

**IN THE HIGH COURT OF JHARKHAND AT RANCHI**  
**W.P.(S) No.4117 of 2018**

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1. Union of India, Ministry of Railways through the General Manager, East Central Railway, Hajipur, P.O.-Hajipur, P.S.-Hajipur, Dist: Vaishali (Bihar).

2. Divisional Railway Manager, East Central Railway, Dhanbad Division, P.O.+P.S.+Dist: Dhanbad.

3. Senior Divisional Personnel Officer, East Central Railway, Dhanbad Division, P.O.+P.S.+Dist: Dhanbad, Jharkhand.

... .. **Petitioners**

Versus

1. Hadisha Khatoon, W/o Late Md. Usman, r/o Mohalla Quilaghat, Milan Chowk, P.O.-Lalbagh, P.S.-Laheriyasarai, Dist:Darbhangha (Bihar).

2. Jaslin Hena, D/o Late Md. Usman & Nasrin Bano, r/o Railway Qr. No.36/31, Type-II, Bhuli, P.O. + P.S. – Bhuli, Dist: Dhanbad.

... .. **Respondents**

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**CORAM :HON'BLE MR. JUSTICE SUJIT NARAYAN PRASAD**  
**HON'BLE MR. JUSTICE NAVNEET KUMAR**

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For the Petitioner : Mr. Anil Kumar, A.S.G.I.

Mr. Ravi Prakash, C.G.C.

For the Respondents: Mr. Kripa Shankar Nanda, Advocate

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**ORAL JUDGMENT**

**Order No.21 : Dated 28<sup>th</sup> August, 2023**

***Per Sujit Narayan Prasad, J.***

**1.** The instant writ petition is under Article 226 of the Constitution of India by which the order dated 16.10.2017 passed by the learned Central Administrative Tribunal, Patna Bench, Circuit Bench at Ranchi in OA/051/00150/2016 has been assailed by which while allowing the original application, following directions have been passed :-

(i) Release the death benefits to the two widows, as per their shares agreed upon, after realizing the Railway dues

payable by the widows from their respective shares legally;  
and

(ii) To consider the daughter of the 2<sup>nd</sup> wife for compassionate appointment.

**2.** Brief facts of the case as per the pleadings made in the writ petition, which are required to be enumerated herein, read as under :-

It is the case of the petitioner that late Md. Usman Khan was an employee working as Sr.SE (Sig) Dhanbad and he expired on 25.07.2001 while in service. During his lifetime, he had contracted two marriages, first time with Respondent No.1 & second time with Respondent No.2 (now deceased). The second marriage was contracted by late Md. Usman without permission from the railway authorities in contravention of rule 21 of the Railway Service (Conduct) Rules, 1966.

**3.** After the death of the employee, namely, late Md. Usman, both respondent Nos. 1 & 2 gave contradictory statements regarding marriage and second marriage by the employee and, as such, on account of such dispute, railway authorities directed respondents to bring succession certificate from the competent court.

**4.** The Respondent No.1, first wife, submitted succession certificate No. 30/2002 dated 19.03.2009 authorising her to receive 9/16<sup>th</sup> of the share of deceased employee against

which second wife, Respondent No.2 submitted a representation and also preferred a Miscellaneous Appeal bearing M.A. No. 165/2009 before this Court and on such state of affairs, no amount was paid to either of the respondents.

**5.** Thereafter, during the pendency of the aforesaid Miscellaneous Appeal, both the respondents entered into a compromise between them with the condition that Respondent No.1 shall get 09 annas and Respondent No.2 shall get 07 annas respectively. Further it was agreed between them that Miss. Jaslin Hena, daughter from the 2<sup>nd</sup> wife shall claim for compassionate appointment. The aforesaid Misc. Appeal was disposed of by this Hon'ble Court in terms of the compromise vide order dated 19.08.2014.

