



**HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR**

D.B. Spl. Appl. Writ No. 1565/2018

Hemendra Puri S/o Late Shri Hairsh Puri, by caste Goswami (Puri), aged about 45 years, Resident of Kair of Lakshman Giri, Goswami, Gau Ghat, Fateh Sagar, Jodhpur (Raj.)

----Appellants

Versus

1. The Jai Narayan Vyas University, Jodhpur (Raj.)
2. The Vice Chancellor, Jai Narayan Vyas University, Central Officer, Residency Road, Jodhpur (Raj.)
3. The Registrar, Jai Narayan Vyas University, Central Office, Residency Road, Jodhpur (Raj.)
4. Bhupendra Puri S/o Kamla, By Caste Goswami (Puri), Resident Of Kamla Sadan, Plot No. 6, Subhash Colony, Gali No. 2, Ratanada, Jodhpur (Raj.)
5. Kamla D/o Shri Shanker Puri, By Caste Goswami (Puri) Resident Of Kamla Sadan, Plot No. 6, Subhash Colony, Gali No. 2, Ratanada, Jodhpur (Raj.)

----Respondents

For Appellant(s) : Mr. B.L. Swami
For Respondent(s) : Mr. Rajesh Panwar, Sr. Adv. assisted
by Mudit Vaishnav
Mr. Nagraj Goswami

**HON'BLE MR. JUSTICE SANDEEP MEHTA
HON'BLE MR. JUSTICE KULDEEP MATHUR**

J U D G M E N T

PRONOUNCED ON :::: 16 /11/2022

RESERVED ON :::: 01/11/2022

The present intra court appeal has been preferred against the judgment dated 12.04.2018 passed by learned Single Bench whereby writ petition filed by the petitioner seeking compassionate appointment in the respondent Jai Narayan Vyas



University (hereinafter referred to as 'respondent-university') in lieu of his deceased father was rejected.

Briefly stated facts of the case are that the father of the appellant while working on the post of 'Tabla Vadak' in the respondent-university, passed away on 01.12.2004. The appellant and respondent No.4 (born through second wife Smt. Kamla) applied for appointment on compassionate grounds in place of deceased employee. The respondent-university considered both the applications keeping in view the provisions of the Rajasthan Compassionate Appointment of Dependents of Deceased Government Servants Rules, 1996 (hereinafter referred to as 'Rules of 1996') and vide office order dated 04.08.2005 extended compassionate appointment in favour of respondent No.4. Aggrieved by the aforesaid action of the respondent-university, the appellant filed a writ petition which came to be dismissed vide order dated 12.04.2018. Hence, this special appeal.

Learned counsel for the appellant submitted that legality of second marriage of the deceased employee with Smt. Kamla is doubtful and therefore, compassionate appointment could not have been offered to the respondent No.4. Learned counsel further submitted that name of respondent No.4 was not entered as a dependent in the service book of deceased employee therefore, he was not even eligible to be considered for compassionate appointment. Lastly, it was submitted that appellant was fully eligible and entitled to be considered for compassionate appointment in place of deceased employee, however, illegally ignoring his right of claiming compassionate appointment as per Rules of 1996, the respondent No.4 has been



appointed on compassionate grounds in the respondent university vide office order dated 04.08.2005 against the post of Class-IV employee. It was thus prayed that the present appeal deserves to be allowed.

Per contra, learned counsel for the respondents submitted that indisputably, respondent No.4 is son of deceased employee and Smt. Kamla Devi therefore, he was fully eligible to seek employment in the respondent-university upon the death of his father Shri Harish Puri. Learned counsel further submitted that in cases where more than one of the dependents seek employment on compassionate grounds, Rule 10(2) the Rules of 1996 empowers Head of the Department to select one of the dependents of the deceased employee. Lastly, it was submitted that the competent authority, after receiving applications for compassionate appointment from more than one dependent of the deceased employee thoroughly considered the financial position and educational qualifications possessed by the applicants before reaching to the conclusion that respondent No.4 deserved to be appointed as Class-IV employee in the respondent-university. It was thus prayed that the appeal deserves to be dismissed as being devoid of merit.

Heard submissions advanced at Bar and perused the material available on record.

