Trackman in Engineering Department under Sr. Section Engineer (Maint.), Wadi Bunder

(ADEN (M) MKRD), Mumbai Division of Central Railway. Initially, Petitioner was appointed in the year 2010 as Gangman and later on re-designated as Trackman. He married with one Ms. Shobha on 12th May 2004 as per the Hindu rites and rituals. However, due to some differences, they started living separately and later on, obtained divorce by mutual consent through a decree of the Family Court No.7, Mumbai, on 24th September 2014. Subsequently, he got married with one Ms. Jyoti Valiba Avhad on 13th June 2016, which was registered under the Hindu Marriage Act, 1955 (for short, "**Hindu Marriage Act**") on 27th June 2016.

3.2. It appears that during the subsistence of his previous marriage, Petitioner had developed relation with Ms. Jyoti (now wife) who gave birth to three children prior to their marriage. One daughter was born on 24th October 2009 and two sons were born on 21st April 2012 and 10th February 2016 respectively. Petitioner also claimed that he is acting as guardian of his children since their birth and accordingly, his name is also mentioned as father in the birth certificates issued in their favour by the Local Bodies.

3.3 On 18th July 2016, the Petitioner moved an Application to Assistant Divisional Engineer (M), Mankhurd through Sr. Section Engineer (P.Way), Wadi Bunder to inform about his divorce and to include the name of his second wife and three children for Railway

Record (Service Register) for availing Family Pass/PTOs, Family Medical Facility, Nominations for different dues after his sad demise, etc. Consequently, the office of ADEN (M) MKRD vide its letter dated 26th July 2016 forwarded the case of the Petitioner to DRM(P) CSTM for opinion of the Law Officer at Headquater's office, CSMT, Mumbai.

3.4 The Headquarter's Office, Personnel Branch, CSMT, Mumbai vide letter dated 2nd May 2017 (for short "**Impugned Letter**") had advised that Smt. Jyoti, being the legally wedded wife, she is eligible for entry of her name in the Service Register of the Petitioner and for other benefits. However, the children who are born prior to their marriage and in view of Section 16 of the Hindu Marriage Act, they are illegitimate and entitled only for limited purpose of sharing property of their parents. It had also been clarified that the children will be eligible for family pension in their turn subject to fulfillment of conditions prescribed for the drawl of such pension from time to time. A reference was also made to Railway Board's letter dated 14th February, 1997 and it was stated that the children will be not eligible for any kind of Railway Passes as clarified by the Railway Board vide RBE No.39/2005 dated 10th March 2025. (for short "**Impugned Circular**")

3.5 Consequently, the Petitioner preferred Original Application No.525 of 2017 before the Tribunal, seeking a direction to the Respondents to accord basic facilities such as Pass/PTOs (including School passes), Medical Facility, re-imbursement of tuition fees and various SBF grants, if eligible. It was also prayed to direct the Respondents to allow the Petitioner to execute various nominations in favour of his children for PF/DCRG/NGIS purpose. The Petitioner further sought a direction to Respondents to make entries of the names of the Petitioner's children as his "Family Members" in the Service Register, Medical Card and Pass/PTO purposes.

3.6 After hearing the both the parties, the Tribunal by its Judgment and Order dated 9th October 2018, dismissed the Original Application No.525 of 2017 preferred by the Petitioner.

3.7 In such factual backdrop, the Petitioner has preferred the instant Writ Petition, challenging the Impugned Order dated 9th October 2018 passed by the Tribunal; the Impugned Letter dated 2nd May 2017 issued by the The Headquarter's Office, Personnel Branch, CSMT, Mumbai and the Impugned Circular dated 10th March 2025 (RBE No.39/2005) issued by the Railway Board.

Submissions on behalf of the Petitioner:

4. Mr. Pillai, learned Counsel for the Petitioner, at the outset, submitted that the Tribunal was not right in dismissing the Original Application. He drew our attention to the Railway Servants (Pass) Rules, 1986 (for short "**Railway Pass Rules**"), more particularly Rule 2(a), 2(c) and 2(d) thereof, to submit that there is no discrimination between children born out of a valid or a void marriage. He submits that the dependent son and daughter are entitled to the benefits as they are dependent upon the Petitioner being their biological father, and therefore, his children are entitled to receive the benefits and such rights cannot be denied to them on the basis of their illegitimacy.

4.1. Mr. Pillai vehemently submitted that what is stated in the definition of "family" under Rule 2(d)(ii) of the Railway Pass Rules is only a "son" and the same is not qualified by stating that such son has to be born out of valid wedlock. He submitted that any male/female child born to a couple are son/daughter. The rule-making authority consciously used the expression "son/daughter" and has not restricted it by any other condition such as to the effect that the son/daughter should have been born out of valid marriage.

