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HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (S) No. 2860 of 2018**

{Arising out of Order dated 22.12.2017 passed in Original Application No. 203/00308/ 2017 by the Central Administrative Tribunal, Jabalpur Bench, Circuit Sitting, Bilaspur}

1. Union of India, Through General Manager, SECR New GM Building, Bilaspur.
2. Chief Personnel Officer, South East Central Railway, Divisional Office, Personnel Branch, District Bilaspur.
3. Senior Divisional Personnel Officer, South East Central Railway, Divisional Office, Personnel Branch, District Bilaspur.

---- Petitioners**Versus**

Richa Lama D/o Late Ganesh Lama, Aged about 25 years, R/o Qtr. No. 553/4, RTS Colony, Bilaspur, Chhattisgarh.

---- Respondent

For Petitioners	: Shri H.S. Ahluwalia, Advocate.
For Respondent	: Shri A.V.Shridhar, Advocate.

Hon'ble Shri P.R. Ramachandra Menon, Chief Justice
Hon'ble Shri Sanjay K. Agrawal, Judge

Order on Board**Sanjay K. Agrawal, J.****25/06/2019**

1. This writ petition under Article 227 of the Constitution of India is directed against the order passed by the Central Administrative Tribunal (*for short 'the Tribunal'*), granting the application for compassionate appointment to the Respondent herein finding her eligible as per circular of Petitioners herein governing consideration of application for said appointment by setting aside the order dated

04.09.2017 passed by Petitioner herein.

2. Shri Ganesh Lama, while working as a Railway servant died in harness on 17.01.2015. The Respondent, who is the daughter from the second wife of the deceased Railway servant made an application before the Railway authorities for grant of compassionate appointment as per prevalent regulations, notifications and circulars which was not decided by the Railway authorities and pursuant to the direction passed by the Tribunal dated 24.01.2016, the same was decided by order dated 04.04.2017 (Annexure P/2) rejecting the claim for compassionate appointment of the Respondent on the ground that she is the daughter from the second wife of the deceased Railway servant and as such, is not entitled to be considered for the privilege of compassionate appointment as the administration had not permitted the second marriage to her father, relying upon the circular dated 02.01.1992 (Annexure P/3).
3. Feeling aggrieved and dissatisfied with the order rejecting application for grant of compassionate appointment, the sole Respondent herein preferred an original application under Section 19 of the Administrative Tribunals Act, 1985 seeking quashment of the order passed by the Petitioner-Railways with a further direction for consideration of her case for grant of compassionate appointment.
4. The learned Tribunal, vide the impugned order dated 22.12.2017 (Annexure P/1) quashed the order dated 04.04.2017 (Annexure P/2) passed by the Petitioner-Railway authorities and directed to consider the case of the Respondent for grant of compassionate appointment within a period of 60 days from the date of the order.

5. Now, the Petitioner-Union of India takes exception to the order directing the Respondent's case for grant of compassionate appointment, stating *inter alia*, that she is not entitled for the said consideration in view of the circular dated 02.01.1992, issued by the Railway Board as the Respondent is admittedly, the daughter of the deceased Railway servant out of his second marriage, which was not permitted by Railways. Therefore, the writ petition be allowed and the order passed by the Tribunal be set aside.
6. No return has been filed by the Respondent.
7. Shri H.S. Ahluwalia, learned counsel for the Petitioners-Railways would submit that the learned Tribunal is absolutely unjustified in allowing the Original Application of the Respondent ignoring the fact that the Respondent, being the daughter from the second wife of the deceased Railway servant, admittedly, is not entitled in view of the circular dated 02.01.1992 (Annexure P/3) and as such, the Petitioners-Railways has rightly rejected the case of the Respondent for grant of compassionate appointment, therefore, the writ petition deserves to be allowed and the impugned order be set aside accordingly.
8. Shri Shridhar, learned counsel for the Respondent, would support the impugned order and submit that the circular dated 02.01.1992 was set aside by the Bombay High Court and when the Union of India had taken up the issue before the Supreme Court in the case of ***Union of India v. V.R.Tripathi***¹, Their Lordships did not interfere with the order

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of the Bombay High Court and confirmed the same, and as such, the Respondent who is the daughter of the deceased Government servant with his second wife, is still a legitimate child and entitled for grant of compassionate appointment, therefore the writ petition deserves to be dismissed.