**6.** Thereafter, respondent Nos.1 and 2 were informed by the railway authorities concerned that total amount of the deceased Md. Usman for payment is coming around Rs.9,13,831/- whereas an amount of Rs.7,00,000/- (at present Rs.9,78,640/- up to April, 2018) is recoverable by the railway authorities on account of rent, water charges, electric charges and penal rent of unauthorised occupation of the railway quarter by Respondent No.2, namely, Smt. Nasrin Bano, the second wife. Again dispute arose between Respondent Nos.1 and 2 regarding distribution of the retirement dues and further it came to light that there were

contradictions with regard to the statements of the Respondent No.1 who claimed that deceased employee entered into second marriage with her consent and Respondent No.2 claimed that deceased entered into marriage with her after giving divorce to Respondent No.1.

**7.** Due to the aforesaid contradiction, the amount of retirement dues was not paid. Further, vide letter dated 10.06.2015, Respondent No.2 was informed that case of Miss Jaslin Hena cannot be considered for compassionate appointment as Respondent No.2 happens to be the second wife of the Deceased employee Late Md. Usman who had contracted second marriage without permission from the railway authorities required under rule 21 of the service conduct rules.

**8.** Thereafter, Respondent No.1 approached the learned Central Administrative Tribunal with a prayer for a direction to the respondents to pay retiral dues to the tune of 9 Annas to Respondent No.1 & to the tune of 7 Annas to Respondent No.2 with a further direction to provide compassionate appointment to Miss. Jaslin Hena in terms of the compromise entered between them.

**9.** The writ petitioner-Railway appeared before the Tribunal and filed written statement denying the claim of Respondent No.1 and reiterating that her claim is not tenable in law.

**10.** The said application was heard by the learned Central Administrative Tribunal and after hearing the parties, learned Tribunal has allowed the application filed by Respondent No.1 on 16.10.2017 and directed the petitioners to release the death benefits to the two widows as per their shares agreed upon, after realising the railway dues payable by the widows from their respective shares legally and to consider the daughter of the second wife for compassionate appointment and to issue appropriate orders within 3 months from the date of communication of the order. Against the aforesaid order passed by the learned Central Administrative Tribunal, the present writ petition has been filed.

**11.** It appears from the factual aspect as pleaded herein, as referred hereinabove, that the original applicant, Respondent No.1 herein, happens to be the widow of the deceased employee. The Respondent No.2 had filed an application in view of the compromise entered in between the 1<sup>st</sup> and 2<sup>nd</sup> wife of the deceased employee for appointment on compassionate ground since the 1<sup>st</sup> and 2<sup>nd</sup> wife of the deceased had agreed that 1<sup>st</sup> wife will take 09 annas and 2<sup>nd</sup> wife will take 07 annas of other admissible retiral benefits accrued to be paid in favour of their husband, the deceased employee.

**12.** The aforesaid grievance having not been redressed, therefore, original application was filed before the learned

Central Administrative Tribunal for seeking a direction for disbursement of the post retiral benefit and to consider the case for appointment on compassionate ground.

**13.** The Respondent-Railway, petitioner herein, had appeared before the Tribunal and had objected by taking the ground that the children of the second wife is not entitled for getting appointment on compassionate ground.

**14.** The learned Tribunal, on consideration of the law as has already been settled that the child of second wife cannot be said to be illegitimate, has allowed the original application by passing two directions, i.e., release the death benefits to the two widows, as per their shares agreed upon, after realizing the Railway dues payable by the widows from their respective shares legally and to consider the daughter of the 2<sup>nd</sup> wife for compassionate appointment, against which the present writ petition has been filed.

**15.** Mr. Anil Kumar, learned Additional Solicitor General of India assisted by Mr. Ravi Prakash, learned Central Government Counsel, in all fairness, has submitted that whatever view has been taken by the learned Tribunal cannot be said to suffer from any error since the issue has already been decided by the Hon'ble Apex Court by holding that the child of the second wife cannot be said to be illegitimate. However, this appeal is only on the consideration which has been done by the learned Tribunal based upon the paper

cutting and oral version of the learned counsel appearing for the applicant that such decision was taken by the Hon'ble Apex Court.

