

IN THE HIGH COURT OF JHARKHAND AT RANCHI
W. P. (S) No. 1455 of 2016(DB)

Sohan Kumar Mahto

.... Petitioner

Versus

1. Union of India, through General Manager,
East Central Railway, Hajipur, Bihar
2. Sr. Divisional Personnel Officer, East
Central Railway, Dhanbad, Jharkhand
3. Divisional Railway Manager, East Central
Railway, DRM Building, Dhanbad, Jharkhand..... Respondents

CORAM : The Hon'ble Mr. Justice Aparesh Kumar Singh
The Hon'ble Mr. Justice Kailash Prasad Deo

For the Petitioner

: M/s. Niranjana Kumar &
Niranjana Kumar Sinha, Advts.

For the Respondents

: Mr. Mahesh Tewari, Adv.

06/18.09.2019

Heard learned counsel for the petitioner and Railways.

2. This writ petition is directed against the order dated 12th January, 2015 rendered in Original Application No. 17/2011[R] by the Central Administrative Tribunal, Patna Bench, Patna [Circuit Bench at Ranchi], whereby learned Tribunal refused to interfere in the order dated 13th December, 2007 issued by respondent- Senior Divisional Personnel Officer, East Central Railway, Dhanbad, whereby compassionate appointment was refused to the applicant/writ petitioner herein.

3. Undisputedly, applicant/writ petitioner was born out of the second marriage of the deceased employee, who died in harness while serving on the post of Gangman on 19th January, 2003. First wife of the employee had no issue and he had incurred second marriage from which applicant was born. Railway had rejected the application for compassionate appointment in view of the Railway Board circular dated 2nd January, 1992, which did not permit compassionate appointment to the children born out of the second marriage of the employee unless the second marriage was with the permission of administration.

4. The issue is no longer *res integra*. The matter was taken up to the Apex Court in the case of **Union of India vs. V.R. Tripathi in Civil Appeal No. 12015 of 2018** reported in [2018 SCC On Line SC 3097] which arose from the

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judgment of Bombay High Court on the import of same circular of Railway Board dated 2nd January, 1992. Similar appeals were also preferred by the Railways being aggrieved by the judgment rendered by the High Court at Calcutta such as, Special Leave to Appeal(C) No(s). 14010/2017. The Apex Court considered the import of the Railway Board circular dated 2nd January, 1992 and the provisions of Hindu Marriage Act in particular Section 16 as also the decision rendered in the cases of *Director of Education (Secondary) and another versus Pushpendra Kumar and others* reported in (1998)5 SCC 192; *State Bank of India and another vs. Raj Kumar* (2010) 11 SCC 661 and *V. Sivamurthy vs. State of Andhra Pradesh and others* (2008)13 SCC 730. The Apex Court also took note of a decision in the case of *Namita Goldar versus Union of India*, whereby the instant circular of the Railways Board was quashed to the extent that it prevented the children of the second wife from being considered for appointment on compassionate grounds. Subsequently, another decision of a Coordinate Bench of Calcutta High Court in the case of **Eastern Coalfields Ltd. V. Dilip Singh** taking a contrary view was also taken note of. The ratio of the judgment rendered in the case of **V.R. Tripathi (Supra)** as contained at paragraph nos. 16, 17 and 18 containing the illuminating the opinion of the Apex Court, is quoted hereunder:

“16. The issue essentially is whether it is open to an employer, who is amenable to Part III of the Constitution to deny the benefit of compassionate appointment which is available to other legitimate children. Undoubtedly, while designing a policy of compassionate appointment, the State can prescribe the terms on which it can be granted. However, it is not open to the State, while making the scheme or rules, to lay down a condition which is inconsistent with Article 14 of the Constitution. The purpose of compassionate appointment is to prevent destitution and penury in the family of a deceased employee. The effect of the circular is that irrespective of the destitution which a child born from a second marriage of a deceased employee may face, compassionate appointment is to be refused unless the second marriage was contracted with the permission of the administration. Once Section 16 of the Hindu Marriage Act, 1955 regards a child born from a marriage entered into while the earlier marriage is subsisting to be legitimate, it would not be open to the State, consistent with Article 14 to exclude such a child from seeking the benefit of compassionate appointment. Such a condition of exclusion is arbitrary and ultra vires.