4.2 Mr. Pillai submitted that the Impugned Circular (RBE No.39/2005) relied upon by the Respondents, which states that the

children are not eligible for privilege passes, PTOs, medical facilities etc. because they were born during the subsistence of first marriage, is contrary to the Railway Pass Rules and therefore, it ought to be set aside. It was submitted that when the Railway Pass Rules do not restrict the claim of son/daughter, then, by no stretch of imagination, the Respondents can put an embargo on such a claim by stating that the son/daughter are not eligible for the benefits on the ground that during the subsistence of first marriage, they were born to the second wife.

4.3 Mr. Pillai emphatically placed reliance on Section 16 of the Hindu Marriage Act, wherein there is a conferment of legitimacy on children born out of a void marriage as defined under Section 11 of the Hindu Marriage Act. It was submitted that Section 16(1) begins with a non-obstante clause and states that notwithstanding that marriage is null and void under Section 11, any child of such marriage who would have been legitimate if the marriage had been valid, shall be legitimate, whether such child is born before or after commencement of the Marriage Laws (Amendment) Act 1976, and whether or not a decree of nullity is granted in respect of that marriage under the said Act and whether or not the marriage is held to be void otherwise than on a petition under the said Act.

4.4. Mr. Pillai further submitted that in similar facts and circumstances, relying upon a Circular dated 2nd January 1992 issued by the Railway Board, appointment on compassionate ground to a second widow and her children were denied. The same was set aside by a Division Bench of the Calcutta High Court in ***Namita Goldar & Anr. vs. Union of India & Ors***[1]. The Apex Court has also considered the compassionate appointment of a child born out of a second marriage as legitimate and entitled for grant of compassionate appointment in the case of ***Union of India vs. V. R. Tripathi***[2]. In the said case, the Apex Court has categorically observed that, though there may be restriction to an illegitimate child succeeding to the ancestral properties of the deceased parent and the right is only with regard to the separate property of the deceased parent when their marriage is void, the same cannot be construed as a restriction so as to prevent the son born out of a void marriage to claim appointment on compassionate basis.

4.5 Mr. Pillai submits that the Tribunal has erred in law whereas the Parliament in its wisdom has conferred legitimacy to children born out of a void marriage, even if any person marries during the subsistence of his first marriage or has a spouse living at the time

1 (2010) 1 Cal.L.J.464.

2 (2019) 14 SCC 646

of the marriage and enters into a void marriage in terms of Section 11 of the Hindu Marriage Act. A bare reading of Section 16 would indicate that the children born out of a void marriage are considered to be legitimate by a deeming fiction. While conferring legitimacy to such children, the Parliament has consciously made restrictions only to the succession rights of such illegitimate children, inasmuch as they can succeed only to the separate property of their parents, as if they are the legitimate children of their parents and not to the ancestral property. Mr. Pillai has also submitted that a similar view has also been taken by the Division Bench of Karnataka High Court in ***K. Santhosha vs. Karnataka Power Transmission Corporation Limited & Ors***[3].

4.6 Mr. Pillai has also relied on the recent Judgment of the Supreme Court in ***Mukesh Kumar & Anr. vs. Union of India & Ors***.[4], wherein the Supreme Court had considered whether the child born from the second wife of a deceased employee is entitled to compassionate appointment in the light of a Circular dated 2nd January 1992, issued by the Railway Board and held that the policy for compassionate appointment cannot discriminate against a person only on the ground of descent by classifying children of deceased employee as legitimate and illegitimate and recognizing

3 (2021) 3 KCCR 2401

4 (2022) 14 SCC 161

only the right of legitimate descendant. It was further held that apart from the fact that strict scrutiny would reveal that the classification is suspect, as demonstrated in ***V. R. Tripathi*** *(supra)*, the impugned policy will instantly fall foul of the constitutional prohibition of discrimination on the ground of descent.

4.7 Mr. Pillai submitted that as per the earlier Circular dated 6th March 2003 issued by the Railways Board, even the step sons/step daughters are entitled to be included in the privilege pass of Railway employees and as such, on the ground of a legitimate or illegitimate, such discrimination cannot be permitted in the light of the aforementioned mandate and Petitioner's children cannot be denied privilege pass merely on the ground that they were born before marriage of the couple. He submitted that as per the Railway Pass Rules, the adopted children are put at par with the natural born children of railway employee and even adopted children are also entitled to privilege pass.

4.8 Mr. Pillai submits that the Impugned Order passed by the Tribunal was contrary to law and in terms of the Judgment in ***Revanasiddappa & Anr. vs. Mallikarjun & Ors.***[5] inasmuch as there cannot be any discrimination based on the relationship between the parents.

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5 AIR 2011 SC (Supp.) 155

4.9 Mr. Pillai has heavily relied on the aim and object of the Juvenile Justice (Care & Protection of Children) Act, 2015, wherein Chapter II deals with General Principles of Care and Protection of Children. Section 3(iv) thereof provides that all decisions regarding the child shall be based on the primary consideration that they are in the best interest of the child and to help the child to develop full potential. Furthermore, Section 3(vii) deals with adversarial or accusatory words not to be used in the processes pertaining to a child.

