

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.6872 of 2024

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1. The Union of India through the General Manager, Eastern Railway, Fairlie Place, Kolkata-700001.
 2. The Pr. Chief Personnel Officer, Eastern Railway, Kolkata-700001.
 3. The Divisional Railway Manager, Eastern Railway, Malda Division, Malda-732102.
 4. The Chief Works Manager, Jamalpur Railway, Workshop, Eastern Railway, Jamalpur-811214.

... .. Petitioners

Versus

1. Asha Devi, W/o Late Madan Mandal At Kantur, P.O. Nawagarhi, P.S.-Naya Ram Nagar, Distt-Munger.
2. Bhanu Devi, W/o Late Madan Mandal, At Kantpur, P.O. Nawagarhi, P.S.-Naya Ram Nagar, Distt-Munger.
3. Krishna Mohan, S/o Late Madan Mandal at Kantpur, P.O. Nawagarhi, P.S.-Naya Ram Nagar, Distt-Munger.

... .. Respondents.

Appearance :

For the Petitioners/U.O.I. :	Ms. Kanak Verma, CGC.
For the Respondents :	Mr. Hemant Kumar Karn, Advocate. Mr. Jayant Kumar Karn, Advocate.

CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
and
HONOURABLE MR. JUSTICE S. B. PD. SINGH
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE P. B. BAJANTHRI)

Date : 14-11-2024

The present writ petition is filed by the Railway Department-Union of India and others in assailing the order of the Central Administrative Tribunal, Patna Bench, Patna, dated 12.04.2023 passed in O.A. No.050/000499/2022.

2. Late Madan Mandal, who was an employee of the Eastern Railway died on 19.11.2016 while he was in service. Respondents filed application in seeking compassionate appointment in the month of May, 2021. Respondents'



candidature for compassionate appointment has been turn down on the score that Late Madan Mandal had entered into a second marriage and applicant seeking for compassionate appointment is son of the second wife. Central Administrative Tribunal, Patna Bench, Patna allowed respondents' original application on 12.04.2023 to the extent that respondents' claim for compassionate appointment and its rejection on the score that deceased Madan Mandal had entered into a second marriage, therefore, son of the second wife is not entitled to compassionate appointment has been turned down and directions have been issued.

3. Feeling aggrieved by the Central Administrative Tribunal, Patna Bench, Patna, decision dated 12.04.2023, Railway Department-Union of India and others have presented this writ petition in assailing the order of the Central Administrative Tribunal, Patna Bench, Patna, dated 12.04.2023 passed in O.A. No.050/000499/2022.

4. Learned counsel for the petitioners vehemently contended that identical matters were subject matters of litigation before the various Central Administrative Tribunals and High Courts like Calcutta, Madras and Bombay. In the case of **Union of India and Another Versus V.R. Tripathi**, the



Hon'ble Supreme Court while deciding **Civil Appeal No.12015 of 2018**, on 11.12.2018, affirmed the decision of the Bombay High Court. In Paragraph-18 to 21, it is held as under:

“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 {(2016) 5 CTC 50}** 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** in **Union of India v M Karumbayee {2017 Lab. IC (NOC 237) 69}**. A Special leave petition filed against the judgment of the Division Bench was dismissed by this Court on 18 September 2017 **{SLP (C) arising out of Diary No.27352 of 2017}**.

19. We may, however, clarify that the issue as to whether in a particular case, the applicant meets all the stipulations of the scheme including financial need and other requirements are matters which will be decided on the facts of each individual case.
20. Finally, it would be necessary to dwell on the submission which was urged on behalf of the respondent that once the circular dated 2 January 1992 was struck down by the Division Bench of the Calcutta High Court in **Namita Goldar** (supra) and which was accepted and has been implemented, it was not thereafter open to the railway authorities to rely upon the same circular which has all India force and effect. There is merit in the submission. Hence, we find it improper on the part of the Railway Board to issue a fresh circular on 3 April 2013, reiterating the terms of the earlier circular



dated 2 January, 1992 even after the decision in **Namita Goldar** (supra), which attained finality.

21. For the above reasons, we do not find any merit in the appeal. The authorities shall take a decision in terms of this judgment on the application for compassionate appointment in three months from today. The appeal stands dismissed. No costs.”

5. Learned counsel for the petitioners submitted that Coordinate Bench of this Court in the case of the **Union of India and others Versus Sonu Kumar (C.W.J.C. No.921 of 2023)**, allowed the Railway Department’s petition on 10.04.2023. The same cannot be taken into consideration in view of the fact that the Hon’ble Supreme Court in the case of **Union of India and Another Versus V.R. Tripathi** (cited supra) rendered a detailed Judgment. Sonu Kumar filed Special Leave Petition (Civil) Diary No.47625 of 2023 against C.W.J.C. No.921 of 2023. The Hon’ble Supreme Court dismissed Sonu Kumar’s petition on 19.04.2024 in the following manner:

“1. Delay condoned.

2. We are not inclined to interfere with the judgment impugned herein under Article 136 of the Constitution of India.



- 3. The petition for Special Leave to Appeal is dismissed.
- 4. Pending application(s), if any, shall stand disposed of.”

6. Union of India being a model employer should have apprised the decision passed in **Union of India and Another Versus V.R. Tripathi** (cited supra) in the case of **Sonu Kumar Versus The Union of India & Ors** (cited supra), who are common party to the Sonu Kumar’s case and V.R. Tipathi’s case. Therefore, we proceed to follow the decision of the Hon’ble Supreme Court in the case of **Union of India and Another Versus V.R. Tripathi** (cited supra) and dismiss the present writ petition filed on behalf of the Union of India and others.

7. Accordingly, the present writ petition stands dismissed.

(P. B. Bajanthri, J)

(S. B. Pd. Singh, J)

P.S./-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	21.11.2024.
Transmission Date	NA

