

**THE HON'BLE SRI JUSTICE SURESH KUMAR KAIT
AND
THE HON'BLE DR. JUSTICE SHAMEEM AKTHER**

WRIT PETITION No.24366 OF 2015

ORDER:

(Per Hon'ble Sri Justice SURESH KUMAR KAIT)

Vide the present petition, the petitioners have challenged the order dated 23.03.2015 passed in O.A.No.1376 of 2013, whereby the petition filed by the 1st respondent has been allowed.

2. The brief facts of the case are that :

The father of the 1st respondent late B. Veeraswamy died in harness on 16.02.1992. The 1st respondent is the son born from second marriage of late B. Veeraswamy. His father had a daughter by name B. Uma Maheswari from his first marriage. His mother Smt.Komaramma died on 30.12.1997. The case of respondent is that he had passed SSC during November/December 2010, and made a representation dated Nil, received by the 2nd petitioner on 11.04.2011, requesting for appointment on compassionate grounds. The said request was rejected by the 2nd petitioner vide letter dated 18.04.2011 on the ground that compassionate appointment is not permissible to other than first wife and her wards. Aggrieved by the said order, the respondent had filed OA No.415 of 2012 before the Tribunal and the same was disposed of vide order dated 14.12.2012 setting aside the impugned orders and directing the petitioners to consider the claim of the 1st

respondent based on the succession certificate, vide common order in O.P.No.391 of 1993 and O.P.No.570 of 1993 issued by the competent Civil Court and passed a reasoned order as per rules within six weeks. Thereupon, the 2nd petitioner considered his representation and again rejected the same.

3. The further case of the 1st respondent was that the rejection is on the ground that 1st respondent's father died 21 years ago was not valid, as the Serial Circular No.77/2011 dated 15.6.2011 authorizes the General Managers to consider and decide time barred cases of compassionate appointment, which were up to 25 years from the date of death of ex-employee. He contends that he is covered by the orders of this Court in **Smt V. Saraswath Vs Union of India, rep. by GM/SC & another** in WP No.19114 of 2004 dated 15.7.2009.

4. The learned Tribunal opined that in view of the rule position, no inquiry at all has been conducted by the petitioners into the financial conditions of the family of deceased employee, immediately after his death. Thereafter also, the petitioners have not made any attempt to assess the financial condition of the 1st respondent. In view of the absence of an independent assessment, the petitioners are not justified in rejecting the application for compassionate appointment on this ground. Accordingly, the impugned rejection order was quashed and set aside. Moreover, the 1st petitioner was directed to reconsider the applicant for

compassionate appointment as per the delegation given in Serial Circular No.77/2011, dated 15.06.2011 and also in view of the fact that the Serial Circular No.5/1992 dated 02.01.1992 relied upon by the Railways was not in force at the time of issuance of rejection letters. Further directed to cause an inquiry and make an objective assessment of the financial conditions of the 1st respondent and consider his case as per rules.

5. Learned counsel appearing on behalf of the petitioners submits that B. Veeraswamy, the father of the 1st respondent herein, while working as Pointsman "A"/KZJ died due to natural cause on 16.12.1992. Consequent upon his death, an application dated 18.01.1993 was received from B.Komaramma, claiming herself, to be the wife of the deceased and thus requested for payment of settlement dues and appointment in her favour on compassionate grounds. A discrete inquiry has been made through official sources on 23.06.1993 revealed that the deceased was married to three women viz., Yakamma, Bhadramma and Komaramma. The deceased initially was married to Yakamma and reported to be without issues from the said wedlock. Later, the deceased married to Bhadramma and they had one daughter Uma Maheswari. The said Bhadramma died of a snake bite on 24.04.1974. After the death of second wife, the deceased got married for a third time to Komaramma and they had one son i.e. 1st respondent herein.

6. Learned counsel further submits that O.P.No.570 of 1993 and O.P.No.391 of 1993 were filed by the surviving dependents viz., B.Uma Maheswari and 1st respondent respectively, impleading each other before the II Additional District Judge, Warangal, seeking Succession Certificate for claiming the settlement benefits due to late B. Veeraswamy. The Court below while examining the case for grant of Succession Certificate, observed in para-16 of their order dated 15.12.1998 that the surviving dependents are illegitimate children, but entitled for the share of death benefits of the deceased, as legal heirs of the deceased and granted Succession Certificate for claiming the shares of death benefits of the deceased as successors. Accordingly, the settlement dues of the deceased were paid in equal shares between B.Uma Maheswari and 1st respondent respectively on 02.07.2007.

