

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

Present:

The Hon'ble Justice Ananya Bandyopadhyay

WPA 24082 of 2013

Smt. Lachhmina Devi & Anr.

-Vs-

Union of India & Ors.

For the Petitioner : Mr. Pratik Majumder

For the Respondents : Mr. Sanajit Kumar Ghosh

Heard on : 10.06.2024, 18.07.2024, 26.11.2024

Judgment on : 04.12.2024

Ananya Bandyopadhyay, J.:-

1. The petitioner has prayed for a writ in the nature of mandamus allowing for the respondent being Eastern Railways to suspend the implementation of the order dated 19.03.2013 and to consider the appointment of the petitioner No. 2 on compassionate grounds without taking into consideration the Railway Board's Circular dated 2nd January, 1992. Furthermore, the petitioner has prayed for the Railway Board's Circular dated 2nd January, 1992 to be declared *ultra vires* and *non est* in the eyes of the law.
2. The husband of petitioner no. 1, viz. late Gorakh Nath Pandey was the Head Constable of Railway Protection Force of Eastern Railway, posted at STN post under the Asansol Division. He expired on duty, being survived by two wives, viz. his first wife, i.e. petitioner no. 1 and Smt. Dewanti Devi the second wife along with two sons and a daughter. Petitioner no. 1 and

petitioner No. 2 being the younger son of the second wife filed a representation to I.G. cum Chief Security Commissioner RPF Eastern Railways, Kolkata to appoint petitioner no. 2 on compassionate grounds. Petitioner no. 1, being the first wife of the deceased did not object to the second marriage of her husband to the mother of petitioner no. 2, being the second wife. The elder son of the second wife of the deceased refrained to object through a representation on 27.07.2011 to such employment on compassionate grounds.

3. A letter dated 18.04.2012 was addressed to petitioner no. 2 by the Senior Divisional Security Commissioner of the RPF/Eastern Railway, Asansol requesting him to visit his office on 30.04.2012 at 11.00 a.m. along with xerox copies of certain documents in order to scrutinize his application. Subsequently, petitioner no. 2 attended the meeting scheduled on 30.04.2012 at 11.00 a.m. and submitted the necessary documents.
4. By a letter dated 19.12.2012, the Senior Divisional Personnel Officer of the Eastern Railway, Asansol stated, in terms of the Railway Board's Letter No. E(NG)/II/91/RC-1/136 dated 02.01.1992, if an employee died in harness leaving more than one wife along with children born to the second wife, appointment on compassionate grounds to the second wife and her children could not be considered unless the administration had permitted the second marriage in special circumstances, taking into account personal laws and other such circumstances. Therefore, petitioner no. 1 was asked to intimate as to whether her late husband had taken any permission from the administration regarding his marriage to his second wife and to provide the relevant documents effectively. By a letter dated 24.03.2013, addressed to the Senior Divisional Personnel

Officer of the Eastern Railway, Asansol, petitioner no. 1 replied, the authorities were aware of the second marriage of the deceased since his children from the second marriage received benefits in the capacity of dependents of the deceased from the Railway Department. Petitioner no. 1 further stated she had no objection to the younger son being considered for employment on compassionate grounds since she herself did not have any children.

5. Vide a communication dated 19.03.2013 the Senior Divisional Personnel Officer of the Eastern Railway, Asansol observed that the deceased has been married twice during his lifetime while his first wife was alive. In term of the Railway Board's Letter No. E(NG)/II/91/RC-1/136 dated 02.01.1992, the children of the second widow would not be considered for appointment for employment on compassionate grounds unless permission had been taken from authorities for the marriage of the deceased to his second wife. Thus, the request considering petitioner no. 2 for compassionate appointment was rejected.

6. The Learned Advocate representing the petitioners submitted as follows:-

- a) The first wife of the deceased herself approached the concerned authority to grant compassionate appointment in favour of the younger son of the second wife, being petitioner no. 2 and the same should not have been denied.
- b) It was further referred under Hindu Succession Act, 1956, the marriage between the said deceased employee and the second wife might be void but the children born out of second marriage during life time of first wife entitled them to receive equal shares in the properties of the deceased as the children of the second wife should

be treated at par with the legitimate children of the deceased employee with a similar entitlement to appointment on compassionate ground in consonance with the provisions of the said Hindu Succession Act, 1956.

