

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

WRIT PETITION No.20619 OF 2013

ORDER:

(Per Hon'ble Sri Justice SURESH KUMAR KAIT)

Vide the present petition, the petitioners have challenged the order dated 23.01.2013 passed in O.A.No.485 of 2012 by the Central Administrative Tribunal, Hyderabad, whereby directed the petitioners herein to reconsider the claim of the applicant/respondent for compassionate appointment to her son A.Srinivasa Rao, as per the scheme, within a period of two months from the date of receipt of a copy of the order.

2. The case of the petitioners are that :

The husband of the respondent late A. Narsing Rao, while working as Hospital Attendant in Railway Hospital, Lalaguda, died in harness on 07.06.2009 due to natural causes. He had married Yellamma on 10.11.1976. The ex-employee was having two daughters namely Srilatha and Meena Mary born from the wedlock with Smt A.Yellamma. However, during the year 2005, the ex-employee filed a petition i.e., FCOP No.151 of 2005 on the file of Family Court, Secunderabad, seeking divorce with Smt A.Yellamma. The learned judge granted divorce on 02.07.2006. Meanwhile, Smt A. Suryakala, respondent herein, claiming to be wife of the deceased employee, has requested for compassionate

appointment in favour of her son A Srinivasa Rao, on account of the demise of her husband Sri A Narsinga Rao. But, the deceased employee has not submitted anything in support of evidence that he had married Suryakala, the alleged second wife during his lifetime. There was no permission either sought for from or granted by the petitioners for his marriage with Suryakala. Similarly Smt Suryakala, applicant in the OA, respondent herein, has also not submitted any proof in support of fact that her marriage was solemnized with the deceased.

3. Learned counsel appearing on behalf of the petitioners submits that it is evident from the judgment and decree in F.C.O.P. No.151 of 2005, as contended by the wife of deceased Smt Yellamma, that the deceased, in fact, had developed illegal intimacy with respondent/applicant Suryakala and begot a daughter and two sons, out of such illegal intimacy, while the marriage between the deceased and Smt Yellamma, having been performed on 10.11.1976 had been subsisting.

4. Learned counsel further submits that these facts were never disputed by the deceased before Family court in the aforesaid FCOP. However, the Family Court granted divorce by its judgment and decree dated 22.7.2006 between the ex-employee and Smt Yallamma. Therefore, the respondent Smt Suryakala is not legally wedded wife of the

deceased Narsing Rao, much less, in the absence of any proof of her marriage with the deceased or any declaration from the competent Court of law. Hence, the status of respondent herein as legally wedded wife of the deceased is specifically denied and the respondent be put to strict proof of the same. In these facts and circumstances, the question of considering A.Srinivasa Rao, the alleged son of the respondent herein for appointment on CG ground does not arise.

5. Learned counsel further submits that in the declaration dated 15.11.2003 submitted by the deceased employee, Smt Suryakala was however, mentioned as the wife and the age of A.Srinivasa Rao and A.Krishna Babu, the alleged sons are shown as 17 years and 14 years old respectively, as on the said date. By this declaration, it is obvious that two sons of the respondent herein were born during 1986 and 1989 respectively much prior to the decree of divorce granted by the Family court on 22.07.2006 without there being any marriage of the respondent with the deceased.

6. It is further submitted that so far as the scheme of compassionate appointment to the wards of the deceased railway employee is concerned, the Railway Board vide their letter No.E(NG)II/91/RC-1/136 dated 02.01.1992 *inter-alia* instructed 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. However, the learned tribunal overlooked on the facts mentioned above and directed the petitioners to consider the case of the applicant/respondent for compassionate appointment to her son A.Srinivas Rao, as per the scheme.

7. We have heard learned counsel for the parties and perused the record.

8. It is not in dispute that the respondent's husband Narsing Rao while working as Hospital Attendant in Railway hospital, Lalaguda, expired on 07.06.2009 after working for about 30 years and still he had 9 years of service. During the life time, the deceased married Yellamma in the year 1976 and they begot two daughters namely Srilatha and Meena Mary. Subsequently, he obtained divorce decree with her in the year 2006. While allowing OP, the trial Court held that the parties are living separately since 1993. Smt Yellamma, the first wife of the deceased, has also filed reply in the said OP stating that the deceased got illegal intimacy with one Suryakala (respondent herein) and begot one daughter and

two sons namely Durga, Srinu and Krishna Babu. Even before filing the OP in the year 2005, the deceased employee submitted a family declaration on 15.11.2003 wherein he declared Smt Suryakala/respondent, as his wife and A.Srinivasa Rao and A.Krishna Babu are his sons.

