

LIBRARY**CENTRAL ADMINISTRATIVE TRIBUNAL
KOLKATA BENCH, KOLKATA**

O.A/350/673/2015 & 350/1335/2015

Date of Order: 05.02.2020



**Coram: Hon'ble Ms. Bidisha Banerjee, Judicial Member
Hon'ble Dr. Nandita Chatterjee, Administrative Member**

Srimati Kanchan Kumari, widow of Late Arun Kumar Yadav, while he was working as a Clerk Grade (I) employee of Chief Factory Manager, Eastern Railway Factory/Jamalpur, under Director (Ermi)/Jamalpur, residing at of 13 Raja Sew Bux bagla Lane, Kolkata – 700002 and also residing at Naya Tola Fulka, P.O. Jamalpur District – Munger, Bihar, Pin – 811214.

...Applicant (In both O.As.)

Vrs.

1. Union of India, service through the General Manager, Eastern Railway, Fairlie Place, 17, N.S Road, Kolkata – 700001.
2. Director, Indian Railways Institute of Mechanical & Electrical Engineering Jamalpur- 811214 (Bihar).
3. Chief Works Manager, Eastern Railway, workshop at Jamalpur Munger, Pin Code – 811214.
4. The Workshop Personal Officer, Eastern Railway, workshop at Jamalpur Munger, Pin Code – 811214.
5. Staff Welfare Inspector, Eastern Railway, workshop at Jamalpur Munger, Pin Code – 811214.
6. Smt. Usha Devi @ Kumkum Devi, C/o Sri Ramswaroop Yadav, Village & P.O. Chharrapatti, Thana-Sahpur Kamal, District – Begusarai, Pin – 851217.

...Respondents (In both O.As.)

For The Applicant(s): Mr. G.K.Choudhury, Counsel

For The Respondent(s): Mr. S.R.Das, Counsel

ORDER (ORAL)

Ms. Bidisha Banerjee, Member (J):

Heard Ld. Counsels for both the parties.

2. Since both the Original Applications bearing Nos. 673/2015 and 1335/2015 have been filed by the same applicant, viz. Smt. Kanchan Kumari, for family pension along with other benefits, and compassionate appointment respectively, both the O.As. were heard analogously to be disposed of by this common order.

3. Applicant, admittedly the second wife of the deceased Arun Kumar Yadav, has preferred O.A. No. 1335/15 to seek the following reliefs:

- "a) To quash the impugned order being No.F/WPO/Con. Cell/Aky Jamalpur dated 16/7/2015 passed by the Workshop Personnel Officer for Chief Works Manager, Eastern Railway Jamalpur respondent NO.3 & 4 herein and the setting aside the Impugned order 16/7/2015 and also impugned order 16/7/2015 be stayed till the disposal of this application.*
- b) Direction/order directing the respondents in regard to appointment of Smt Kanchan Kumari on compassionate ground on account of death of her husband Sri Arun Kumar Yadav, Sr. Clerk to the entire service benefits of the deceased employee only in favour of the applicant who is the only wife of the deceased employee forthwith.*
- c) To issue direction upon the respondents to grant entire appointment of Smt. Kanchan Kumari on compassionate ground to the applicant.*
- d) A direction upon the respondents to produce all the relevant Records of the case, so that conscionable justice may be rendered by directing the respondents to in regard to appointment of Smt. Kanchan Kumari on compassionate ground on account of death of her husband Sri Arun Kumar Yadav, Sr. Clerk the service benefits, including the applicant on the death of her husband who died on 20.05.2009.*
- e) Issuance of any other order/orders direction which the Hon'ble Tribunal may deem fit and proper in her circumstances of the case.*
- f) Costs."*

While, in O.A. No. 673/2015, she has prayed for the following reliefs:

- "a) To quash the Impugned order being LNo. Sett/Pen/P. File/Aky Jamalpur dated 03.4.2015 passed by the Workshop Personnel Officer for Chief Works Manager, Eastern Railway Jamalpur respondent No.3 & 4 herein and the setting aside the Impugned*

order 03/04/2015 and also impugned order 3/4/2015 be stayed till the disposal of this application.

- b) Direction/order directing the respondents to release the entire service benefits of the deceased employee only in favour of the applicant who is the only wife of the deceased employee forthwith with interests.
- c) To issue direction upon the respondents to grant entire family pension to the applicant.
- d) A direction upon the respondents to produce all the relevant Records of the case, so that conscionable justice may be rendered by directing the respondents to release the service benefits, including pension to the applicant on the death of her husband who died on 20.05.2009.
- e) Issuance of any other order/orders direction which the Hon'ble Tribunal may deem fit and proper in her circumstances of the case.
- f) Costs."