- c) The purported circular of the Railway Board dated 2nd January, 1992 preventing the children of the second wife from being considered for an appointment on compassionate ground could not be sustainable in the eye of law in view of the specific provision of the Hindu Marriage Act 1955 and as such, denial of employment the petitioner No. 2 on compassionate ground on the basis of the said purported Railway Board's circular dated 2nd January, 1992 was absolutely illegal, arbitrary and contrary to the specific provision of the Hindu Marriage Act, 1955 and was passed without considering the Hindu Succession Act, 1956 and the Hindu Marriage Act, 1955.
- d) It was further submitted that the object of the compassionate appointment was to provide employment to a son or daughter or near relative, who would take care of the family of a government servant, who died-in-harness, leaving his family in precarious circumstances and to mitigate the sufferings of the bereaved family. Employment of petitioner no. 2 on compassionate ground would serve the object of compassionate appointment.
- e) The Hon'ble Apex Court also held though the second marriage was said to be irregular, the children born out of such marriage would not dis-entitle them to claim the benefits of their parents and as such the question of legitimacy could not be a stumbling block for

petitioner no. 2 to receive employment on compassionate ground and as such the purported order dated 19.3.2013 suffered from illegality and perversity and the same was liable to be set aside.

f) Moreover the Railway Board's Letter No. E(NG)/II/91/RC-1/136 dated 02.01.1992 had been directed to be quashed in **2010 (3) Service Law Reporter 57 Nomita Golder vs Union of India & Ors.** by the Hon'ble High Court of Calcutta.

g) Rule 21 of the Railway Servant Conduct Rules, 1966 had no application in the instant case.

7. The Learned Advocate for the petitioners relied on the following cases:-

i. **2010 (3) Service Law Reporter 57, Nomita Golder vs Union of India & Ors.**, where the division bench of the Hon'ble High Court of Calcutta held to that in view of the decision of the Apex Court in the case of Rameshwari Devi, the children of the second wife could not be treated as illegitimate as section 16 of Hindu Marriage Act held that children of a void marriage are legitimate. Thus, in view of the law as settled by the Supreme Court, no distinction can be made amongst the children of the first and second wife of a deceased employee. In the present case, however, the first wife was issueless and died shortly after the death of the employee concerned. Therefore, the youngest son of the second wife, namely the petitioner no.2 herein was entitled to claim appointment on compassionate grounds on account of the sudden death of the employee concerned. In the said judgment of Nomita Golder (supra), the division bench of this Hon'ble Court struck down the said circular dated 02.01.1992.

- ii. **2019 (4) Service Law Reporter 281, The State of Bihar & others vs Chandra Sekher Paswan & Others.** In view of the two aforesaid decision of the Hon'ble Court at Calcutta and a full bench of the Hon'ble High Court at Patna, it had been specifically held that the children of the second wife were entitled to get compassionate appointment.

8. The Learned Advocate for the respondents submitted as follows:-

- a) Intimation of second marriage of the said Gorakh Nath Pandey, Ex Hd. Constable, since deceased was not furnished by him during his lifetime. Subsequently on investigation, it revealed that the deceased had married twice during his lifetime and both the widows were alive at the time of his death. Petitioner no. 2 was the son of the second wife of the deceased. Petitioner being the first wife had no children.
- b) Railway Board's letter No. E(NG)/II/91/RC-1/136, dated 02.01.1992, clarified, in the case of railway employee dying in harness leaving more than one widow along with children born to the second wife, appointment on compassionate ground to the second widow and her children was not to be considered unless the administration permitted the second marriage in special circumstances taking into account the personal law, etc. In the instant case, petitioner no. 2 was the child of second wife of the deceased and both the widows were alive at the time death of the ex-employee. As per Railway Board's letter No. E(NG)/11/2012/RC-1/21 dated 03.04.2013, it had been decided that such cases would be dealt strictly in terms of Board's letter No. E(NG)II/91/RS-1/136 dated 02.01.1992. Rule 21 of Railway Servant Conduct Rules, 1966 imposed certain restriction

regarding marriage of railway employee that stated no railway servant having a living spouse should enter into another marriage.

