

(2019) 04 PAT CK 0041

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 7111 Of 2019

Kundan Kumar

APPELLANT

Vs

Divisional Railway Manager (Personnel) And Ors

RESPONDENT

Date of Decision : 09-04-2019

Acts Referred:

Citation : (2019) 2 PLJR 708

Hon'ble Judges : Amreshwar Pratap Sahi, CJ;Anjana Mishra, J

Bench : Division Bench

Advocate : Satya Prakash Parasar, Anil Singh

Final Decision : Allowed

Judgement

Anjana Mishra, J

1. Heard Shri Satya Prakash Parasar, learned counsel for the petitioner and Shri Anil Singh, learned counsel for the respondent Nos.1 and 2.

2. This writ petition has been filed assailing the order of the Central Administrative Tribunal dated 1st of November, 2018, whereby the original application of the petitioner, who was claiming compassionate appointment after the death of his father in the respondent-Railways, has been dismissed on the ground that the father was married to another lady previously, and therefore the mother of the petitioner being a second widow, compassionate appointment could not be offered in view of the Circular of Railway Board dated 24th of January, 1992. The learned Tribunal has also relied on a couple of judgments to deny the said claim to the petitioner.

3. The reason for coming to the aforesaid conclusion is a report of the Welfare Officer dated 16th of September, 2016, a copy whereof was filed as Annexure 4 to the written statement of the Railways before the Tribunal. The said report recites that the petitioner's father was employed as a Valveman (a Class IV post) with the respondent-Railways at Patna. He died in harness on 22nd of October,

2009. On an enquiry made at the village, the Welfare Officer claims to have been informed that the deceased employee had earlier married one Puspa Devi who within a month of the marriage returned back to her parental house and never came back. No children were born of the said wedlock. It is thereafter that the deceased employee married Rita Devi in 1994 itself. From the report it is evident that it is Rita Devi who is shown to be the only wife and even the Railway records do not indicate the description of any previous marriage of the deceased employee.

4. The Circular of the Railway Board on which reliance has been placed, places a restriction on the consideration of compassionate appointment of children of the second widow.

5. In the instant case, according to the report of the Welfare Officer himself, even assuming for the sake of argument that there was a marriage earlier, it is undisputed that the said marriage ended up in an abandonment by the first wife Puspa Devi. It further culminated into her remarriage which is also a fact contained in the same report. It is therefore evident that Puspa Devi herself voluntarily appears to have dissolved the said marriage, may be in a customary manner, and further entered into a marital relationship with some other person. There is nothing in the report which may indicate that she had come up to stake any claim in support of the estate of the deceased employee or benefits arising out of his employment. Her remarriage itself therefore alters her status and she cannot be described to be the widow of the deceased employee at all as she has already remarried someone. Her status therefore is not of a widow but of a married wife of some other person as she appears to have abandoned her marriage with the deceased employee long back and married another person.

6. The circular of the Railways places a restriction on the children of the second widow. As noted above, the said concept of second widow does not get attracted on the peculiar facts of the present case where there is only one wife and only one marriage surviving according to the report of the railways itself. To treat the marriage of Rita Devi with the deceased employee as void was not within the competence of the authorities and the learned Tribunal also fell in error in relying on the circular which, as stated above, was not applicable on the facts of the present case. Consequently, the rejection of the claim of the petitioner for compassionate appointment is unfounded and is unsustainable in law.

7. We therefore allow the writ petition and set aside the impugned order of the Tribunal dated 1st November, 2018 as well as the order passed by the Divisional Railway Manager (Personnel), East Central Railway, Danapur dated 20th October, 2016 and direct the said authority to reconsider the claim of the petitioner in the light of what has been stated above by passing an appropriate order within six weeks of the date of the presentation of the certified copy of this order.

8. The writ petition is accordingly allowed.