

M v v Prakash Vs. Union of India Represented Through the General Manager South Eastern Railway and Ors

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Court : Jharkhand

Decided On : Jun-16-2017

Appellant : M v v Prakash

Respondent : Union of India Represented Through the General Manager South Eastern Railway and Ors

Advocate for Def. : Mrs. M.M. Pal

Judgement :

1 W.P.(S) No. 8078 of 2012 With Civil Review No. 2 of 2015 ` IN THE HIGH COURT OF JHARKHAND AT RANCHI W.P.(S) No. 8078 of 2012 Union of India through General Manager, E.C. Railway, Hajipur Petitioner V e r s u s 1. Suraj Kumar Prasad, son of Late Law Kumar Prasad Respondent 2. Divisional Railway Manager, E.C. Railway, Dhanbad. 3. Divisional Personnel Office, E.C. Railway, Dhanbad ... Proforma Respondents WITH CIVIL REVIEW NO. 2 OF 2015 M.V.V. Prakash, son of Late M. Narsingh Rao. Petitioner/ Petitioner V e r s u s 1. Union of India represented through the General Manager, South Eastern Railway, Garden Reach, P.O. and P.S. Kolkata Sadar, Kolkata - 43.

2. Divisional Railway Manager, South Eastern Railway, CKP Division, Chakradharpur, P.O. and P.S. Chakradharpur, District - Singhbhum West.

3. Senior Divisional Personnel Officer, South Eastern Railway, CKP Division, Chakradharpur, P.O. and P.S. Chakradharpur, District - Singhbhum West. 4. Assistant Personnel Officer, South Eastern Railway, CKP Division, Chakradharpur, P.O. and P.S. Chakradharpur, District - Singhbhum West. Respondents/ Opposite Parties For the Petitioner : Mr. Mahesh Tewari, Advocate For the Respondents : Mrs. M.M. Pal, Sr. Advocate. Ms. Ruby Pandey, Advocate. Ms. Leena Mukherjee, Advocate PRESENT : HONBLE MR. JUSTICE H. C. MISHRA HONBLE MR. JUSTICE APARESH KUMAR SINGH HONBLE MR. JUSTICE Dr. S.N. PATHAK C.A.V. On 27/04/2017 PRONOUNCED ON 16 /06 /2017 Dr. S.N. Pathak, J.

By Order dated 22.07.2016, this matter was referred to the Larger Bench to consider and decide the following issue: Whether the Union of India/Railway Board can use Circular No. 1 of 1992, dated 2nd January, 1992 arising out of Rule 21 of Railway Service (Conduct) Rules, 1966 in similar matters, after it being quashed by Hon'ble Calcutta High Court in the case of Smt. Namita Goldar & Another Vrs. Union of India & Ors. (supra) and that too said decision of Hon'ble Calcutta High 2 W.P.(S) No. 8078 of 2012 With Civil Review No. 2 of 2015 ` Court has neither been challenged by the Union of India/ Railway Board before the Apex Court nor any further circular has ever been notified after the Judgment of the Calcutta High Court.

4. The factual matrix of the case is that Law Kumar Prasad (father of the respondent no.

1) died in harness on 28.01.2007 leaving behind his old mother, two wives namely Smt. Premlata Devi (1st wife) and Smt. Pratima Prasad (Devi) [2nd wife], two sons and one daughter. At the relevant point of time, deceased father of the respondent no. 1 was working as Chief Office Superintendent at Carriage & Wagon Depot, Barwadih under East Central Railway. The 1st wife of the deceased did not have any issue and she is a mentally retarded lady with 50% disability. After death of Law Kumar Prasad, his 2nd wife applied for payment of deathcum retirement dues of her husband. Thereupon vide letter dated 20.08.2008, said Smt. Pratima Devi (2nd wife of deceased) was asked to produce affidavit sworn in before an

