

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

WRIT PETITION NO.2344 OF 2019

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Smt. Manjit Kaur Nelson & Anr.

..... Petitioners

Vs.

Union of India & Anr.

..... Respondents

Shri. Mihir Desai, Senior Advocate I/b. Devyani Kulkarni for the
Petitioner

Shri. R. R. Shetty for Respondent No.1 – Union of India

Ms. Jyoti R. Yadav I/b. Shri. Suresh Kumar for Respondent No.2
– Western Railways

**CORAM: DEVENDRA KUMAR UPADHYAYA, CJ. &
ARIF S. DOCTOR, J.**

DATE : MARCH 11, 2024

P.C.

1. Heard Shri. Mihir Desai, learned Senior Advocate representing the Petitioners, Shri. R. R. Shetty, learned Counsel representing Respondent No.1 – Union of India and Ms. Jyoti Yadav, learned Counsel representing Respondent No.2 – Western Railways.

2. This Petition filed under Article 226 of the Constitution of India, assails the judgment and order dated 6th April 2017 passed by the Mumbai Bench of the Central Administrative

Tribunal (hereinafter referred to as the **Tribunal**) in Original Application No.525 of 2015 to the extent the Tribunal has not acceded to the prayer of Petitioner No.1 for consideration of her claim for appointment on compassionate ground on the death of her husband Alwyn Nelson who died in harness on 14th December 2014 while working as Head Train Ticket Examiner (TTE) in the Western Railways.

3. The facts of the case, as can be culled out from the pleadings available on record are that Petitioner No.1 is the second wife of the deceased employee whereas Petitioner No.2 is the daughter born out of the wedlock of Petitioner No.1 with the deceased employee.

4. Further, Petitioner No.1, on the death of her husband laid a claim for compassionate appointment which was rejected by the Railway Administration by means of an order dated 17th April 2015. She again laid her claim for compassionate appointment which too was rejected by the Railway Administration by means of an order dated 29th May 2015. The reason indicated in both the aforesaid orders rejecting the claim of the Petitioners for compassionate appointment was that as per the extant policy of

the Railway Board contained in the circular/letter dated 2nd January 1992, compassionate appointment to the second widow and her children is not permissible.

5. Challenging the aforesaid two orders dated 17th April 2015 and 29th May 2015, the Petitioners instituted the proceedings of the Original Application No.525 of 2015 before the Tribunal which has partly been allowed with the direction that Petitioner No.1 shall be entitled to avail pensionary benefits accrued on account of death of her husband, however, she shall not be entitled for consideration of her claim for appointment on compassionate ground as the second marriage was not permitted by the Railways and she is, in fact, the second widow of the deceased Government employee.

6. Shri. Mihir Desai, learned Senior Advocate appearing for the Petitioners has submitted that so far as rejection of the claim of Petitioner No.1 for consideration of her case for compassionate appointment is concerned, the same is not tenable in view of the fact that the circular/letter dated 2nd January 1992 which is the basis of rejection of her claim, has been quashed by Division Bench of Calcutta High Court in the

case of ***Namita Goldar Vs. Union of India***¹, however, relying upon a judgment of Hon'ble Supreme Court dated 11th December 2018 in the case of ***Union of India & Anr. Vs. V. R. Tripathi***², it has been urged that claim of Petitioner No.2 may be ordered to be considered as she admittedly is the daughter of the deceased employee from his second wife and at the time of death of the deceased employee she was only aged 15 years 9 months and 14 days. Our attention has also been drawn to Master Circular No.16 issued by the Railway Board which contains provision for appointment on compassionate ground, according to which, if widow of a deceased employee cannot take up employment, Railways has to keep the case for appointment on compassionate ground open so that consideration of appointment of a minor once he/she attains majority, can be made. He has also stated that as per the said provision, consideration of appointment on compassionate ground on attaining majority can be made provided, the dependent attains the majority within five years from the date of event of death.

7. It has, thus, been submitted that keeping in view the judgment of the Hon'ble Supreme Court in the case of ***V. R.***

¹ (2010) 1 Cal.L.J. 464

² (2019) 14 SCC 646

Tripathi (supra) and the Master Circular issued by the Railway Board of appointment on compassionate ground, a direction be issued to consider the claim of Petitioner No.2 for appointment on compassionate ground. Shri. Mihir Desai has, thus, confined his prayer for issuing such direction to the authorities of the Railways.

8. In ***V. R. Tripathi (supra)***, compassionate appointment to the son of the second wife was denied on the basis of Circular of the Railway Board dated 2nd January 1992. It is this very circular dated 2nd January 1992 which has been relied upon by the Railway authorities to deny the appointment to Petitioner No.1. However, the Hon'ble Supreme Court in ***V. R. Tripathi (supra)*** has clearly held that it will not be open to the authorities to exclude a child from the second marriage of a deceased employee from seeking the benefit of compassionate appointment and further that such a decision of exclusion is arbitrary and *ultra vires*. Paragraphs 14 and 15 of the judgment in the case of ***V. R. Tripathi (supra)*** are relevant which are extracted hereinbelow:

"16. The issue essentially is whether it is open to an employer, who is amenable to Part III of the Constitution to deny the benefit of compassionate

appointment which is available to other legitimate children. Undoubtedly, while designing a policy of compassionate appointment, the State can prescribe the terms on which it can be granted. However, it is not open to the State, while making the scheme or rules, to lay down a condition which is inconsistent with Article 14 of the Constitution. The purpose of compassionate appointment is to prevent destitution and penury in the family of a deceased employee. The effect of the circular is that irrespective of the destitution which a child born from a second marriage of a deceased employee may face, compassionate appointment is to be refused unless the second marriage was contracted with the permission of the administration. Once Section 16 of the Hindu Marriage Act, 1955 regards a child born from a marriage entered into while the earlier marriage is subsisting to be legitimate, it would not be open to the State, consistent with Article 14 to exclude such a child from seeking the benefit of compassionate appointment. Such a condition of exclusion is arbitrary and ultra vires.

