



**IN THE HIGH COURT OF KARNATAKA AT BENGALURU**

DATED THIS THE 24<sup>TH</sup> DAY OF JUNE, 2021

PRESENT

THE HON'BLE MRS. JUSTICE B. V. NAGARATHNA

AND

THE HON'BLE MR. JUSTICE HANCHATE SANJEEVKUMAR

**WRIT APPEAL No.2495/2019 (S - RES)**

**BETWEEN:**

K. SANTHOSHA,  
S/O LATE K KABBALIAH,  
AGED ABOUT 19 YEARS,  
RESIDING AT KADAVEKERE,  
DODDI VILLAGE,  
MALAGALU POST, KASABA HOBLI,  
KANAKAPURA TALUK,  
RAMANAGARA DISTRICT-562 117.

... APPELLANT

(BY SRI. SUBRAMANYA BHAT, ADVOCATE (THROUGH V.C.))

**AND:**

1. THE KARNATAKA POWER TRANSMISSION CORPORATION LIMITED,  
REPRESENTED BY THE  
MANAGING DIRECTOR,  
KAVERI BHAVAN,  
BANGALORE -560 001.
2. THE BANGALORE ELECTRICITY SUPPLY COMPANY LIMITED,  
REPRESENTED BY THE MANAGING  
DIRECTOR, K.R. CIRCLE,  
BANGALORE - 01.
3. THE SUPERINTENDING ENGINEER (ELCL)  
BANGALORE ELECTRICITY SUPPLY  
COMPANY LIMITED,  
RAMANAGARA CIRCLE,  
RAMANAGARA - 562 117.

4. THE EXECUTIVE ENGINEER (ELCL),  
BANGALORE ELECTRICITY SUPPLY  
COMPANY LIMITED,  
KANAKAPURA DIVISION,  
KANAKAPURA,  
RAMANAGARA DISTRICT - 562 117. ... RESPONDENTS

(BY SRI. RAVINDRA REDDY, ADVOCATE FOR R-1 to R-4  
(THROUGH V.C.))

THIS WRIT APPEAL IS FILED UNDER SECTION 4 OF THE KARNATAKA HIGH COURT ACT, 1961 PRAYING TO ALLOW THIS APPEAL AND SET ASIDE THE ORDER PASSED BY THE LEARNED SINGLE JUDGE IN W.P.NO.16400/2015 DATED 15.12.2018 AND ORDER PASSED IN R.P.NO.11/19 DATED 10.06.2019, AND GRANT ALL THE RELIEFS SOUGHT IN THE WRIT PETITION.

THIS WRIT APPEAL IS COMING ON FOR PRELIMINARY HEARING, THIS DAY, **NAGARATHNA J.**, DELIVERED THE FOLLOWING:

### **JUDGMENT**

Though this appeal was listed to consider I.A.No.1/2019 seeking condonation of delay of 174 days in filing the appeal, on condoning the said delay and on disposal of I.A.No.1/2019 (vide separate order), with the consent of learned counsel appearing for the parties, it is heard finally.

2. The appellant was the petitioner in W.P.No.16400/2015. In that petition, petitioner assailed communication bearing No.CEA(«)/gÁÀÈ/G É¼/ É/À É/À1/2014-15/6884 dated 11.03.2015 addressed to respondent No.4 by respondent No.3 (Annexure-'B') and Circular bearing

No.KPTCL/B5/721/80-81 dated 23.09.2011 issued by respondent No.1 (Annexure-'D') insofar as a portion of clause 2 is concerned, which reads as under:

“Under no circumstances, the second wife nor her children are eligible for compassionate grounds appointment, if the marriage has taken place during the subsistence of the first marriage.”

3. By order dated 15.12.2018, the learned Single Judge rejected the writ petition. Thereafter, Review Petition No.11/2019 was filed. The learned Single Judge dismissed the review petition also. Being aggrieved, the petitioner has assailed the aforesaid orders.

4. Succinctly stated, the facts are, the petitioner/appellant herein is the son of deceased Kabbalaiah, who was working as Lineman Grade-II. He died in harness on 10.06.2014. During his life time, he was married for the second time during the subsistence of his first marriage. Out of the second marriage, the petitioner was born. On the death of his father, petitioner made an application seeking appointment on compassionate basis under the Regulations titled Karnataka Electricity Board Employees' Recruitment

(Appointment on Compassionate Grounds) Regulations, 1997 (hereinafter referred to as "Regulations" for the sake of convenience). The respondents rejected the claim of the petitioner on the ground that he was the son of the second wife of the deceased employee Kabbalaiah and his father had married his mother during the subsistence of his first marriage. Therefore, he was not entitled to appointment on compassionate basis. In that context, reliance was placed on the Circular dated 23.09.2011 issued by respondent No.1 i.e. the Karnataka Power Transmission Corporation Limited (hereinafter referred to as "KPTCL" for the sake of brevity), wherein in Clause 2, dealing with the eligibility for appointment on compassionate basis, it was stated that neither the second wife nor her children are eligible for compassionate grounds appointment, if the marriage had taken place during the subsistence of the first marriage. Being aggrieved by the communication dated 11.03.2015 and that portion of the Circular denying appointment on compassionate basis to children from the second marriage, while the first marriage of the deceased employee is in subsistence, the petitioner assailed the same in the writ petition. Being aggrieved by the

dismissal of the writ petition as well as the review petition, the petitioner has preferred this present appeal.