4.10 Mr. Pillai also relied on United Nations Convention on the Rights of the Child, 1989. He submitted that even under the said Convention, which was adopted and opened for signature, ratification and accession by General Assembly resolution 44/25 of 20th November 1989, in which, India is also a signatory, there cannot be any such discrimination.

4.11 In light of all the above submissions, Mr. Pillai would urge that the instant Writ Petition be allowed and the Rule be made Absolute.

Submissions of the Respondents:

5. Per contra, Mr. Suresh Kumar, learned Counsel for the Respondents has supported the Impugned Order passed by the Tribunal. He has relied upon an Affidavit-In-Reply dated 30th

August 2024, filed on behalf of the Respondents to submit that Section 2(d) of the Railway Pass Rules provides for a definition of 'family'. However, it only acknowledges the legally wedded spouse, their sons, whether married or unmarried and unmarried/widowed/legally divorced daughters. Therefore, son/daughter born out of void marriage are not entitled to be considered under the Railway Pass Rules.

5.1 Mr. Kumar would contend that there is no infirmity much less irregularity, let alone illegality in the Impugned Circular dated 10th March 2005, which is issued perfectly by the Railway Board, in accordance with law. The same warrants no interference and the submissions made in this regard, by Mr. Pillai to strike down the same are unwarranted and uncalled for.

5.2 Mr. Kumar submitted that the embargo on the children born out of void marriage is just and proper. When the first marriage is in subsistence, the employee is not entitled to marry for second time. Accordingly, such embargo is also there in the Service Rules as permission has to be taken before marrying during the subsistence of first marriage. He submitted that in the instant matter, it is an admitted position that while subsistence of the previous marriage, the Petitioner entered into illegitimate relation and consequently three children were born and as such, the denial

of such facilities, which is assailed before the Tribunal as well as in this Court, is not unsustainable and contrary to law.

5.3 Mr. Kumar submitted that the Tribunal has correctly appreciated the position of law and dismissed the claim/Original Application of the Petitioner. Accordingly, he would urge that there is no merit in the instant Writ Petition and the same is liable to be dismissed with costs.

Analysis and Conclusion:

6. The gravamen in this proceedings relates as to whether the children born to a railway servant can be denied privilege passes, medical facilities etc. by railway administration on the ground that the children are born to second wife during the subsistence of previous marriage in light of the Impugned Circular issued by the Railway Board and also whether the Impugned Judgment and Order passed by the Tribunal is sustainable in the eyes of law.

7. The detailed narration of facts and contentions would not call for reiteration. It is not in dispute that the Petitioner is an employee of the Respondents. It is also not in dispute that during the subsistence of the previous marriage, two children, i.e., daughter and first son were born and the second son was born when the first marriage was dissolved (prior to the solemnization of second marriage). The claim of the Petitioner for providing certain benefits

had been denied by the Respondents merely on the ground that even though father had married for the second time, the children were born during subsistence of the first marriage and prior to the second marriage, and as such, they are not legitimate children.

8. Being aggrieved by the Impugned Letter dated 2nd May 2017, whereby the benefits had been denied, the Petitioner had challenged the same before the Tribunal. In the Impugned Order, the Tribunal has considered the Railway Pass Rules, Railway Service (Pension) Rules, 1993 and Railway Service (Conduct) Rules, 1966. However, the Tribunal was swayed away with the fact that Rule 21 of Railway Service (Conduct) Rules, 1966 debars an employee from contracting second marriage when the first wife is living and since the Petitioner (Applicant) had committed such misconduct by entering into an extra-marital relationship and fathering three children during it, he was not entitled for any relief but only liable for punishment under the Railway Service (Conduct) Rules, 1966.

9. For ready reference, the analysis and conclusion as arrived by the Tribunal is reproduced hereunder: -

> *"4. Analysis and conclusions: -*
>
> *I have considered the contents of the application memo and annexes A-1 to A-13, written notes of arguments submitted by the applicant's counsel, reply to the O.A.*

submitted by the respondents on 23.02.2018 and the written arguments submitted by counsel for the respondents alongwith rules and case laws cited by the counsel on both sides. Based on this, my conclusions emerge as follows: -

4(a) The facts pertaining to divorce of the applicant with his earlier wife Smt. Shobha with effect from 24.09.2014 through a decree granted by the Family Court No.7, Mumbai, marriage of the applicant with Smt. Jyoti Valiba Avhad on 13.06.2016 and its registration on 27.06.2016 are not being contested by the Respondents. The applicant himself has categorically admitted in his submissions about his unlawful, extra marital relationship and fathering of the three children with Smt. Jyoti prior to their actual marriage on 13.06.2016.

4(b) The contention of the applicant is that as per provisions of Section 16 of the Hindu Marriage Act, 1955, there is a legitimacy of children of void and voidable marriages. As per Section 16(1) – Notwithstanding that a marriage is null and void under Section 11, any child of such marriage who would have been legitimate if the marriage had been valid, shall be legitimate, whether such child is born before or after the commencement of the Marriage Laws (Amendment) Act, 1976 and whether or not a decree of nullity is granted in respect of that marriage under this Act and whether or not the marriage is held to be void otherwise than on a petition under this Act.

