



W.P.No.20948 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on:16.08.2023

Delivered on: 31.08.2023

CORAM:

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

AND

THE HONOURABLE MR.JUSTICE P.B.BALAJI

W.P.No.20948 of 2019

and

W.M.P.No.20133 of 2019

1. Union of India,
represented by its General Manager,
Southern Railway, Park Town,
Chennai – 600 003.

2. The Senior Divisional Personnel Officer,
Southern Railway,
Divisional Railway's Manager's Office,
Personnel Branch, III Floor NGO Annexe,
Chennai Division, Park Town,
Chennai-600 003.

... Petitioners

Vs.

1. The Registrar,
Central Administrative Tribunal
Madras Bench,
Chennai.

2. Shenbagavalli W/o. Late Megavarnam
3. Mohanraj S/o. G. Megavarnam

... Respondents



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PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari calling for the entire records of the 1st respondent in O.A. No.310/01125/2014 including the order dated 12.10.2018 and quash the same.

For Petitioners : Mr. P.T. Ramkumar

For Respondents : Tribunal [for R1]

Mr. V. Sivakumar [for R2 & R3]

JUDGMENT

(Judgment of the Court was made by P.B.BALAJI,J.)

The Employer, Southern Railways, aggrieved by the order of the Tribunal in OA/310/01125/2014, has preferred the present writ petition.

2. Before the Tribunal, the 2nd and 3rd respondents, as applicants, sought for compassionate appointment to be given to the second applicant, namely the 2nd respondent herein. The Tribunal, after considering the rival contentions of the petitioners herein as well as respondents 1 and 2, allowed the OA and directed the petitioners herein to consider the application of the 2nd respondent for compassionate appointment.



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3. The main grounds of challenge to the said order of the Tribunal are that;

i) the Supplementary Circular No.5 to Master Circular No.16 in RBE No.1/1992 dated 02.01.1992, clarifies that appointment on compassionate ground to a 2nd widow and her children cannot be considered, unless the administration had permitted the 2nd marriage, in special circumstances, taking into account the personal laws and the other relevant considerations;

ii) the employee died way back on 10.12.2002 and the application for compassionate appointment came to be given only in 2012 and therefore on the ground of delay also, the application ought to have been rejected;

iii) compassionate appointment is a matter of policy of the employer & when the circular of the Railway Board clearly covers the issue in hand, the Tribunal ought not have allowed the above OA;

iv) the Tribunal failed to see that ***Section 16 of the Hindu Marriage Act, 1955*** provided only for property rights of the father to be available to even illegitimate children and the same concession cannot be extended to cases of appointment on compassionate ground.

4. We have heard Mr. P.T. Ramkumar, learned counsel for the



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petitioners and Mr. V. Sivakumar, learned counsel for the respondents 2 & 3. We have also perused the records.

5. The admitted facts are that the deceased employee, one Mr. Megavararam was an employee of the Railways and he died while he was in service. Disputes arose between the 1st respondent and one Komala regarding the marriage with the deceased employee, Megavararam. A suit was filed in the Family Court in O.S. No.100 of 2003 and the said suit ended in a compromise, declaring the said Komala to be the legally wedded wife of the deceased Megavararam and that the 2nd respondent would be entitled to apply for compassionate appointment. Pursuant to the decree in the said suit in 2006, the 1st respondent made a representation for compassionate appointment to be given to the 2nd respondent, her son. On 30.05.2006, the said representation was rejected, citing the circular dated 02.01.1992, as the children of the 2nd wife are not entitled to get compassionate appointment and further on the ground that the 2nd marriage was not permitted by them.

6. The Tribunal relying on the decision of the Hon'ble Apex Court in ***Rameshwari Devi Vs. State of Bihar and Ors, reported in AIR 2000***



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(SC) 735, came to the conclusion that children born through the 2nd wife during subsistence of the first marriage are entitled to the property of the deceased employee in equal shares, along with the 1st wife and children born through the first marriage.

7. The Tribunal also placed reliance on the Judgment of the Calcutta High Court following the decision of the Hon'ble Supreme Court in the aforesaid *Rameshwari Devi's Case*, where it was held that there cannot be any discrimination between children born in the first and second marriages. The Calcutta High Court had infact quashed the circular dated 02.01.1992, and the same had become final. During the course of arguments, it was fairly brought to our notice by the counsel for the petitioner that the Railway Board has subsequently clarified the issue of appointment on compassionate ground to 2nd wife and her wards vide circular No.E(NG)II/2016/RC-1/CR/12(Pt) dated 30.12.2019.

