

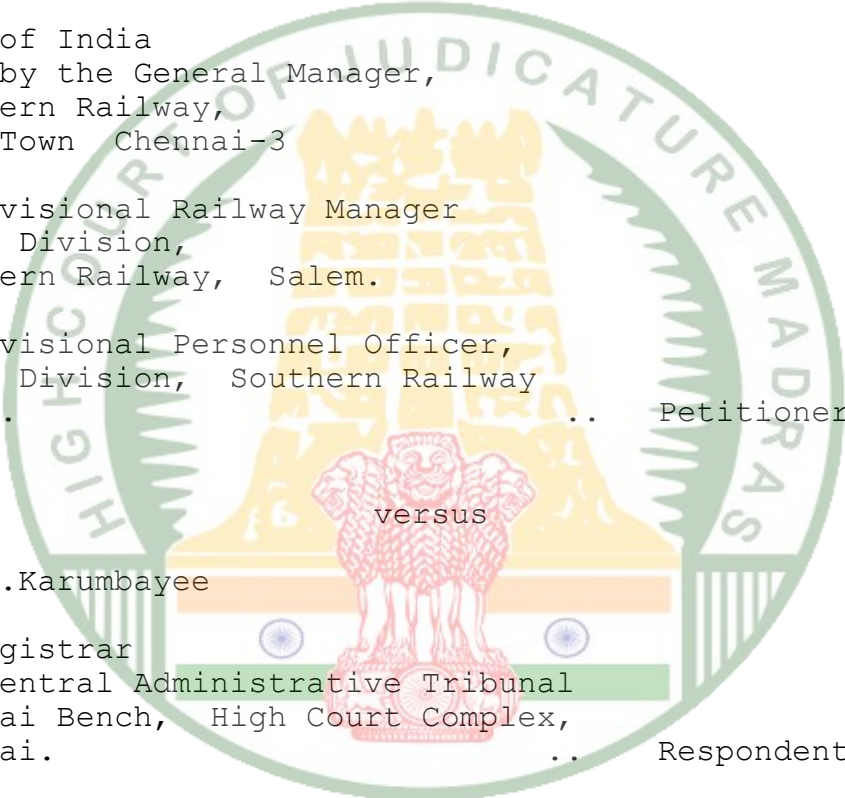
IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.02.2017

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The Honourable Mr. JUSTICE K.K.SASIDHARAN,
and
The Honourable Mr.JUSTICE V.PARTHIBAN

W.P.No.36981 OF 2015

- 
- 1 Union of India
Rep. by the General Manager,
Southern Railway,
Park Town Chennai-3
- 2 The Divisional Railway Manager
Salem Division,
Southern Railway, Salem.
- 3 The Divisional Personnel Officer,
Salem Division, Southern Railway
Salem. .. Petitioners
- versus
- 1 Smt. M.Karumbayee
- 2 The Registrar
The Central Administrative Tribunal
Chennai Bench, High Court Complex,
Chennai. .. Respondents

Prayer: This Writ Petition is filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorari, to call for the records on the file of 2nd respondent in order dated 13-07-2015 made in O.A.No. 866/2013 and quash the same.

For Petitioner : Mr.V.Bhavani Subbaroyan

For Respondents : Mr.L.Chandrakumar for R1

ORDER

(Order of the Court was made by V.PARTHIBAN, J.)

This Writ Petition has been filed against the order passed by the Central Administrative Tribunal (in short, 'the Tribunal'), Madras Bench in O.A.No.866 of 2013, dated 13.07.2015 allowing the original application filed by the first respondent herein/applicant, seeking for appointment on compassionate grounds in Southern Railway.

2. For the sake of clarity, the parties are referred to as 'the applicant' and 'the respondents' as narrated before the learned Tribunal.

3. The applicant has approached the Tribunal, seeking the following relief:

"To call for the records related to impugned order No.SA/P.712/XII/CS/CGA/Misc. dated 18.10.2012 passed by the 3rd respondent and to quash the same and further to direct the respondents to consider the applicant's nominee for compassionate ground appointment in terms of the mandatory provisions."

4. The case of the applicant was that she sought appointment on compassionate ground on the death of her husband, for the son who was born to second wife of the deceased employee as she did not have any issue from her wedlock with the deceased employee. The claim was rejected on the ground that the children born to second wife, were not recognized and the second wife was not entitled to any benefits, as per the instructions of the Railway Board. According to the Railway Board's Circular, dated 02.01.1992, appointment on compassionate ground, cannot be granted to the children born to second wife.