5. We have heard the learned counsel Sri. Subramanya Bhat M., for the appellant and Sri. Ravindra Reddy, learned counsel for respondent Nos.1 to 4 and perused the material on record.

6. Learned counsel for the appellant at the outset submitted, the learned Single Judge was not right in dismissing the writ petition as well as review petition. He drew our attention to the Regulations to contend that Regulations 2(1)(a) and 3(2) state that the dependent son is entitled to be appointed on compassionate basis. That the appellant herein, as a dependent son of the deceased Board employee - Kabbalaiah, who was his father, was entitled to be appointed on compassionate grounds. It may be that he is the son of second wife of Kabbalaiah, but the said fact cannot be a ground to reject the application made by the appellant for appointment on compassionate basis.

7. Learned counsel for the appellant submitted that what is stated in Regulation 3(2)(a) is 'son', the same is not qualified by saying that the son has to born

out of a valid wedlock. It was submitted that any male child born to a couple is a 'son'. The Rule making authority therefore has deliberately used the expression 'son' and has not restricted it by any other condition such as to the effect that the son should have been born out of a valid marriage of the deceased employee who died while in service.

8. Learned counsel for the appellant further contended that the Circular dated 23.09.2011 stating that, under no circumstances, the second wife or her children are eligible for compassionate grounds appointment, if the marriage is taken place during the subsistence of first marriage, is contrary to the Regulations. It was submitted that when Regulations do not restrict the claim of a son, the Circular cannot put an embargo on such a claim by stating that neither the second wife nor her children are eligible for appointment on compassionate basis, if the marriage has taken place during the subsistence of first marriage.

9. In this context, our attention was also drawn to Section 16 of the Hindu Marriage Act, 1955 (hereinafter referred to as 'Act' for the sake of brevity), wherein, there

is a conferment of legitimacy on children born out of void marriage as defined under Section 11 of the said Act. It was submitted that Section 16(1) begins with a non-obstante clause and it states that '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 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 the said Act and whether or not the marriage is held to be void otherwise than on a petition under this Act.'

10. He submitted that the said provision has been read into the Regulations in respect of appointment on compassionate basis by the Hon'ble Supreme Court in the case of ***Union of India vs. V.R.Tripathi [(2019) 14 SCC 646]***, (*V.R.Tripathi*), wherein it has been categorically observed that, though there may be restriction to an illegitimate child succeeding to the ancestral properties of the deceased parent and the right is only with regard to the separate property of the deceased parent when their marriage is void, the same

cannot be construed as a restriction so as to prevent the son born out of a void marriage to claim appointment on compassionate basis. Reliance was placed on other judgments of Hon'ble Supreme Court, namely, ***Vidhyadhari vs. Sukhrana Bai [(2008) 2 SCC 238]***, (*Vidhyadhari*) and the judgment of the Division Bench of this Court in ***Sri.J.Mahendra vs. The General Manager [W.A.No.3144/2010 disposed of on 01.04.2014]***, (*Sri. J.Mahendra*), the judgment of the Division Bench of this Court in the case of ***N.Anusuyamma Vs. BESCO [W.A.No.379/2006 dated 30.11.2011]*** (*N.Anusuyamma*) and the order of the learned Single Judge in the case of ***Lohit Gowda V. vs. State of Karnataka [W.P.No.28676/2018 dated 25.04.2019]*** (*Lohit Gowda*). Learned counsel for the appellant contended that in view of the aforesaid dicta, the appellant is entitled for consideration of his case under the Regulations. Hence, the impugned orders of the learned Single Judge may be set aside and the application of the appellant may be directed to be considered by the respondents at the earliest.

11. *Per contra*, learned counsel for respondent Nos.1 to 4 supported the orders of the learned Single



Judge and submitted that Regulation 2(1)(b) categorically defines 'family' in relation to a deceased employee to mean only his or her legally wedded spouse and their sons whether married or unmarried and unmarried daughters who were jointly living with him. Therefore, the son not born out of a valid marital relationship, is not entitled to be considered under the Regulations. He submitted that the embargo is just and proper and in Circular dated 23.09.2011, the same has been clarified. That only when the spouse of an employee has died, then he or she is entitled to marry for the second time. But when the first marriage is in subsistence, the employee is not entitled to marry for the second time. Such an embargo is also there in the Service Rules, as permission has to be taken before marrying during the subsistence of a first marriage. Therefore, the Circular clarifies what is sought to be meant under the Regulations.