- c) The Senior Divisional Personnel Officer, Asansol, Eastern Railway through his letter dated 19.12.2012 requested the Petitioner No.1 to intimate as to whether the deceased had obtained any permission from the Railway Administration regarding his second marriage but the Petitioners failed to submit any documents in support of receiving permission from the Railway Administration.
- d) The elder son of the ex-employee namely Sunil Pandey (issue of second wife) had submitted “no objection declaration” in favour of his younger brother i.e. Petitioner No. 2 vide representation dated 27.07.2011 however the mere submission of “no objection declaration” did not entitle him to an appointment on compassionate ground.
- e) It was further submitted as per judgment passed by Hon'ble High Court, Patna in **Civil Writ Petition Case No. 2592 of 2007** and **Writ Petition(s) No. 4461 of 2008** of Jharkhand High Court, Ranchi communicated vide Railway Board's letter No. E(NG)/II/2012/RC- 1/21 dated 03.04.2013, the Hon'ble High Court of Jharkhand as well as the Hon'ble High Court of Patna observed there was specific restriction against the appointment of the son of second wife of the ex-employee who contracted marriage in the life time of first wife.
- f) The provisions of the Hindu Succession Act, 1956 and the Hindu Marriage Act, 1955 are not applicable to current case and relied on the following judgments:-

- i. The Hon'ble Three Judges Bench of the Patna High Court by its judgment dated 24.01.2017 in the Letters Patent Appeal No. **163 of 2006 (Union of India & Ors. Vs- Sanjay Kumar)** considered the relevant provisions of the Hindu Marriage Act, 1955, Hindu Succession Act, 1956, circulars of the Railway Board and the various judgments of the Hon'ble Supreme Court and Hon'ble High Courts and was please to hold that there was specific restriction against the appointment to the son of second wife of the employee who contracted marriage in the life time of first wife and the said son of the second wife was not entitled for appointment on compassionate grounds in Railway.
- ii. As per the judgment dated 13th April, 2011 passed by Hon'ble Division Bench of the Hon'ble Jharkand High Court, Ranchi in **Writ Petition (S) No. 4461 of 2008 (Union of India-Vs- Basanti Devi & Anr.)** and **Writ Petition (S) No. 4495 of 2008 (Union of India-Vs- Shankar Thakur & Anr.)** and **Writ Petition (S) No. 1083 of 2010 (Union of India-Vs- Samaullah Ansari)** considering the aforesaid Circulars of the Railway Board dated 02.01.1992 (which is under challenge of the instant Writ Petition), Railway Service Conduct Rules, 1996 and the various judgments of the Hon'ble Supreme Court and Hon'ble High Courts, particularly Purushottam Kumar's Case, the Hon'ble Court observed that there was specific restriction against the appointment to the son of second wife of the ex-employee who contracted marriage in the life time of first wife and therefore the

said son of the second wife was not entitled for appointment under the compassionate ground in Railway.

9. In **Union of India v. V.R. Tripathi**¹, the Hon'ble Supreme Court held as follows:-

“14. The real issue in the present case, however, is whether the condition which has been imposed by the circular of the Railway Board under which compassionate appointment cannot be granted to the children born from a second marriage of a deceased employee (except where the marriage was permitted by the administration taking into account personal law, etc) accords with basic notions of fairness and equal treatment, so as to be consistent with Article 14 of the Constitution. While answering this issue, it would be necessary to advert to the provisions of Section 16 of the Hindu Marriage Act, 1955 which provide thus:

“16. Legitimacy of children of void and voidable marriages.—(1) Notwithstanding that a marriage is null and void under Section 11, any child of such marriage who would have been legitimate if the marriage had been valid, shall be legitimate, whether such child is born before or after the commencement of the Marriage Laws (Amendment) Act, 1976 (68 of 1976), and whether or not a decree of nullity is granted in respect of that marriage under this Act and whether or not the marriage is held to be void otherwise than on a petition under this Act.

(2) Where a decree of nullity is granted in respect of a voidable marriage under Section 12, any child begotten or conceived before the decree is made, who would have been the legitimate child of the parties to the marriage if at the date of the decree it had been dissolved instead of being annulled, shall be deemed to be their legitimate child notwithstanding the decree of nullity.

(3) Nothing contained in sub-section (1) or sub-section (2) shall be construed as conferring upon any child of a marriage which is null and void or which is annulled by a decree of nullity under Section 12, any

¹ (2019) 14 SCC 646

rights in or to the property of any person, other than the parents, in any case where, but for the passing of this Act, such child would have been incapable of possessing or acquiring any such rights by reason of his not being the legitimate child of his parents.”