Executive Magistrate stating therein that her husband married twice in his life time and that his first wife suffering from mental disease. She was also asked to produce Guardianship Certificate of first wife issued by a competent Court of law alongwith proof of her mental disease. She was also asked to inform about dates of first and second marriage. Thereupon, said Smt. Pratima Devi filed an application before the District Judge, Latehar under Section 52 of the Mental Health Act, 1987 vide Civil Miscellaneous Case No. 01 of 2009 for appointment as guardian and manager of the Estate of Smt. Premlata Devi, widow of Late Law Kumar Prasad. After appearance of the parties, the Sessions Judge, Latehar appointed Smt. Pratima Devi as guardian and manager of the Estate of Smt. Premlata Devi. Thereafter, deathcumretiral benefits were paid to her and deposited in the bank and she is also getting pension regularly. 3 W.P.(S) No. 8078 of 2012 With Civil Review No. 2 of 2015 ` The respondent no. 1 being eldest son of the deceased employee submitted an application alongwith his educational certificate followed by various representations for his appointment on compassionate ground. However, vide letter dated 14.05.2010 he was informed about the decision of the competent authority as communicated vide letter no. GM(P), ECR, Hajipur, dated 04.05.2010 and thereby rejected claim of respondent no. 1 for appointment on compassionate ground on the basis of Railway Board's Circular No. No. 1 of 1992 specifying that appointment on compassionate grounds to the second widow and her children could not be considered unless the second marriage was with the permission of the administration taking into account the special circumstances and personal law etc. (Annexure1/A) giving rise to O.A. No. 212 of 2011 (R). 5. It was case of the respondent no. 1 in O.A. No. 212 of 2011 (R) that the rejection order communicated vide letter dated 14.05.2010 is illegal, improper and has been passed on extraneous consideration without application of mind. It was further contended that there was sufficient ground of second marriage and the name of second wife of the deceased was duly recorded in the service record and no objection has been ever raised from any corner and as such, this issue could not have been raised after death of the employee. It was further contended that the Railway Circular No. 1/1992 is not applicable in the case of the respondent no. 1 because the administration had never objected entry of name of the second wife in service excerpts of the deceased - employee and as such, the

respondent no. 1 is entitled for appointment on compassionate ground. It was further contended by the respondent no. 1 that it is settled law that children born through second wife or even adopted children are entitled to the benefits of deathcumretirement dues and appointment on compassionate ground and as such the Railway Circular 1/1992 is illegal and not valid. It was also contended that 4 W.P.(S) No. 8078 of 2012 With Civil Review No. 2 of 2015 ` the said Circular was already quashed by the Calcutta Bench of the Tribunal vide Order dated 17.09.2009, passed in O.A. No. 1117 of 2008 in the matter of Kajali Karmakar Vs. Union of India & Others and further by High Court at Kolkata in the case of Smt. Namita Goldar and Anr. Vs. Union of India & Ors. [2010(1) CLJ (Cal.) 465]. It was further submitted that the respondent no. 1 being the eldest son of the deceased employee was entitled for appointment on compassionate ground. Learned counsel further brought Judgment of the Calcutta Bench of the Central Administrative Tribunal in the matter of Kajli Karmakar and Principal Bench of the Central Administrative Tribunal in the case of Subhash Singh and further submitted that the said Judgments were not brought to the notice of the Single Judge before this High Court.

6. On the other hand, the writ petitioner Union of India, by relying upon the Judgment dated 13.04.2011, passed by this Court in W.P.(S) Nos. 4461 of 2008, 4495 of 2008 and 1083 of 2010 submitted before the Central Administrative Tribunal that the issues involved therein was also the same namely eligibility of child of second wife of the employee (married during the life time of first wife) for appointment on compassionate ground. In the said matter, Single Judge of this High Court set aside the orders passed by the Central Administrative Tribunal upholding the Circular No. 1/1992 of the Railway Board. It was further pointed out that the Judgment in the cases of Rameshwari Devi vs. State of Bihar & Others [AIR 2000 SC 735], Purushottam Kumar Vs. State of Bihar & Others [2005(3) PLJR 458]; and Union of India Vs. Central Administrative Tribunal & Others [2002(2) PLJR 686], have been elaborately discussed in the Judgment dated 13.04.2011, passed by this Court in W.P.(S) Nos. 4461 of 2008, 4495 of 2008 and 1083 of 2010 in the matters of Basanti Devi & another; Shankar Thakur & another and Samaullah Ansari respectively. These writ petitions were filed challenging the orders passed in O.A. No. 256 of 2005, O.A. No. 60 5 W.P.(S) No. 8078 of 2012

With Civil Review No. 2 of 2015 ` and 61 of 2006, in which the issue involved was the same as in the instant case namely entitlement of child of second wife of the employee, married during the lifetime of first wife, for compassionate appointment.