12. In support of his case, learned counsel for the respondents placed reliance on an order of the learned Single Judge of this Court in the case of ***R.Muniraju vs. Chief Engineer, KEB [Writ Petition No.42844/1999 disposed on 03.12.1999]***, (*R.Muniraju*), ***State Bank of India vs. Jaspal Kaur, [W.A.No.442/2010 dated***

**29.08.2013]** and ***Union of India vs. Thoushif [2017 (2) KCCR 1266](Thoushif)***.

13. Learned counsel for respondent Nos.1 to 4 submitted that appointment on compassionate basis is an exception to regular recruitment. That such an exception can be made only by Regulations. It is only when an employee of the respondent-Corporation dies in harness, his widow being the legally wedded wife of the deceased employee or his son born through her, can seek appointment on compassionate basis. The said position of law has been clarified by the Circular dated 23.09.2011. The same cannot be assailed as being contrary to law. Learned counsel for the respondents further submitted that having regard to the Circular as well as Regulations, endorsement at Annexure-'B' was rightly issued to the appellant on 11.03.2015.

14. He further submitted that the learned Single Judge has correctly appreciated the position of law and has dismissed the writ petition as well as the review petition. There is no merit in this appeal and the same may be dismissed.

15. The detailed narration of facts and contentions would not call for reiteration. It is not in dispute that the petitioner/appellant's father - Kabbalaiah was an employee of the respondent-KPTCL and he died in harness. It is also not in dispute that the appellant made an application seeking appointment on compassionate basis. Annexure-B is the endorsement, which was issued to the appellant stating, he is not entitled for appointment on compassionate basis, as his father had married for the second time during the subsistence of his first marriage and hence, his mother was not the legally wedded wife and therefore, he was not a legitimate son. We have perused Annexure-B, which is the endorsement dated 11.03.2015. Being aggrieved by the said communication, the appellant challenged not only the said communication, but also the clarification issued in the Circular dated 23.09.2011, where the relevant portion reads as under:

“Under no circumstances, the second wife nor her children are eligible for compassionate grounds appointment, if the marriage has taken place during the subsistence of the first marriage.”

16. It is no doubt true that appointment on compassionate basis is an exception to appointment by

recruitment. It is well settled that appointment on compassionate grounds is not a source of recruitment, but is an exception to the general rule of recruitment and hence a 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. Hence, the right to compassionate appointment arises under the particular scheme framed by the employer for such employment and there is no right outside the said scheme, vide ***State Bank of India vs. Raj Kumar [(2010)11 SCC 661]***.

17. If an employee who died in harness has left the family unsettled, the Regulations framed in exercise of powers conferred under Section 79(c) r/w Section 15 of the Electricity (Supply) Act, 1948, provide for appointment on compassionate basis by the respondent/KPTCL. It is necessary to extract the relevant clauses of the Regulations as under:

“1. Title and commencement:-

(1) x x x x x

(2) x x x x x

(3) Notwithstanding anything contained in the Karnataka Electricity Board Recruitment and Promotions Regulations, 1969 and

regulations of recruitment specially made in respect of any service or post or deemed to have been made under KEBESR, these Regulations shall apply in respect of appointment of the dependent of a deceased Board employee on compassionate grounds.

## 2. Definitions:-

(1) In these Regulations, unless the context otherwise requires:

a) Dependents of a 'deceased Board employee' means, his widow, son and unmarried daughter who were wholly dependent upon him and were living jointly with him;

b) "family": in relation to a deceased employee shall mean only his or her legally wedded spouse and their sons whether married or unmarried and unmarried daughters who were jointly living with him.

## 3. Eligibility for appointment:

(1) Appointment under these regulations shall not be claimed as a matter of right and shall not be given as a matter of course. It is entirely at the discretion of the Board.

(2) Appointment under these Regulations shall be restricted to the dependents of the deceased Board employee in the following order of preference, namely:-

(a) son,

- (b) unmarried daughter,
- (c) widow, if there are no son/s and unmarried daughter/s, or for any valid reason they are not willing to accept the appointment.

(3) Notwithstanding anything contained in any other law or regulations, an adopted son or daughter of a deceased employee shall not be eligible for appointment under these Regulations.

#### 4. Conditions of appointment:-

Appointment on compassionate grounds under these Regulations shall be subject to the following conditions:

- (1) The family of the deceased Board employee should be in a immediate financial crisis or destitution on account of the death of the employee.