15. In sub-section (1) of Section 16, the legislature has stipulated that a child born from a marriage which is null and void under Section 11 is legitimate, regardless of whether the birth has taken place before or after the commencement of amending Act 68 of 1976. Legitimacy of a child born from a marriage which is null and void, is a matter of public policy so as to protect a child born from such a marriage from suffering the consequences of illegitimacy. Hence, though the marriage may be null and void, a child who is born from the marriage is nonetheless treated as legitimate by sub-section (1) of Section 16. One of the grounds on which a marriage is null and void under Section 11 read with clause (i) of Section 5 is that the marriage has been contracted when one of the parties had a spouse living at the time of marriage. A second marriage contracted by a Hindu during the subsistence of the first marriage is, therefore, null and void. However, the legislature has stepped in by enacting Section 16(1) to protect the legitimacy of a child born from such a marriage. Sub-section (3) of Section 16, however, stipulates that such a child who is born from a marriage which is null and void, will have a right in the property only of the parents and none other than the parents.

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.

18. The learned Additional Solicitor General submitted that the decision of this Court in *Rameshwari Devi* [*Rameshwari Devi v. State of Bihar*, (2000) 2 SCC 431 : 2000 SCC (L&S) 276] arose in the context of the grant of family pension to the minor children born from the second marriage of a deceased employee. That is correct. This Court, in that context, observed that Section 16 of the Hindu Marriage Act, 1955 renders the children of a void marriage to be legitimate while upholding the entitlement to family pension. The learned Additional Solicitor General submitted that pension is a matter of right which accrues by virtue of the long years of service which is rendered by the employee, entitling the employee and after his death, their family to pension in accordance with the rules. **Even if we do accept that submission, the principle which has been laid down by this Court on the basis of Section 16 of the Hindu Marriage Act, 1955 must find application in the present case as well. The exclusion of one class of legitimate children from seeking compassionate appointment merely on the ground that the mother of the applicant was a plural wife of the deceased employee would fail to meet the test of a reasonable nexus with the object sought to be achieved. It would be offensive to and defeat the whole object of ensuring the dignity of the family of a deceased employee who has died in harness. It brings about unconstitutional discrimination between one class of legitimate beneficiaries — legitimate children.**

19. We may note at this stage, that a Division Bench of the Calcutta High Court in *Namita Goldar* [*Namita Goldar v. Union of India*, 2010 SCC OnLine Cal 266 : (2010) 1 Cal LJ 464] quashed the circular of the Railway Board dated 2-1-1992 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 Singh* [*Eastern Coalfields Ltd. v. Dilip Singh*, 2013 SCC OnLine Cal 4285 :

(2013) 3 Cal LT 379] took a contrary view, without noticing the earlier decision. We may advert to the subsequent decision in Eastern Coalfields Ltd. [Eastern Coalfields Ltd. v. Dilip Singh, 2013 SCC OnLine Cal 4285 : (2013) 3 Cal LT 379] 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 : (Eastern Coalfields Ltd. case [Eastern Coalfields Ltd. v. Dilip Singh, 2013 SCC OnLine Cal 4285 : (2013) 3 Cal LT 379] , SCC OnLine Cal)

“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 the Hindu Marriage 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 SBI v. Jaspal Kaur [SBI v. Jaspal Kaur, (2007) 9 SCC 571 : (2007) 2 SCC (L&S) 578] the Supreme 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 [State of Chhattisgarh v. Dhirjo Kumar Sengar, (2009) 13 SCC 600 : (2010) 1 SCC (L&S) 281] the Supreme Court held as follows : (SCC p. 604, para 10)

‘10. 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)

20. 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. State* [*M. Muthuraj v. State*, 2016 SCC OnLine Mad 2387 : (2016) 5 CTC 50] 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* [*Namita Goldar v. Union of India*, 2010 SCC OnLine Cal 266 : (2010) 1 Cal LJ 464] in *Union of India v. M. Karumbayee* [*Union of India v. M. Karumbayee*, 2017 SCC OnLine Mad 13030] . A special leave petition filed against the judgment of the Division Bench was dismissed by this Court on 18-9-2017 [*Union of India v. M. Karumbayee*, 2017 SCC OnLine SC 1797] .

21. 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.

22. 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.”