7. Learned counsel further submits that Uma Maheswari and 1st respondent have separately represented for appointment on compassionate grounds and their requests were rejected by the competent authority on 16.11.2007 and 18.04.2011 respectively on the ground that they were the daughter and son of the second and third wives of the deceased respectively. As per instructions of the Railway Board vide letter No. E(NG)II/91.RC-1/136 dated 02.01.1992, RBE No.1/92, circulated under CPO/SC's S.C.No.5/92, the settlement dues may be shared by both the

widows on court's orders or otherwise, but appointments on compassionate grounds to the second widow and her children are not to be considered unless the administration has permitted the second marriage taking the personal law into account.

8. Learned counsel while concluding her arguments, submits that, compassionate ground is not a debt or security nor an intestate property which flows automatically to the legal heirs unless fulfilling the conditions for offering an appointment on compassionate grounds existing on the date of consideration. It is a benefit granted to the deceased family based on the penurious family conditions prevailing on the date of death of the railway servant. The death of the employee took place on 16.12.1992 and 21 years have elapsed since then. In obedience of the orders of the tribunal in O.A.No.415 of 2012 and keeping all the above factors in view the competent authority has considered the representation dated NIL received by the office on 01.04.2011 and rejected the claim of the 1st respondent for appointment on compassionate grounds vide letter dated 31.01.2013.

9. It is pertinent to mention here that High Court of Calcutta in W.P.C.T.No.20 of 2009 dated 10.02.2010 quashed the Railway Board circular dated 02.01.1992 to the extent that it prevents the children of the second wife from being considered for appointments on compassionate grounds.

Admittedly, the said order has not been challenged before the higher Court, thus, attained finality.

10. Moreover, the High Court of Patna in **Union of India and Others vs The Central Administrative Tribunals**¹ held that having split the pensionary benefit between the two wives, the Court fails to understand where is the difficulty in providing a job under the rule of harness to the son of the second wife when the record shows that there is no rival and the first wife has given consent that the son of the second wife may be employed. Admittedly, this judgment has also attained finality as not challenged before the higher Court.

11. The judgment rendered in **Km. Priti Vs. State of Uttar Pradesh** vide LAWS (ALL)-2004-12-167/TLALL-2004-0-4336, dated 22nd December 2004 in C.M.W.P.No. 55348 of 2012, held that children born out of second marriage, even though the deceased employee is a Hindu and has contracted second wife during subsistence of his first marriage, shall be entitled for consideration for grant of compassionate appointment.

12. We note, the main grounds for rejection of the application for compassionate appointment, is as under:

(i) As per the Serial Circular No.5/92, the compassionate appointment is permissible only to the first wife and her wards.

(ii). *Application for compassionate appointment has been submitted by the respondent after 19 years of the death of the railway employee and that having survived for 21 years, the respondent cannot be said to be in a state of penury.*

(iii). *The respondent is not entitled to claim compassionate appointment on the strength of the succession certificate. The purpose of the succession certificate is very limited and is only for a declaration of the respondent's rights to receive the settlement dues payable to his late father and to claim debt or security. Compassionate appointment is not a debt or security that automatically flows to the legal heirs. Further compassionate appointment can only be granted as per the approved scheme and based on the financial conditions of the family.*

13. As discussed above, the High Court of Calcutta in **Namita Goldar and another Vs Union of India and others** in W.P.C.T.No.20 of 2009 dated 10.02.20102, quashed the Railway Board Circular No.5/92, dated 02.01.1992 to the extent it prevents the children of the second wife from being considered for appointments on compassionate grounds. Thus, the circular relied upon by the petitioners was not in existence at the time of issuance of first rejection letter dated 18.04.2011. The petitioners have, therefore, erred in rejecting the application on the ground that “compassionate appointment is not permissible to other than the first wife and her wards”.

14. In regards to other ground for rejection was that there is no justification for considering a case, which is more than 21 years, the scheme of compassionate appointment is

to provide immediate relief to the family of the deceased after making assessment of the financial conditions. But, the petitioners have been taking a very liberal approach in implementing the welfare scheme of compassionate appointment. In Serial Circular No.136/1995 dated 01.12.1995, the power to consider cases of compassionate appointment upto 20 years from the date of death of the deceased employee was conferred on the General Managers. Later, vide Serial Circular No.77/2011, dated 15.06.2011, the General Managers were delegated with powers to consider and decide time barred cases of appointment upto 25 years from the date of the death of ex-employee with the proviso that such cases are to be decided by the General Managers at their personal level only and are not to be delegated further. Accordingly, the petitioners are not debarred from considering the applications for compassionate appointment on the ground that ex-employee died about 21 Years ago.

15. Regarding third ground for rejection was that it can only be made in accordance with the approved scheme and has to take into consideration the financial conditions of the family of the deceased employee and such appointment is to be provided only to those who are in financial distress. Undisputedly, the petitioners have a duty to consider as to whether such conditions exist for the grant of compassionate appointment.