8. The Board, taking into account several judgements of various High Courts, regarding compassionate appointment to a child born to the second wife of its employee, has reviewed its earlier circular dated 02.01.1992 and it has been decided that children born to second wife would also be eligible



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for consideration for compassionate appointment, even where the second marriage has not been specifically permitted by the administration. In such cases, the first wife and her children should not object for such compassionate appointment being given to the child born to the second wife and where the first wife opts for the compassionate appointment, either for herself or for her own children, such claim will have priority. However, Mr. P.T. Ramkumar, would hasten to add that despite the change in policy of the Railways the circular dated 30.12.2019 in RBE/2/8/2019 shall be effective only from the date of issue that is 30.12.2019 onwards. In other words, the said circular does not have retrospective effect and therefore the counsel for the petitioners would submit that on the relevant date of considering the case of the respondents 1&2, the circular dated 02.01.1992 in RBE No.1/1992, was applicable and in full force and therefore the decision of the petitioners rejecting the claim of the respondents 1 & 2, cannot be faulted. The counsel for the petitioners would also placed reliance on the following judgments;

1. State of Madhya Pradesh and Ors Vs. Ashish Awasthi, reported in (2022) 2 SCC 157.



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2. *State of J&K and Ors Vs. Sajad Ahmed Mir, reported in (2006) 5 SCC 766.*

3. *State of Himachal Pradesh and Another Vs. Shashi Kumar reported in (2019) 3 SCC 653.*

In *State of Madhya Pradesh and Ors Vs. Ashish Awasthi. etc*, the Hon'ble Supreme Court held that for appointment on compassionate ground, the policy prevalent at the time of the death of the deceased employee alone is relevant and any subsequent policy cannot have retrospective applicability.

In the case of *State of J&K and Ors Vs. Sajad Ahmed Mir*, the Hon'ble Supreme Court held that delay of four and a half years seeking appointment on compassionate ground which had enlarged to 15 years at the time of the Division Bench of High Court deciding the matter would be relevant and a material fact that would require consideration as during such time the family had indeed survived in spite of the death of the employee.

In the case of *State of Himachal Pradesh and Another Vs. Shashi Kumar* the Hon'ble Supreme Court rejected the argument that delay should not be taken into account while considering the cases of compassionate appointment and held that the basis of a Scheme of



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Compassionate Appointment was only to meet the requirement of providing immediate assistance to the family of the deceased employee and such requirement is evidently lost by delay on the part of the dependent in seeking compassionate appointment and ultimately rejected the request for appointment on compassionate ground, on the ground of delay.

9. Per contra, Mr.V.Sivakumar, counsel for the respondents 1 &2 would rely on the decision of the Hon'ble Supreme Court in *AIR 2000 (SC) 735*, for the proposition that under *Section 16 of the Hindu Marriage Act, 1955*, even child of void marriage would be treated as legitimate for the purposes of succeeding to the property of the Hindu father dying intestate and that even share in family pension, **death cum retirement** and gratuity would also become payable to such children of void marriage. A Full Bench decision of the High Court of Jharkand at Ranchi in *Union of India through General Manager, E.C. Railway, Hajipur Vs. Suraj Kumar Prasad and Ors, reported in 2017 SCC Online Jhar 3938*, has held that the Railway Board was estopped from taking advantage of the circular RBE No.1/1992 dated 02.01.1992, since the same has been quashed by the Calcutta High Court and that the same has become final.



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10. The counsel for the respondents also placed reliance on a Division Bench judgment of this Court in W.P. No.36981 of 2013, for the proposition that even this Court has recognised the right of children born out of an illegal marriage and upheld the order of the Tribunal directing application to be made on compassionate ground.

11. Placing reliance on the above judgments, the counsel for the respondents 1 & 2, would submit that the request for the appointment on compassionate ground to be given to the 2nd respondent was imminent & that even delay cannot be attributed to the case of the respondents has immediately after the outcome of the Civil Suit filed by the 1st wife, an application was made and therefore according to the counsel for the respondents 1 & 2, there was no error or infirmity in the order of the Tribunal.

