

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.30598 of 2016

G.Jayasudha

... Petitioner

-vs-

1.The General Manager,
Southern Railway,
Headquarters Office,
Park Town, Chennai - 600 003.

2.The Divisional Railway Manager,
Southern Railway,
Chennai Division - 13.

3.The Senior Divisional Personnel Officer,
Southern Railway,
Headquarters Office,
Personnel Branch,
Personnel Office,
Chennai - 600 003.

4.The Registrar,
Central Administrative Tribunal,
High Court Campus,
Chennai - 600 104.

... 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 O.A.No.542 of 2013 on the file of the Hon'ble Tribunal [fourth respondent] dated 18.09.2013, quash the same and direct the third respondent to appoint the petitioner on the compassionate grounds and grant such other reliefs.

For Petitioner : Mr.S.Sunder Mohan

For Respondents : Mr.ML.Ramesh

O R D E R

The petitioner has come up with the present Writ Petition for a Writ of Certiorarified Mandamus, to call for the records of the order passed by the fourth respondent / Central Administrative Tribunal, Chennai, in O.A.No.542 of 2013 dated 18.09.2013 and to quash the same and direct the third respondent to appoint the petitioner on the compassionate grounds and grant such other reliefs.

2.A.George, was an employee of Southern Railways. He died on 11.11.2005 while he was in service. The petitioner claimed that she is the wife of George and their marriage was solemnized on 16.10.1995 and a male child was born to them. They lived with the deceased in the Railway Quarters. She received payments towards funeral expenses of her husband from the Railways. After the death of her husband, she was asked to vacate the Railway Quarters. Since the claim of the petitioner for pension and retiral benefits was rejected on the ground that her name was not found in the service records approached the Civil Court. They filed O.S.No.309 of 2008 on the file of the learned District Munsif, Tirupattur, against the Railways / respondents 1 and 2 for a declaration that she is the legally wedded wife of George and she her son are the legal heirs of the deceased George. They have also prayed for a mandatory injunction directing the Railways to pay the retiral benefits to them. The suit was decreed as prayed for. She was declared as the legally wedded wife of George. Pursuant to the decree, all the retiral benefits were given to the petitioner. However, her request dated 07.07.2011 for appointment on compassionate ground was rejected by the third respondent, by its letter dated 26.10.2012 on the ground that the deceased employee has not declared the petitioner's name in the family composition as "wife" from the date of marriage till his death. According to them, as per Railway Board's Rule, the second wife her children are not to be considered for compassionate appointment unless the Administration permitted the second marriage.

3.Aggrrieved by the rejection of her request for consideration, the petitioner approached the Central Administrative Tribunal, Chennai, by way of O.A.No.542 of 2013, seeking the following relief: "to call for the records of the third respondent pertaining to the Order dated 26.10.2012 bearing reference number M/PB/CS/22/131/2011 and set aside the same; consequently direct the respondents to appoint the applicant on compassionate grounds in any one of the posts according to her qualification."

4.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 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. They have also stated that the deceased employee has not declared that the petitioner is his wife till his death in the service records.

5.The Tribunal having considered the rival submissions has come to the conclusion that the writ petitioner is not living in penury. It has observed that the writ petitioner is getting Rs.8,000/- roughly as family pension and the deceased left behind him, the petitioner and one male child. It has also pointed out that compassionate appointment cannot be claimed as a matter of right. O.A.No.542 of 2013 was dismissed.

6.Aggrieved by the dismissal of O.A.No.542 of 2013 dated 24.06.2013 of the Central Administrative Tribunal, Chennai, the present Writ Petition has been filed by the petitioner.

7.The learned counsel appearing for the petitioner would submit that the case of the Railways is that the petitioner is not eligible to be appointed on compassionate ground on the ground that she is the second wife of the deceased employee and the stand taken by the railways is contrary to the judgment and decree in O.S.No.309 of 2008. According to him, the petitioner is entitled to be considered for compassionate appointment.

8.The learned counsel appearing for the respondents would submit that the petitioner is the second wife of the deceased employee and as per the Railway Board Supplementary Circular No.5 to Master Circular No.16, the second wife is not entitled to be considered for appointment.

9.Admittedly, George / deceased, while working as Safaiwala II, Medical Department of Southern Railways in Jolarpettai, died on 11.11.2005, in harness. The petitioner made a request for compassionate appointment on the ground that she is the wife of the deceased / George.

10.The petitioner and her son has already filed a Suit against the respondents 1 and 2 before the learned District Munsif, Tirupattur and a decree has been passed declaring that the petitioner is the legally wedded wife of the deceased. According to the Railways, the petitioner is the second wife of George / deceased and the first wife, by name, Srimathi Shanthi is living separately. This contention has already been raised by

the Railways and it was rejected by the Civil Court in the said Suit. Admittedly, the judgment in O.S.No.309 of 2008 has reached finality and it is binding on the respondents 1 and 2, who are parties to the Suit.

11.The respondents relied on the Railway Board Supplementary Circular No.5 to Master Circular No.16 dated 02.01.1992 and it reads thus:

"GOVERNMENT OF INDIA (BHARAT SARKAR)
MINISTRY OF RAILWAYS / RAIL MANTRALAYA
(RAILWAY BOARD)
RBE No.1/1992
No.E(NG) II/91/RC-1/136 dated 02/01/1992

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

Supplementary Circular No.5 to Master Circular No.16.
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."

12.A careful perusal of the Railway Board Supplementary Circular would clearly reveal that it pre-supposes for its application more wives than one. If so, the present case would not come within the sweep of the said Circular. Here, the petitioner alone is the legally wedded wife as declared by the Civil Court and it is a decree passed after full trial. It is not the case of the respondents that there is rival claim from the said Shanthi. In these circumstances, we are of the considered view that the respondents 1 to 3 are not correct in rejecting the request of the petitioner by applying the said circular dated 02.01.1992 to the case of the petitioner. The Central Administrative Tribunal, Chennai has not considered the case of the petitioner in its proper perspective. Therefore, the impugned order dated 18.09.2013 passed by the fourth respondent is liable to be quashed and accordingly, the same is quashed.

The respondents 1 to 3 are directed to consider the request of the petitioner for compassionate appointment afresh, having regard to the said conclusion reached by this Court, within a period of eight weeks from the date of receipt of a copy of this order.

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

Sd/-
Asst. Registrar

/true copy/

Sub Asst. Registrar

sri

To

1. The General Manager,
Southern Railway,
Headquarters Office,
Park Town, Chennai - 600 003.
2. The Divisional Railway Manager,
Southern Railway,
Chennai Division - 13.
3. The Senior Divisional Personnel Officer,
Southern Railway,
Headquarters Office,
Personnel Branch,
Personnel Office,
Chennai - 600 003.
4. The Registrar,
Central Administrative Tribunal,
High Court Campus,
Chennai - 600 104.

+1cc to Mr. Sunder Mohan, Advocate Vide SR.NO. 501

W.P.No.30598 of 2016

MV(CO)
VR(14/02/2017)