

Rajasthan High Court - Jodhpur

Smt. Chandra Devi And Anr vs State Of Rajasthan And Ors on 21 September, 2022

Bench: Kuldeep Mathur

HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR S.B. Civil Writ Petition No. 10865/2017

1. Smt. Chandra Devi W/o Late Shri Mohan Singh, C/o Shri Subhan Singh Samant, Driver, Colonization Colony, Plot No. 4/7, Sector 4, Sagar Road, Bikaner. At Present R/o Vill. Sali Pedu Sunkuri, Post Madlak, District- Champawat Uttrakhand.

2. Jatin Singh S/o Late Shri Mohan Singh, C/o Shri Subhan Singh Samant, Driver, Colonization Colony, Plot No. 4/7, Sector 4, Sagar Road, Bikaner Rajasthan.

----Petitioners Versus

1. The State Of Rajasthan Through The Secretary To The Government, Irrigation Department, Rajasthan Secretariat, Jaipur.

2. The Chief Engineer, Irrigation Department, Irrigation Bhawan, Government Of Rajasthan, Jaipur.

3. The Superintending Engineer, Irrigation Department, Irrigation Circle, Sri Ganganagar.

4. The Executive Engineer, Irrigation Department, Irrigation Circle, Sri Ganganagar.

----Respondents

For Petitioner(s) : Mr. Dron Kaushik  
For Respondent(s) : Ms. Saloni Malpani for  
Ms. Abhilasha Bora

HON'BLE MR. JUSTICE KULDEEP MATHUR

Order

21/09/2022

The facts in brief are that Mohan Singh was a Class-IV employee in the respondent-department. Shri Mohan Singh had two wives namely, Smt. Gowa Devi and Smt. Chandra Devi (petitioner No.1). Shri Jatin Singh (petitioner No.2) is son through second wife i.e. Smt. Chandra Devi. Shri Mohan Singh died while in service on 08.04.2002. Smt. Chandra Devi (petitioner No.1) filed an application seeking compassionate appointment as per the (2 of 6) [CW-10865/2017] provisions of Rajasthan Compassionate Appointment of Dependents of Deceased Government Servants Rules, 1996

(hereinafter referred to as 'Rules of 1996'). The application was rejected vide order dated 07.06.2003, on the ground that she is not legally wedded wife of the deceased employee. The order dated 07.06.2003 was challenged by way of filing S.B. C.W.

No.5019/2004 (Smt. Chandra Devi v. State of Rajasthan & Ors.) before Co-ordinate Bench of this Court. During pendency of the aforesaid writ petition, Smt. Chandra Devi (petitioner No.1) became overage. The writ petition was therefore, withdrawn with the liberty to pursue the matter for compassionate appointment qua the son i.e. Jatin Singh (Petitioner No.2). A representation dated 03.05.2017 was submitted by the petitioner No.2 seeking compassionate appointment as per the Rules of 1996. The respondent No.4 vide order dated 15.06.2017 rejected the representation on the ground that petitioner No.2, being the son of second wife is not entitled for appointment on compassionate grounds.

The controversy involved in the present writ petition has already been settled in a catena of judgments by the Hon'ble Supreme Court. In the case of Union of India vs. V.R. Tripathi reported in (2019) 14 SCC 646, the Hon'ble Supreme Court has held as under:

12. 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 (3 of 6) [CW-10865/2017] 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 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 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."

13. 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 (4 of 6) [CW-10865/2017] 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. 14. 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.

15. 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 (5 of 6) [CW-10865/2017] 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.

16. The learned Additional Solicitor General submitted that the decision of this Court in Rameshwari Devi (supra) 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."

The Hon'ble Apex Court in the case of Mukesh Kumar & Anr. vs. Union of India reported in (2022) 2 JT 346 while reiterating the above settled proposition of law held that 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 Article 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 (6 of 6) [CW-10865/2017] this regard, descent must be understood to encompass the familial origins of a person. Familial origins include the validity of the marriage of the parents of a claimant of compassionate appointment and the claimants legitimacy as their child.

It would be pertinent to note that the delay in seeking compassionate appointment, in the present case is not attributable to the petitioners, as the writ petition filed by the petitioner No.1 seeking compassionate appointment before this Court in the year 2004 came to be decided after more than a decade. The co-ordinate Bench of this Court while deciding the writ petition on 06.04.2017 granted liberty to the petitioner No.1 to pursue the matter for compassionate appointment qua his son.

In view of law enunciated by the Hon'ble Supreme Court and peculiar facts of the case, it is held that consideration under the Rules of 1996 for compassionate appointment cannot be denied to Petitioner No.2, on the ground of his being son of the second wife of the deceased employee. Accordingly, the respondents are directed to consider the case of petitioner No.2 for compassionate appointment, in accordance with the Rules of 1996 for providing compassionate appointment to him, if he fulfills all other requirements. The entire exercise as indicated hereinabove shall be completed within a period of 3 months from today.

In the result, the writ petition is allowed in above terms.

No order as to costs.

(KULDEEP MATHUR),J 17-Ravi Kh/-

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