

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.9383 of 2013

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1. The Union of India Through The General Manager, East Central Railway, Hajipur at and Po- Hajipur, District- Vaishali
 2. The Divisional Railway Manager, Samastipur Division, East Central Railway, Samastipur
 3. The Divisional Railway Manager (Personnel) Samastipur Division, East Central Railway, Samastipur

.... Petitioners

Versus

1. Most. Uma Devi, Second Wife of Late Jai Kishore Thakur, Resident of Village- Bishanpurpur, P.S.- Samastipur, District- Samastipur
2. Most. Kamal Devi, First Wife of Late Jai Kishore Thakur, Resident of Village- Bishanpurpur, P.S.- Samastipur, District- Samastipur
3. Santosh Kumar Thakur, Son of Late Jai Kishore Thakur, Resident of Village- Bishanpurpur, P.S.- Samastipur, District- Samastipur

.... Respondents

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Appearance :

For the Petitioner/s : Mr. Anil Kumar Sinha with Mr. Sakib Aiyaz
Mr. Gautam Bose, AAG

For the Respondent/s : Mr. Abdul Hakim with Mr. Rakesh Kumar

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE GOPAL PRASAD

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date: 29-01-2015

The appointment to the various posts in the Government services was, and continues to be through a perfect procedure that comprised of calling for applications, assessment of the applicants' merit and selection of the candidates. Irrespective of difference as to the procedures, it is only after the process of selection that appointments are made, duly observing the rules of reservation wherever they exist. An order was passed by the Hon'ble Supreme Court out of compassion that the one of the dependants of an employee who died in harness, be provided employment, to enable the



bereaved family to tide over the difficulty on account of the sudden death. Over the period, this has grown, to the extent of virtually overshadowing the regular process of appointment. In certain cases, appointment on compassionate ground is the only method in force for inducting candidates into the service, on account of the ban imposed on recruitment. Obviously, by yielding to the pressure exerted by the Trade Unions, or other agencies, the Government and its instrumentalities have widened the scope of the concept of compassionate appointments to the levels, which the Hon'ble Supreme Court may not have intended. All this, in the teeth of Articles 14, 16 and 309 of the Constitution of India, and when millions of well educated youths are without employment.

In the Railways also, there exists a facility of providing appointment on compassionate ground, to the dependants of the employees, who died in harness. In certain agencies/instrumentalities of the Government, such as banks, conditions are imposed to the effect that facility can be extended, only when the family is found to be in a financial penury, on account of the death of the employee but not when it is already in a fairly good condition or if the death-cum-retirement benefits extended to the family are considerable. It is also to be noted that in many cases the widow is provided the family pension, apart from the other benefits such as gratuity, commutation, leave encashment, etc.

The respondents herein are said to be heirs of one late Jai Kishore Thakur, who was employed as Fitter in East Central Railways. He died on 9.5.1999 while in service. His wife whose name was recorded in the service register, or her children did not make any claim for appointment on compassionate ground. They have received the benefits, and the lady is getting the family pension. However,



another woman by name Smt. Uma Devi, submitted an application in 2001 for appointment on compassionate ground, stating that she is the second wife of the deceased employee. That application was rejected by the Railway Administration by placing reliance upon a circular dated 9.2.1992, according to which, the second wife of a deceased employee or the children through such marriage shall not be eligible for the facility of compassionate appointment; unless the second marriage was performed after obtaining the permission of the competent authority, in accordance with the service rules. Smt. Uma Devi did not press the matter further. However, her son, the 3rd respondent herein, filed representation dated 1.2.2008 with a prayer to appoint him on compassionate grounds. He claimed that he is the son of the deceased employee through the second wife Smt. Uma Devi. The same was rejected through order dated 18.3.2010 by the respondent-appellants. Challenging the said order the 3rd respondent filed O.A. No. 623 of 2010 before the Patna Bench of the Central Administrative Tribunal. The petitioners opposed the same by raising several grounds.

The Tribunal allowed the O.A., through its order dated 10.5.2012. The same is challenged in this writ petition.

Heard Mr. Anil Kumar Sinha for the petitioners and Mr. Abdul Hakim for the respondents.