7. The Central Administrative Tribunal, while dealing O.A. No. 212 of 2011(R) has elaborately discussed various Judgments, particularly the Judgment passed by this Court in W.P.(S) Nos. 4461 of 2008 with W.P.(S) No. 4495 of 2008 and W.P.(S) No. 1083 of 2010. It is necessary to quote relevant extracts of the said Judgment for appreciation of point of law involved: 7. It is a settled law that appointment on compassionate ground is not a source of recruitment as held in various judgments and one of which was delivered by the Honble Supreme Court in the case of State Bank of India & anr. Vrs. Raj Kumar, reported in (2010) 11 SCC 661, wherein the Honble Supreme Court held that the compassionate appointment is an exception to the general rule that recruitment to public services should be on the basis of merit, by an open invitation providing equal opportunity to all eligible persons to participate in the selection process. The Dependents of employees, who die in harness, do not have any special claim or right to employment, except by way of the concession that may be extended by the employer under the Rules or by a separate scheme, to enable the family of the deceased to get over the sudden financial crisis. The Honble Supreme Court thereafter held that the claim of compassionate appointment is, therefore, traceable only to the scheme framed by the employer for such employment and there is no right whatsoever outside such scheme. 8. So far this legal proposition of law is concerned, this is accepted legal position and if we examine the issue raised in these writ petitions, keeping in view the above legal position then the applicants will have to show their claim on the basis of the employers decision to provide employment to the dependent of deceased employee. The Circular No. E(NC)11/91/RC1/136 dated 2nd January ,1992 is as follows : It is clarified that in the case of railway employees dying in harness etc. having more than one widow along with children born to the 2nd wife, while settlement dues may be shared by both the widows due to Court orders 6 W.P.(S) No. 8078 of 2012 With Civil Review No. 2 of 2015 ` or otherwise on merits of each case, appointments on compassionate grounds to the second widow and her children are not to be considered unless the administration has permitted the second marriage in special

circumstances, taking into account the personal law etc. The fact that the second marriage is not permissible is invariable clarified in the terms and conditions advised in the offer of initial appointment. This may be kept in view and the cases for compassionate appointment to the second widow or her wards need not be forwarded to Railway Board. 9. The said circular was not brought to the notice of the two Division Benches of the Patna High Court , who decided the cases of the Union of India Vrs. Central Administrative Tribunal (supra) and Purushottam Kumar (supra). The validity of this Circular has not been challenged , which is in existence from 2nd January,1992. Therefore, so far the decision of the employer is concerned, it clearly provides that children of second marriage of the employee shall not be eligible for compassionate appointment unless the employee obtained the permission for second marriage which could have been granted only in special circumstances. Admittedly the employees in the cases did not obtain any permission for second marriage by showing special circumstances for second marriage and, therefore, in view of the said circular dated 2nd January,1992 the incumbents were not entitled to compassionate appointment. Since the Circular dated 2nd January, 1992 was not brought to the notice of the two Division Benches referred above, therefore, both the Division Benches have no benefit of knowing the effect of the Circular, in the light of the settled law that compassionate appointment can be sought only when it is traceable to the scheme framed by the employer for such appointment.

10. So far as the case of Union of India Vrs. Central Administrative Tribunal, reported in 2002(2) PLJR 686, is concerned, the said judgment is a brief judgment, wherein it appears that sympathy more prevailed and therefore, the Division Bench held that stand of the Railway administration obviously denying the appointment to the children of second wife is too technical. In that case, it was submitted that first wife was admitted to mental asylum and in that situation the employee contracted second marriage and since there was no child from first wife, 7 W.P.(S) No. 8078 of 2012 With Civil Review No. 2 of 2015 ` therefore, second wifes child , who was equally entitled to the retirement benefits and family pension from the employer railway administration through his mother and , therefore, having split the pensionary benefits between the two wives, the Court observed that it is not difficult to provide a job under the rule of harness to the son of the

