

LIBRARY

CENTRAL ADMINISTRATIVE TRIBUNAL, CALCUTTA BENCH KOLKATA

O.A.No.350/01296/2015

Date of Order : 09-09-2015

Present : Hon'ble Mr Justice G. Rajasuria, Judicial Member
Hon'ble Ms Jaya Das Gupta, Administrative Member

Smt Madhabi Murmu & Another

.....Applicants

-Versus-

Union of India & Ors. (Eastern Railway)

.....Respondents

For the applicants : Mr A. Felix, Counsel

For the respondents : Mr M. K. Bandyopadhyay, Counsel

ORDER (ORAL)

JUSTICE G.RAJASURIA, JM,

Heard Both. This O.A has been filed seeking the following reliefs :

- i) An order or direction do issue directing the respondents concerned and particularly the respondent No.2 to show cause as to why the speaking order dated 19.2.15 ought not to be quashed and/or set aside forthwith.
- ii) An order or direction do issue directing the respondents concerned to consider the application of the applicants praying for grant of compassionate appointment a fresh within a stipulated time, mandatorily and to give the said appointment to the applicant without any further delay.
- iii) Leave may be granted to move this application jointly in terms of Rule 4(5) (a) of the CAT Procedure Rules, 1991.

2. This case is having a chequered career of its own. One Mongla Murmu working in the Railways died on 27.12.2002 leaving behind his two sons born through his first wife Saraswati Murmu. It is also a fact that even during the life time of the first wife, the said Mongla Murmu married Madhabi Murmu and gave birth to one son Manik Murmu (2nd applicant). While so the Railway authority had chosen to pay the family pension to the second wife of the deceased Mongla Murmu. She also made a prayer for compassionate appointment for her son, the second applicant herein; whereupon previous O.A.805/2013 was filed seeking compassionate appointment for her son. In that a direction was issued to consider the representation of the applicant and to pass a speaking order. Whereupon

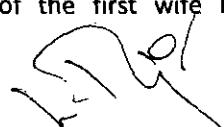


the impugned speaking order dated 19.2.2015 was passed and as per which the Railway authority took up the stand that the second applicant was not entitled to compassionate appointment. Challenging the said order this O.A has been filed seeking the aforesaid reliefs.

3. Learned counsel for the applicant would submit that the Hon'ble Calcutta High Court in *Namita Goldar & Anr. v. Union of India & Ors.*, reported in (2010) 2 WBLR (Cal) held thus :

7. Therefore, the eldest son of the second wife, namely the petitioner No.2 herein is entitled to claim appointment of compassionate ground on account of the sudden death of the employee concerned.
8. The learned Tribunal, in our opinion, has rightly held that the claim of the petitioner No.2 herein for compassionate appointment cannot be turned down on the ground it was done although the learned Tribunal did not issue any mandatory direction on the respondents authorities for granting compassionate appointment to the said son of the second wife, namely the petitioner No.2 herein and directed the General Manager, Eastern Railway to refer the matter to the Railway Board for taking decision. We are, however, of the opinion that the circular issued by the Railway Board on 2nd January, 1992 preventing the children of the second wife from being considered for appointments on compassionate ground cannot be sustained in the eye of law in view of the specific provision of the Hindu Marriage Act, 1955 and pursuant to the decision of the Hon'ble Supreme Court in the case of *Rameshwari Devi (supra)*.
9. In the aforesaid circumstances, the aforesaid circular issued by the Railway Board on 2nd January, 1992 stands quashed to the extent it prevents the children of the 2nd wife from being considered for appointment on compassionate ground.
10. For the reasons discussed hereinabove, we direct the respondents Railway authorities to allow the claim of the petitioner No.2 for appointment on compassionate ground and issue appropriate order of appointment in favour of the said petitioner No.2 without any further delay but positively within a period of two months from the date of communication of this order.
11. This Writ Petition thus stands allowed. There will be, however no order as to costs.

As such placing reliance on the aforesaid judgment learned counsel for the applicant would submit that the son born through the second wife even though the second marriage had been held during the life time of the first wife he is entitled for



compassionate appointment. As such he would pray for setting aside the impugned order and direct the authorities to give compassionate appointment to applicant No.2.

4. Per contra, the learned counsel for the respondents would vehemently oppose the prayer on the main ground that in response to the direction given by the CAT in the earlier O.A, the Welfare Officer was ordered to make a thorough probe, whereupon the two sons of the deceased born through his first wife, made claim for compassionate appointment. As such there is nothing to indicate that the applicant obtained any consent from the sons born through the first wife. As such he would pray for the dismissal of the O.A.

5. The points for consideration are as to whether the Railway authority considered the decision of the Hon'ble Calcutta High Court in W.P.C.T.20 of 2009 while passing the order, and whether the Railway authority has considered the prayer for compassionate appointment for either one of the two sons of the deceased Mongla Murmu through his first wife, and if not, what should be the remedy.