17. Even if the narrow classification test is adopted, the circular of the Railway Board creates two categories between one class of legitimate children. Though the law has regarded a child born from a second marriage as legitimate, a child born from the first marriage of a deceased employee is alone made entitled to the benefit of compassionate appointment. The salutary purpose underlying the grant of compassionate appointment, which is to prevent destitution and penury in the family of a deceased employee requires that any stipulation or condition which is

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imposed must have or bear a reasonable nexus to the object which is sought to be achieved. The learned Additional Solicitor General has urged that it is open to the State, as part of its policy of discouraging bigamy to restrict the benefit of compassionate appointment, only to the spouse and children of the first marriage and to deny it to the spouse of a subsequent marriage and the children. We are here concerned with the exclusion of children born from a second marriage. By excluding a class of beneficiaries who have been deemed legitimate by the operation of law, the condition imposed is disproportionate to the object sought to be achieved. Having regard to the purpose and object of a scheme of compassionate appointment, once the law has treated such children as legitimate, it would be impermissible to exclude them from being considered for compassionate appointment. Children do not choose their parents. To deny compassionate appointment though the law treats a child of a void marriage as legitimate is deeply offensive to their dignity and is offensive to the constitutional guarantee against discrimination.

18. The learned Additional Solicitor General submitted that the decision of this Court in Rameshwari Devi (supra) arose in the context of the grant of family pension to the minor children born from the second marriage of a deceased employee. That is correct. This Court, in that context, observed that Section 16 of the Hindu Marriage Act, 1955 renders the children of a void marriage to be legitimate while upholding the entitlement to family pension. The learned Additional Solicitor General submitted that pension is a matter of right which accrues by virtue of the long years of service which is rendered by the employee, entitling the employee and after his death, their family to pension in accordance with the rules. Even if we do accept that submission, the principle which has been laid down by this Court on the basis of Section 16 of the Hindu Marriage Act, 1955 must find application in the present case as well. The exclusion of one class of legitimate children from seeking compassionate appointment merely on the ground that the mother of the applicant was a plural wife of the deceased employee would fail to meet the test of a reasonable nexus with the object sought to be achieved. It would be offensive to and defeat the whole object of ensuring the dignity of the family of a deceased employee who has died in harness. It brings about unconstitutional discrimination between one class of legitimate beneficiaries-legitimate children.”

The Apex Court has however at para-21 of the judgment clarified that the issue as to whether in a particular case, the applicant meets all the stipulations of the scheme including financial need and other requirements are matters which will be decided on the facts of each individual case.

5. We have considered the submission of learned counsel for the writ petitioner and the Respondent-Railways in the factual matrix of the case noted above and the ratio rendered in the case of **V.R. Tripathi (Supra)**. The order of learned Tribunal impugned herein has sustained the rejection of the claim of the applicant by the Railways on the ground that applicant being a child of the second wife, marriage being consumed during subsistence of first marriage, was disentitled for compassionate appointment in view of the Circular dated 2nd January, 1992. Apex Court in the case of **V.R. Tripathi (Supra)** has held that the Circular fails to meet the test under Article 14 and 16 of the Constitution of India

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as compassionate appointment is being denied to a child born out of a void marriage though law treats such child as legitimate. Even if the narrow classification test is adopted, the circular of the Railway Board which creates two categories between one class of legitimate children, would fail on the test of reasonableness. The salutary purpose underlying the grant of compassionate appointment, which is to prevent destitution and penury in the family of a deceased employee requires that any stipulation or condition which is imposed thereupon must have or bear a reasonable nexus to the object which is sought to be achieved. The exclusionary clause under the circular was impermissible as it sought to deny compassionate appointment to a class of beneficiaries who have been deemed legitimate by the operation of law. Children do not choose their parents. As such, denial of compassionate appointment to such children is deeply offensive to their dignity and is offensive to the constitutional guarantee against discrimination, though the law treats a child of a void marriage as legitimate.

6. The impugned order therefore cannot survive. It is accordingly set aside. Respondents are directed to take fresh decision on the application of the petitioner, of course, taking into account that the applicant meets all the stipulations of the scheme of the compassionate appointment. Let such fresh decision be taken within a period of 12 weeks from the date of receipt of a copy of this order. However, respondents would not debar him on the grounds of age at this stage in such reconsideration if he was not overage at the time of application.

7. Accordingly, writ petition is allowed.

(Aparesh Kumar Singh, J)

(Kailash Prasad Deo, J.)