second wife when as the record shows there is no rival and first wife has given consent that the son of the second wife be employed. As we have already observed that neither the rules nor the above Circular was brought to the notice of the Division Bench and therefore that judgment has no application, in the facts and circumstances of the present case. 11. In Purushottam Kumars case (supra), the Division Bench of the Patna High Court took into consideration Rule 23 of the Bihar Governments Conduct Rules regarding marriage of the employee, whereunder, under subrule (1), it has been provided that no Government servant shall enter into or contract a marriage with a person having a spouse living and subrule(2) says that no Government servant, having a spouse living shall enter into or contract a marriage with any person. Then it has been observed by the Division Bench that admittedly the second marriage of the employee was misconduct in terms of the Government Servants Conduct Rules but the first wife or any other person did not raise any objection during the life of the father of the appellant i.e. in the life time of employee. Then the Division Bench considered the Government Circular contained in memo no. 3/C22067/90 KA.13293 dated 5th October, 1991 . This Circular provided for employment in ClassIII and ClassIV posts in case of death of a Government servant during service period. The said memo also lays down the categories/ persons entitled to the said appointment and other procedure for the same. According to the Circular, only dependent will be given employment on compassionate ground and under the category of dependents are widow of the deceased employee, son, unmarried daughter and the widow of predeceased son and the order of preference would, the widow of the deceased, son, unmarried daughter and the widow of predeceased son. In Purushottam Kumar's Case (supra), the aforesaid Circular was applicable and, therefore, the Division Bench held that since appellant, the son of the deceased, may be outcome of a void marriage, in terms of Section 5 read with Section 11 of the Hindu Marriage Act which provides that any marriage solemnized after the commencement of Hindu Marriage Act, 1955 in violation of Clause(1) of Section 5 shall be null and void. But even when such marriage is void, Section 16 of the Hindu marriage Act provides that notwithstanding that the 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 Marriage Laws(Amendment)Act,1976 and whether or not a decree of nullity is granted in respect of that marriage under the Act and whether or not the marriage is held to be void otherwise than on a petition under the Act. In addition, subsection(3) of Section 16 provides that the child of a marriage which is null and void will have rights in or to the property of his parents only and not to the property of any other person. 12. The Division Bench in Purushotam Kumars case, after considering the above provisions of law reached to the conclusion that though the marriage is void but the child born is a legitimate one and they will share the property equally with the legitimate children in their parents property and by a deeming provision illegitimate children of a second marriage have been treated to be legitimate and he will inherit the property in the same manner as a legitimate son of a valid marriage. 13. Then the Division Bench proceeded to consider the effect of Hindu Succession Act and observed that in the parents property the son of the second wife also have the same right as the legitimate son of the first wife and there is no distinction and differentiation can be made with regard to share in the property of the parents. The Division Bench also considered the Apex Court decision given in the case of Rameshwari Devi Vrs. The State of Bihar & ors., as reported in AIR 2000 SC 735, wherein the Apex court held that children of the void marriage are legitimate and the property of a male Hindu dying intestate devolve firstly on heirs in Class 1 which include widow and son. A son of the second wife being legitimate son will be entitled to the property of the deceased in equal share along with the first wife and her sons. Then the Division Bench of the Patna High Court considered a policy decision of the State Government for compassionate appointment which speaks about son only and in the opinion of the Division Bench since son of the second marriage is also legitimate son 9 W.P.(S) No. 8078 of 2012 With Civil Review No. 2 of 2015 ` and, therefore, the employees second wifes son cannot be denied benefit of compassionate appointment.

14. With respect, we are unable to subscribe the view expressed in Purushottam Kumars case. Firstly, the compassionate appointment and right to inherit property have no correlation, nor can be equated in any manner. The compassionate appointment is not a property which can be subject matter of alienation and can be

bequeathed whereas the devolving of property of a person is governed by the law, may it be customary or may it be statutory law, whereas the service and benefit arising out of services are governed by the frame of the contract of service or the rules governing the service of the employees and by the scheme, if framed by the employer. The compassionate appointment depends solely upon the frame of contract between the employer and employee and cannot be made subject matter to be governed by the personal law, when the employer has not provided so. The Hon'ble Supreme Court in the case of State Bank of India Vrs. Raj Kumar (supra) clearly held that compassionate appointment is traceable only to the scheme framed by the employer for such appointment and there is no right whatsoever outside such scheme. Therefore, in our humble opinion, merely because illegitimate child has been put at par in the matter of inheritance, by specific and statutory provision, its benefit cannot be extended, so as to put a burden upon the employer when the employer specifically has disallowed such benefit to such successor of the employee.

15. We may again observe here that the said decision of Railway Board, not providing compassionate appointment to the child of second wife of the employee who contracted second marriage in the life time of the first wife, is neither under challenge nor has been shown to be unreasonable, rather it appears to be in consonance with the public policy of the monogamy. Therefore, on this count also, in our humble opinion, the view expressed by the Tribunal does not appeal to us.

16. In addition to above, in Purushottam Kumar's case also the fact and situation was entirely different. In Purushottam Kumar's case, there was a specific provision for providing employment to the dependent of the Government servant, who died while in service and it provided appointment to the employees' son without 10 W.P.(S) No. 8078 of 2012 With Civil Review No. 2 of 2015 ` any restriction against appointment to the son of second wife. Therefore, on facts also Purushottam Kumar's case has no application as in the present case there is specific restriction against the appointment to the son of second wife of the employee who contracted marriage in the life time of first wife. The Central Administrative Tribunal observed that the above order had been passed after taking into consideration the Judgment in the case of Rameshwari Devi, Purushottam Kumar and Union of India Vs. Central Administrative Tribunal. This Court had observed that the children of the