6. The judgment of Hon'ble Calcutta High Court would point out that as per Section 16 of the Hindu Marriage Act an illegitimate son born through the second wife also could claim compassionate appointment. There should be an actual second marriage, valid in all respects except for the fact that it was invalid because of the subsistence of the first marriage. While holding so, we can not lose sight of another judgment of Hon'ble Supreme Court in Vijaya Ukarda Athor (Athawale) vs. State of Maharashtra & Ors. (2015) 1 SCC (L&S) 603. An excerpt from it would run thus :

" 9. The learned counsel for the respondent No.3 submitted that even though respondent No.3 is the son of a deceased employee out of second wedlock and illegitimate child, yet there is no denying the fact that he remains the son of deceased-Ukarda Athor and therefore, the respondent No.3 was entitled to the same treatment as is available to the child of first marriage. It was submitted that as the illegitimate son of the deceased the 3rd respondent is entitled to get appointment on compassionate ground subject to the fulfilment of certain criteria as laid down by the authorities and in consideration of the status of the respondent No.3 and the Policy Decision of the State Government, rightly respondent No.3 was given the appointment and the High Court rightly dismissed the writ petition and also the review application and the impugned orders warrant no interference.



- 4 -

10. We have carefully considered the rival contentions and perused the impugned order and other materials on record.

11. The fact that the appellant is the daughter through the first wife-Shantabai Athor and respondent No.3 is the son through the second wife-Kuntabai Athor of Late Ukarda Athor are not in dispute. Ukarda Athor died on 18.06.1997. According to the Page 7 7 appellant, her mother submitted an application dated 29.12.1997 stating that her daughter Vijaya Athor-appellant who is aged seventeen years and then a minor studying in 10th standard, should be given compassionate appointment when she attains majority. According to the appellant after she attained majority she has submitted another application on 19.03.1998, seeking compassionate appointment; but for quite sometime, the same was not considered by the authorities. The appellant was married in the year 2009.

12. The contention of the appellant is that her application for compassionate appointment was kept pending by the authorities without any justifiable reason. But according to the respondent No.2-Corporation, giving employment in government service on compassionate ground was then governed by "Government Resolution, General Administration Department, No. Comp.1093/2335/M.No.90/93/Eight, dated 26 October, 1994". As per the said Resolution only the unmarried daughter of the deceased would be eligible for the appointment as per Rules. Reliance is placed on clause (3)(a) of Government Resolution which reads as under:

"(3) (a). Husband/wife, son or unmarried daughter of the deceased/ prematurely retired government employee OR son/unmarried daughter lawfully adopted, before death/premature retirement, shall be deemed to be the relatives eligible to be appointed as per rules. Except Page 8 8 them, no other relative shall get the benefit under this scheme."

The State Government has taken a Policy Decision on 26.02.2013 and held that the married daughters are also entitled for compassionate appointment subject to certain conditions.

13. In our considered view, the questions viz.:

(i) the effect of "Government Resolution, General Administration Department, No. Comp. 1093/2335/M. No.90/93/Eight, dated 26.10.1994 and effect of Clause (3)(a);

(ii) the plea that the appellant submitted application on 29.12.1997 and 19.03.1998, that the same was not considered by the authorities for quite sometime;

(iii) at the time when the applications for compassionate appointment was considered in 2012 whether 3rd respondent was eligible to be considered;

(iv) the effect of subsequent policy decision dated 26.02.2013 taken by the State Government as per which the married daughter is also eligible to get compassionate appointment; and



-5-

(v) such other relevant questions which are to be examined.

In our considered view, instead of this Court examining the above questions, the matter is to be remitted back to the High Court for considering the above questions in the light of the facts and circumstances of the case.

14. In the result, the impugned Orders of the High Court in Page 9 9 Writ Petition No.1341 of 2013 dated 18.03.2013 and Review Application No. 511 of 2013 dated 22.11.2013 are set aside and the appeals are allowed and the matter is remitted back to the High Court for consideration of the matter afresh. The High Court shall give sufficient opportunity to the appellant and the respondents and consider the matter afresh expeditiously and in accordance with law."

A bare perusal of the said judgment of the Hon'ble Apex Court would indicate and exemplify, that the issue relating to granting of compassionate appointment to an illegitimate son, cannot be taken as the one no more *re-integra*. The Hon'ble Supreme Court remitted the case to the Hon'ble High Court of Bombay for considering the issue afresh. As such the issue decided by Hon'ble Calcutta Bench cannot be taken as no more *res-integra*. How this CAT, which is situated within the Calcutta High Court's jurisdiction should follow the Calcutta High Court's judgment to the effect, that even an illegitimate son under Section 16 of the Hindu Marriage Act is entitled to compassionate appointment. As of now as per the proposition of law obtaining in West Bengal the Railway authority has to consider in *strict sensu*, the eligibility of the second applicant to get compassionate appointment and if out of the two sons born to the deceased through his first wife, if any one is appointed on compassionate ground then the question of granting compassionate appointment to the second applicant would not arise, and it is for the Railway authority to consider on merits the claim of the second applicant. The aforesaid process shall be completed within a period of 3 months from the date of receipt of a copy of this order.

O.A is disposed of. No costs.

(JAYA DAS GUPTA)
ADMINISTRATIVE MEMBER

(G. RAJASURIA)
JUDICIAL MEMBER