#### Explanation:-

- (a) Family of a deceased Board employee shall be considered to be in financial crisis or destitution if the recurring monthly income of the family from all sources of all persons whether living separately or jointly including earnings of other family members shall less than the income prescribed by the Board from time to time. For calculating such monthly income, the income from family pension, interest

earned on pensionary benefits shall be excluded;

(b) Recurring monthly income from all sources of the family for the purpose of this regulation shall be computed by the Head of the Office or the appointing authority;

(i) On the basis of the last annual property return filed by the deceased Board employee and if, for any reason, it is not available, on the basis of a certificate of income issued by a Revenue Officer not below the rank of Tahsildar; and

(ii) In case any member of the family of the deceased Board employee is employed in any State or Central Government Service or a Public or Private Sector Undertaking or a Private Establishment, on the basis of a certificate issued by his employer and in case such member is self employed, on the basis of certificate issued by a revenue officer not below the rank of Tahsildar.

(2) Person seeking appointment shall be within the age limit specified for the post in the relevant regulations of recruitment specially made in respect of any service or post read with Regulation 5 of Chapter II and Regulation 4 of Chapter VII of KEB R&P Regulations, 1969 and where it is not so specified such person

shall be within the age limits specified in the KEB R&P Regulations, 1969.

(3) Person seeking appointment should possess the minimum qualification specified for the post in the relevant Regulations, recruitment specially made in respect of any service or post.

(4) Appointment under these Regulations shall be confined to the posts coming under Group 'C' and 'D' depending upon the qualification specified for the post and availability of vacancies.

(5) Appointment shall be made only against a direct recruitment vacancy, but for the purpose of calculation of quota between direct recruits and promotees it shall not be taken into account.

(6) Appointment under these Regulations shall be considered only once for a family."

18. On reading of the same, it is evident that, the Regulations have been made notwithstanding anything contained in the Karnataka Electricity Board Recruitment and Promotion Regulations, 1969 and they apply to appointment of dependents of a deceased Board Employee on compassionate grounds by way of an exception.



19. Learned counsel for the respondents placed reliance on the definition of 'family' in Regulation 2(1)(b) to contend that a family in relation to a 'deceased Board employee' means, only his or her legally wedded spouse and their sons, whether married or unmarried and unmarried daughters who were jointly living with him. Therefore, having regard to the definition of 'family', the expression 'son' must be interpreted to mean that he should be a son born to a legally wedded spouse. Hence, the clarification in the Circular in clause (2) states that, 'under no circumstances, the second wife nor her children are eligible for compassionate grounds appointment, if the marriage has taken place during the subsistence of the first marriage'.

20. We have considered the aforesaid submission in the context of the definition of 'family' in Regulation 2(1)(b) and the 'Eligibility for Appointment' under Regulation 3(2) as well as 'dependents of a deceased Board employee' under Regulation 2(1)(a) of the Regulations .

21. The eligibility for appointment under Regulation 3(2) states that, appointment on

compassionate basis is restricted to the 'dependent of a deceased Board employee' in the following order of preference, namely;

- (a) Son;
- (b) Unmarried daughter;
- (c) Widow, if there are no son/s and unmarried daughter/s, or for any valid reason they are not willing to accept the appointment.

22. Further, Regulation 3(3) categorically states that notwithstanding anything contained in any other law or regulations, an adopted son or daughter of a deceased Board employee shall not be eligible for appointment under these Regulations. It is noted that the Regulations have been made by the rule making authority being conscious of the fact that an adopted son or daughter has the same rights in law as a son or daughter born to a deceased Board employee. But, under the Regulations, adopted children are expressly excluded from the scope of the appointment on compassionate basis, which is in the realm of policy. However, the expression under Regulation 3(2)(a) is 'son', but there is no qualification to the expression 'son'. It does not say that the son or even unmarried daughter should be born to the parents who are

legally wedded, even the expression 'widow' is not clarified by saying that the widow who was legally married to the deceased employee only is entitled to make an application for compassionate appointment. Similarly, the expression 'unmarried daughter' is not qualified by the expression that the unmarried daughter should have been born to a legally wedded deceased employee. In the absence of such a qualification being made in the Regulations by way of an exclusion of such category of persons, question arises, whether the same could have been clarified by way of an embargo under Circular dated 23.09.2011, which has been issued for the purpose of implementation of the Regulations.

23. In this context, while we have already noted that there is no express qualification to the expression 'son', 'unmarried daughter', 'widow', except that a widow can be considered for appointment, only if, there are no son/s or unmarried daughter/s or for any valid reasons they are not willing to accept the appointment, could by an implication, an application filed by a 'son', 'unmarried daughter' and 'widow', could be rejected on the premise that they are not related to the deceased Board employee under a valid marriage, in other words, under a void marriage?

24. Before we proceed further, it would be useful to place reliance on Section 16 of the Act applicable to the appellant, which reads as under:

**“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 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) of 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.”