second wife of the deceased employee who contracted second marriage during the lifetime of his first wife without prior approval of the railway authorities as per Railway Service (Conduct) Rules, 1996 had no legal right to claim appointment on compassionate ground in view of the Railway Board Circular 1/1992. The Tribunal further took note of the fact that in the aforesaid case of Basanti Devi and two other petitions heard together, the Railway Board's Circular dated 02.01.1992 [R.B. Circular No. 1/1992] was not under challenge and the said Circular was already quashed by Calcutta Bench of the Central Administrative Tribunal vide order dated 17.09.2009, passed in O.A. No. 1117 of 2008 [Kajali Karmakar Vs. Union of India]. The Tribunal further observed that in the order dated 01.09.2006, in the case of Subhash Singh, the Principal Bench of Central Administrative Tribunal at New Delhi interpreted the decision contained in Railway Board's Circular dated 02.01.1992 as invalidated in view of the decision of the Apex Court in the case of Rameshwari Devi were not brought to the notice of High Court of Jharkhand at Ranchi. In this regard, it is relevant to quote the extracts of the orders in aforesaid cases: (a) Extracts of order dated 17.09.2009 of CAT, Calcutta Bench in OA No. 1117 of 2008: 7. In the instant case, however the second marriage was not even disputed by the first wife and admittedly there was no 11 W.P.(S) No. 8078 of 2012 With Civil Review No. 2 of 2015 ` issue from the first marriage which was the reason for second marriage by consent from the first wife. The respondents have also not taken any disciplinary action against the late employee for contracting second marriage during the subsistence of first marriage. On the other hand, they disbursed the family pension and other dues to the second wife and his children. In a decision earlier rendered by this Court in OA 33/2006 dated 30.09.2008, this Court found as follows: The scheme of compassionate appointment has been introduced for providing employment assistance to the family of the deceased employee, who faces economic set back due to sudden death of the bread earner. It is not disputed that in this case the applicant no. 2 is the son of a late employee and there was no other son born from the first marriage. Therefore, he has claimed the benefits of compassionate appointment. It is true that under Railway Rules dependent family members do not include son born from second marriage mainly on the ground that he is being treated as an illegitimate child. Hon'ble Apex Court has now held such a son is

legitimate son and is entitled to share of property of the father. In my opinion, therefore, there cannot be any distinction between a son from first wife or from the second wife though such marriage may be void. Hence, the claim of applicant no. 2 for compassionate appointment cannot be turned down on the ground it was done. 8. In the circumstances taking evidence from the decision of the Hon'ble Supreme Court that son/daughter born out of the second marriage is entitled to the benefit of compassionate appointment, the case of the applicant cannot be distinct or separate. Any decision of the Hon'ble Supreme Court is binding on the other Court and citizens vide Article 141 of the Constitution and that becomes the law of the land and since there is a declaration that the children born out of the second marriage though are legitimate has to be accepted in this case. In this case the applicant is on a better footing that there is a Civil Court decree in favour of the applicant along with her mother and brother and all retirement benefits of the deceased employee has been disbursed to them and the 1st wife admittedly divorces. In the circumstances, I am of the considered view that the applicant has made out a case and her case for compassionate appointment has to be considered by the respondents. Coming to the letter in which much reliance has been given by the respondents dated 20.01.1992 (Annexure R/I), I am of the view that it has become obsolete and bad in law in view of the decision of the Hon'ble Supreme Court. Therefore, I have no hesitation in setting aside and quashing the said letter of the 12 W.P.(S) No. 8078 of 2012 With Civil Review No. 2 of 2015 ` Railway Board which can be no longer in force, I, therefore, set aside and quash the said order. (b) Extracts of Principal Bench of CAT, New Delhi order dated 01.09.2006 in case of Subhash Singh Vs. Northern Railway. If pensionary benefits could be given to the progeny of the second wife, why not an employment on compassionate ground. Respondents have been in the wrong to rely upon the circular dated 2.1.1992 of the Railway Board for denying consideration for appointment on compassionate ground though settlement dues were directed to be paid to both the widows. Judgment of the Hon'ble Supreme Court in Rameshwari Devi (Supra) is the law of the land. It has to be interpreted liberally instead of taking a constricted view which would invalidate the direction contained in circular dated 2.1.1992 for nonconsideration of entitlement of the second widow or her wards for compassionate appointment.

