

IN THE HIGH COURT OF JUDICATURE OF MADRAS

DATED: 03.01.2017

CORAM:

THE HONOURABLE MR.JUSTICE S.MANIKUMAR
and
THE HONOURABLE MR.JUSTICE N.AUTHINATHAN

W.P.No.41091 of 2015

J.Kaliammal

... Petitioner

-vs-

1.The Union of India,
Rep. by The General Manager,
Southern Railway,
Park Town, Chennai - 600 003.

2.The Divisional Railway Manager,
Madurai Division,
Southern Railway,
Madurai.

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

4.The Registrar,
Central Administrative Tribunal,
Madras Bench,
Chennai.

... Respondents

Prayer: Writ Petition has been filed under Article 226 of the Constitution of India, praying for a Writ of Certiorarified Mandamus, calling for the records relating to the order of the fourth respondent made in O.A.No.927 of 2013 dated 10.06.2014 & R.A.No.29 of 2014 dated 27.11.2014, to quash the same and to consequently direct the respondents to consider the claim of the petitioner's son for compassionate appointment in the light of the law settled in the case between Namita Goldar & Anr. vs. Union of India & others and further the same was adopted in W.P.C.T.No.24 of 2012 by the Hon'ble Calcutta High Court and further in O.A.No.2187 of 2009 decided on 16.01.2014 by the Mumbai Bench of the Hon'ble Tribunal, the order in O.A.No.927 of 2013 by the Hon'ble Tribunal and to extend all the consequential service and pecuniary benefits.

For Petitioner : Mr.L.Chandrakumar
For Respondents : Mrs.V.Bhavanisubarayan

O R D E R

[Order of the Court was made by N.AUTHINATHAN, J.]

The petitioner has come up with the present Writ Petition for a Writ of Certiorarified Mandamus, to call for the records relating to the order of the fourth respondent made in O.A.No.927 of 2013 dated 10.06.2014 & R.A.No.29 of 2014 dated 27.11.2014, to quash the same and to consequently direct the respondents to consider the claim of the petitioner's son for compassionate appointment in the light of the law settled in the case between Namita Goldar & Anr. vs. Union of India & others.

2.The petitioner is the second wife of R.Jayabhaskaran, who was an employee of Southern Railways. He died on 08.11.2011 in harness. He left behind three daughters through his first wife and one son and daughter through the second wife (petitioner). The status of the petitioner as wife of the deceased employee was recognised by the Railways and family pension was ordered to be paid to the petitioner. The petitioner has applied for compassionate appointment to his son to take care of the entire family including the aged parents of the deceased by way of representation dated 29.07.2011.

3.The Divisional Personnel Officer / third respondent by a communication dated 21.10.2011 informed the petitioner that her request for appointment to her son on compassionate ground cannot be considered since she married the deceased employee during the subsistence of his earlier marriage. She made another representation dated 12.02.2012.

4.Thereafter, the petitioner approached the Central Administrative Tribunal, Chennai Bench, by way of O.A.No.927 of 2013, seeking the following relief: "to direct the respondents to consider the request of the applicant for compassionate appointment to her son in terms of Master Circular No.16 issued by the Railway Board and to quash the impugned order dated 21.10.2011."

5.The respondents contested the claim of the petitioner before the Tribunal. According to them, the petitioner has to be treated as second wife of the deceased employee and that therefore her request for compassionate appointment to his son could not been considered, in view of Railway Board's Master

Circular No.16 dated 02.01.1992, which prohibits offering of appointment to the second wife and her children.

6.The Tribunal having considered the rival submissions has come to the conclusion that there was no legal flaw in the order of rejection and dismissed the Original Application. The petitioner's Application seeking review of the dismissal order was also dismissed by the Tribunal.

7.Aggrrieved by the dismissal of O.A.No.927 of 2013 dated 10.06.2014 of the Central Administrative Tribunal, Chennai Bench, the present Writ Petition has been filed by the petitioner.

