

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.7033 of 2020

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1. Smt. Triveni Devi, Wife of late Dharmanand Jha, Ex- Gateman Under Senior Section Engineer (P. Way), East Central Railway, Raghapur, Resident of Village / Moh- Farbisganj, Ward No. 13, P.O. and P.S.- Farbisganj, District- Araria, Pin Code- 854318 (Bihar).
 2. Smt. Ranjan Kumari, Second Wife of Dharmanand Jha, Ex- Gateman Under Senior Section Engineer (P. Way), East Central Railway, Raghapur, Resident of Village/ Mohallah- Farbisganj, Ward No. 13, P.O. and P.S.- Farbisganj, District- Araria (Bihar), Pin Code- 854318.
 3. Babu Jha, Son of late Dharmanand Jha, Ex- Gateman Under Senior Section Engineer (P. Way), East Central Railway, Raghapur, Resident of Village / Moh- Farbisganj, Ward No. 13, P.O. and P.S.- Farbisganj, District- Araria (Bihar), Pin Code- 854318.

... .. Petitioners

Versus

1. The Union of India through the General Manager, East Central Railway, Hajipur, P.O. - Digghi Kalan, P.S.- Hajipur (Sadar), District- Vaishali, Pin Code- 844101 (Bihar).
2. The General Manager (Personnel), East Central Railway, Hajipur, P.O.- Digghi Kalan, P.S. - Hajipur (Sadar), District- Vaishali, Pin Code- 844101 (Bihar).
3. The Divisional Railway Manager, East Central Railway, Samastipur, P.O. - Samastipur, P.S. - Samastipur, Town and District- Samastipur, Pin Code- 848101 (Bihar).
4. The Senior Divisional Personnel Officer, East Central Railway, Samastipur, P.O.- Samastipur, P.S.- Samastipur, Town and District- Samastipur, Pin Code- 848101 (Bihar).
5. The Senior Divisional Engineer (Coordination), East Central Railway, Samastipur, P.O.- Samastipur, P.S. Samastipur, Town and District- Samastipur, Pin Code- 848101 (Bihar).



6. The Senior Divisional Financial Manager, East Central Railway, Samastipur, P.O.- Samastipur, P.S.- Samastipur, Town and District- Samastipur, Pin Code- 848101(Bihar).

... .. Respondents

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Appearance :

For the Petitioners : Mr. Munna Pd Dixit, Advocate

For the Respondents : Mrs. Kalpana, Advocate

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CORAM: HONOURABLE MR. JUSTICE VIKASH JAIN

and

HONOURABLE MR. JUSTICE ANJANI KUMAR SHARAN

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE VIKASH JAIN)

Date : 07-07-2021

Heard learned counsel for the petitioners and learned counsel for the respondents through video conference. Learned counsel for the petitioners hereby undertakes that all defects pointed out by the stamp reporter shall be removed, and compliance with the conditions of the notices of this Court with regard to acceptance of e-filing shall be made, without delay immediately upon resumption of normal physical functioning of the Court, and in any event within one month thereof.

2. The following reliefs as formulated by the petitioners have been claimed in the writ petition.

"A. For issuance of Writ in the nature of Certiorari for quashing/setting aside the Order dated 26.04.2019 passed by the Learned Central Administrative Tribunal, Patna Bench, Patna



herein after CAT in Original Application No. 050/00049 of 2018 **as contained in Annexure-2 of the writ application** whereby and whereunder the prayer for appointment of Petitioner No.3 on compassionate ground being the son of 2nd wife of the deceased employee has been rejected and instant OA has been dismissed illegally, without application of Judicious mind and also contrary to the Full Bench judgment of this Hon'ble Court reported in 2019 (2) PLJR 500 and also by Hon'ble Supreme Court of India reported in AIR 2019 SC 666.

(B). For issuance of Writ in the nature of Certiorari for declaring the RBE No.42/2018 dated 21.03.2018 **as contained in Annexure-1 of the writ application** as null, void, abnatio wrong and contrary to the **Full Bench** judgment of this Hon'ble Court reported in **2019 (2) PLJR 500** and also by Hon'ble Supreme Court of India reported in **AIR 2019 SC 666**.

(C) For issuance of an appropriate writ(s)/ order(s)/ direction(s) in the nature of Mandamus commanding the Respondents to consider and issue offer of appointment letter on compassionate ground in favor of Petitioner No.3 being son of 2nd wife without any further delay in view of orders so passed by Hon'ble **Full Bench** of this Hon'ble Court reported in **2019 (2) PLJR 500**, Hon'ble Supreme Court of India reported in **AIR 2019 SC 666** and also by Hon'ble Madras High Court dated 28.02.2017 upheld by Hon'ble Supreme Court of India on 18.09.2017 as



contained in Annexure-A/1 and A/2 with Paper Book.

(D) For issuance of an appropriate writ(s)/ order(s)/ direction(s) in the nature of Mandamus commanding the Respondents to grant all consequential benefits in favour of the Petitioners.

(E) Any other appropriate relief(s) for which the Petitioners may be entitled to be granted."

3. The short facts of the case according to the petitioners herein, who are the first wife, the second wife and the son of the second wife, respectively, of the deceased late Dharmanand Jha, are that he was the Ex-Gateman under Senior Section Engineer (P. Way), East Central Railway, Raghapur and died in harness on 28.01.2007. A representation was made for compassionate appointment in favour of petitioner no.3 but no action was taken by the concerned authorities. Accordingly, the petitioners filed O.A. No.050/00049/18 (Annexure-2) but the same has been dismissed by the Tribunal vide its order dated 26.04.2019, *inter alia*, relying on a decision of the Tribunal passed in O.A. No.050/00910/2016. Such dismissal has been made subject matter of challenge in the present writ petition.