8. After considering the aforesaid Judgments, the Central Administrative Tribunal observed that decision in both the cases have essentially been arrived at based on the Judgment of the Apex Court in the case of Rameshwari Devi. The Tribunal further observed that the applicability of said Judgment has elaborately been discussed by this Court in the case of Basanti Devi and other analogous cases and a clear distinction between the right of children of second wife with regard to the property of the father and their right to claim appointment on compassionate ground. Relying upon the Judgment of Apex Court in the case of State Bank of India Vs. Raj Kumar [(2010) 11 SCC 661], this Court had held that the right to compassionate appointment is only traceable to the scheme framed by the employer for such appointment and there is no right whatsoever outside the scheme. The observation of the High Court has also been quoted by the Tribunal while discussing aforesaid aspect of the matter. Therefore, in our humble opinion, merely because illegitimate child has been put at par in the matter of inheritance, by specific and statutory provisions, its benefit cannot be extended, so as to put a burden upon the employer 13 W.P.(S) No. 8078 of 2012 With Civil Review No. 2 of 2015 ` when employer specifically has disallowed such benefit to a successor of the employee. Now regarding the question of reasonableness of the Railway Board's Circular, the Tribunal observed that in view of the Judgment of this Court in the case of Basanti Devi, it appears to be in consonance with the public policy of monogamy. However, while dealing with same question, the Tribunal noted down the observation made by the High Court at Kolkata in the case of Smt. Namita Goldar and Anr. Vs. Union of India & Ors. [2010(1) CLJ (Cal.) 465], the relevant extract of the same is being quoted hereunder: The Supreme Court in the case of Rameshwari Devi Vs. State of Bihar & Ors., reported in 2002(2) SCC 431, specifically held that the second marriage during the subsistence of first marriage may be illegal and the children born out of such second marriage are legitimate and are also entitled to the estate of the father. Paragraph 14 of the aforesaid judgment is set out hereunder.: It cannot be disputed that the marriage between Narain Lal and Yogmaya Devi was in contravention of Clause (i) of Section 5 of the Hindu Marriage Act and was a void marriage. Under Section 16 of the Act children of a void marriage are legitimate. Under the Hindu Succession Act, 1956, property of a male Hindu dying intestate devolves firstly on heirs in Clause (1)

which include the widow and son. Among the widow and son, they all get shares (see: Sections 8, 10 and the Schedule to the Hindu Succession Act, 1956), Yogmaya Devi cannot be described as a widow of Narain Lal, her marriage with Narain Lal being void. The sons of the marriage between Narain Lal and Yogmaya Devi being the legitimate sons of Narain Lal would be entitled to the property of Narain Lal in equal shares along with that of Rameshwari Devi and the son born from the marriage of Rameshwari Devi and Narain Lal. That is, however, the legal position when a Hindu male dies intestate.

4. Admittedly, in the present case, second marriage of the deceased employee was accepted by the first wife since she never challenged the second marriage and did not even lodge any complaint before the railway authorities for taking appropriate action against the said deceased 14 W.P.(S) No. 8078 of 2012 With Civil Review No. 2 of 2015 ` employee for contracting second marriage and, therefore, we have no difficulty to accept that the deceased employee married for the second time upon obtaining specific consent from the first wife. There is also no dispute that the said deceased employee used to live with both the wives and the four children of the second wife. Since the first wife dies shortly after the death of the deceased employee, family pension and other retiral benefits also disbursed to the second wife and his children. The compassionate appointment was claimed by the eldest son of the second wife, as the first wife was issueless and also died shortly after the death of the employee concerned.

5. In view of the decision of the Apex Court in the case of Rameshwari Devi (Supra), the children of the second cannot be treated as legitimate and referring to section 16 of the Hindu Marriage Act specifically held that children of a void marriage are legitimate.

6. 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, first wife was issueless and died shortly after the death of the employee concerned.

7. Therefore, the eldest son of the second wife, namely the petitioner no. 2 herein, is entitled to claim appointment on 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 respondent 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 appointment on compassionate ground cannot be sustained in the eyes of law in view of the specific provision of the Hindu Marriage Act, 1966 and pursuant to the decision of the Hon'ble Supreme Court in the cases 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 second 15 W.P.(S) No. 8078 of 2012 With Civil Review No. 2 of 2015 ` wife from being considered for appointment on compassionate ground.

9. The Central Administrative Tribunal further observed that in the instant case there was no protest from the first wife and the first wife was issueless and mentally not in sound health and appellant has been declared as her guardian. After discussing the Judgment of this High Court in the case of Basanti Devi and the Judgment of High Court at Calcutta in the case of Namita Goldar, the Tribunal held that validity of the Railway Board's Circular RBE 1/1992 was not under challenge before a Bench of this Court in the case of Basanti Devi and since the Circular was already quashed by the High Court at Calcutta to the extent it prevents the children of second wife from being considered for appointment on compassionate ground and was not brought to the notice of this Court, the order of this Court cannot be adopted as law. Tribunal further observed that the Railway Board is one and when orders passed by various coordinate Benches of the Tribunals or the High Courts are within its knowledge, the Board or its subordinate offices should have brought this to the notice of this Court. Considering the

aforesaid aspects, the Tribunal disposed of the O.A. No. 212 of 2011 (R) filed by the respondent no. 1 with a direction upon the Railways to reconsider case of the applicant (respondent no.

