

IN THE HIGH COURT OF JHARKHAND AT RANCHI
W.P.(S) No. 5617 of 2024

1. Prabha Devi, aged about 58 years, wife of Late- HariRaj Dubey, resident of village- Bishrampur, P.O.- Hurka, P.S. – Indrapuri, District- Rohtas, Bihar.
2. Sunita Dubey, aged about- 34 years, Daughter of – Late – HariRaj Dubey, resident of village – Bishrampur, P.O. – Hurka, P.S. – Indrapuri, District- Rohtas, Bihar.

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Petitioners

Versus

1. The Union of India, through its Chariman Railway Board, Rail Bhawan, 256- A, Raisina Road, Rajpath Area, Central Secretariat, P.O. + P.S. New Delhi, Pin – 110001.
2. The General Manager, East Central Railway, P.O. Hajipur, P.S. Sadar Police Station, Distt.- Vaishali, Bihar, PIN – 844101.
3. The Divisional Railway Manager, East Central Railway, Mukunda, Kasturba Nagar, P.O. + P.S. Dhanbad, Distt. Dhanbad, Jharkhand, Pin – 826001.
4. The Divisional Railway Manager (Personnel), East Central Railway, Mukunda, Kasturba Nagar, P.O. + P.S. Dhanbad, Distt. Dhanbad, Jharkhand, Pin – 826001.
5. Rahul Kumar Dubey, Son of Late – Hariraj Dubey, resident of – Quarter No. 382/13 Diesel Set, Patratu, P.O. & P.S. – Patratu, District- Ramgarh, Pin- 829119.

.... Respondents

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

For the Appellants	: Mr. Sheyakur Rahman, Advocate
	: Mr. Wazid Ali, Advocate
For the Resp.-UOI	: Mr. Anil Kumar, A.S.G.I.
	: Mr. Abhijeet Kumar, C.G.C.
For the Resp.-5	: Mr. B. Shastri, Advocate

02/Dated: 21st October, 2024

1. Mr. Bishwambhar Shastri, learned counsel, at the outset, has sought for leave of this Court to accept the Vakalatnama to represent the

original applicant, who has been impleaded as respondent no. 5, namely, Rahul Kumar Dubey.

2. The Vakalatnama has been accepted and the matter has been heard on merit with the consent of the parties.
3. The instant writ petition is filed under Article 226 of the Constitution of India for quashing the order dated 15.03.2024 passed by the learned Central Administrative Tribunal, Ranchi Circuit Bench, in O.A. No. 051/00102/2024, whereby and whereunder the respondents have been directed to consider the case of the respondent no. 5(herein) for appointment on compassionate ground on basis of no objection which according to writ petitioners has obtained fraudulently from the petitioners and without impleading the petitioners necessary party in the proceeding. And further for the quashing of order dated 20.05.2024 passed by respondent no. 3 wherein respondent no. 5 have been considered for the appointment ignoring the claim of the petitioners despite objections being raised by them.
4. The factual aspect as is being reflected from the writ petition needs to be referred herein which reads as under:

The husband of the petitioner no. 1 and father of petitioner no. 2 namely Late HariRaj Dubey was a permanent employee of East Central Railway and he died in harness on 30.05.2023, while working as Sr. Technician (M) under Diesel Shed Patratu, under East Central Railway.

After the death of her husband, the petitioner no. 1 has informed the respondents about the death of her husband and accordingly family pension amount has been started to be paid to her by the respondent railway.

One Rahul Kumar Dubey purported to have submitted an

application dated 05.10.2023 before the respondents railways claiming himself to be the son of the deceased employee born out of second wife Sanju Devi and thereby claimed for compassionate appointment with no objection affidavit of the petitioner no. 1 without knowledge and consent of the petitioner no. 1.

Rahul Kumar Dubey (respondent no. 5 herein) taking benefit of illiteracy got the LTI of petitioner no. 1 on some papers by taking her into confidence that the LTI of the petitioner no. 1 is required for processing the payment of DCRG of late Hari Raj Dubey.