5. The learned Tribunal, after taking note of the submissions of the rival parties, allowed the Original Application on the basis of the Judgment rendered by the Division Bench of Kolkatta High Court in the case of "Smt.Namita Goldar and another versus Union of India and others", which was extracted in para 8 of the impugned order by the Tribunal. It is worthwhile to extract the operative portion of the decision rendered by the Kolkatta High Court which reads as under:

"3. The Supreme Court in the case of "Rameshwari Devi v. State of Bihar & Ors., reported in 2000(2) SCC 431 specifically held that the second marriage during the subsistence of first marriage may be illegal but the children born out of such second marriage are legitimate and are also entitled to the estate of the father.

Paragraph - 14 of the aforesaid judgment is set out hereunder :

"It cannot be disputed that the marriage between Nariain Lal and Yogmaya Devi was in contravention of Clause (i) of Section 5 of the Hindu Marriage Act and was a void marriage. Under Section 16 of this Act children of a void marriage are legitimate. Under the Hindu Succession Act, 1956, property of a male Hindu dying intestate devolves firstly on heirs in Clause (1) which include the widow and son. Among the widow and son, they all get shares (See: Sections 8,10 and the Schedule to the Hindu Succession Act, 1956) . Yogmaya Devi cannot be described as a widow of Narain Lal, her marriage with Narain Lal being void. The sons of the marriage between Narain Lal and Yogmaya Devi being the legitimate sons of Narain Lal would be entitled to the property of Narain Lal in equal shares along with that of Rameshwari Devi and the son born from the marriage of Rameshwari Devi with Narain Lal. That is, however, the legal position when a Hindu male dies intestate."

4. *** *** ***

5. In view of the decision of the Apex Court in the case of Rameshwari Devi (supra), the children of the second wife cannot be treated as illegitimate and referring to Section 16 of the Hindu Marriage Act specifically held that children of a void marriage are legitimate.

6. In view of the law as settled by the Supreme Court, no distinction can be made amongst the children of the first and second wife of a deceased employee. In the present case, however, first wife was issueless and died shortly after the death of the employee concerned.

7. *** *** ***

8. *** *** ***

9. In the aforesaid circumstances, the aforesaid circular issued by the Railway Board on 2nd January, 1992 stands quashed to the extent it prevents the children of the second wife from being considered for appointments on compassionate ground".

6. In view of the above decision of the Kolkatta High Court, the Tribunal has reasoned that the Railway cannot cite the Board's Circular dated 02.01.1992 and rejected the contentions put forth on behalf the respondents. In such view of the

matter, the Original Application came to be allowed. Against the said order, the present Writ Petition has been filed.

7. Ms.V.Bhavani Subbaroyan, learned counsel appearing for the respondents would contend that the children born out of illegal marriage, cannot be considered for compassionate appointment and though there was a judgment of the Kolkatta High Court on the said aspect, the Railway Board's Circular as stated supra would prevail in the matter of compassionate appointment. In fact, as could be seen from the extract of the Kolkatta Judgment, the decision was based on the ratio laid down by the Hon'ble Supreme Court and therefore, the contention put forth by the learned counsel, cannot be countenanced in law.

8. Mr.L.Chandrakumar, learned counsel appearing for the first respondent would contend that the Tribunal was right in passing the order, allowing the Original Application and the same does not call for interference.

9. We have given our anxious consideration to the materials placed on record and the pleadings of the parties.

10. We do not find any infirmity in the order passed by the learned Tribunal as the same was on the basis of the Division Bench judgment of the Kolkatta High Court, which had followed the decision of the Hon'ble Supreme Court. We also do not have any quarrel with the proposition of law laid down by the Kolkatta High Court as the children born out of second marriage, cannot be treated as illegitimate in the eye of law.

In such view of the matter, the Writ Petition is dismissed as devoid of merits and substance. No costs.

-s/d-

Assistant Registrar(CSII)

True Copy

Sub-Assistant Registrar

1. The General Manager,
Union of India
Southern Railway,
Park Town Chennai-3
- 2 The Divisional Railway Manager
Salem Division,
Southern Railway, Salem.

3 The Divisional Personnel Officer,
Salem Division, Southern Railway
Salem.

4. The Registrar,
Central Administrative Tribunal,
Madras Bench,
Chennai-600 104.

+1 cc to Mr.L.Chandrakumar Advocate sr 13215

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