1) as per rules ignoring the RBE Circular 1/1992 to the extent it makes the children born of second wife ineligible for consideration for appointment on compassionate ground. Tribunal further directed to complete the said exercise within a period of four months from the date of receipt/ production of a copy of said order.

10. Being aggrieved by the aforesaid order, the Union of India preferred writ petition being W.P.(S) No. 8078 of 2012 , which is the subject matter for reference before the Larger Bench, as stated hereinabove.

11. We have heard learned counsel for the parties. 16 W.P.(S) No. 8078 of 2012 With Civil Review No. 2 of 2015 `

12. Mr. Mahesh Tewari, learned counsel appearing for the Railways submits that the Central Administrative Tribunal has erred in passing the impugned order ignoring the Railway Circular No. 1/1992. Learned counsel further submits that the Tribunal has erred in ignoring Rule 21 of the Railway Service (Conduct) Rules, 1966 which completely bars appointment of second widow or her children on compassionate ground unless the second marriage was performed by due permission of Railway. Learned counsel further submits that the deceased employee had never taken permission for his second marriage. Learned counsel further submits that the Tribunal cannot give go by to the Judgment passed by this Court in W.P.(S) No. 4461 of 2008 and other analogous cases. Learned counsel further emphatically argued that the Judgment passed by the High Court at Calcutta is not binding on this Court and the case of Rameshwari Devi vs. State of Bihar & Others [AIR 2000 SC 735], is not applicable in the instant case and no benefits can be derived from the Judgment of the Apex Court passed in Rameshwari Devi as in that case the Apex Court has held and observed that son of the second wife has a right in the property, that does not mean that it can be applicable also in the case of compassionate appointment and, therefore, the Circular of the Railway Board cannot be overlooked while considering case of compassionate appointment and as such, the decision of the Central

Administrative Tribunal relying upon the Judgment passed by the High Court at Calcutta is not sustainable in the eyes of law as the Central Administrative Tribunal, Ranchi Bench is bound by the Judgment of High Court of Jharkhand at Ranchi rendered in the case of Basanti Devi.

13. Per contra, Mrs. M.M. Pal, learned counsel for the respondent no. 1 submits that there is no error in the order passed by the Central Administrative Tribunal. The said Judgment has fully considered and elaborately discussed the various Judgments passed by the Tribunals as also this Hon'ble Court. She strenuously argued 17 W.P.(S) No. 8078 of 2012 With Civil Review No. 2 of 2015 ` that there is no infirmity in the order passed by the learned Central Administrative Tribunal. The said Circular No. 01/1992 had already been quashed by the Central Administrative Tribunal while dealing O.A. No. 1117 of 2008 and as such the said issue is no more resintegra and cannot be raised again and again. The issue fell for consideration before the Calcutta High Court and the said Court had decided the issue and law was laid down quashing the said Circular of the Railways bearing No. 01/1992. Learned Sr. Counsel further submitted that once the said Circular has been quashed by the Calcutta High Court, it is no more in existence and when the said Circular itself is no more in existence, the benefits of said Circular cannot be taken or the purport of that Circular cannot be raised for taking the benefits in case of compassionate appointment. Law has been decided by the Calcutta High Court and ratio of which is binding on all. The Railway Board has not come out with any new Circular after quashment of the Circular No. 01/1992 and as such, no error has been committed by the learned Central Administrative Tribunal and no interference is required. 14. Be that as it may, going through the rival submission of the parties and considering the reference and the issue to be decided, we are of the considered view that when the Circular No. 01/1992 has already been quashed by the Calcutta High Court and the Circular is no more in existence, no benefits can be taken by the Railway Board out of the said Circular and this question is no more resintegra. It is an admitted fact that the Railway Board has not come out with any new Circular after quashment of the said Circular. Once the Circular has been quashed by the Calcutta High Court in the case of Smt. Namita Goldar and Another Vs. Union of India & Others reported in 2010(1) CLJ (Cal.) 465. The settled issues cannot be allowed to be raised again