25. A reading of the same would clearly indicate that the Parliament in its wisdom has conferred legitimacy to children born out of a void marriage. Any person who marries during the subsistence of his first marriage and who has a spouse living at the time of the marriage, enters into a void marriage and such a marriage is void in terms of Section 11 of the said Act. But a reading of Section 16 would indicate that children born out of a void marriage are considered to be legitimate by a deeming fiction. While conferring legitimacy to such children, the Parliament has placed an embargo only on the succession rights of such illegitimate children, inasmuch as they can succeed only to the separate property of their parents, as if they are the legitimate children of their parents and not to the ancestral property, (Section 16(3) of the Act). Section 16 of the Act deals with legitimacy of children of void and voidable marriages. That means it is necessary

that there ought to be a marriage between the parties which is a void or voidable marriage before Section 16 of the Act could apply to the children born out of such a marriage. Therefore, Section 16 of the Act does not apply to a case where even in the absence of any marriage at all, children born to parents have been conferred any rights. Therefore, before any benefit could be conferred on a child born to parents, it is necessary that such parents ought to have been married and their marriage is either void or voidable. Hence, it is only children born to parents whose marriage is void or voidable, who have conferred with benefit under Section 16 of the Act. Therefore, the rule making authority has deliberately not clarified the expression 'son', 'unmarried daughter', being the persons entitled to be considered for compassionate appointment.

26. The contention of learned counsel for respondents is that having regard to the definition of 'family' in Regulation 2(1)(b), the Circular dated 23.09.2011 is in consonance with the expression 'family'. We cannot accept the same for the reason that the definition of 'family' in the Regulations is to be applied 'unless the context otherwise requires'. The expression family is found in Regulation 4(1), wherein it is stated that

the family of the deceased Board employee should be in immediate financial crisis or destitution on account of the death of the employee and the explanation thereto explains what is financial crisis or destitution. Therefore, that is the consideration to be made when an application is preferred by the 'son', 'unmarried daughter' or 'widow' of an employee, who died in harness for seeking compassionate appointment.

27. The expression 'family' cannot be imported into Regulation 3(2) to interpret the same to mean that, it is only a legitimate son, legitimate unmarried daughter or a widow, who was a legally wedded wife or spouse of the deceased Board employee who are entitled to be considered for appointment on compassionate basis. The expression in the definition clause "In these Regulations, unless the context otherwise requires", is significant. Therefore, the definition of 'family' must be considered in a contextual perspective and not imported to Regulation 3(2). While considering the application for appointment on compassionate basis the definition of 'family', under Regulation 4(1), whether the family of a deceased Board employee is in immediate financial crisis or destitution on account of death of the employee is relevant.

28. In our view, that definition cannot be imported while considering the right of a 'son', 'unmarried daughter' or 'widow' of deceased employee who has preferred an application for appointment on compassionate basis. Hence, the eligibility of such persons cannot be restricted by qualifying that they should be only a legitimate son or legitimate daughter of the deceased Board employee. If such was the case, there could have been an express exclusion of such category of persons as has been made vis-à-vis adopted son or daughter under Regulation 3(3). But, the rule making authority in its wisdom has not thought it fit to restrict the rights of or qualify a son – as legitimate son and unmarried daughter – as legitimate daughter. Therefore, we are not inclined to accept the submissions of learned counsel for the respondents to the effect that the communication issued to the appellant is based on Circular dated 23.09.2011, which is in consonance with the Regulations, as the definition of 'family' has to be taken into consideration while considering an application filed under Regulation 3(3) which deals with eligibility for appointment on compassionate basis.



29. Before we proceed further, it would be useful to refer to the judgments cited at the Bar. With regard to the judgments referred to by the learned counsel for the appellant, it is noted that a Co-ordinate Bench of this Court, in the case of *Sri.J.Mahendra*, has taken a view that children born out of a second marriage would be legitimate even though the second marriage itself may be void and are entitled to be considered for appointment on compassionate basis. While saying so, the Co-ordinate Bench placed reliance on a judgment of the Hon'ble Supreme Court in ***Vidhyadhari***. In the said judgment, it was observed that a legally wedded wife is not automatically entitled to succession certificate to the exclusion of the second *de facto* wife and her children, when the deceased had made nomination in favour of second wife to receive terminal benefits of his employment, though she herself was not legally wedded wife, yet her children were legitimate for the purpose of share in their father's employment dues.

30. In the said case, reliance was placed in ***Rameshwari Devi vs. State of Bihar and Others [(2000)2 SCC 431***, wherein it was observed that, even if a Government servant contracted second marriage during

the subsistence of his first marriage, children born out of such second marriage would still be legitimate, though the second marriage itself would be void. The Court therefore, went on to hold that such children would be entitled to the pension, but not the second wife.