4(c) In this case it is to be noted that while there is no dispute about illegitimacy of the children of the present applicant, the first issue for consideration here is whether nomination of Smt. Jyoti and such children is allowed as per the applicable Pension Rules for pension and pensionary benefits.

4(d) The respondents have already acceded to the request of the applicant to nominate Smt. Jyoti as his wife on service record with effect from 13.06.2016. They have

also conceded that Smt. Jyoti would be eligible for benefit of family pension and other pensionary benefits as wife of the applicant after his death. Once her nomination as wife of the applicant is accepted, she would also be eligible for other applicable benefits, as the family member of the applicant.

4(e) The second main issue of contention here is about allowing nomination (on his service record) as his family members of the 3 illegitimate children of the applicant who were born prior to his second marriage i.e. when his marriage to Smt. Jyoti was void and to extend to them the benefits of Railway passes, PTO, medical facilities and other concessions made available by the Railway authorities to the employees and their dependent children. As per Rule 21 of the Railway Services (Conduct) Rules, 1966, there are restrictions regarding marriage. As per Rule 21(1), no Government servant shall enter into or contract a marriage with a person having a spouse living. As per rule 21(2) no Government servant having a spouse living, shall enter into, or contract a marriage with any person, provided that the Central Government may permit a Government servant to enter into, or contract any such marriage as is referred to in clause (1) or clause (2), if it is satisfied that (a) – such marriage is permissible under the personal law applicable to such Government servant and the other party to the marriage; and (b) there are other grounds for doing so.

4(f) In view of this explicit provision under the Railway Services (Conduct) Rules, 1966 applicable to the present applicant as a Railway employee, he was prohibited from entering into or contracting a marriage when his first wife was living. In the present case, while the applicant seems to have formally married Smt. Jyoti after the divorce with the first wife, but there is clear admission of the applicant in this O.A. (synopsis page A and memo p.3-4) that the 3 children were born out of his extra-marital relationship with Smt. Jyoti during the period when the marriage with her was void and that he married her subsequently on

13.06.2016. These facts clearly establish as per the Hindu Marriage Act, 1955. This was obviously a serious misconduct on his part under Rule 21 of the Railway Services (Conduct) Rules, 1966 warranting penal action by the concerned disciplinary authority but it is not known whether after coming of this fact of his second marriage to the notice of the respondents any disciplinary action has been taken against the present applicant for this misconduct.

4(g) As regards the question as to whether the children of the present applicant can be nominated by him on service record for pension and pensionary benefits, the relevant Rules are the Railway Services (Pension) Rules, 1993, as amended from time to time. As contended by the respondents, Rule 74(1)(i) of these Rules provides that when the Railway servant has a family, the nomination shall not be in a favour of any person or persons other than the members of his family.

4(h) As discussed above, the applicant fathered the three children through extra-marital relationship with Smt. Jyoti but it was against the conduct rules and he also concealed this fact from the authorities apprehending disciplinary action. Now he claims to have solemnized his second marriage with her on 13.06.2016 after obtaining divorce from her first wife. Since he could have but did not bring on service record name of Smt. Jyoti prior to 13.06.2016, it follows that names of children born out of the void marriage also cannot be brought on the service record as members of his family. Hence his request in this regard deserves to be rejected. 4(i) As per Rule 3 of the Railway Servants (Pass) Rules, 1986, except where specifically provided to the contrary, they shall apply to all railway servants under the administrative control of the Ministry of Railways but shall not apply to – (iii) any person under the administrative control of the Ministry of Railways who by a general or special order is excluded from the facilities of Pass or a Privilege Ticket Order under these rules. Under Rule 2(d) 'family' has been defined and

the persons included in the 'family' do not cover the children of an employee born out of void marriage which is prohibited under the Conduct Rules.

4(j) While pension and pensionary benefits of an employee have been treated as part of his property, as per the settled law, the benefits like Pass, PTOs, etc. are neither a part of the employee's property nor they can be claimed as of right. Such facilities are extended to the employees and their dependents only as per specific rules or scheme framed in this regard by the relevant authorities. The contention of the respondents in this regard is, therefore, correct.

4(k) For extending these benefits the concerned authorities provide for eligibility criteria which may make certain distinctions based on intelligent differentia. As provided under Railway Servants (Pass) Rules, 1986, the facilities like Pass and PTO, can be extended only to those persons who have been made eligible under these rules. Since the list of eligible persons included in the definition of family here does not include illegitimate children born out of a void marriage (as is the case of the children of the present applicant), they are not entitled for the facilities such as Pass and PTO. This exclusion is a reasonable distinction made by the respondents in the rules based on intelligent differentia. Hence this claim of the applicant is not justified.