9. It is pertinent to mention here that after the death of the deceased Narsing Rao, the applicant/respondent herein and her children made claim before the petitioners for grant of death benefits including pension. At the same time, Smt Yellamma along with her daughters got issued legal notices to the petitioner authorities claiming service benefits of the deceased employee. In view of such rival claims before the authorities, both the parties approached the elders wherein they have compromised the matter and entered into a compromise deed dated 17.08.2009 wherein Smt Yellamma and her children have given no objection to the respondent for claiming the death benefits of deceased employee and also agreed to submit required applications before the authorities. In view of such compromise, Smt Yellamma and her children agreed to pay the death benefits of the deceased to Smt Suryakala. In the said compromise, Smt Yellamma and her children gave no objection to the respondent for claiming compassionate appointment and also family pension to the respondent herein.

10. It is further important to note that basing on the declaration and also the compromise deed, the petitioner authorities have settled and paid terminal benefits of the deceased to the respondent herein and also Kum Srilatha, who is the daughter of first wife. In pursuance of the compromise deed, the petitioner authorities have also granted family pension to the respondent herein being the wife of the deceased employee and she has been continuously receiving the same. Accordingly, the respondent submitted a representation to the petitioners seeking compassionate appointment to her son namely A Srinviassa Rao. However, the petitioner authorities have rejected the claim of the respondent/applicant vide proceedings dated 02.08.2010 relying on Railway Board's Circular No.5/92, dated 02.01.1992.

11. Being aggrieved, the respondent has filed OA No.102 of 2011, wherein the tribunal quashed and set aside the impugned letter dated 02.08.2010 with a direction to the 2nd petitioner to reconsider the case of the respondent in the light of instructions and various judgments of the Hon'ble Supreme Court on the subject of compassionate appointment and pass appropriate order within a period of three months from the date of receipt of the order and thus allowed O.A. vide order dated 21.06.2011. Thereafter, the respondent submitted a representation dated 01.07.2011 along with no objection letter given by Sum Srilatha, daughter of first wife of

the deceased, requesting to provide employment to the respondent's son.

12. Aggrieved with the finding of the tribunal in O.A.No.102 of 2011, the petitioners have filed Writ Petition No.29991 of 2011 before this Court and also sought for suspension of operation of directions of the tribunal. However, this Court did not grant any such interim stay and the petition is pending for adjudication. In the meantime, the respondent has also filed CP No.113 of 2011 against the petitioners that they have failed to implement the directions of the Tribunal. During the pendency of the Contempt petition, the petitioners have passed the impugned order dated 30.11.2011 whereby they have rejected the claim of the respondent for compassionate appointment to her son A.Srinvasa Rao stating that the scheme does not provide for compassionate appointment for children of second wife and also because no penurious condition has brought out, the respondent's son cannot be offered compassionate appointment outside the purview of the scheme. In the said order, it is also stated that there was no proof produced by the respondent or the deceased employee that the marriage between them was solemnized and there is no declaration by either party that the respondent is legally wedded wife of the deceased Narsing Rao.

13. It is not in dispute that the reasons for rejecting the claim of the respondent vide order dated 30.11.2011 are similar to the earlier rejection order dated 02.08.2010 which was the subject matter in OA No.102 of 2011 decided on 21.06.2011. Accordingly, the learned tribunal allowed the OA filed by the respondent with a direction to the petitioners to consider the claim of the respondent for compassionate appointment to her son A.Srinviase Rao as per the scheme within a period of two months from the date of receipt of the order.

14. 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 No.5/92, 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.

15. 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

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the second wife may be employed. Admittedly, this judgment has attained finality as not challenged before the higher Court.

16. 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.

17. 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.*

18. 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”.

19. 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 occasion before the 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."

20. 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.

21. 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

