

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.18153 of 2017

=====

Smt. Gayatri Devi, Wife of Late Jagdish Harijan, Resident of Village-
Raghunathpur, P.O.- Barsoigha, P.S.- Barsoi, District- Katihar (Bihar).

2. Mukesh Kumar, Son of Late Jagdish Harijan, Resident of Village- Raghunathpur,
P.O.- Barsoigha, P.S.- Barsoi, District- Katihar (Bihar).

.... Petitioner/s

Versus

1. The Union of India through the General Manager, Noth Frontier Railway,
Maligaon (Guahati).
2. The General Manager (Personnel), North Frontier Railway, Maligaon (Guahati).
3. The Divisional Railway Manager, North Frontier Railway, Katihar (Bihar).
4. The Senior Divisional Mechanical Engineer, North Frontier Railway, Katihar
(Bihar).

.... Respondent/s

=====

Appearance :

For the Petitioner/s	:	Mr. Munna Pd Dixit (M.P. Dixit), Adv. Mr. S.K. Dixit, Adv. Mr. Sanjay Kumar Choubey, Adv,
For the Respondent/s	:	Mr. Anil Kumar Sinha, Adv. Mr. Akash Keshav, Adv. Mr. Yash Mathur, Adv.

=====

CORAM: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI
and
HONOURABLE JUSTICE SMT. NILU AGRAWAL

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI)

Date: 18-01-2018

O.A. No. 484 of 2016 preferred by the petitioner before
the Central Administrative Tribunal, Patna Bench Patna for a
direction upon the railway authorities to provide compassionate
appointment to the son of the second wife has been rejected. The
reason for such rejection primarily seems to be that since a
government servant in terms of the conduct Rules is debarred from



marrying second time during the life time of first wife and since he himself has violated the direction and the Rules, no person much less offspring can derive any benefit of any welfare scheme including the benefit of compassionate appointment.

There is a circular of the Railway Board, which lays down an embargo on extending benefit of compassionate appointment to the children of second wife.

Submission of the counsel for the petitioner is based on decisions rendered by the Madras High Court, a copy of which has been annexed as Annexure-2 as well as Annexure-3. The Division Bench of Madras High Court in its order contained in Annexure-2 has primarily gone by the principle of law that even though the second marriage may be illegal, the offsprings of such marriage cannot be treated to be illegal. The Madras High Court, therefore, was of the opinion that the embargo imposed by the Railway Board to that extent needs to be struck down. It is further the submission of the counsel that similar view had been taken by the Calcutta High Court and, in fact, in an appeal by the railways, the Hon'ble Apex Court had dismissed the S.L.P. in limine, a copy of which is Annexure-4.

The decision relied upon by the counsel for the petitioner of the Madras High Court could be persuasive but not binding. So far as the order of the Hon'ble Apex Court is concerned, the S.L.P. was



dismissed in limine and, therefore, no ratio as such has emerged from the order. It only affirms the order of the Madras High Court rendered in the case. This Bench is confronted with a situation where a Full Bench of this Court had considered the similar matter in the case of **Union of India & Ors. Vs. Sanjay Kumar (L.P.A. No. 163 of 2006) and Union of India & Ors. Vs. Deepak Kumar Rai (Civil Review No. 375 of 2012)**, reported in **2017 (2) BLJ PHC 243**. The Full Bench decision is dated 24.01.2017 and the copy thereof has been made available to this Bench as well as the counsel for the petitioners.

The Full Bench has taken into consideration diverse decisions rendered on the principle of compassionate appointments that since the matter relating to compassionate appointments is not a constitutional or fundamental right but is a product of a policy, therefore, any person claiming benefit of that policy has to fulfill the requirements of the policy. Compassionate appointments cannot be claimed or be granted as a matter of right but must emerge within the framework of a policy if there is a policy. This Court is not unmindful of the fact that banking industries has done away the concept of compassionate appointment and such a policy has also been upheld by the Hon'ble Supreme Court.

We, therefore, are not only bound by the decision rendered by the Full Bench of Patna High Court which has upheld that the



children of the second wife cannot demand and command compassionate appointment as a matter of right and we also express our opinion that the principles of Hindu law cannot be used to interpret or strike down a policy of the railways on compassionate appointments. The two principles are totally different and they have to be appreciated and understood in the context in which this principle operate and occupy the field.

In view of the above decision of the Central Administrative Tribunal dated 19.07.2017 passed in O.A. No. 484 of 2016 is not required to be interfered with.

Writ has no merit. It is dismissed.

(Ajay Kumar Tripathi, J)

(Nilu Agrawal, J)

Devendra/Arjun

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	23.01.2018
Transmission Date	NA