The petitioner no. 1 being a helpless widow had relied upon the promises given by Rahul Kumar Dubey that she will get the entire amount of DCRG and pension etc. and the paternal properties of late Hari Raj Dubey. However, Rahul Kumar Dubey has made his claim for compassionate appointment and in respect of the landed property of Hari Raj Dubey as well as 50% share of pensionary benefit etc.

Thereafter, the petitioner no. 1 had appeared before the respondent No. 3 and submitted application to the effect that Rahul Kumar Dubey may not be provided compassionate employment in railway department.

Thereafter, the respondent authorities called upon the petitioner no. 1 to appear before the Senior Divisional Personnel Officer, East Central Railway, Dhanbad, and the petitioner no. 1 along with petitioner no. 2 appeared before the respondent no. 3 on 03.12.2023 for personal hearing and the petitioner no.1 has made her claim for compassionate appointment of her daughter and the petitioner no. 2 has also submitted an application for her compassionate appointment.

When the matter was kept pending before the respondent-

Railways, Rahul Kumar Dubey (respondent no. 5 herein) has preferred OA No. 051/00102/2024 praying for compassionate appointment for himself without knowledge and information to the petitioners and also without impleading them as a necessary party/respondent in the OA.

Thereafter, the Central Administrative Tribunal, Circuit Bench, Ranchi, has passed order dated 15.03.2024, in OA No. 051/00102/2024, directing the respondent railways to consider the case of Rahul Kumar Dubey for compassionate appointment and to pass an order within four months in view of railway circular RBE No. 218 of 2019.

The Railways circular RBE No. 218 of 2019 specifically mentioned that the children born out of second wife may be considered provided the first wife and her children given no objection but here in this case the petitioners have not giving no objection though the respondent no. 5 has fraudulently produced no objection papers obtained from the petitioners.

The railway notification RBE No. 218 of 2019 specifically bars the compassionate appointment to the children born out of second wife where the first (legally wedded wife) opts for such compassionate appointment either for herself or one of her own children, such claim will have priority over any competing claim made by the second wife for any of her children.

It is the case of the petitioner that the learned Tribunal, while passing the impugned order dated 15.03.2024, has failed to consider the mandate fixed by the Indian Railway authority in RBE No. 218 of 2019 by not considering the same to the letter and spirit of the circular.

The petitioner no. 1 had appeared before the respondent authorities and submitted referring her earlier application on

03.12.2023, and 25.04.2024 praying for compassionate appointment of her daughter Sunita Kumari, i.e., petitioner no. 2 and thereby requested the respondents not to provide employment to Rahul Kumar Dubey since he refuse to maintain her.

The petitioners had appeared before the respondents for personal hearing on 25.04.2024 where the petitioner no. 1 has again requested the respondents not to provide compassionate appointment to Rahul Kumar Dubey.

The respondent no. 3 after hearing the parties has passed a reasoned and speaking order dated 20.05.2024.

In Paragraph-8 of the speaking order, the amount of retiral dues has been assessed wherein column 4 speaks about the Gratuity/DCRG amount payable to the dependants of the deceased employee amounting to Rs. 20 Lakhs but the said amount has been illegally decided to be paid in 3 equal share i.e. (1) Prabha Devi, the first wife of Late HariRaj Dubey, (2) Rahul Kumar Dubey, the unmarried son of second wife and (3) Miss Anjali Kumari, the unmarried daughter of the DCRG appears to be wholly illegal and against the mandate of law. Hence the respondents have grossly erred the passing the reasoned and speaking order dated 20.05.2024, and the forwarded the letter issued by respondent no. 3 to the petitioner No. 1 dated 24.07.2024.

The respondent no. 5- Rahul Kumar Dubey, in order to get an order for compassionate appointment in his favour, has submitted some documents fraudulently and as such the respondent railway authorities have erred in deciding the matter and passing the reasoned order, aggrieved by which the petitioners had filed the instant writ petition.

5. It is evident from the factual aspects that the respondent no. 5, after the death of his father, namely, HariRaj Dubey, has made an application, who happens to be the son of the second wife. The claim for appointment on compassionate ground has been made by bringing the case under the fold of circular issued by the respondent when the provision has been made that the son of the second wife can be provided appointment on compassionate ground subject to no objection has been issued by first wife or the son/daughter taken birth from the wedlock of first wife of the deceased employee.
6. The petitioners have made serious objection that the said no objection has fraudulently be obtained. The emphasis of argument is that the writ petitioner has not been impleaded as party to the proceeding before the Tribunal as would be evident from the cause title as available in the impugned order.

