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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 9871 OF 2019

Suresh Kitkul Patil & Anr.

.. Petitioners

Versus

**The General Manager, Central
Railway, Mumbai CST & Ors.**

.. Respondents

Mr. Vicky A. Nagrani for petitioners.

Mr. Abhijit Joshi for respondents.

**CORAM: S. V. GANGAPURWALA, ACTING CJ. &
SANDEEP V. MARNE, J.**

DATE: FEBRUARY 15, 2023

P.C.:

1. The petitioner no.2 had filed an application for compassionate appointment in place of petitioner no.1 (now deceased). The deceased petitioner no.1 was medically De-categorized. The application of the petitioner no.2 for appointment on compassionate ground is rejected as he is the son of the second wife of the deceased petitioner no.1.

2. This Court under order dated 7th December, 2022 had directed respondent nos.1, 2 and 3 to verify whether the signature of the petitioner no.1 matches with his other signatures in the official records in respect of the document intimating the department of he performing second marriage.

3. The additional affidavit is filed by the Senior Divisional Personnel Officer of the respondents. In para 2 of the said affidavit, it is stated that on a bare visual comparison, without referring to a handwriting expert, the alleged signature prima facie

appears to be similar to the other signature of the petitioner no.1 in the official records.

4. In light of that, it will have to be presumed that the deceased petitioner no.1 had intimated the department about his performing second marriage.

5. The son born from the second wife would be entitled to the benefit of appointment on compassionate ground. The Apex Court in the case of ***Union of India vs. V. R. Tripathi***, reported in 2018 SCC OnLine SC 3097 has held that the marriage may be illegal but the son born from the said wed-lock would be entitled for the benefit.

6. In view of that, the impugned order passed by the department so also the Tribunal are quashed and set aside. The respondents/department shall reconsider the application filed by the petitioner no.2 for appointment on compassionate ground. The department may consider whether upon medical De-categorization of deceased petitioner no.1, petitioner no.2 would be entitled to seek appointment on compassionate ground and may consider all other relevant factors and they shall not reject the application only on the ground that the petitioner no.2 is the son born to the deceased petitioner no.1 from the second wed-lock.

7. The writ petition is accordingly disposed of. No costs.

(SANDEEP V. MARNE, J.)

(ACTING CHIEF JUSTICE)