8.The learned counsel appearing for the petitioner would submit that the Railway Board's Circular No.RBE 1/92 was quashed by the Hon'ble Calcutta High Court in the case between Namita Goldar & Anr. vs. Union of India & others on 10.02.2010 and therefore, the Railways were not correct in rejecting the request for compassionate appointment.

9.The learned counsel appearing for the respondents / Railways would submit that the petitioner is the second wife of the deceased employee and therefore, as per the Railway Board's Letter No.RBE 1/92 dated 02.01.1992, the request for appointment to her son, namely, J.Selvam, was not considered. According to them, the marriage of the petitioner with the deceased took place during the subsistence of his earlier marriage with Smt.Annamayil [first wife of the deceased].

10.Admittedly, R.Jayabhaskaran / deceased, while working as Ambulance Driver in the office of the Senior Divisional Medical Officer/General in the Railway Hospital, Madurai in Southern Railways, died on 08.11.2011. The petitioner is the second wife of the deceased. It is not her case that her marriage with the deceased employee took place after the dissolution of the first marriage of the deceased. In STATE BANK OF INDIA vs. SOMVIR SINGH [(2007) 4 SCC 778], the Hon'ble Supreme Court has held thus: "There is no dispute whatsoever that the appellant Bank is required to consider the request for compassionate appointment only in accordance with the scheme framed by it and no discretion as such is left with any of the authorities to make compassionate appointment dehors the scheme." The respondents relied on the Railway Board Circular No.RBE 1/92 dated 02.01.1992 for refusing to consider the claim for compassionate appointment. The Circular reads thus:

"RBE NO.2/92

R.B.E.No.1/92

(Supplementary Circular No.5 to Master Circular
No.16.)

Subject :- Appointment on compassionate grounds -
Cases of Second widow and her wards.

No.E(NG)II/91/RC-1/136 dated 2.1.1992

It is clarified that in the case of Railway employees dying in harness, etc. leaving more than one widow along with children born to the second wife, while 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 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."

11.The effect of the Circular was considered by the Hon'ble Calcutta High Court in NAMITA GOLDAR vs. UNION OF INDIA [2010 SCC ONLINE CAL 361]. The Hon'ble Calcutta High Court has quashed the said Circular to the extent it prevented the children of the second wife from being considered for appointments on compassionate ground. But strangely enough reliance has been placed by the Railways for refusing to consider the application for compassionate appointment.

12.The learned counsel for the respondents 1 to 3 has pointed out that the said Circular was relied on by the Hon'ble Jharkhand High Court in W.P.(S)No.16 of 2014 dated 24.07.2014 [M.V.V.PRAKASH vs. UNION OF INDIA]. In this case, reliance would appear to have been placed on the Circular in question which has been quashed by the Hon'ble Calcutta High Court for refusing employment on compassionate ground to the son born through the second wife.

13.A pertinent reference has been made to the decision of a Division Bench of this Court in UNION OF INDIA vs. TEXTILE TECHNICAL TRADESMEN ASSOCIATION [2014 (6) CTC 427]. It has held that "pronouncement on constitutionality of provision of Central

Act by High Court would be applicable throughout India". The Circular in question having been quashed by the Hon'ble Calcutta High Court could not be invoked by the Railways to its aid.

14.The Hon'ble First Division Bench of this Court in DR.T.RAJAKUMARI vs. GOVERNMENT OF TAMILNADU [2016 SCC ONLINE MAD 8992], has observed thus: "4.It is trite to say that once a High Court has struck down the provisions of the Central Act, it cannot be said that it would be selectively applied in other States. Thus, there is no question of applicability of provisions struck down by the High Court as of now until and unless the Hon'ble Supreme Court upsets the Judgment or stays the operation of the Judgment." The dictum laid down by this Court is that if a judgment pronounced by one High Court declaring provisions of a Central Act as unconstitutional would be applicable throughout the territory of India.