10. In ***Mukesh Kumar v. Union of India***², the Hon’ble Supreme Court held as follows:-

“7. This Court in *V.R. Tripathi [Union of India v. V.R. Tripathi, (2019) 14 SCC 646 : (2020) 1 SCC (Civ) 768 : (2020) 2 SCC (L&S) 301]* held that the scheme and the rules of compassionate appointment cannot violate the mandate of Article 14 of the Constitution. Once Section 16 of the Hindu Marriage Act regards a child born from a marriage entered into while the earlier marriage is subsisting to be legitimate, it would violate Article 14 if the policy or rule excludes such a child from seeking the benefit of compassionate appointment. The circular creates two categories between one class, and it has no nexus to the objects sought to be achieved. Once the law has deemed them legitimate, it would be impermissible to exclude them from being considered under the policy. Exclusion of one class of legitimate children would fail to meet the test of nexus with the object, and it would defeat the purpose of ensuring the dignity of the family of the deceased employee. This judgment in *V.R. Tripathi [Union of India v. V.R.*

² (2022) 14 SCC 161

Tripathi, (2019) 14 SCC 646 : (2020) 1 SCC (Civ) 768 : (2020) 2 SCC (L&S) 301] has now been followed by a number of High Courts as well [See K. Santhosha v. Karnataka Power Transmission Corpn. Ltd., 2021 SCC OnLine Kar 12989 : (2022) 1 Kant LJ 154 (decided on 24-6-2021 by the High Court of Karnataka); Yuvraj Dajee Khadake v. Union of India, 2019 SCC OnLine Bom 299 (decided on 21-2-2019 by the High Court of Bombay); Union of India v. Rohit Chand, 2020 SCC OnLine Del 157 (decided on 24-1-2020 by the High Court of Delhi).]

8. *Apart from the discrimination ensuing from treating equals unequally, which is writ large as demonstrated in the judgment of this Court referred to above, there is also discrimination on the ground of descent, which is expressly prohibited under Article 16(2). In V. Sivamurthy v. State of A.P. [V. Sivamurthy v. State of A.P., (2008) 13 SCC 730 : (2009) 1 SCC (L&S) 335 : (SCC pp. 741-42, para 18)*

“18. The principles relating to compassionate appointments may be summarised thus;(a) Compassionate appointment based only on descent is impermissible. Appointments in public service should be made strictly on the basis of open invitation of applications and comparative merit, having regard to Articles 14 and 16 of the Constitution of India. Though no other mode of appointment is permissible, appointments on compassionate grounds are a well-recognised exception to the said general rule, carved out in the interest of justice to meet certain contingencies.(b) Two well-recognised contingencies which are carved out as exceptions to the general rule are:(i) appointment on compassionate grounds to meet the sudden crisis occurring in a family on account of the death of the breadwinner while in service.(ii) appointment on compassionate ground to meet the crisis in a family on account of medical invalidation of the breadwinner. Another*

contingency, though less recognised, is where landholders lose their entire land for a public project, the scheme provides for compassionate appointment to members of the families of project-affected persons. (Particularly where the law under which the acquisition is made does not provide for market value and solatium, as compensation.)(c) Compassionate appointment can neither be claimed, nor be granted, unless the rules governing the service permit such appointments. Such appointments shall be strictly in accordance with the scheme governing such appointments and against existing vacancies.(d) Compassionate appointments are permissible only in the case of a dependent member of the family of the employee concerned, that is, spouse, son or daughter and not other relatives. Such appointments should be only to posts in the lower category, that is, Classes III and IV posts and the crises cannot be permitted to be converted into a boon by seeking employment in Class I or II posts.”*Ed. : Para 18 corrected vide Official Corrigendum No. F.3/Ed.B.J./92/2008 dated 10-11-2008.] , this Court observed that appointments made only on the basis of descent is impermissible. However, compassionate appointments are a well-recognised exception to the general rule if they are carved out in the interest of justice to meet public policy considerations [Director General of Posts v. K. Chandrashekar Rao, (2013) 3 SCC 310, para 18 : (2013) 1 SCC (L&S) 596. Further, constitutionality of compassionate appointments was upheld in State of Haryana v. Ankur Gupta, (2003) 7 SCC 704, para 6 : 2003 SCC (L&S) 1165; Yogender Pal Singh v. Union of India, (1987) 1 SCC 631, para 17.] . It lends justification only that far and no further.