31. While considering the definition of a 'family' in Regulation 2(1)(b) of the Regulations, it was held in *J.Mahendra (supra)*, that when the Parliament has conferred legitimacy on children born out of void marriages and such children are deemed to be legitimate and are even entitled to acquisition of property of their parents. Hence, they cannot be denied appointment on compassionate basis. It was further held that the Regulation cannot discriminate between children born to a legally wedded spouse and those who are born out of a void marriage and hence a direction was issued to consider the application for appointment on compassionate basis.

32. The aforesaid judgment of the Co-ordinate Bench of this Court is against the present respondents and it is stated at the Bar that same has not been assailed before the Hon'ble Apex Court.

33. A Co-ordinate Bench of this Court in *N.Anasuyamma vs. Bescom and others (supra)*, has also held that when the parliament has conferred legitimacy of children born out of void marriages and they are deemed to be legitimate in the matter of compassionate appointment, there is no good reason to make a distinction between children born to "legally wedded spouse" and "not legally wedded spouse". The Co-ordinate Bench went on to hold as under:

"It may be that, "not legally wedded spouse" may be ineligible because of the matrimonial relationship not being recognised by law but nonetheless the children born out of the bigamous marriages cannot be discriminated by Regulations, which has statutory force. The respondents are State Government Organizations within the meaning of Article 12 of the Indian Constitution. Therefore, the Regulations which discriminate the children not born to legally wedded spouse is unconstitutional and violative of Articles 14 and 16 of the Indian Constitution. Whatever the benefit the children born out to the "legally wedded spouse" should also be

extended to daughters or sons born to "not legally wedded spouse". In that view of the matter, the respondents are directed to consider the case of the appellant in the light of the observations made above. Accordingly, writ appeal is allowed. The respondents to pass necessary orders within two months from the date of receipt of this order."

34. The next judgment cited by learned counsel for the appellant is in the case of **V.R.Tripathi**, which is a recent judgment, wherein specific reference has been made to Section 16 of the Act. In this case the issue, whether the condition which had 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 when the marriage was permitted by the administration taking into account the personal law, etc.) was considered in light of Article 16 of the Constitution of India and Section 16 of the Act.

35. Paragraphs 16 to 22 could be usefully extracted as under:-

**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 2-1-1992 was struck down by the 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] 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 3-4-2013, reiterating the terms of the earlier circular dated 2-1-1992 even after the decision in Namita Goldar [Namita Goldar v. Union of India, 2010 SCC OnLine Cal 266 : (2010) 1 Cal LJ 464] , which attained finality.*

(underlining by us)

36. On a reading of the aforesaid judgment, it is evident that, the Hon'ble Supreme Court has stated that in the said case, the Railway Board, who was the employer of an employee who died in harness, could not have made a discrimination between two categories of children, namely, legitimate and illegitimate children when the Parliament under the Hindu Marriage Act, 1955, has conferred legitimacy even to illegitimate children born out of a void marriage where the deceased employee had married for the second time during the subsistence of his first marriage. The said judgment categorically states that the embargo placed on an illegitimate child of an employee seeking appointment on compassionate basis on the ground that he is illegitimate child in a Circular issued by the Railway Board was erroneous. The facts in the present case are identical.

37. The judgment in ***Namita Goldar and Another vs. Union of India and Others [2010 Lab IC 1465]***, has been approved in *V.R.Tripathi* by stating that there can be no distinction made amongst the children of the first and second wife of a deceased employee.

38. In fact, the Bombay High Court speaking through A.S.Oka J., (as His Lordship then was) in the case of ***Yuvraj Dajee Khadake vs. The Union of India [2019(1) ESC 261]***, has applied the judgment in *V.R.Tripathi* and has held that a child born out of a second marriage can make an application for seeking appointment on compassionate ground and the same has to be considered, as if it is an application filed by an legitimate child and it cannot be rejected on the sole ground that the applicant is an illegitimate son of the deceased employee. In the aforesaid judgment, it was directed that consideration of the case of the applicant therein be within a period of two months from the date of receipt of certified copy of the said order.

39. It would also be useful to refer to the order passed in ***Revanasiddappa and another vs. Mallikarjun and Others [(2011) 11 SCC 1]***, wherein the question was whether illegitimate children are entitled

to a share in the coparcenary property or whether their share is limited only to the self-acquired property of their parents under Section 16(3) of the Act.

40. In that case, it was observed that, with changing social norms of legitimacy in every society, including ours, what was illegitimate in the past may be legitimate today. The concept of legitimacy stems from social consensus, in the shaping of which various social groups play a vital role. In view of ever-changing socio-economic scenario and the consequential vicissitudes in human relationship, the law also articulates such social changes through a process of amendment and by taking note of dynamics in a changing society. Thus, law would take its own time to meet the challenges of the changing social pattern in different time periods.