4. Ld. Counsel for the applicant, at hearing, would submit that the applicant is the only wife of the deceased employee, on the basis of a declaration from a competent court of law in a succession case, the order whereof is extracted hereunder for clarity:

SUCCESSION CERTIFICATE

[Section 377 of the Indian Succession Act XXXIX of 1925]

Succession Case No. 23/2013

Kanchan Kumari & others Vs. Chishtima K.R. Yadav.

In the Court of Sub-Judge II, Muzer.

Kanchan Kumari w/o Late Arun K.R. Yadav.
R/o Vill. - Nayatola Fulka, P.O. & P.S. Jamalpur
District - Muzer.

Whereas you applied on the 12th day of Dec 13 for a certificate under the Indian Succession Act, 1925 in the matter of the estate of deceased, in respect of the following debts and securities, namely:

Notes - Cancelled original stamp duty worth
RS. 6255/- attached here with.

Serial number	Name of debtor	Amount of debt, including interest on date of application for certificate	Description and date of instrument, if any, by which the debt is secured.
1	2	3	4
1.	S.B.I. Railway Colony Jamalpur Br.	12935/-35	S.B. A/c No. - 01190022029 in the name of Arun Kumar Yadav (deceased)
2.	E.Rly. Co-operative Bank Ltd. Jamalpur Br.	1557/-00	A/c No. 25408/JMP. in the name of Arun Kumar Yadav. Employee of Jamalpur (deceased)

SECURITIES

Serial number	Distinguishing number of letter of security	Name, title, or class of security	Amount or part value of security	Market value of security on date of application for certificate
1.	2.	3.	4.	5.

This certificate is accordingly granted to you and empowers you to collect those debts and

- (1) to receive interest or dividends on
- (2) to negotiate or transfer
- (3) both to receive interest or dividends or, and to negotiate or transfer the securities any of them.

Dated this

25th day of Aug

2014 Sub District Judge II

SAL

Court of Sub-Judge, II, Munger.

Succession Case 23/13

9.9.2014

The applicant has filed this case for getting succession regarding Rs.1,30,908/- 35.

In short, the applicant has stated that her husband Arun Kumar son of Bhisim Kumar Yadav ^{was} an employee of Eastern Railway, Jamalpur Workshop as clerk Grade no.1 in the office of I.R.M.E., Jamalpur and the serial number was J/000433, L.F.No.J/G 49496/4 P.A./P.F.A./C NO.928061. He was murdered by the criminals on 20.5.09. The O.P.no.1 is Bhisim Kumar Yadav is her father-in-law and the applicant no.2,3 and 4 are minor sons and daughter and they residing under her guardianship. The mother of her husband namely, Dayabati Devi already died on 10.10.08. There is no ~~any~~ any other legal heirs except the petitioner. Her husband has deposited Rs.1,29,351 - 35. in the account of S.B.I. at Jamalpur Railway Colony in Account No.01190022028. Aforesaid Arun Kumar Yadav also hold a Saving Bank Pass Book of Eastern Railway Employee Co-operative Bank Limited Jamalpur bearing Account No.25408/ Jamalpur and Ledger No.25408 a sum of Rs.1,557/-. The bank has demanded succession certificate from the petitioner. So cause of action arises to file this suit. This court has territorial and pecuniary jurisdiction also. Further, he prayed to grant the succession certificate regarding Rs.1,30,908/-35p. The O.P.no.1 Bhisim Kumar Yadav has filed no objection on 28.2.14. He has clearly stated that if succession certificate is granted in favour of petitioner no.1 Kanchan Kumari then he has no objection. The entire

7/9.8.14

-2-

Contd.
19.8.14

family affairs is managed by petitioner no.1.

No any other has interfere in this case even after AAM notice.

In support of her case, A.W.1 Kanchan Kumari applicant no.1 is examined and supported her case as per pleading. She has clearly stated that she is natural guardian of applicant no.2,3 and 4 respectively namely, Ashish Abhinandan, Pratik Abhinandan and Gudia. Documentary evidence is produced by the applicant as Ext.1 is death certificate of Dayabati Devi the mother of Late Arun Kumar Yadav, Ext.2 is death certificate of Late Arun Kumar Yadav, Ext.3 is family members certificate of Late Arun Kumar Yadav in which mentioned that Kanchan Kumari wife, Sri Ashish Abhinandan aged about 4 years, Sri Pratik Abhinandan aged about 3 years and Gudia aged about 3 years issued on 19.4.10, Ext.no.4 Pass Book of Eastern Railway Employee Co-operative Bank Limited, Jamalpur of account No.25408/JMP, Ext.5 Pass Book of State Bank of India, Railway Colony Branch Jamalpur Account no.01190022028. The O.P. also examined on 8.8.14 and he has supported the case of applicant and he has clearly stated that if succession certificate is granted in favour of applicant then he has no objection.