4(l) In such a context, it is also important to consider the likely resultant effect if such benefits are ever extended as an exception to the children born out of extra-marital relationships during subsistence of the legal and lawful marriage. If it is done in such cases, it will incentivise void and illegal marriages, thus misconduct and indiscipline among the employees and also send very undesirable signals of immoral behaviour to the society, besides unjustifiably exploiting the public resources for private or personal gain. When the present applicant consciously maintained his secret unlawful long extra-marital relationship with Smt. Jyoti leading to birth of the three

children before their marriage, which he now openly advances as his case, it was his private affair. Hence to take care of these illegitimate children has to necessarily remain his own private concern liability. He cannot be permitted to exploit the public resources for benefit of railway pass and PTO for these children of his. In view of this position, denial of these facilities by the respondents is fully justified."

10. We have also perused the Railway Pass Rules, the relevant Rules of which are extracted below for easy reference:-

2. Definitions: In these Rules, unless the context otherwise requires:—

a) 'adopted child' means a child for whom there is satisfactory proof of adoption irrespective of the fact whether such adoption is permissible or not under the personal law governing the railway servant concerned.

…

(c) 'dependent relative' in relation to a railway servant, whose father is not alive, means:-

(i) mother including a divorced mother;

(ii) unmarried or widowed sister;

(iii) brother/step-brother under twenty one years of age provided he resides with and is wholly dependent on the railway servant;

(iv) invalid brother of any age;

(v) brother who has attained the age of twenty one years and is a bonafide student of a recognised educational institution;

(vi) legally divorced sister]; and

(vii) Widow mother-in-law in case of widows appointed on compassionate grounds, whether her father. is alive or not.

Provided that a person shall not be considered to be a dependent relative if his/her income from all sources including pension, dearness relief, etc. exceeds 15% of the basic pay per month of the Railway servant or the amount arrived at by adding minimum pension/family pension of Rs. 3,500/-and the dearness relief admissible to the pensioner/ family pensioner thereon, rounded off to the nearest ten rupee figure, whichever is more.

Provided further that dependent relatives may be included in the Privilege Passes/PTOs given to the railway servants in cases where father is missing for a period of at least 7 years. Passes/ PTOs can also be given to the sisters in similar circumstances. However, an affidavit as to the period since when the person is missing, duly attested by a Magistrate is necessary.

(d) "family' includes:-

(i) spouse of a railway servant whether earning or not;

(ii) son or sons who have not attained the age of 21 years and are wholly dependent on the railway servant;

(iii) son or sons of the age of 21 and above who are;

(a) bonafide students of any recognised educational institution;

(b) engaged in any research work and do not get any scholarship/stipend;

(c) working as an articled clerk under the Chartered Accountant;

(d) invalid, on appropriate certificate from Railway Doctor;

(iv) unmarried daughters of any age whether earning or not;

(v) widowed daughters provided they are dependent on the railway servant;

(vi) legally divorced daughter who is dependent on the railway servant.

…

(f) 'Pass' means an authority given by the Ministry of Railways or any railway administration to a person, authorising him to travel by rail gratuitously.

……

4. Kinds of passes: (1) A railway servant or the entitled members of his/her family and dependent relatives as defined in these Rules may be issued the following kinds of passes, namely:

(i) duty pass;

(ii) privilege pass including passes while on deputation;

(iii) school pass;

(iv) post-retirement complimentary pass;

(v) widow pass;

(vi) residential card pass; and

(vii) special pass.

(2) The Passes specified in clause (i) of sub-rule (1) may be issued in the form of metal pass, a card pass or a cheque pass."

11. The definition of "family members", and "dependent relatives" mentioned in the Indian Railway Medical Manual (Volume-I), Third Edition-2000, reads as under: -

"(5)"Family members", and "dependent relatives" for purposes of these rules, will include all such persons as are eligible under Pass Rules."

12. Our attention is also invited to the O.M. No.1/16/96-P & W(E), dated 2nd December, 1996, issued by the Ministry of Personal

Public Grievances and Pensions (Department of Pension & Pensioners' Welfare) for grant of pensionary benefits to children from the void or voidable marriages, which reads as under: -

> *"Subject: Grant of pensionary benefits to children from the void or voidable marriages.*
>
> *Attention is invited to provisions contained in Rule 54(8) of CCS (Pension) Rules, 1972 and decisions thereunder on regulation of amount of family pension payable. This Department has been receiving references from Ministries/Departments seeking advice on the question of admissibility of family pension to children of a deceased Government servant/pensioner from a wife whose marriage with the said Government servant/pensioner would be voidable or held void under the provisions of Hindu Marriage Act.*
>
> *2. The matter regarding grant of pensionary benefits to such children has been examined in consultation with the Ministry of Law.*
>
> *3. In view of the fact that Section 16 of the Hindu Marriage Act, 1955 as amended by Hindu Marriage Laws (Amendment) Act states "Notwithstanding that a marriage and is null and void under Section 11, any child of such marriage who would have been legitimate if the marriage had been valid shall be legitimate, whether such child is born before or after the commencement of Marriage Law (Amendment) Act, 1976 and whether or not a decree of nullity is granted in respect of that marriage under this act, and, whether or not the marriage is held to be void otherwise than on a petition under this act.*
>
> *4. The rights of such children require to be protected and will accrue accordingly. It is, therefore, clarified that pensionary benefits will be granted to children of a deceased Government servant/pensioner form such type of void marriages when their turn comes in accordance with Rule 54(8). It may be noted that they will have no*

claim whatsoever to receive family pension as long as the legally wedded wife is the recipient of the same."