12. We have paid due consideration to the contentions advanced by the respective counsel and we have also carefully perused the various judgments relied on by them.

13. First and foremost, compassionate appointment is the discretion of the employer and the relatives/legal heir of the deceased employee



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cannot seek such appointment on compassionate ground as a matter of right. Infact in recent pronouncements of the Hon'ble Supreme Court, the Apex Court has come down heavily in cases wherever there has been delay in seeking appointment on compassionate ground. Admittedly, the main objective of providing such appointment on compassionate ground is to help the family in distress, having lost their bread winner. If the family is able to survive without such appointment on compassionate ground, then there is no necessity for providing such appointment in the first place. Infact the Hon'ble Supreme Court in the cases discussed herein above namely, *State of J&K and Ors Vs. Sajad Ahmed Mir Case* & *State of Himachal Pradesh and another Vs. Shashi Kumar* (referred supra), has clearly held that delay is a very material and relevant fact and that has to be considered.

14. In the case on hand, admittedly the deceased employee died on 10.12.2002. No doubt a Civil Suit was pending before the Family Court from the year 2003 and the same came to be settled amongst the legal heirs only in 2006, pursuant to which the representation seeking appointment on compassionate ground was made on 30.05.2006. It is however seen that the said representation was rejected on 12.07.2006 itself, having slept over



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the matter for close to six years, the 2nd respondent chose to give another representation on 21.06.2012, which also came to be rejected on 30.09.2012. Challenging the said order of rejection, the OA came to be filed before the Tribunal. There is also force in the submissions of counsel for the petitioners that on the date of the death of the employee, the circular dated 02.01.1992 in RBE No.1/1992 held the field and merely because there was a change in policy subsequently, the revised rules cannot be applied to the cases that had arisen earlier. The Hon'ble Supreme Court in *State of Madhya Pradesh and Ors Vs. Ashish Awasthi Case* (referred *supra*) has clearly settled the position that any claim for compassionate appointment must be decided on the basis relevant Scheme prevalent on the date of the demise of the employee and any subsequent change in the scheme cannot be looked into. Further, in any event, the respondents 1 & 2 have not explained the delay between 2006 to 2012, namely the two dates on which the representations were given, seeking appointment on compassionate ground. Applying the ratio laid down by the Hon'ble Supreme Court, it is clear that the respondents 1 & 2, have been able to sustain themselves even without the appointment on compassionate ground. Moreover it is now more than 20 years since the employee died.



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At the length of this time, it is not equitable to direct the petitioners to consider the appointment of the 2nd respondent on compassionate ground.

15. Even though Division Bench of this Court in ***Union of India Vs. M.Karumbayee and Ors reported in(2017) SCC Online Mad 13030***, has held that children born out of a void marriage are also eligible for appointment on compassionate grounds, which came to be affirmed by the Hon'ble Supreme Court on 11.12.2018 in ***Union of India and Another Vs. V.R.Tripathi reported in 2019 14 SCC 646***, we are unable to apply the ratio laid down therein, to the facts of the present case for the reason that in the said case there was no discussion with regard to the aspect of delay. In the present case, we have already seen that, despite having given a representation in 2006, seeking appointment on compassionate ground and the petitioners having rejected the same immediately thereafter, the respondents 1 & 2, for totally unexplained reasons, chose to remain silent for 6 years, before they made a second representation on 21.06.2012.

16. The Tribunal has not considered the settled legal position in this regard and in view of the various discussions made herein above we are constrained to interfere with the order of the Tribunal.



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17. For all above reasons, the Writ petition stands allowed and the order passed by the Tribunal in O.A. No.310/01125/2014 dated 12.10.2018 is set aside. There shall be no order as to costs. Consequently, the connected miscellaneous petition is closed.

(D.K.K.J) & (P.B.B.J)

31.08.2023

Internet : Yes
Index:Yes/No
Neutral Citation:Yes/No
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To

The Registrar,
Central Administrative Tribunal
Madras Bench,
Additional City Civil Court Building,
High Court Campus, Chennai-600 104.



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D.KRISHNAKUMAR, J.,
and
P.B.BALAJI, J

(mjs)

Pre-delivery judgment in
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and
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