

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.12886 of 2018

1. The Union of India through the General Manager, East Central Railway, Hazipur, Dist. Vaishali.
2. The Divisional Railway Manager, East Central Railway, Danapur, P.O.- Khagaul, District- Patna
3. The Senior Divisonal Personnel Officer, East Central Railway, Danapur, P.O.- Khagaul, District- Patna
4. The Senior Divisonal Engineer Co-Ordination, East Central Railway, Danapur, P.O.- Khagaul, District Patna.

... .. Petitioners/ (Respondents in O.A.)
Versus

1. Smt. Asharfi Devi and Anr W/o Late Maha Prasad Kharwar R/o village- Mishrwalia, Near P.C. College Gate, P.O.- Gazadhaganj, District- Baxar
2. Prabhujee Kharwar S/o Late Maha Prasad Kharwar R/o village- Mishrwalia, Near P.C. College Gate, P.O.- Gazadhaganj, District- Baxar

... .. Respondents/(Applicant in O.A.)

Appearance :

For the Petitioner/s	:	Mr. Shekhar Singh, Adv.
For the Respondent/s	:	Mr. Munna Pd Dixit (M.P. Dixit), Adv.
		Mr. S.K. Dixit, Adv.
		Mr. Sanjay Kr. Chaubey, Adv.
		Mrs. Swastika, Adv.
		Mr. Shailendra Kumar, Adv.

CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY
and
HONOURABLE MR. JUSTICE ANJANI KUMAR SHARAN
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE SHIVAJI PANDEY)

Date : 31-01-2020

Heard learned counsel for the parties.

In this writ application, the prayer has been made for grant of appointment on compassionate ground to the son of the second wife of the deceased employee, the Railway has refused to grant the benefit of appointment, the reason has been assigned that



the father of the respondent no.2, without knowledge of the Railway Administration, has entered in to the second marriage.

In the present case, the first wife has come forward to help the son of the second wife and reason has been assigned that at her behest, the second marriage was solemnized, reason has been assigned failure to give birth to a child. The Railway Administration has a circular that if a person enters into the second marriage, he must have an approval of the department as it should be in the knowledge of the Railway Administration but, this issue is no longer res-integra in view of the fact that the second marriage may be illegal but, as per Section 16 of the Hindu Marriage Act, 1955, the children are legitimate, they cannot be declared to be an illegitimate child and he has right of succession over the property of the father. The issue of compassionate appointment of the son from second marriage has been considered by the Hon'ble Apex Court in the case of Union of India Vs. V.R. Tripathi reported in 2019 (1) SCALE 302 and this matter again been dealt with by the Full Bench of this Court in the case of The Bihar State Electricity Board & Ors. Vs. Chadra Shekhar Paswan & Ors. reported in 2019 (2) PLJR 500. In both the judgments, taking aid of Section 16 of the Hindu Marriage Act, it has been held that the child from the second marriage cannot be deprived of the benefit of



compassionate appointment. Though, the Railway Administration accepts that the employee can go for a second marriage but, there must be knowledge of the same to the Railway Administration but, recently, the Railway has come up with a circular being RBE No. 218/2019 dated 30.12.2019, thereby accepting that the son from the second wife has a right to get appointment but, subject to approval from the first wife and preference will be given to the children of the first wife. Here the first wife herself has come forward to help the respondent.

We do not find any error in the order passed by the Tribunal. Accordingly, this writ application is dismissed.

(Shivaji Pandey, J)

(Anjani Kumar Sharan, J)

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AFR/NAFR	NAFR
CAV DATE	NA
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