13. We find that the aforesaid O.M. has duly considered Section 16 of the Hindu Marriage Act, as amended by Hindu Marriage Laws (Amendment) Act and in paragraph 4 thereof, it stipulates that rights of such children are required to be protected and will accrue accordingly. In this regard, it is clarified that pensionary benefits will be granted to children of a deceased Government servant/pensioner from such type of void marriages when their turn comes in accordance with Rules 54(8) (supra).

14. Subsequently, the Ministry of Personnel Public Grievances and Pensions, Department of Pension & Pensioners' Welfare by O.M. dated 27th November, 2012 had issued certain clarifications, qua the eligibility of the children from void or voidable marriages for family pension. For ready reference, the same is reproduced herein below:

"Subject: Eligibility of Children from a void or voidable marriage for family pension-clarification regarding.

The undersigned is directed to refer to this Department's O.M. No. 1/16/96-P&PW(E) dated 2.12.1996 whereby it was clarified that Pensionary benefits will be granted to children of a deceased Government servant/pensioner from void or voidable marriages when their turn comes in accordance with Rule 54(8). It is mentioned in Para of the O.M. that "It may be noted that they will have no claim whatsoever to receive family pension as long as the legally

wedded wife is the recipient of the same."

2. The matter has been re-examined in consultation with the Ministry of Law and Justice (Department of Legal Affairs) and Ministry of Finance (Department of Expenditure). It has been decided that in supersession of Para 4 of the O.M., ibid, dated 2.12.1996, the share of children from illegally wedded wife in the family pension shall be payable to term in the manner given under sub-rule 7(c) Rule 54 of CCS (Pension) Rules, 1972. along with the legally wedded wife.

3. It has also been decided that in past cases, no recovery from the previous beneficiary should be made. On receipt of an application from eligible child/children of the deceased Government employee/pensioner born to an ineligible mother, a decision regarding division or otherwise of family pension may be taken by the competent authority after satisfying himself/herself about veracity of facts and entitlement of the applicant(s).

4. As regards pensioners/family pensioners belonging to the Indian Audit and Accounts Departments, these Orders issue after consultation with the Comptroller and Auditor General of India.

5. This issues with the concurrence of Department of Legal Affairs vide their FTS No. 3036, dated 17.10.2012.

6. This issues with the concurrence of Ministry of Finance, Department of Expenditure vide their L.D. No. 530/E.V/2012, dated 23.11.2012."

We find that the above OM dated 27th November 2012 also does not bar / prohibit grant of family pension to children from illegally wedded wife. The same shall be payable to them in the manner stipulated under sub-rule 7(c) Rule 54 of CCS (Pension) Rules, 1972, along with the legally wedded wife.

15. At this juncture, we may advert to the Impugned Circular (RBE No.39/2005) dated 10th March 2005, as annexed to the Affidavit in Reply (Exhibit R-1) filed on behalf of the Respondents, the relevant extract of which reads thus:-

> *" Instructions were issued vide Board's letter referred to above, that children born out of void marriage are not eligible for inclusion in the Pass of widows of Railway servants.*
>
> *2. On reference from a Railway whether children born out of void marriage are eligible for inclusion in the Privilege pass issued to Railway servants, the case has been further examined and it is clarified that children born out of void marriages are not eligible for any kind of Railway passes...."*

16. Contextually, we find that the entitlement of such children to the said benefits came up for consideration before the Supreme Court in the context of compassionate appointments in the case of ***V. R. Tripathi*** *(supra)*. In paragraph 18 thereof, the Supreme Court has considered Section 16(1) and 16(3) of the Hindu Marriage Act and held that "*Section 16(3), however, does not in any manner affect the principle declared in sub-section (1) of Section 16 in relation to the legitimacy of a child*". In paragraph 20, the Supreme Court has considered a Circular dated 2nd January 1992, whereby the compassionate appointment in case of a child who was born to the second wife during subsistence the first marriage was denied. The

Supreme Court also observed that the said Circular of 2nd January 1992, was struck down by a Division Bench of the Calcutta High Court in ***Namita Goldar*** *(supra)*. Such decision was accepted and has been implemented. Therefore, the Apex Court has held that it was not open to the Railway Authorities to rely upon the said Circular which was legally struck down.