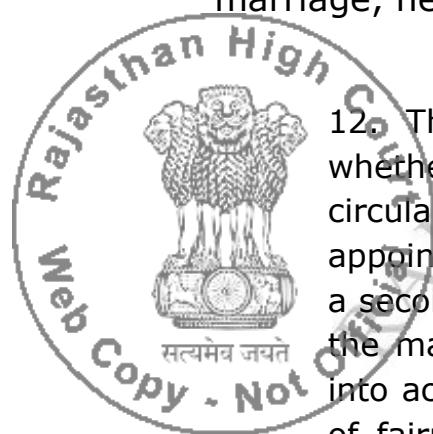
Rule 10(2) of the Rules of 1996 is reproduced hereinbelow for the sake of ready reference:-

10. Procedure :- (2) Where the deceased Government servant is not survived by a spouse the application shall be made by one of the dependants of the deceased Government servant and other dependants shall have to give their consent for his/her candidature. Provided that if



more than one of the dependants seek employment, the Head of Department shall select one, keeping in view the overall interest and welfare of the entire family, particularly the minor members.”

In the case of **Union of India vs. V.R. Tripathi** reported in **(2019) 14 SCC 646**, Hon’ble the Supreme Court, while considering the issue of legitimacy of child born from a second marriage, 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 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.

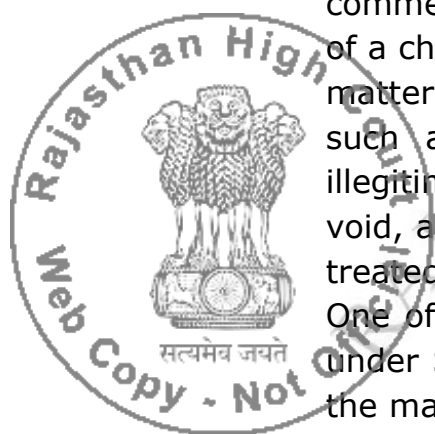
(3) Nothing contained in sub-section (1) or subsection (2) shall be construed as conferring upon any child of a marriage which is null and void or which is annulled by a decree of nullity under section 12, any rights in or to the



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. Subsection (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.

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





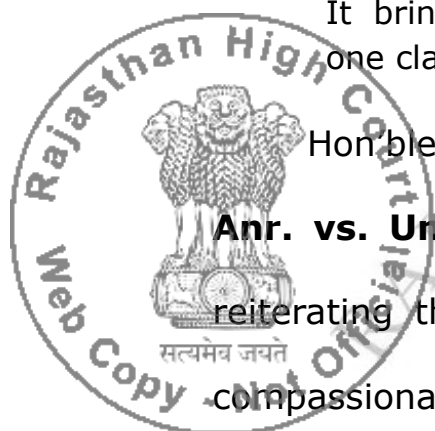
such a child from seeking the benefit of compassionate appointment. Such a condition of exclusion is arbitrary and ultra vires.

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 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.”



Hon'ble the 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 this regard, descent must be understood to encompass the familial origins of a person which would include the validity or otherwise of the marriage of the parents of a claimant for compassionate appointment and the claimant's legitimacy as their child.

In view of law enunciated by Hon'ble the Supreme Court and provisions of the Rajasthan Compassionate Appointment of Dependents of Deceased Government Servants Rules, 1996, we have no hesitation in reaching to the conclusion that the application submitted by respondent No.4 seeking compassionate appointment could not have been rejected by the respondent-university solely on the ground of him being child from the second



wife. The Head of the Department as per Rule 10(2) of the Rules of 1996 is competent to decide the applications for compassionate appointment keeping in view the overall interest and welfare of the family, if more than one of the dependents claim employment on compassionate grounds.

In view of the facts noted above, we are of the firm view that the competent authority i.e. the Head of the Department had rightly considered the application submitted to be compliant of the Rules of 1996 and issued an offer of appointment in his favour.

In light of aforesaid discussion, the order of compassionate appointment dated 04.08.2005 issued in favour of respondent No.4 does not suffer from any infirmity warranting interference by this Court. The order dated 12.04.2018 passed by the learned Single Bench is resonable and logical, therefore, we are not inclined to interfere with the same.

In the result, the special appeal stands dismissed being devoid of merit.

No order as to costs.

(KULDEEP MATHUR),J सत्यमेव जयते **(SANDEEP MEHTA),J**

Ravi Khandelwal