

**THE HON'BLE SRI JUSTICE SANJAY KUMAR
AND
THE HON'BLE SRI JUSTICE M.GANGA RAO**

WRIT PETITION NO.34622 OF 2017

ORDER: (Per Hon'ble Sri Justice Sanjay Kumar)

The Union of India and its officials in the Railways filed this Writ Petition aggrieved by the order dated 05.06.2017 passed by the Central Administrative Tribunal, Hyderabad Bench, Hyderabad, in O.A.No.021/00430 of 2016. The said O.A. was filed by the respondent herein assailing the communication dated 19.01.2016 addressed by the Senior Divisional Personnel Officer writing for the Divisional Railway Manager, Divisional Office, Personnel Branch, Nanded, informing him that his request for appointment on compassionate grounds on account of the death of his father, Shaik Abdul Jaleel, was not accepted. He sought a consequential direction to the authorities to consider and appoint him on compassionate grounds as per his eligibility and suitability, without reference to the fact that he was born to Shaik Abdul Jaleel through his second wife.

By the order under challenge, the Tribunal took note of the fact that Shaik Abdul Jaleel was married to one Zaibunnisa Begum in the first instance and thereafter, he got married to Jameela Bee in the year 1970. He then entered the service of the Railways on 04.08.1984. He died in harness on 24.07.2013 while holding the post of Key Man. Upon his death, the second wife, the mother of the respondent-applicant, addressed representations dated 28.07.2013 and 22.10.2013 to provide him compassionate appointment. Taking note of case law holding that the Circular

relied upon by the Railways was illegal, the Tribunal ultimately held that the order rejecting the case of the respondent-applicant for compassionate appointment on the ground that he was born to the second wife of the deceased employee was liable to be set aside. The O.A. was accordingly allowed directing re-consideration of the case of the respondent-applicant for compassionate appointment without reference to the Circular in question. A reasoned order was directed to be passed within a time frame and communicated to the respondent-applicant.

However, this process was stalled owing to the Railways approaching this Court by way of this writ petition and securing an interim order, suspending the operation of the order under challenge, on 20.10.2017.

This Court took into account the fact that the case law relied upon by the Tribunal, being the judgments of the Calcutta High Court in ***Union of India and others vs. Binod Kumar Patra and another***¹ and ***Namita Goldar vs. Union of India and others***² were under consideration of the Supreme Court. I.A.No.1 of 2018 was filed by the respondent-applicant to vacate the aforesaid order.

Heard Mrs.Shanthi Sree, learned counsel representing Mrs.K.Aruna, learned counsel for the petitioners, and Mr.S.Rahul Reddy, learned counsel for the respondent-applicant.

The Circular, which was relied upon by the Railways before the Tribunal and is now sought to be pressed into service before this Court, is Serial Circular No.5/92, which reads as under:

¹ W.P.C.T.No.155 of 2016

² 2010 (1) CLJ Cal.464

“ SERIAL CIRCULAR No.5/92

Circular Letter No.P(R)268/Dt.01.07.1992

Copy of Board's Letter No.E(NG)II/91/RC-1/136 dated 2.1.1992 is published for information, guidance and necessary action.

Copy of Board's letter No.E(NG)II/91/RC-1/136 dated 2.1.1992 (RBE No.1/92) supplementary circular No.5 to M.C.No.16

Sub: Appointment on compassionate grounds – cases of second widow and her wards.

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 2nd 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 is invariably 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.”

It is manifest from a bare perusal of the afore-stated Circular that, in terms thereof, the second widow and her children are not to be considered for compassionate appointment unless the Administration permitted the second marriage in special circumstances taking into account personal law, etc.

It is not in dispute that the father of the respondent-claimant, Shaik Abdul Jaleel, entered the service of the Railways on 04.08.1984. It is also not in dispute that his second marriage with Jameela Bee, the mother of the respondent-applicant, was in the year 1970. That being so, the afore-stated Circular has no application to his case. When his second marriage was long prior to his entry into the service of the Railways, the question of his

seeking the permission of the Administration for contracting a second marriage does not arise.

We are therefore of the opinion that the afore-stated Circular could not be applied to the case of the father of the respondent-applicant and, in consequence, the disqualification envisaged therein in so far as the second widow and her children are concerned, in terms of eligibility for compassionate appointment, would also have no role to play.

In that view of the matter, the pendency of the case before the Supreme Court in relation to said Circular and its validity has no impact on this case and the eligibility of the respondent-applicant has to be considered for compassionate appointment, notwithstanding the fact that he is the son of the second wife of late Shaik Abdul Jaleel, who died in harness. The order of the Tribunal does not warrant interference, albeit, for the reasons set out hereinabove.

The writ petition is therefore devoid of merit and is accordingly dismissed. Interim order dated 20.10.2017 shall stand vacated.

Pending miscellaneous petitions, if any, shall also stand dismissed. No order as to costs.

SANJAY KUMAR, J

M. GANGA RAO, J

1st May, 2018

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