9. We have heard learned counsel for the parties, considered their respective submissions and went through the records with utmost circumspection.
10. The only question to be considered is, whether the Respondent being the daughter of deceased Railway servant out of her father's second marriage is entitled for appointment on compassionate ground in view of the circular dated 02.01.1992 issued by Petitioners, which states as under:

"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 alongwith 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."

11. The Bombay High Court, in the matter of **V.R. Tripathi v. Union of India**² considered the issue relating to grant of compassionate appointment to the children born out of second marriage in light of above stated circular dated 02.01.1992 and directed for consideration for grant of compassionate appointment sustaining the order of the Central Administrative Tribunal in favour of the claimant of compassionate appointment therein. When the matter was taken up by Petitioners-Railway authorities before the Hon'ble Supreme Court in **V.R. Tripathi** (*supra*), their Lordships, in paragraph 12 formulated the following issue for consideration :

“12. The real issue in the present case, however, is whether the condition which has been imposed by the circular of the Railway Board under which compassionate appointment cannot be granted to the children born from a second marriage of a deceased employee (except where the marriage was permitted by the administration taking into account personal law, etc) accords with basic notions of fairness and equal treatment, so as to be consistent with Article 14 of the Constitution.”

Their Lordships considered the said issue threadbare and answered in affirmative holding that the child born out of second marriage is still a legitimate child and is entitled for grant of compassionate appointment upholding the view taken by the Bombay High Court in paragraphs 13 and 14, and held as under :

“13. In sub-section (1) of Section 16, the legislature has stipulated that a child born from a marriage which is null and void under Section 11 is legitimate, regardless of whether the birth has taken place before or after the commencement of Amending Act 68 of 1976. Legitimacy of a

child born from a marriage which is null and void, is a matter of public policy so as to protect a child born from such a marriage from suffering the consequences of illegitimacy. Hence, though the marriage may be null and void, a child who is born from the marriage is nonetheless treated as legitimate by sub-section (1) of Section 16. One of the grounds on which a marriage is null and void under Section 11 read with clause (i) of Section 5 is that the marriage has been contracted when one of the parties had a spouse living at the time of marriage. A second marriage contracted by a Hindu during the subsistence of the first marriage is, therefore, null and void. However, the legislature has stepped in by enacting Section 16(1) to protect the legitimacy of a child born from such a marriage. Sub-section (3) of Section 16, however, stipulates that such a child who is born from a marriage which is null and void, will have a right in the property only of the parents and none other than the parents.

14. 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.”

12. Reverting to the facts of the case, in light of the authoritative and binding pronouncement of the Supreme Court in matter of

V.R.Tripathi (supra) wherein their Lordships have clearly held that the child born out of second marriage is a legitimate child and is entitled for grant of compassionate appointment relying upon the provisions contained in Section 16 of the Hindu Marriage Act and also held that it would not be open to the State, consistent with Article 14 to exclude such a child from seeking the benefit of compassionate appointment holding the condition of exclusion as arbitrary and *ultra vires*. In view of that the Respondent herein, though being a child born out of second marriage of a Railway servant is still entitled for consideration for grant of compassionate appointment as the learned Tribunal has rightly directed to consider the case of the Respondent for grant of compassionate appointment in view of the above legal position stated hereinabove and in light of authoritative pronouncement rendered therein.

13. We find no reason to interfere with the order passed by the learned Tribunal. The writ petition is accordingly dismissed leaving the parties to bear their own costs. However, the time granted to the Petitioners for considering the case of the Respondent for grant of compassionate appointment is extended by 45 days from today.

Sd/-
(P.R. Ramachandra Menon)
CHIEF JUSTICE

Sd/-
(Sanjay K. Agrawal)
JUDGE

HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Petition (S) No. 2860 of 2018

Petitioners : Union of India and others

Versus

Respondent : Richa Lama

(English)

Child of the deceased Railway Servant of his second marriage is entitled for privilege of compassionate appointment.

(हिन्दी)

मृतक रेलवे सेवक की दूसरी शादी से उत्पन्न संतान अनुकंपा नियुक्ति का विशेषाधिकार पाने की हकदार है ।