

(2019) 07 PAT CK 0044

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 13089 Of 2019

Union Of India Through And Ors

APPELLANT

Vs

Sona Devi And Ors

RESPONDENT

Date of Decision : 04-07-2019

Acts Referred:

Citation : (2019) 07 PAT CK 0044

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

Bench : Division Bench

Advocate : Shekhar Singh

Final Decision : Dismissed

Judgement

1. This writ petition on behalf of the Union of India and Railways questions the correctness of the judgment of the Central Administrative Tribunal whereby the claim of the respondents for compassionate appointment has been allowed on 11.10.2018 and the review application filed by the petitioner has been rejected by the Tribunal on 01.03.2019.

2. The respondent-applicants Sona Devi and Suman Kumar claiming themselves to be the widow and son respectively of late Munna Ram, an Ex-Railway Employee (Safai Karamchari) who died in harness on 13.04.2006. Sona Devi moved an application in the year 2008 for appointment on compassionate basis contending that late Munna Ram had died leaving four children behind who were minors at that time. Her claim had not been considered as one Gayatri Devi claimed herself to be the wife of late Munna Ram. Gayatri Devi had filed a Succession Case No. 73 of 2006 before the Court of learned District Judge, Patna in which Sona Devi was also arrayed as an opposite party. This case dragged on for eight years and vide order dated 31st January, 2014 the claim of succession made by Gayatri Devi was rejected holding that Sona Devi was the legally wedded wife of late Munna Ram. It was also found that Gayatri Devi was not married to late Munna Ram.

3. The said order was tendered before the Railway authorities and Sona Devi also moved before the Administrator General of Bihar for granting a succession certificate in respect of the monetary claims namely the terminal and retiral dues of late Munna Ram. The Railways were insisting for a succession certificate from a Court of law as a certificate from the Administrator General that was granted on 12th March, 2018 was on the basis of affidavits only. The Railway authorities were of the view that a succession certificate issued by a Court of law cannot be equated with a succession certificate of an Administrator General and therefore the claimant was advised to obtain one.

4. It is in this background that the respondents filed the Original Application before the Tribunal claiming compassionate appointment and for quashing of the order dated 23rd April, 2018 that was passed by the Railway authorities denying the claim of the compassionate appointment. The Original Application was allowed on 11th of October, 2018 holding that the respondent Sona Devi was entitled to claim compassionate appointment as also to receive the post-retiral benefits. A direction was issued to the Railways to pay the retiral benefits to the applicant Sona Devi as mentioned in the letter dated 08.09.2017 and the Welfare Department of the Railways was given opportunity to consult any of the family members of late Munna Ram for submission of additional documents in respect of the claim made by Sona Devi.

5. The order dated 23rd April, 2018 that was passed by the Railway authority only contained a recital that in view of the opinion of the Law Officer of the Railways the certificate issued by the Administrator General could not be equated with a succession certificate from a Court of law which does not entitle the applicant to obtain the benefits as the rule requires a succession certificate to be obtained from a competent Court of law.

6. We confronted the learned counsel for the Railways to inform us about the rule requiring a succession certificate from a competent Court of law which he was unable to point out. Learned counsel was also unable to point out that a certificate from the Administrator General was unacceptable under any Rule either of the Railway Manual or the Circulars. The opinion of the Law Officer about the equal status of the two therefore does not meet any rationality in law moreso when there is no challenge raised about the certificate obtained from the Administrator General or to the order passed in the succession case between Gayatri Devi and Sona Devi.

7. A review application was filed before the Tribunal by the Railways on the ground that material facts had not been considered and a couple of orders were also relied on. The Tribunal did not find any scope for review and dismissed the review application on 1st March, 2019.

8. Learned counsel for the Railways has now come up before this Court with a different reason other than that which was mentioned in the letter dated 23rd April, 2018. The ground taken is that the Railways cannot be compelled to

provide compassionate appointment to the children born of a second marriage. This does not appear to have been the ground taken before the Tribunal and has now been pressed into service contending that the Staff Welfare Inspector had submitted an inquiry report that late Munna Ram was initially married to one Malti Devi who without any legal separation married one Kanchan Ram. Consequently, Malti Devi was the first legally wedded wife of late Munna Ram who had not been made a party in the succession case therefore this fact militates against the claimant. As a natural corollary to this argument, and relying on the same report of the Welfare Officer, it was contended that Sona Devi the present respondent-applicant had married late Munna Ram during the life time of his first legally wedded wife Malti Devi and, therefore, their marriage was void. This aspect was not considered by the Tribunal and the Original Application was entertained which was not maintainable as there was a misjoinder and non-joinder of necessary party namely Malti Devi.

9. It was also contended that the respondent-applicant had failed to obtain the succession certificate to receive the accrued dues to the tune of Rs. 38,183/- which the respondent-applicant could not receive on the basis of a certificate of the Administrator General. The learned counsel for the Railways submitted that adequate opportunity had not been given to the Railways to place actual facts through their written statement and, therefore, the directions issued deserve to be set aside.

10. Having considered the aforesaid submissions, we find that two novel objections were generated probably with the aid of Law Officer of the Railways to deny the claim of the respondent-applicant who is the widow of a poor Safai Karamchari who admittedly died in harness. The first is about the equal status argument having been raised between a succession certificate from a competent Court of law and a certificate from the Administrator General. We have been unable to find out any reason or even a fact pleaded to show as to how the certificate issued by the Administrator General is invalid or not enforceable for the claim of post-retiral dues under any rule or law or circular of the Railways. No such provision could be shown to us nor any such prohibition in law could be established. It is not the case of the Railways that the same is a fake or unlawful document.

11. The second ground now raised is about the validity of the marriage of Sona Devi with late Munna Ram. This is not open to the Railways when there is no dispute about the same and moreso when Malti Devi has admittedly not come forward to stake any such claim. The Railways have attempted to create a dispute on the strength of an event that may have taken place about half a century ago, that too without any claim or adverse adjudication against the respondent-claimant.

12. To the contrary the claim that had been set up by one Gayatri Devi was rejected by a court of competent jurisdiction in a succession dispute where it was found that the respondent-applicant Sona Devi was the only legally wedded wife

of late Munna Ram. There is no reason explained by the Railways as to why the said declaration is being discarded by the Railways. Thus, the issue of the validity of the marriage of the respondent-applicant without there being any adverse material was not an issue that could have been raised or opened by the Railways on the basis of a historic fact as against a legal and valid declaration in favour of Sona Devi treating her to be the legally wedded wife of late Munna Ram. Ignoring the said document is not only a legal flaw but a dereliction of duty by the concerned Law Officer who while facilitating the order dated 23.04.2018 has completely overlooked the same or appears to have deliberately ignored the same.

13. The Railways have unnecessarily entangled the respondent-applicant in a spate of litigation and have now come up with a new plea before the High Court about the validity of the marriage of the respondent-applicant. Once the said status of the respondent-applicant is accepted by a competent Court in a succession dispute, then there is no occasion for the Railways to apply the Circular dated 21.03.2018 in the present case.

14. It is evident from the facts of the present case that the Railways have been taking one stand or the other to somehow scuttle the claim of the respondent-applicant which does not appear to be justified either on facts or in law. The writ petition is therefore devoid of any merits and is rejected with Rs. 5,000/- as costs payable to the respondent-applicant.