9. While compassionate appointment is an exception to the constitutional guarantee under Article 16, a policy for

compassionate appointment must be consistent with the mandate of Articles 14 and 16. That is to say, a policy for compassionate appointment, which has the force of law, must not discriminate on any of the grounds mentioned in Article 16(2), including that of descent. In this regard, “descent” must be understood to encompass the familial origins of a person [See, Gazula Dasaratha Rama Rao v. State of A.P., 1960 SCC OnLine SC 39 : (1961) 2 SCR 931 : AIR 1961 SC 564] . Familial origins include the validity of the marriage of the parents of a claimant of compassionate appointment and the claimant's legitimacy as their child. The policy cannot discriminate against a person only on the ground of descent by classifying children of the deceased employee as legitimate and illegitimate and recognising only the right of legitimate descendant. Apart from the fact that strict scrutiny would reveal that the classification is suspect, as demonstrated by this Court in V.R. Tripathi [Union of India v. V.R. Tripathi, (2019) 14 SCC 646 : (2020) 1 SCC (Civ) 768 : (2020) 2 SCC (L&S) 301] , it will instantly fall foul of the constitutional prohibition of discrimination on the ground of descent. Such a policy is violative of Article 16(2).

10. We note with approval the decision of the Delhi High Court in Union of India v. Pankaj Kumar Sharma [Union of India v. Pankaj Kumar Sharma, 2014 SCC OnLine Del 7729] , to which one of us (S. Ravindra Bhat, J.) was a party, which held that descent cannot be a ground for denying employment under the scheme of compassionate appointments. Speaking through Sanghi, J., the Court held : (SCC OnLine Del para 22)

“22. The Court is of opinion that — apart from being textually sound — understanding “descent” in terms of prohibiting discrimination against a person on the basis of legitimacy, or on the basis of his mother's status as a first or second wife, fits within the principles underlying Article 16(2). Not only is one's descent, in this sense, entirely

beyond one's control (and therefore, ought not to become a ground of State-sanctioned disadvantage), but it is also an established fact that children of "second" wives, whether counted as illegitimate or legitimate, have often suffered severe social disadvantage. Another significant observation here is that at the entry level — "legitimacy" is and cannot be a ground for denial of public employment. For these reasons, this Court is of the opinion that the petitioner's regulation violates Article 16(2)."

11. The letter No.DSC/4/Comp/58/2012/Gr.C/RPF dated Asansol, 19.03.2013, inter alia, reflected as follows:-

"In terms of Railway Board's letter No.E(NG/II/91/RC-1/36 dated 02.01.1992 it has been clarified that in the case of railway employee dying in harness leaving more than one widow along with children born to the 2nd wife, appointment on compassionate ground to the 2nd widow and her children are not to be considered unless the administration has permitted 2nd marriage in special circumstances taking into account the personal law etc.

In view of the above, the competent authority (DRM/ASN) has regretted your request for consideration of appointment in favour of above named being not coming under the purview of extant rule."

12. The legal intent of the provisions enumerated in Section 16 of the Hindu Marriage Act, 1955 vividly explained by the decisions of the Hon'ble Supreme Court as cited above fortified the status of a child born out of a void marriage to be a legitimate child to eradicate discrimination compared to a child born out of a valid marriage. A child by virtue of its birth cannot be enamoured by legitimacy and/or stigmatized by illegitimacy contrary to the principle enshrined in Article 14 of the Constitution to its prejudice devoid of any iota of fault on its part of having taken birth through a void marriage.

13. The respondents should not have given effect to the circular No. E(NG)/II/91/RC-1/136 dated 02.01.1992, once it had been struck down by the Division Bench in ***Namita Goldar v Union of India***³ as observed by the Hon'ble Supreme Court in paragraph 20 of ***V.R. Tripathi (Supra)***.
14. The objective to grant compassionate appointment to redress financial constraints occasioned in a family in the event of the death of the bread earner ensures a means of sufficiency to assuage abrupt crisis and indigence, which cannot be refused ambiguously and unjustifiably on the basis of a circular which is unequivocally unconstitutional to judge a child's entitlement to an appointment on compassionate ground on the basis of its descent. It is reprehensible and repugnant to distinguish the eligibility or suitability to the aforesaid appointment considering the valid or void source of inception of a child's birth. The circular vitiates and invalidates the constitutional mandate of equality before law.
15. The respondent authorities shall, therefore, grant the appointment on compassionate ground in favour of petitioner no. 2, provided he fulfils other conditions of such appointment on scrutiny of his application. If the other conditions are fulfilled in accordance to law, the respondent authority is to complete the process of such appointment within 3 months from the date of passing of this order.
16. In view of the above discussions, the instant writ petition being WPA 24082 of 2013 is allowed.
17. Accordingly, WPA 24082 of 2013 is disposed of.

³ 2010 SCC OnLine Cal 266

18. There is no order as to costs.

19. Photostat certified copy of this order, if applied for, be given to the parties on priority basis on compliance of all formalities.

(Ananya Bandyopadhyay, J.)