16. We note, on 23.06.1993, a fact finding inquiry was conducted, the relevant extract of which are re-produced below:

“From my enquirers, it is revealed that the deceased was having 3 wife’s. 1st wife Smt Yakamma (still alive and whereabouts are not known), 2nd wife Smt Bhadramma (expired on 24.4.1984) (and her daughter Kum Uma Maheswari is alive and living with paternal grandmother) and 3rd wife Smt B. Komaramma, who is alive and claiming for all benefits. Smt B.Komaramma’s name is reflected in the pass declaration dt 29.01.1991, along with her son’s name B.Shiva Shanker and 2nd wife’s daughter Kum Uma Maheswari.

As there is no provision to consider the case of the 2nd and 3rd wife or their children case for offering comptt. Apptt., in this case Smt B.Komaramma (3rd wife) is not entitled to seek apptt. on compassionate grounds. Hence, W1’s report and other formalities in giving the report does not arise.”

17. We note, after considering this report, the petitioners relied on the instructions of Serial Circular No.5/92, dated 02.01.1992 and rejected the request for compassionate appointment in view of the fact that only first wife and wards are eligible for compassionate appointment.

18. It is clear that no inquiry at all has been conducted by the petitioners into the financial conditions of the family of the deceased employee immediately after his death. Thereafter also, the petitioners have not made any attempt to assess the financial conditions of the applicant. In the absence of an independent assessment, the petitioners are

not justified in rejecting the application for compassionate appointment.

19. In view of the facts and circumstances recorded above, learned tribunal quashed and set aside the impugned rejection order and the 1st petitioner was directed to reconsider the applicant for compassionate appointment as per the delegation given in Serial Circular No.77/2011, dated 15.6.2011 and also in view of the fact that Serial Circular No.5/92 dated 02.01.1992 relied upon was not in force at the time of issuance of rejections letters. Further directed to cause inquiry and make an objective assessment of the financial condition of the applicant and consider his case as per rules.

20. It is relevant to mention here that in case of **Union of India and others vs. V.R Tripathi** in W.P.No.910/2015 dated 1st April, 2016, a Division Bench of Bombay High Court, considering the case of High Court of Calcutta, High Court of Jharkhand (relied upon by the petitioners) and the Hon'ble Supreme Court, held that in any case, on the basis of railway circular dated 2nd January 1992, which has already been struck down, there is no question of Union of India rejecting the application of the respondents, to be considered for compassionate appointment at threshold, which reads as under:

The decision in **Pradeep Uttam Gid** [supra] delivered by the Division Bench of this court mainly proceeds upon the circumstance that there was unreasonable delay in the matter of demand of compassionate appointment. In the said case, the employee Uttam Gid had expired in harness on 6 February 1999. At the time of his demise, his son Pradeep was a minor. Pradeep attained majority on 22 October 2013 and the application seeking compassionate appointment was made only in the year 2011, i.e., after delay of eight years. In this fact situation, the Division Bench of this Court has held that the directions of the CAT to consider Pradeep's case for compassionate appointment came to be set aside. The Division Bench of this Court observed that after lapse of over 10 years, there was no question of considering the Pradeep's case for compassionate appointment merely on the ground that railway board's circular dated 2 January 1992 had been set aside by the Calcutta High Court. The observations in paragraph '6' of the said judgment and order are therefore, to be construed in the light of fact situation in the said case. Even otherwise, the Division Bench has not made any reference to the provisions contained in Section 16 of the H.M. Act as interpreted by the Hon'ble Supreme Court in **Rameshwari Devi** (supra). The provisions make it clear that even though the marriage with second wife may be void, nevertheless, the children of such marriage are legitimate.

For all the aforesaid reasons, we see no ground to interfere with the impugned orders made by the CAT. However, we once again clarify that the impugned orders merely direct the Union of India (Railways) to consider the case of the respondent for compassionate appointment on its own merits and in accordance with existing rules and regulations, without adverting to railway board's circular dated 2 January 1992. we therefore, direct the Union of India (Railways) to take a decision in this regard, as expeditiously as possible and in any case within a period of three months from today and thereafter, to communicate the such decision to the respondent."

21. In view of the above discussion and the legal position, we hereby find no merit in the instant petition and

the same is accordingly dismissed. There shall be no order as to costs.

22. We hereby direct the petitioners to complete the exercise as directed by the learned tribunal within eight (08) weeks from the date of receipt of a copy of this order.

Miscellaneous petitions, if any, pending shall stand closed.

JUSTICE SURESH KUMAR KAIT.

Dr. JUSTICE SHAMEEM AKTHER.

Date : 17 -07-2017
Gvl