and again. The said Circular was quashed by the High Court at Calcutta to the extent that it prevents the children of second wife from being considered 18 W.P.(S) No. 8078 of 2012 With Civil Review No. 2 of 2015 ` for appointment on compassionate ground. There should have been a serious endeavour on the part of the Railways, especially the Railway Board to circulate the decision of the Tribunals or the High Courts on their circulars/ orders, especially those involving policy decisions and/or issue fresh circulars or corrigendum in the light of such orders of the Tribunal/ High Court to avoid any confusion in the matter and to bring uniformity in decision making. The fact that the Railway Board never challenged the order of the High Court at Calcutta passed in the case of Namita Goldar before the Apex Court and as such, it has attained finality. The fact also remains that the Order of the High Court at Calcutta was never brought to the knowledge of this Court in the matter of Basanti Devi. 15. In the facts and circumstances of the case, it is necessary to discuss the Judgment rendered by the Hon'ble Apex Court in the case of National Institute of Technology Vs. Niraj Kumar Singh reported in (2007) 2 SCC 481, which is fully applicable in the instant case. All public appointments must be in consonance with Article 10 of the Constitution of India. Exception carved out, therefore, are the case where the appointment are to be given to the widow or dependent children of the employer who died in harness. Such an exception is carved out with a view to see that the family of the deceased employee, who has died in harness, does not become a destitute. . Further, in the case of Jyoti Prasad Vs. Union Territory of Delhi reported in AIR 1961 SC 1602, the Court observed as under: such guidance may thus be obtained from or afforded by (a) the preamble read in the light of the surrounding circumstances which necessitated the legislation taken in conjunction with well known facts of which the Court might take the judicial notice or of which it is apprised by evidence before it in the form of evidence, or (b) even from the policy or purpose of enactment which may be gathered from other operative provisions applicable to analogous or comparable situations or generally from the object sought to be achieved by the enactment. 19 W.P.(S) No. 8078 of 2012 With Civil Review No. 2 of 2015 ` In the case of Sulekha Vidyarthi case [(1991) 1 SCC 2012], the Apex Court held as under: reasonable and nonarbitrary exercise of discretion is an inbuilt requirement of law and any unreasonable or arbitrary exercise of it violates

Article 14. Discretion must be exercised reasonably in furtherance of public policy, public good and for public cause. Discretionary action taken without application of mind will be annulled as an arbitrary exercise of power. Reference may also be made to the case of Onkar Lal Bajaj Vs. Union of India reported in (2003) 2 SCC 673 and in the case of Consumer Action Group Vs. State of Tamilnadu reported in (2000) 7 SCC 425.

16. The issue to be decided by this Larger Bench regarding reference made is being answered accordingly as follows: Once the Railways Board's Circular No. 1/1992, dated 02.01.1992 has been quashed by the Hon'ble Calcutta High Court in the case of Smt. Namita Goldar (Supra) to the extent it prevents the children of second wife from being considered for appointment on compassionate ground and the said decision attained finality, having not been challenged by the Railway authorities, the Circular of the Railway Board to the extent quashed by the Hon'ble Calcutta High Court is no more in existence and no benefit thereof can be taken by the Railway Authorities unless a contrary view is taken by the Apex Court. As such, the Railway Board is stopped from taking the advantage of the Circular No. 1/1992, dated 02.01.1992 arising out of Rule 21 of Railway Service (Conduct) Rules, 1966 in similar matters after it being quashed by Hon'ble Calcutta High Court in the case of Smt. Namita Goldar & Another Vrs. Union of India & Ors. Resultantly we hold that the Central Administrative Tribunal has rightly decided the O.A. No. 212 of 2011 (R) rejecting the 20 W.P.(S) No. 8078 of 2012 With Civil Review No. 2 of 2015 ` contention of the Railway Board. We do not find any illegality or infirmity in the impugned order dated 04.05.2012 passed in O.A. No. 212 of 2011(R) and as such, the writ petition merits dismissal. In the result, this writ petition stands dismissed and the order dated 04.05.2012 passed in O.A. No. 212 of 2011(R) is upheld. CIVIL REVIEW NO. 2 OF 2015 This Civil Review arises out of Judgment dated 24.07.2014 passed in W.P.(S) No. 16 of 2014 [M.V.V. Prakash Vs. Union of India & Others] decided by Mrs. R. Banumathi, CJ and Sri Amitav Kumar Gupta, J. Since Hon'ble Judge Sri Amitav Kumar Gupta is sitting Judge of the Court, let this Civil Review be listed before the appropriate Bench with the approval of Hon'ble the Chief Justice. (Dr. S.N. Pathak, J) H.C. Mishra, J. (H.C. Mishra,J.) Aparesh Kumar Singh, J. (Aparesh Kumar Singh, J.) Dated the June 16, 2017 High Court of Jharkhand at Ranchi RC/A.F.R.