41. Referring to Section 16 of the Act, it was observed that, the object of the said Section is to bring about social reforms and to confer social status of legitimacy on innocent children born out of void marriages. In the said case, it was also observed that the relationship between the parents may not be sanctioned by law, but the birth of a child in such relationship has to be viewed

independently of the relationship of the parents. A child born in such relationship is innocent and is entitled to all the rights, which are given to other children born in valid marriage. This is the crux of Section 16(3) of the Act. However, some limitation on the property rights of such children is still there in the sense that their right is confined to the property of their parents only.

42. It was further observed that a Court cannot interpret a socially beneficial legislation on the basis as if the words therein are cast in stone. Such legislation must be given a purposive interpretation to further and not to frustrate the eminently desirable social purpose of removing the stigma on such children. In doing so, the Court must have regard to the Constitution including Directive Principles of State Policy enshrined in Articles 37 and 39(f), under which children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity. By the said order, the matter has been referred to Hon'ble the Chief Justice of India for constitution of a larger Bench to reconsider the decision rendered earlier by the Hon'ble Supreme Court under Section 16(3) of the Act.



43. A Learned Single Judge of this Court in *Lohit Gowda V.* by placing reliance on *V.R.Tripathi*, had directed consideration of the application of the petitioner therein in light of the Judgment in *V.R.Tripathi* and in accordance with law.

44. As against the aforesaid judgments pressed into service by learned counsel for the appellant, reliance has been placed on a judgment of a learned Single Judge of this Court in the case of *R.Muniraju*, wherein it has been observed that the object of conferring legitimacy under Section 16 of the Hindu Marriage Act, is only for the purpose of claiming a right in or to the property of the parents, and not for claiming any right against any third parties. Thus, the object and purpose of conferring legitimacy under Section 16 of the Hindu Marriage Act is not for all purposes. However, restricted right is conferred under Section 16 of the Hindu Marriage Act, 1955, only with regard to claiming a right in or to the property of the parents. In other words, it is observed in the aforesaid judgment that except for inheriting separate property of parents whose marriage is void, for which there is conferment of legitimacy is recognized, for all other purposes, such children are illegitimate. This interpretation

would mean that, conferment of legitimacy is only for the purpose of claiming a right in or to the property of the parents and not for any other purpose. With respect, we do not think that is the scope and import of Section 16 of the Hindu Marriage Act, 1955. It is observed that, in the context of claiming rights to the property of the parents by an illegitimate child, the Parliament has restricted it to the separate property of the parents only, which means they do not have any right of inheritance in the ancestral property of their parents. But, by that, it cannot be interpreted to mean that Section 16 of the Hindu Marriage Act, 1955 confers legitimacy only to that extent and not for any other purpose, such as claiming appointment on compassionate basis. Hence, with respect, we do not agree with the interpretation in the aforesaid judgment. The aforesaid interpretation is also contrary to the latest judgment of the Hon'ble Supreme Court in *V.R.Tripathi* referred to above in detail.

45. Reliance placed on the judgment in ***State Bank of India vs. Jaspal Kaur [Writ Appeal No.442/2010 disposed of on 29.08.2013]***, is of no assistance to the respondents, since the said judgment proceeds on the same lines as what has been stated in

*R.Muniraju*, which we have said is contrary to the recent judgment of Hon'ble Supreme Court in *V.R.Tripathi* and the judgments of this Court in *Anusuyamma* and *Sri.J.Mahindra* referred to supra.

46. Further, reliance placed on *Thoushif*, which is a judgment of a Co-ordinate Bench of this Court, also cannot be of any assistance to the respondents, since the said judgment proceeds on the premise that, unless the employer has accorded approval to the second marriage, such second marriage during the subsistence of the first marriage is void, and therefore, children born out of the second marriage are illegitimate. Approval of a second marriage by the employer does not confer legitimacy to a second marriage, if the marriage is otherwise void under the personal law of the employee. Can approval be given by an employer to a second marriage of an employee, if it is void under the personal law of the employee? The said approval arises only where a second marriage of an employee is not invalid only under the personal law of an employee. This is to encourage monogamy.

47. In *Thoushif*, the decision of the Calcutta High Court in *Smt.Namita Goldar* has not been approved, but

we have noted above that, the said decision has been approved by the Hon'ble Supreme Court recently in the case of *V.R.Tripathi*.

48. One other aspect requires consideration. In Regulation 2(1)(a), definition of 'dependents of a deceased Board employee' means, 'his widow', 'son' and 'unmarried daughter' who are wholly dependent upon him and were living jointly with him. The said provision does not make a distinction between the legitimate or illegitimate son or daughter or widow who is the first wife or second wife of the deceased Board employee. A broad meaning has been given to the expression 'daughter' and 'son' when it comes to considering whether they are wholly dependent upon and were jointly living with the deceased Board employee. These two conditions are required to be fulfilled before a daughter or son could be considered to be dependent of a deceased Board employee. Firstly, that they were wholly dependent upon him and secondly, were living jointly with him.