17. Even if the narrow classification test is adopted, the circular of the Railway Board creates two categories between one class of legitimate children. Though the law has regarded a child born from a second marriage as legitimate, a child born from the first marriage of a deceased employee is alone made entitled to the benefit of compassionate appointment. The salutary purpose underlying the grant of compassionate appointment, which is to prevent destitution and penury in the family of a deceased employee requires that any stipulation or condition which is imposed must have or bear a reasonable nexus to the object which is sought to be achieved. The learned Additional Solicitor General has urged that it is open to the State, as part of its policy of discouraging bigamy to restrict the benefit of compassionate appointment, only to the spouse and children of the first marriage and to deny it to the spouse of a subsequent marriage and the children.

We are here concerned with the exclusion of children born from a second marriage. By excluding a class of beneficiaries who have been deemed legitimate by the operation of law, the condition imposed is disproportionate to the object sought to be achieved. Having regard to the purpose and object of a scheme of compassionate appointment, once the law has treated such children as legitimate, it would be impermissible to exclude them from being considered for compassionate appointment. Children do not choose their parents. To deny compassionate appointment though the law treats a child of a void marriage as legitimate is deeply offensive to their dignity and is offensive to the constitutional guarantee against discrimination."

9. Petitioner No.2 attained the age of majority on 20th February 2017 and is said to have made an Application seeking compassionate appointment on 19th March 2020. The prayer, thus, is that the concerned authorities of the Railways be directed to consider the claim of Petitioner No.2 for compassionate appointment.

10. Shri. Shetty, learned Counsel representing Respondent No.1 – Union of India has, however, opposed the said prayer and submitted that for such a prayer, Petitioner No.2 should take recourse to the remedies available before the Tribunal under the provisions of the Administrative Tribunals Act, 1985.

11. So far as the impugned judgment of the Tribunal is

concerned, we do not see any illegality in the same and in fact, it appears that the Petitioners have given up the said challenge. However, in the light of the judgment of the Hon'ble Supreme Court in the case of **V. R. Tripathi (supra)**, we find some force in the prayer made by Shri. Mihir Desai, learned Senior Advocate for issuing a direction to the authority concerned for consideration of the case of Petitioner No.2 for compassionate appointment. It is not in dispute that at the time of death of the deceased employee, Petitioner No.2 was minor who attained the age of majority only on 20th February 2017 and is said to have made an Application on 19th March 2020 seeking consideration of her case for compassionate appointment. Thus, we find it appropriate to issue a direction to the concerned authority of the Railways to consider the case of Petitioner No.2 for compassionate appointment in the light of the judgment of the Hon'ble Supreme Court in the case of **V. R. Tripathi (supra)** and also in terms of the extant policy relating to compassionate appointment. As regards the objection raised by Shri Shetty, learned Counsel representing the Respondent – Union of India, that for such a prayer Petitioner No.2 ought to seek a remedy by institution appropriate proceedings before the Tribunal, we may

only observe that relegating Petitioner No.2 at this juncture to seek her remedy before the Tribunal will be too harsh. Her father, while in service of the Railways had died way back on 14th December 2014 and admittedly, at that time she was minor.

12. Thus, having regard to the over-all facts and circumstances of the case, without interfering with the impugned judgment and order passed by the Tribunal, we dispose of this petition with the direction to the competent authority of the Railways to consider and decide the claim of Petitioner No.2 for compassionate appointment, strictly in accordance with the extant policy for compassionate appointment, keeping in view the judgment in the case of **V. R. Tripathi (*supra*)**. Such consideration shall be made within six weeks from the date of certified copy of this order is produced before the competent authority by the Petitioners.

13. Shri. Shetty has drawn our attention to interim order passed by this Court on 22nd February 2019, whereby interim relief was granted in terms of prayer clause (d) which is as under:

"(d) Pending the hearing and final disposal of the present writ petition the respondents be directed to

retain the petitioner in the Quarters she is presently residing or provide alternate accommodation in case the present Quarters are to be demolished.”

14. Shri. Shetty has, thus, stated that in the strength of the said interim order, the Petitioners are occupying official accommodation to which they are not entitled to. It has, thus, been prayed by Shri. Shetty that the said interim order may also be discharged.

15. Since we have issued a direction to the competent authority of the Railways to consider the case of Petitioner No.2 for compassionate appointment within a period of six weeks, we provide that the interim order dated 22nd February 2019 shall operate till consideration of the claim of Petitioner No.2 under this order is made by the competent authority or for a period of three months from today, whichever is earlier.

16. With the aforesaid directions, the Writ Petition is disposed of.

17. There will be no order as to costs.

18. Interim Application, if any, shall stand disposed of.

(ARIF S. DOCTOR, J.)

(CHIEF JUSTICE)