Submissions advanced by the learned counsel appearing on behalf of the Petitioners:

7. The learned counsel for the petitioner has submitted whatever may be the delay, he being the necessary party to the proceeding ought to have been impleaded as a party to the proceeding so as to get an opportunity of hearing. But the applicants have not impleaded the writ petitioner as party and hence the said order cannot be said to be sustainable in the eye of law which has been passed without providing an opportunity of hearing.

Submissions advanced by the learned counsel appearing on behalf of the Respondents:

8. While on the other hand, learned counsel appearing for the respondent no. 5 has submitted that it is incorrect on the part of the petitioner to take the ground that NOC has been obtained fraudulently, according to his argument, the same NOC has been furnished by both the petitioners in front of one Executive

Magistrate which was brought on record.

9. Learned counsel for the respondent no. 5 in view of the above has submitted that the learned Tribunal has taken into consideration the aforesaid aspect of the matter and as such it is incorrect on the part of the writ petitioner to take the ground that any prejudice has been caused to him.

Analysis:

10. We have heard the learned counsel for the parties and gone across the finding recorded by the learned Tribunal in the impugned order as also the pleading made in the writ petition.
11. The primary issue which has been raised on behalf of the petitioners is that the order passed by the Tribunal is without providing an opportunity of hearing as they have not impleaded as party since as per the case of the respondent No. 5, the NOC has been said to be furnished by both the petitioners which is the prerequisite for consideration for appointment on compassionate ground to be given in favour of the children taken birth from the wedlock of the second wife of the deceased employee.
12. While on the other hand, the learned counsel for the respondent no. 5 has submitted that there is no need to implead the petitioner as party to the proceeding, since the NOC had been furnished by both the petitioner in front of the Executive Magistrate.
13. This Court on consideration of the rival submissions made on behalf of the parties, and considering the admitted position that the basis for consideration for appointment on compassionate ground in fact made in favour of the children taken birth from the wedlock of the deceased employee and the second wife. The NOC to be furnished by the wife or the children taken birth from the wedlock of the first wife and the deceased employee.

14. The said NOC was furnished on behalf of the respondent no. 5 claiming his case to be squarely covered under the fold of the scheme applicable during the relevant time. But the concerned party interested who are the petitioners herein from whom the NOC is being sought to be obtained before the Executive Magistrate had not been impleaded as party.
15. This Court is in the view that whatever may be the contention, it is the prime duty of the Court of Law that before adjudicating the issue, if any averment regarding the interest of any other party or any document on the basis of which the reliance is being placed said to be issued by a party are required to be impleaded as a party to the proceeding so as to ascertain the fact whatever be stated making the ground to get the relief from the Court of Law is being ascertained.
16. This Court further is of the view that for ascertaining the aforesaid fact, the party concerned who is being said to be a party in creating the document will be necessary party and it is a fundamental principle of law that in absence of necessary party if any order is being passed, the same cannot be said to be sustainable in the eye of law.
17. The principle regarding “necessary party” has been dealt with by Hon'ble Apex Court in the case of ***Moreskar Yadaora Mahajan V. Vyankatesh Sitaram Bhedi (D) thr. LRs. and Others*** reported in ***2022 SCC Online SC 1307*** wherein in at Paragraphs-17, 18 and 20 the consideration has been given with respect to the interpretation/meaning of necessary party. For ready reference, the relevant paragraphs are being referred herein which reads as under:

“17. This Court, in the case of Mumbai International Airport Private Limited (supra), has observed thus: “15. A “necessary party” is a person who ought to have been joined as a party and in whose absence no effective decree could be passed at all by the court. If a “necessary

party” is not impleaded, the suit itself is liable to be dismissed. A “proper party” is a party who, though not a necessary party, is a person whose presence would enable the court to completely, effectively and adequately adjudicate upon all matters in dispute in the suit, though he need not be a person in favour of or against whom the decree is to be made. If a person is not found to be a proper or necessary party, the court has no jurisdiction to implead him, against the wishes of the plaintiff. The fact that a person is likely to secure a right/interest in a suit property, after the suit is decided against the plaintiff, will not make such person a necessary party or a proper party to the suit for specific performance.”