4. Learned counsel for the petitioners submits that the view taken by the learned Tribunal is contrary to the established law on the subject of compassionate appointment of the son of the second wife of a deceased employee. He relies on



the decision of the Hon'ble Apex Court rendered on 11.12.2018 in *Union of India and Another vs. V.R. Tripathi* reported in AIR 2019 S.C. 666 holding as follows -

“18. The High Court has proceeded on the basis that the recognition of legitimacy in Section 16 is restricted only to the property of the deceased and for no other purpose. The High Court has missed the principle that Section 16(1) treats a child born from a marriage which is null and void as legitimate. Section 16(3), however, restricts the right of the child in respect of property only to the property of the parents. Section 16(3), however, does not in any manner affect the principle declared in sub-section (1) of Section 16 in regard to the legitimacy of the child. Our attention has also been drawn to a judgment of a learned Single Judge of the Madras High Court in M. Muthuraj v. Deputy General of Police, Tamil Nadu adopting the same position. In the view which we have taken, we have arrived at the conclusion that the exclusion of a child born from a second marriage from seeking compassionate appointment under the terms of the circular of the Railway Board is ultra vires. A Division Bench of the Madras High Court followed the view of the Calcutta High Court in Namita Goldar (2010 Lab IC 1465 (Cal)) in Union of India v. M. Karumbayee. A Special leave petition filed against the judgment of the Division Bench was dismissed



by this Court on 18 September 2017.”

5. The said decision in *V.R. Tripathi's case (supra)* relied upon by a Full Bench of this Court in its decision dated 18.04.2019 in *Bihar State Electricity Board & Ors. Vs. Chadra Shekhar Paswan & Ors., 2019(2) PLJR 500*, which after a detailed consideration of various decisions on the point, disposed of the writ petition with a direction to the respondents to consider the claim of the petitioner for appointment on compassionate ground on merits.

6. Yet again, a Division Bench of this Court in C.W.J.C. No.12886 of 2018 (*Union of India and Another vs. Smt. Asharfi Devi & Anr.*) took a similar view.

7. It is, therefore, submitted that the authorities have wrongly deprived the petitioner no.3 from being considered for compassionate appointment. Surprisingly, the Tribunal has failed to interfere in the matter despite its observation that the Rule contained in RBE 42/2018 to the extent that it barred the widows to nominate the children covered under Section 16 of the Hindu Marriage Act, 1955 for the purposes of compassionate appointment, “*to be prima facie against law as it amounts to imposing the Department's perceived sense of morality over what is expressly declared as legal, or legitimate*”.

8. Learned counsel for the respondents appears and opposes the petition, submitting that considerable time has



elapsed since the death of the employee Dharmanand Jha in the year 2007. The purpose of compassionate appointment is primarily to tide over the immediate crisis which befalls the family upon death of the bread earner. This no longer remains a consideration after a lapse of more than a decade since death occurred. It is further stated on instructions that a recent circular has been issued only in the year 2019 accepting the proposition that a child of the second widow of a deceased would be eligible for compassionate appointment. However, such circular would operate only prospectively to cover cases arising from deaths occurring after issuance of the circular and would not be applicable to the case of the petitioners.

9. Having heard the parties and on a consideration of materials on record, this Court finds merit in the writ petition. The principle of law has been clearly recognized in *VR. Tripathi's case (supra)* to the effect that on the strength of Section 16 of the Hindu Marriage Act, 1955, the legal presumption of legitimacy would not be restricted only with respect to the property of the deceased. As such, the son of the second widow would also be eligible for compassionate appointment. This Court has also reiterated the view in its aforesaid decision of the Full Bench in *Chadra Shekhar Paswan's case (supra)* and of the Division Bench in *Asharfi Devi's case (supra)*. This Court is not inclined to accept the submission of the respondents that such compassionate



appointment could not be made prior to issuance of the recent circular of 2019. This is evident from the very fact that circulars of the respondent railway issued prior to 2019 denying the benefit of compassionate appointment to a son of second widow have been quashed in the past. In the case of *Namita Goldar & Anr. Vs. Union of India & Anr., 2010 Lab IC 1465 (Cal)*, the Calcutta High Court set aside Railway Board's circular dated 02.01.1992 to the extent it prevented children of the second widow from being appointed on compassionate basis. This decision was upheld by the Hon'ble Supreme Court. So also, a Division Bench of the Madras High Court in *Union of India v. M. Karumbayee, 2017 Lab. IC (NOC) 237 (Mad)* has taken a similar view.

10. We have, therefore, no hesitation in setting aside the impugned order of the Tribunal dated 26.04.2019 passed in O.A. No. 050/00049/18. The matter is remanded to the General Manager (Personnel), East Central Railway, Hajipur (respondent no.2) to consider the case of the petitioner no. 3 on its own merit in accordance with law for his compassionate appointment. The Railway Board's circular No. 42/2018 dated 21.03.2018 which has been impugned herein, is also set aside to the extent that it prohibits the widows of a deceased from nominating the children treated as legitimate under Section 16 of the Hindu Marriage Act, 1955 for their appointment on compassionate basis, as contained in paragraph 5(a) thereof, as being contrary to the law laid down



by the Hon'ble Supreme Court in V.R. Tripathi's case (supra).

11. The writ petition stands allowed.

(Vikash Jain, J)

(Anjani Kumar Sharan, J)

pawan/-

AFR/NAFR	A.F.R.
CAV DATE	N/A.
Uploading Date	12.07.2021
Transmission Date	