15.In view of the decisions of this Court, we are not in a position to accept the contention of the learned counsel for the respondents/Railways that the respondents were correct in refusing to consider the request for appointment placing reliance on the said Circular. The Circular in question has been quashed to the extent it prevented the children of the second wife from being considered for appointment on compassionate ground. If so, the dictum laid down by the Hon'ble Calcutta High Court will have the legal consequence of enabling the petitioner's son to get the appointment on compassionate ground. The Central Administrative Tribunal, Chennai has not considered the case of the petitioner in its proper perspective. Viewed in this perspective, we hold that the impugned order dated 27.11.2014 passed by the fourth respondent deserves to be quashed and is accordingly, quashed. The respondents 1 to 3 are directed to consider the request of the petitioner for compassionate appointment, in the backdrop of the views expressed supra, within a period of eight weeks from the date of receipt of a copy of this order.

16.In the result, the Writ Petition is allowed in the above terms. No costs.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

sri

To

1.The General Manager,
The Union of India,
Southern Railway,
Park Town, Chennai - 600 003.

2.The Divisional Railway Manager,
Madurai Division,
Southern Railway, Madurai.

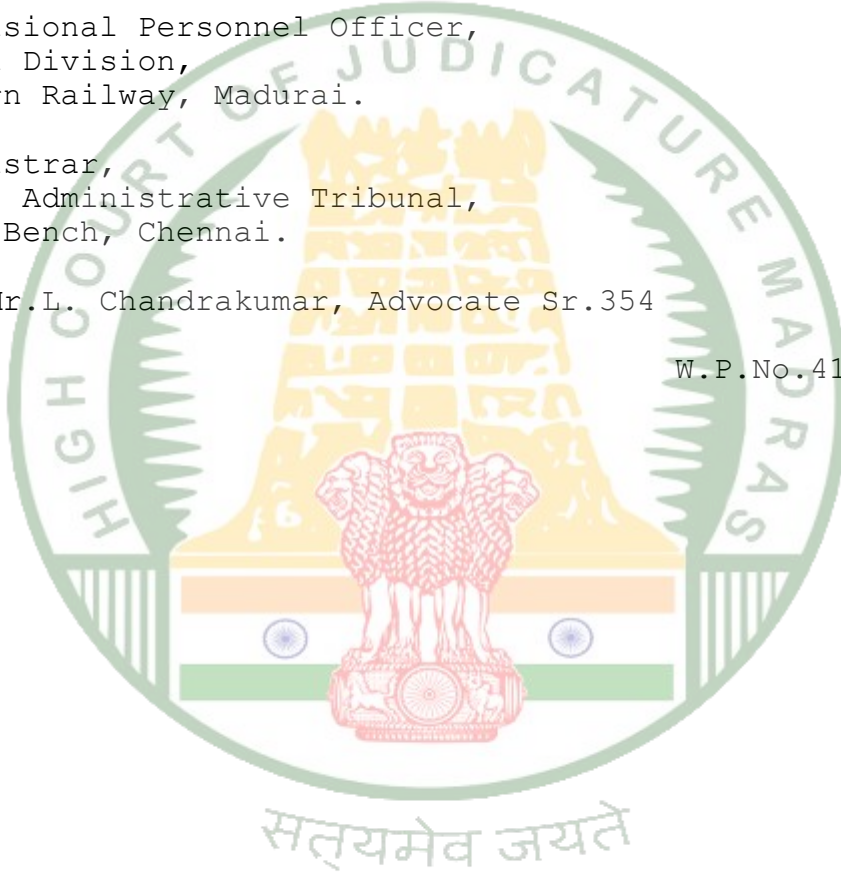
3.The Divisional Personnel Officer,
Madurai Division,
Southern Railway, Madurai.

4.The Registrar,
Central Administrative Tribunal,
Madras Bench, Chennai.

+1 cc to Mr.L. Chandrakumar, Advocate Sr.354

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