18. It could thus be seen that a “necessary party” is a person who ought to have been joined as a party and in whose absence no effective decree could be passed at all by the court. It has been held that if a “necessary party” is not impleaded, the suit itself is liable to be dismissed.

20. It can thus be seen that what has been held by this Court is that for being a necessary party, the twin test has to be satisfied. The first one is that there must be a right to some relief against such party in respect of the controversies involved in the proceedings. The second one is that no effective decree can be passed in the absence of such a party.”

18. This Court, considering the aforesaid proposition and adverting to the factual aspect of the present case, is of the view that non-impleadement of the party to the proceeding, according to our considered view is the error which has been committed by the learned Tribunal.

19. We are conscious with the law that the order passed by the Tribunal

is to be looked into under the power of judicial review in view of the judgment rendered by Hon'ble Apex Court in the case of ***L Chandra Kumar v. Union of India & Others*** reported in **(1997) 3 SCC 261** wherein at **Paragraph-99** it has been held that the order passed by the learned Tribunal i.e., the Court of first instance is to be looked into by the High Court under Article 226 of the Constitution of India in exercise of power of judicial review.

“99. In view of the reasoning adopted by us, we hold that clause 2(d) of Article 323-A and clause 3(d) of Article 323-B, to the extent they exclude the jurisdiction of the High Courts and the Supreme Court under Articles 226/227 and 32 of the Constitution, are unconstitutional. Section 28 of the Act and the “exclusion of jurisdiction” clauses in all other legislations enacted under the aegis of Articles 323-A and 323-B would, to the same extent, be unconstitutional. The jurisdiction conferred upon the High Courts under Articles 226/227 and upon the Supreme Court under Article 32 of the Constitution is a part of the inviolable basic structure of our Constitution. While this jurisdiction cannot be ousted, other courts and Tribunals may perform a supplemental role in discharging the powers conferred by Articles 226/227 and 32 of the Constitution. The Tribunals created under Article 323-A and Article 323-B of the Constitution are possessed of the competence to test the constitutional validity of statutory provisions and rules. All decisions of these Tribunals will, however, be subject to scrutiny before a Division Bench of the High Court within whose jurisdiction the Tribunal concerned falls. The Tribunals will, nevertheless, continue to act like courts of first instance in respect of the areas of law for which they have been constituted. It will not, therefore, be open for litigants to directly approach the High Courts even in cases where they question the vires of statutory legislations (except where the legislation which creates

the particular Tribunal is challenged) by overlooking the jurisdiction of the Tribunal concerned. Section 5(6) of the Act is valid and constitutional and is to be interpreted in the manner we have indicated.” [emphasis supplied]

20. Further, the power of judicial review has been interpreted by the Hon'ble Apex Court wherein it has been held that if any error is apparent on the face of the record, will be said to be an error apparent.

For ready reference, Hon'ble Apex Court in the case of ***T.C. Basappa Vs. T. Nagappa*** reported ***in (1955) 1 SCR 250***, their Lordship hold that the patent error in a decision can be corrected by writ of certiorari, when it is manifested by the error apparent on the face of the proceedings. The relevant portion of the aforesaid judgment is quoted hereunder:-

“10. An error in the decision or determination itself may also be amenable to a writ of certiorari but it must be a manifest error apparent on the fact of the proceedings, e.g. when it is based on clear ignorance or disregard of the provisions of law. In other words, it is a patent error which can be corrected by certiorari but not a mere wrong decision.”