On the basis of above discussions and perusal of record, it appears that there is no objection on behalf of O.P. The applicant has succeeded to prove her prima facie case that she is the successor of Late Arun Kumar and the minors sons and daughters are also successors of Late Arun Kumar and she is the natural guardian of the

-3- Succ.23/13 Sub-Judge, II, Munger

Contd.
19.8.14

Hence, I ordered that petitioner no.1 Kanchan Kumari is entitled to receive money for her and also for minor sons and daughters. Hence, succession certificate is granted in favour of Kanchan Kumari for Rs.1,30,908-35p. (One lxx thirty thousand nine hundred eight and paise thirtyfive only). Office is directed to prepare succession certificate accordingly. (Dictated & corrected by me).

Rajendra Chandra
19.8.14
Sub-Judge, II, Munger.

5. Ld. Counsel for the respondents disputed her status on the basis of an enquiry report that reads as under:

"Late Arun Kumar Yadav had solemnized his second marriage with Kanchan Kumari on 01.12.99. Late Arun Kumar has 02 sons and 01 daughter from Kanchan Kumari which is mentioned below:

Sl. No.	Name	Relation	Date of Birth
01.	Aashish Abhinandan	Unmarried son	14.07.2006
02.	Pratik Abhinandan	Unmarried son	14.09.2007
03.	Jyoti Rani	Unmarried daughter	15.10.2009

In this connection, Kanchan Kumari has produced a copy of birth certificate, the report is enclosed herewith. She produced a photocopy of affidavit, the report is enclosed herewith."

6. The concluding paragraph of the impugned letter dated 16.07.2015, issued by the Workshop Personnel Officer, E.Railways, Jamalpur, the subject matter of challenge in O.A. 1335/2015, reads as under:

"Sri Arun Kumar Yadav, Sr. Clerk, IRIMEE, Jamalpur (an employee of these works) was died (murdered) on 20.05.2009 while he was in service. While alive and he was in service, had contracted plural marriage, 1st marriage with Smt. Usha Devi @ Kumkum Devi on 14.07.1986 and further 2nd marriage with Smt. Kanchan Kumari on 01.12.1999 without legal separation during the life time of his 1st wife Smt. Usha Devi @ Kumkum Devi and without having any permission from Railway Administration. The aforesaid fact has also been established in inquiry conducted by S&WI of this unit vide it's report dt. 04.09.14. This fact regarding plural marriage was concealed by the deceased employee while he was in service. However Late Arun Kumar Yadav had submitted his family Pass declaration mentioning the name of Smt. Kanchan Kumari only as his wife during his service period.

Smt. Usha Devi @ Kumkum Devi has no any issue but Smt. Kanchan Kumari have two sons (Sri Aashish Abhinandan and Pratik Abhinandan) and one unmarried daughter Miss Jyoti Rani begotten from Sri Arun Kumar Yadav.

The above act done by the deceased employee confirms the violation of subsection 2 of section 21 of Railway Service Conduct Rules, 1966. Late Arun Kumar Yadav was the Hindu, to be adhered with Hindu Marriage Act, 1955 but he failed and deliberately violated the subsection (i) of Section 5 of Hindu Marriage Act, 1955 also. Since Sri Yadav is not alive, departmental Disciplinary Action cannot be taken now. No settlement dues has been paid to any of the wife viz. Smt.

Usha Devi @ Kumkum Devi and 2nd wife Smt. Kanchan Kumari due to being two rival claimants.

Incidentally it is pointed out that one OA bearing No. 350/01226 of 2014 filed by Smt. Kanchan Devi citing relief for payment of Settlement dues has also been disposed by the Hon'ble CAT/Kolkata vide it's order dt. 19.12.2014. The aforesaid order dt. 19.12.2014 has been complied vide this office letter No. Sett/Pen/P.File/AKY dt. 03.04.2015, the copy of which has also been served to Smt. Kanchan Kumar, with a copy to Usha Devi @ Kumkum Devi (1st wife of Late Arun Kumar Yadav) with instruction for submission of documents, forms etc to release the service benefit of deceased employee as per rule but till date no forms have been submitted.

At present one OA No. 673 of 2015 further has also been filed by Smt. Kanchan Kumari before the Hon'ble CAT/Kolkata citing Smt. Usha Devi @ Kumkum Devi as respondent No. 6 citing relief for quashing the order dt. 03.04.2015 and release of entire service benefits of deceased employee in favour of herself which has not been disposed.