17. The Supreme Court, *inter alia*, held that it was improper on part of the Railway Board to issue a fresh Circular on 3rd April, 2013, reiterating the terms of the earlier Circular dated 2nd January, 1992, after the decision in ***Namita Goldar*** *(supra)* had attained finality. Accordingly, it was held that compassionate appointment to the claimants therein was to be accorded and ought not to be denied. Contextually, we find it necessary to further refer to paragraphs 14 and 15 of the said decision, which reads thus:-

> *"14. The issue essentially is whether it is open to an employer, who is amenable to Part III of the Constitution to deny the benefit of compassionate appointment which is available to other legitimate children. Undoubtedly, while designing a policy of compassionate appointment, the State can prescribe the terms on which it can be granted. However, it is not open to the State, while making the scheme or rules, to lay down a condition which is inconsistent with Article 14 of the Constitution. The purpose of compassionate appointment is to prevent destitution and penury in the family of a deceased employee. The effect of the circular is that irrespective of the destitution which a child born from a second marriage of a deceased employee may face, compassionate appointment is to be refused*

unless the second marriage was contracted with the permission of the administration. Once Section 16 of the Hindu Marriage Act, 1955 regards a child born from a marriage entered into while the earlier marriage is subsisting to be legitimate, it would not be open to the State, consistent with Article 14 to exclude such a child from seeking the benefit of compassionate appointment. Such a condition of exclusion is arbitrary and ultra vires.

15. Even if the narrow classification test is adopted, the circular of the Railway Board creates two categories between one class of legitimate children. Though the law has regarded a child born from a second marriage as legitimate, a child born from the first marriage of a deceased employee is alone made entitled to the benefit of compassionate appointment. The salutary purpose underlying the grant of compassionate appointment, which is to prevent destitution and penury in the family of a deceased employee requires that any stipulation or condition which is imposed must have or bear a reasonable nexus to the object which is sought to be achieved. The learned Additional Solicitor General has urged that it is open to the State, as part of its policy of discouraging bigamy to restrict the benefit of compassionate appointment, only to the spouse and children of the first marriage and to deny it to the spouse of a subsequent marriage and the children. We are here concerned with the exclusion of children born from a second marriage. By excluding a class of beneficiaries who have been deemed legitimate by the operation of law, the condition imposed is disproportionate to the object sought to be achieved. Having regard to the purpose and object of a scheme of compassionate appointment, once the law has treated such children as legitimate, it would be impermissible to exclude them from being considered for compassionate appointment. Children do not choose their parents. To deny compassionate appointment though the law treats a child of a void marriage as legitimate is deeply offensive to their dignity and is offensive to the constitutional guarantee against discrimination."

Apropos the above, we find that the said Impugned Circular (RBE No.39/2005) is premised on the Circular dated dated 2nd January 1992 *(supra),* which finds reference in the judgment of the Supreme Court, in ***V.R. Tripathi*** *(supra).* As observed above, the said Circular dated 2nd January 1992 *(supra),* which deprives the benefit of compassionate appointment to the children born of a void marriage, was initially struck down by the decision of the Calcutta High Court in ***Namita Goldar*** *(supra)* which was duly considered and approved by the Supreme Court in ***V.R. Tripathi*** *(supra).*

18. At this juncture, it is apposite to advert to the Supreme Court judgment in ***Mukesh Kumar*** *(supra).* This came to be passed in the context of compassionate appointments, dealing with the issues/lis similar to that in the given case. For easy reference, paragraph nos. 9, 10 and 11 of the said decision are reproduced below:-

> *"9. While compassionate appointment is an exception to the constitutional guarantee under Article 16, a policy for compassionate appointment must be consistent with the mandate of Articles 14 and 16. That is to say, a policy for compassionate appointment, which has the force of law, must not discriminate on any of the grounds mentioned in Article 16(2), including that of descent. In this regard, "descent" must be understood to encompass the familial origins of a person. Familial origins include the validity of the marriage of the parents of a claimant of compassionate appointment and the claimant's legitimacy as their child. The*

policy cannot discriminate against a person only on the ground of descent by classifying children of the deceased employee as legitimate and illegitimate and recognising only the right of legitimate descendant. Apart from the fact that strict scrutiny would reveal that the classification is suspect, as demonstrated by this Court in V.R. Tripathi, it will instantly fall foul of the constitutional prohibition of discrimination on the ground of descent. Such a policy is violative of Article 16(2).

10. We note with approval the decision of the Delhi High Court in Union of India v. Pankaj Kumar Sharma'|, to which one of us (S. Ravindra Bhat, J.) was a party, which held that descent cannot be a ground for denying employment under the scheme of compassionate appointments. Speaking through Sanghi,J., the Court held: (SCC OnLine Del para 22)

"22. The Court is of opinion that - apart from being textually sound—understanding "descent" in terms of prohibiting discrimination against a person on the basis of legitimacy, or on the basis of his mother's status as a first or second wife, fits within the principles underlying Article 16(2). Not only is one's descent, in this sense, entirely beyond one's control (and therefore, ought not to become a ground of State-sanctioned disadvantage), but it is also an established fact that children of "second" wives, whether counted as illegitimate or legitimate, have often suffered severe social disadvantage. Another significant observation here is that at the entry level—"legitimacy" is and cannot be a ground for denial of public employment. For these reasons, this Court is of the opinion that the petitioner's regulation violates Article 16(2)."