Further, in the case of ***Syed Yakooob vs. Radhakrishnan, A.I.R. 1964 SC 477. Paragraph no.7*** of the said judgment is being reproduced as under:

“The question about the limits of the jurisdiction of High Courts in issuing a writ of certiorari under Art. 226 has been frequently considered by this Court and the true legal position in that behalf is no longer in doubt. A writ of certiorari can be issued for correcting errors of jurisdiction committed by inferior courts or tribunals : these are cases where orders are passed by inferior courts or tribunals without jurisdiction, or is in excess of it, or as

a result of failure to exercise jurisdiction. A writ can similarly be issued where in exercise of jurisdiction conferred on it, the Court or Tribunal Acts illegally or improperly, as for instance, it decides a question without giving an opportunity to be heard to the party affected by the order, or where the procedure adopted in dealing with the dispute is opposed to principles of natural justice. There is, however, no doubt that the jurisdiction to issue a writ of certiorari is a supervisory jurisdiction and the Court exercising it is not entitled to act as an appellate Court. This limitation necessarily means that findings of fact reached by the inferior Court or Tribunal as result of the appreciation of evidence cannot be reopened or questioned in writ proceedings. An error of law which is apparent on the face of the record can be corrected by a writ, but not an error of fact, however grave it may appear to be. In regard to a finding of fact recorded by the Tribunal, a writ of certiorari can be issued if it is shown that in recording the said finding, the tribunal had erroneously refused to admit admissible and material evidence, or had erroneously admitted inadmissible evidence which has influenced the impugned finding. Similarly, if a finding of fact is based on no evidence, that would be regarded as an error of law which can be corrected by a writ of certiorari. In dealing with this category of cases, however, we must always bear in mind that a finding of fact recorded by the Tribunal cannot be challenged in proceedings for a writ of certiorari on the ground that the relevant and material evidence adduced before the Tribunal was insufficient or inadequate to sustain the impugned finding. The adequacy or sufficiency of evidence led on a point and the inference of fact to be drawn from the said finding are within the exclusive jurisdiction of the Tribunal, and the said points cannot be agitated before a writ Court. It is within these limits that the jurisdiction

conferred on the High Courts under Art. 226 to issue a writ of certiorari can be legitimately exercised (vide Hari Vishnu Kamath v. Ahmad Ishaque, 1955-1 SCR 1104 : ((S) AIR 1955 SC 233); Nagendra Nath v. Commr. Of Hills Division, 1958 SCR 1240 : (AIR 1958 SC 398) and Kaushalya Devi v. Bachittar Singh, AIR 1960 SC 1168.

In *Hari Vishnu Kamath vs. Ahmad Ishaque and Ors., AIR 1955 Supreme Court 233*, the Hon'ble Supreme Court has held in paragraph no.21 as under:

With regard to the character and scope of the writ of certiorari and the conditions under which it can be issued, the following propositions may be taken as established: (1) Certiorari will be issued for correcting errors of jurisdiction, as when an inferior Court or Tribunal acts without jurisdiction or in excess of it, or fails to exercise it. (2) Writ of certiorari will also be issued when the Court or Tribunal acts illegally in the exercise of its undoubted jurisdiction, as when it decides without giving an opportunity to the parties to be heard, or violates the principles of natural justice. (3) The Court issuing a writ of certiorari acts in exercise of a supervisory and not appellate jurisdiction. One consequence of this is that the Court will not review findings of fact reached by the inferior Court or Tribunal even if they be erroneous. This is on the principle that a Court which has jurisdiction over a subject-matter has jurisdiction to decide wrong as well as right, and when the Legislature does not choose to confer a right of appeal against that decision, it would be defeating its purpose and policy, if a superior Court were to rehear the case on the evidence and substitute its own findings in certiorari."

In *Sawarn Singh and Anr. vs. State of Punjab and Ors., (1976) 2 SCC 868* their Lordships, while discussing the power of writ under

Article 226 of the Constitution of India for issuance of writ of certiorari, has been pleased to hold at paragraph nos.12 and 13 as hereunder:

“12. Before dealing with the contentions canvassed, it will be useful to notice the general principles indicating the limits of the jurisdiction of the certiorari jurisdiction can be exercised only for correcting errors of jurisdiction committed by inferior courts or tribunals. A writ of certiorari can be issued only in the exercise of supervisory jurisdiction which is different from appellate jurisdiction. The Court exercising special jurisdiction under Article 226 is not entitled to act as an appellate Court. As was pointed out by this Court in Syed Yakoob's case (supra) 13. In regard to a finding of fact recorded by an inferior tribunal, a writ of certiorari can be issued only if in recording such a finding, the tribunal has acted on evidence which is legally inadmissible, or has refused to admit admissible evidence, or if the finding is not supported by any evidence at all, because in such cases the error amounts to an error of law. The writ jurisdiction extends only to cases where orders are passed by inferior courts or tribunals in excess of their jurisdiction or as a result of their refusal to exercise jurisdiction vested in them or they act illegally or improperly in the exercise of their jurisdiction causing grave miscarriage of justice.”