**16.** It has been submitted that the learned Tribunal ought to have taken into consideration by referring the judgment of the Hon'ble Apex Court while adjudicating the right of the parties but instead of doing so, merely on the basis of the reference of the paper news and oral submission of the learned counsel for the applicant that the issue has already been decided by the Hon'ble Apex Court, since, has decided the original application, therefore, the instant writ petition has been filed. However, he has admitted that the law is already settled.

**17.** Mr. Kripa Shankar Nanda, learned counsel appearing for the respondents, has submitted that although before the learned Tribunal no order of Hon'ble Apex Court was produced but now the issue is not *res integra* since the same has already been decided by the Hon'ble Apex Court that the child from second wife is not an illegitimate child.

**18.** It has been submitted that the Kolkata High Court while deciding the issue with respect to the Railway Board's Circular dated 01.05.2015, has held the said circular to be not valid in the eyes of law.

**19.** According to him, since the circular dated 01.05.2015 itself has been held to be invalid, therefore, there is no

embargo in consideration of the case of the Respondent No.2, who happens to be the child of the second wife, for her appointment on compassionate ground.

**20.** It has been submitted that there is no dispute that the child taken birth from the wedlock with the second wife cannot be said to be illegitimate and cannot be debarred from his/her legal rights. The aforesaid issue has been decided by the Hon'ble Apex Court in the case of ***Union of India and Another v. V.R.Tripathi*** reported in ***(2019) 14 SCC 646***.

**21.** The further submission has been made by referring to the subsequent circular of the Railway Board issued in the light of the judgment passed by the Hon'ble Apex Court in the case of ***Union of India and Another v. V.R.Tripathi*** (Supra) wherein also the Railway Board has come out with the conscious decision that there cannot be any discrimination in between the child either taken birth from the first wife or the second wife.

**22.** Learned counsel for the respondents has submitted that if the learned Tribunal has allowed the original application in the aforesaid premise, the same cannot be said to suffer from an error.

**23.** We have heard learned counsel for the parties and gone across the finding recorded by the learned Tribunal in the impugned order.

**24.** The basic issue herein is making discrimination among the child taken birth from the second wife by denying the claim for appointment on compassionate ground.

**25.** The aforesaid issue has already been decided in the case of ***Union of India and Others v. M.Karumbayee***, reported in **2017 SCC OnLine SC 1797** wherein it has been held that the child taken birth from the second wife cannot be said to be illegitimate and will have all the rights in inheritance.

**26.** The same view has again been reiterated in the case of ***Union of India and Another v. V.R.Tripathi*** (Supra).

**27.** It further appears that the Railway Board has also come out with a policy decision dated 30.12.2019 as appended with the supplementary affidavit wherein a conscious decision has been taken to consider the cases of the child of the second wife and her wards.

**28.** It further appears from the fact which was brought by way of one Miscellaneous Application being M.A. No.165 of 2009 wherein the first wife and the second wife have entered into a compromise based upon the same they had agreed to divide the death benefits to the two widows as per their shares agreed upon after realizing the Railway dues while the daughter of the second wife will claim appointment on compassionate ground.

**29.** This Court, on the basis of the fact that there cannot be any discrimination with the child of the second wife and, as

such, the rejection of the claim of the Respondent No.2 merely on the ground that she happens to be the daughter of the second wife for the purpose of consideration of her case for appointment on compassionate ground cannot be said to have a substance.

**30.** The learned Tribunal, after taking into consideration the aforesaid fact, if has allowed the original application, which we consider not to interfere with under the power of judicial review.

**31.** Accordingly, the instant writ petition fails and is dismissed.

**(Sujit Narayan Prasad, J.)**

**(Navneet Kumar, J.)**

*Birendra/* **N.A.F.R.**