11. Given the above, we hold that the issue arising for consideration, in this case, is covered by the judgment of this Court in Union of India v. V.K Tripathi' and consequently the judgment and order dated 18-1-2018 of the High Court of Judicature at Patna passed in Gayatri Devi v. Union of India is set aside. As we have held that Appellant 1, Shri Manish Kumar, cannot be denied consideration under the scheme of compassionate appointments only because he is the son of

the second wife, there shall be a direction to consider his case as per the extant policy. The authorities shall be entitled to scrutinise whether the application for compassionate appointment fulfills all other requirements in accordance with the law. The process of consideration of the application shall be completed within a period of three months from today."

Upon a perusal of the above, it is evident that the ratio in ***V. R. Tripathi*** *(supra)* has been duly followed by the Supreme Court in ***Mukesh Kumar*** *(supra)*. This, to reiterate that illegitimacy of children, cannot be a ground to deny public employment and the benefits accruing therefrom.

19. We find that a similar view is taken by the Karnataka High Court in ***K. Santhosha*** *(supra)*. The relevant paragraphs of the said decision are extracted below:-

"34. The next judgment cited by learned counsel for the appellant is in the case of V. R. Tripathi, which is a recent judgment, wherein specific reference has been made to Section 16 of the Act. In case the issue, whether the condition which had been imposed by the Circular of the Railway Board under which compassionate appointment cannot be granted to the children born from a second marriage of a deceased employee (except when the marriage was permitted by the administration taking into account the personal law, etc.) was considered in light of Article 16 of the Constitution of India and Section 16 of the Act.

……

36. On a reading of the aforesaid judgment, it is evident that, the Hon'ble Supreme Court has stated that in the said case, the Railway Board, who was the employer of an

> *employee who died in harness, could not have made a discrimination between two categories of children, namely, legitimate and illegitimate children when the Parliament under the Hindu Marriage Act, 1955, has conferred legitimacy even to illegitimate children born out of a void marriage where the deceased employee had married for the second time during the subsistence of his first marriage. The said judgment categorically states that the embargo placed on an illegitimate child of an employee seeking appointment on compassionate basis on the ground that he is illegitimate child in a Circular issued by the Railway Board was erroneous. The facts in the present case are identical."*

20. A holistic reading of the applicable statutory provisions, including the Rules and Regulations, coupled with the decisions relied on *(supra)* make it clear that the law does not envisage any distinction, let alone any discrimination *qua* children born out of void marriages, in the context of their right to be eligible for benefits including railway passes. Having observed that the first two children who were born out of the relationship of the Petitioner with the second wife, during the subsistence of the first marriage are entitled to the said benefits of Railway Pass, etc., there is no rationale, much less legal embargo to deny such benefits to the third child who was born on 10th February 2016, after divorce *qua* the first wife and before solemnization of the marriage with the second wife. Depriving the child of such benefit would tantamount to discrimination, *inter alia*, in the teeth of Article 14 of the Constitution, which cannot be countenanced.

21. Therefore, in our considered view, children are children and the labels of illegitimate, etc. is not what the law prescribes and or mandates, so as to deprive/deny the benefits to them, in the given factual matrix. In view thereof, the Impugned Circular (RBE No.39/2005) which runs contrary in letter and spirit to such mandate of law, cannot be sustained.

22. In the aforesaid circumstances, the instant Writ Petition is allowed. The Impugned Judgment and Order dated 9th October 2018 passed by the Tribunal in Original Application No. 525 of 2017 is quashed and set aside. So also, we quash and set aside the Impugned Circular dated 10th March 2005 as unsustainable in law coupled with the Impugned Letter dated 2nd May 2017 to the extent it states that 'such children' of the Petitioner, will not be eligible/entitled for any kind of Railway passes/other benefits.

23. The Respondents are directed to consider the case of the Petitioner for grant of the benefits as claimed by him in light of the observations made above and in accordance with law. Such exercise shall be carried out by the Respondents, positively within a a period of two months from the date of receipt of the certified copy of this order.

24. Petition is Allowed. Rule is made Absolute in the above terms.

25. Before parting, we are reminded of a verse from the poetry

"*On Children*" by the celebrated writer and poet, Kahlil Gibran, the relevant extract of which is reproduced herein below:

"Your children are not your children.
They are the sons and daughters of Life's longing for itself.
They come through you but not from you,
And though they are with you yet they belong not to you."

26. All concerned to act on an authenticated copy of this Order.

[ADVAIT M. SETHNA, J.] **[CHIEF JUSTICE]**

PRAVIN DASHARATH PANDIT
Digitally signed by PRAVIN DASHARATH PANDIT
Date: 2026.10.09 17:00:46 +0530