In **Heinz India (P) Ltd. and Anr. vs. State of U.P. and Ors., (2012) 5 SCC 443** their Lordships have been pleased to hold at paragraph nos. 66 and 67 as hereunder:

“66. That the court dealing with the exercise of power of judicial review does not substitute its judgment for that of the legislature or executive or their agents as to matters within the province of either, and that the court does not supplant “the feel of the expert” by its own

review, is also fairly well settled by the decisions of this Court. In all such cases judicial examination is confined to finding out whether the findings of fact have a reasonable basis on evidence and whether such findings are consistent with the laws of the land.

67. In Dharangadhara Chemical Works Ltd. v. State of Saurashtra this Court held that decision of a tribunal on a question of fact which it has jurisdiction to determine is not liable to be questioned in proceedings under Article 226 of the Constitution unless it is shown to be totally unsupported by any evidence. To the same effect is the view taken by this Court in Thansingh Nathmal case where this Court held that the High Court does not generally determine questions which require an elaborate examination of evidence to establish the right to enforce for which the writ is claimed."

In the case of ***West Bengal Central School Service Commission & Others Vs. Abdul Halim & Others reported in (2019) 18 SCC 39***, their Lordships have been laid down pleased to hold at paragraph no. 30 that the power of the judicial review must be exercised by the Court after determining that the impugned is vitiated by an error apparent on the face of the record and not the same has been established by a process of reasoning, Para-30 of the aforesaid judgment reads as under:-

"30. In exercise of its power of judicial review, the Court is to see whether the decision impugned is vitiated by an apparent error of law. The test to determine whether a decision is vitiated by error apparent on the face of the record is whether the error is self-evident on the fact of the record or whether the error requires examination or argument to establish it. If an error has to be established by a process of reasoning, on points where there may reasonably be two opinions, it cannot be said to be an

error on the fact of the record, as held by this Court in Satyanarayan Vs. Mallikarjuna reported in AIR 1960 SC 137. If the provision of a statutory rule is reasonably capable of two or more constructions and one construction has been adopted, the decision would not be open to interference by the writ Court. It is only an obvious misinterpretation of a relevant statutory provision, or ignorance or disregard thereof, or a decision founded on reasons which are clearly wrong in law, which can be corrected by the writ Court by issuance of writ of Certiorari."

21. The power of judicial review has been dealt by the Hon'ble Apex Court in the aforementioned judgments, wherein such power can be exercised, if the order impugned challenged under the Article 226 of Constitution of India, appears to be error on the face of record is required to be there.

Conclusion:

22. This Court in view of the aforesaid proposition of law and taking into consideration the fact that the petitioners and even though the learned counsel for the respondent no. 5 are emphasizing upon the NOC which is alleged to be said to be issued by the two petitioners herein and since they have not been impleaded as party before the Tribunal as such due to non-impleadment of them as party to the proceeding, the order passed by the learned Tribunal, according to our considered view, will be said to suffer from an error apparent on the face of order.
23. This Court in view of the aforesaid settled principle of law and particularly the judgment rendered by Constitutional Bench of the Hon'ble Apex Court in the case of ***L Chandra Kumar v. Union of India & Others*** (supra) as referred hereinabove is of the view that the impugned order needs to be interfered with.

24. Accordingly, the order dated 15.03.2024 is quashed and set aside.

25. The matter is remitted to the learned Tribunal for fresh adjudication of the issue.

26. Further, the learned Tribunal is requested to issue notice to the petitioners and the petitioners are also at liberty to appear on its own.

27. It needs to refer herein that we have not considered the case on merit. Further, the fresh adjudication is to be made without being prejudiced by this own.

(Sujit Narayan Prasad, J.)

(Navneet Kumar, J.)

Samarth/**A.F.R.**