It has already been mentioned that the wife or the children of the deceased employee, whose names were entered in the service register did not submit any claim for appointment on compassionate grounds. It is only Smt. Uma Devi who came forward as the second wife, and wanted the facility of compassionate appointment. That was rejected in the year 2001 itself. Uma Devi did not challenge the order of rejection. It is seven years thereafter, that

her son filed an application in 2008. The appellants adhered to the existing policy, as contained in the scheme as well as the circular dated 24.1.1992 (Annexure -1). The relevant portion of the circular reads as under:-

Sub : Appointment on compassionate grounds – cases of second widow and her wards.

It is clarified that in the case of railway employees dying in harness even leaving more than one widow along with children born to the 2nd wife, settlement dues may be shared by both the widows due to court orders or otherwise on merits of each case, appointments on compassionate grounds to the second widow and her children are not to be considered unless the administration has permitted the second marriage, in special circumstances, taking into account the personal law etc.

2. The fact that the second marriage is not permissible is invariably clarified in the terms and conditions advised in the offer of initial appointment.
3. This may be kept in view and the cases for compassionate appointment to the second widow or her wards need not be, forwarded to railway board.
4. Kindly acknowledge receipt.”

This very aspect fell for consideration before various Division Benches of this Court. For example, in CWJC No.2592 of 2007 (The Union of India & Ors. Vs. Uma Devi & Another), a Division Bench of this Court rendered its judgment dated 22.4.2010, reversing an order passed by the Tribunal in O.A.No.739 of 2005 on similar terms, as in the O.A. which is the subject matter of this writ petition. Extensive reference was made to the circular dated 24.1.1992. The concluding portion of the judgment reads as under:-

“Law is well settled that public employment in this country is a national wealth, and every citizen should have unrestricted access to the same which is possible only after the vacancies are advertised, and given wide publicity. Appointment on compassionate ground is based on descent, and the court have generally

set their faces against the same, subject to exceptional circumstances to be found in legislation, or policy decision or executive instruction of the employer. The position in the present case is just to the contrary with respect to children born out of an unholy combination.”

A Division Bench of Jharkhand High Court in a batch of writ petitions, being WP No. 4461 of 2008 and analogous cases (The Union of India vs. Basanti Devi & Another) has taken a similar view in its judgment dated 13.4.2011. In CWJC No. 18275 of 2010 (Pankaj Kumar Singh vs. Union of India & Others), another Division Bench of this Court held that as long as the policy of the Railways and circular dated 24.1.1992 are in force, and not challenged, the question of the second wife of the railway employee or her children being provided employment on compassionate grounds, does not arise. In the instant case, the Tribunal however has taken into account the decision of the Calcutta High Court in granting the relief.

It is no doubt true that recently one Division Bench expressed doubt about the correctness of the judgment of this Court in Uma Devi's case and referred the matter to the Full Bench. We are of the view that the reference itself is not warranted. If a Bench of co-equal jurisdiction is unable to persuade itself to be in agreement with a judgment cited before it, it can certainly render its own judgment. However, it cannot refer the matter to a Bench of larger size. It is only when a learned Judge or a Bench come across two conflicting judgments rendered by the benches of same strength that an observation can be made, as to the feasibility of referring the matter to a Bench of larger size to resolve the conflict leaving the matter to the Chief Justice. That is not the case here.

We hasten to add that almost in every organization, particularly those of the Government, there exists a provision in the

service rules, prohibiting bigamy by an employee. It is only in rare cases, that permissions are accorded for the employees to contract second marriage, that too depending upon the personal law and other relevant factors. The circular reflects the gist of such provision as well as the public law, which prohibits bigamy. Once prohibited under the law, bigamy is treated to be an act of misconduct under the relevant service rules. The spouse of such a prohibited marriage, much less her children, can not be conferred the benefit of exceptional measure, intended for rescuing a true family, in need.

Reliance is placed by the respondents upon an order passed by a Division Bench of this Court in CWJC No. 15815 of 2011 (The Union of India & Ors. Vs. Deepak Kumar Rai). However, we find it difficult to discern any principle of law as such from that. Added to that, the circular dated 24.1.1992 was not challenged in that writ petition much less it was held to be unconstitutional. As of now, there exist at least two Division Bench judgments of this Court which dealt with the matter in detail, dealing with the circular and holding that the second wife of a deceased employee of the Railways or children cannot claim the benefit of compassionate appointment.

Following the same, we allow the writ petition and set aside the order dated 10.5.2012 passed by the Tribunal in O.A. No. 623 of 2010.

(L. Narasimha Reddy,CJ)

(Gopal Prasad, J)

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