3.0 CONCLUSION:

Considering all the facts in this case, it is observed that the marriage of Smt. Kanchan Kumari with Sri Arun Kumar Yadav is considered to be void marriage as Smt. Usha Devi @ Kumkum Devi 1st wife of Sri Yadav was and is alive and also has claimed for settlement payment. The above fact regd. plural marriage has also been established in inquiry dt. 04.09.2014. Further the 1st marriage of Late Arun Kumar Yadav with Smt. Usha Devi @ Kumkum Devi on 14.07.1986 has also been certified by Smt. Mina Devi, Mukhia, Vill.+ PO: Raj Raghunathpur Barari, Sa Kamal (Begusarai) on 10.12.2012 and 09.04.2014. Also as per residential certificate No. 14264 dt. 02.12.2009 issued by Sub Divisional Officer, Munger, Usha Devi is the wife of Late Arun Kumar Yadav. Thus as per extant rule Smt. Kanchan Kumari (being 2nd wife of Late employee) does not deserve fit for appointment on Compassionate ground on account of death of Sri Arun Kumar Yadav.

7. It was submitted that the first wife has not staked her claim in regard to compassionate appointment or family pension but the respondents have showed their desire to pay only 50% of the family pension in favour of the applicant, which is bad in law.

8. Be that as it may, in view of the fact that the respondents' contention about existence of two wives cannot be brushed aside and as it is learnt that the children of the applicant are minor and hence entitled to family pension, we direct the Railway authorities to give a hearing to both the widows get the requisite proforma filled in as is required to be filled in by them, in terms of communication dated 03.04.2015 to act upon that by issuing appropriate orders on family pension as well as compassionate appointment within three months.

9. For the purpose, the respondents should bear in mind the law declared by the Hon'ble Apex Court in regard to RBE 02/1992, in the case of **Union of India & Anr. Vs. V.R.Tripathi (Civil Appeal No. 12016/2018 arising out of SLP(C) No. 34830/2016)** in which it has been observed and held as under:

"17. We may note at this stage, that a Division Bench of the Calcutta High Court in Namita Goldar (supra) quashed the circular of the Railway Board dated 2 January 1992 to the extent that it prevented the children of the second wife from being considered for appointment on compassionate grounds. Subsequently, another Division Bench of the High Court in its decision in Eastern Coalfields Ltd. v Dilip Singh⁶ took a contrary view, 6 (2013) 3 Cal.LT 379 without noticing the earlier decision. We may advert to the subsequent decision in Eastern Coalfields Ltd. (supra) for the reason that it proceeds on a construction of Section 16 which, in our view, is inconsistent with the language of that provision. The Division Bench held thus:

Section 16(1) of the aforesaid Act creates a legal fiction whereby a child born out of void marriage shall be held to be legitimate. Section 16(3) of the said act restricts such legal presumption to the rights of such a child only to the property of his parents and none else.

It is, therefore, clear that Section 16 of Hindu Marriages Act, 1955 presumes a child born out of a void marriage as legitimate only for the purpose of entitling him to claim rights in or to the property of his parents but not to any other thing.

It is settled law that public post is not a heritable property. In State Bank of India v. Jaspal Kaur reported in (2007) 9 SCC 571 the Apex Court held that it is clear that public post is not heritable, therefore, the right to compassionate appointment is not a heritable property.

In fact it is an exception to the rule of regular appointment by open competition. Such exception to the rule of regular appointment is therefore a privilege extended by the employer in

terms of the scheme for compassionate appointment itself. It is not a property of the deceased nor is it a heritable right.

In *State of Chhattisgarh v. Dhirjo Kumar Sengar* reported in (2009) 13 SCC 600 the Apex Court held as follows:

“Appointment on compassionate ground is an exception to the constitutional scheme of equality as adumbrated under Articles 14 and 16 of the Constitution of India.” For the aforesaid reasons, we are of the opinion that the provisions of Section 16 of the Hindu Marriage Act, 1955 cannot come to the aid of the petitioner. Legal presumption of legitimacy in such provision is restricted only to the property of the deceased and not to other things. Hence, such provision of law cannot be pressed into service to expand the privilege of compassionate appointment extended by an employee under the scheme as the same can by no stretch of imagination be held to be the property of the deceased employee.” (Emphasis supplied)

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*⁷ 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*.⁸ A Special leave petition filed against the judgment of the Division Bench was dismissed by this Court on 18 September 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.

7(2016) 5 CTC 50 82017 Lab. IC (NOC 237) 69 9SLP(C) arising out of Diary No.27352 of 2017

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."



10. With the aforesaid observation and directions, both the O.As. stand disposed of. No costs.

(Nandita Chatterjee)
Member (A)

(Bidisha Banerjee)
Member (J)

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