49. But, while defining the expression 'family' under Regulation 2(1)(b) of the Regulations in relation to a deceased employee, it states that it would mean only his

or her legally wedded spouse and their sons, whether married or unmarried and unmarried daughters who are jointly living with him. While defining the expression 'family', a widow who is not a legally wedded spouse and illegitimate sons and daughters are excluded, even if, they were jointly living with him and they may be dependent upon him.

50. The expression 'family' has relevance in Regulation 4, which prescribes conditions for appointment on compassionate basis, wherein it says that, the family of the deceased Board employee should be in immediate financial crisis or destitution on account of the death of the family and the meaning of the expression financial crisis or destitution has been given thereunder. If Regulation 2(1) and Regulation 4(1) are read conjointly, it would mean that, even if a widow who was not a legally wedded spouse and children are in financial crisis or destitution on account of death of the employee and were dependent upon him and were living jointly with him, would not be entitled to be considered for compassionate appointment. This is also contrary to Regulation 3(2), which does not qualify the expression 'son', 'unmarried daughter' or a 'widow'. This is also contrary to the recent judgments of the Hon'ble

Supreme Court particularly in *V.R.Tripathi*, wherein it has been held that owing to Section 16 of the Act, 'son' or 'daughter' of the second wife of a deceased employee, who died in harness would be entitled to be considered under the Regulations for compassionate appointment.

51. Having regard to the broad interpretation given to the expression 'son' and 'daughter' so as to include even on illegitimate son and daughter by the Hon'ble Supreme Court for the purpose of consideration for compassionate appointment, we find that Regulation 2(1)(b) cannot restrict the expression 'family' in relation to a deceased Board employee to mean only his or her legally wedded spouse and their sons and daughters who were jointly living with him. Such a definition would run counter to Section 16 of the Act, which is a Parliamentary legislation and also Articles 14, 15(1) and 16(1) as well as the Directive Principles of State Policy concerning children which would include all children, whether legitimate or illegitimate, to have equal opportunities. When the Parliament under Section 16 of the Act, has treated legitimate and illegitimate children on par and given them equal status, Regulation 2(1)(b) cannot restrict the expression family in relation to deceased employee to

mean only his or her legally wedded spouse and children jointly living with him.

52. If the expression 'family' is interpreted literally as per the definition in the Regulations, then it would also run counter to Regulation 3(2) which does not qualify the expressions 'son' and 'unmarried daughter' by stating that there has to be a valid marriage between their parents preceding their claim for compassionate appointment. Hence, the expression "only his or her legally wedded wife" in Regulation 2(1)(b) must be read down and the expression 'family' must read in relation to deceased employee to mean "only his spouse and their sons whether married or unmarried and unmarried daughters who were jointly living with him". Otherwise, the ratio of the judgment of the Hon'ble Supreme Court in *V.R.Tripathi* and the object and purpose of Section 16 of the Act, would be diluted, which is impermissible. Also, if not so read down, it would be contrary to Regulation 3(2) under consideration.

53. The judgment in *V.R.Tripathi* is in the context of Section 16 of the Hindu Marriage Act, 1955, which is the personal law of Hindus concerning, *inter alia*, validity of a Hindu marriage. But, in this case, we are concerned with

regard to the right of a child born out of a void marriage irrespective of the personal law under which the marriage might have taken place to seek appointment on compassionate basis. No doubt, validity of a marriage is dependent upon the personal law applicable to the parties but there is also Special Marriage Act, 1954, which is not relatable to any personal law. It is a species of a uniform civil law applicable to marriages of persons irrespective of the religion they may belong to. Even under the said Act, there are the concepts of void and voidable marriages. Hence, it is necessary to protect the rights of children born from such void or voidable marriage to seek compassionate appointments *de hors* the personal law applicable to the parents of such a child.

54. In this regard, it would be useful to refer to Section 26 of the Special Marriage Act, 1954. The same deals with marriage between any two persons solemnised under the said Act which is a void and voidable marriage (Sections 24 and 25 of the said Act respectively) but conferring legitimacy to children born out of such marriages. It is noted that the said provision also has an over-riding effect and a child born out of a void or voidable marriage is deemed to be a legitimate child.



55. The object and purpose of referring to Special Marriage Act, 1954, is to emphasize that, the said Act is applicable to all persons irrespective of their religion and irrespective of the personal law applicable to them based on their religion. Hence, the Special Marriage Act, 1954, applies to all marriages solemnised under the said Act and in case of void or voidable marriages under the said Act, legitimacy is conferred on the children of such marriages under section 26 thereof. In our view, conferring legitimacy is, not only under the Hindu Marriage Act, which is the personal law for Hindus, but such legitimacy is also conferred to the children born out of void or voidable marriages solemnised under the provisions of the Special Marriage Act, 1954. The said enactment, not being a legislation coming under the realm of personal law but applying to parties getting married under the said law irrespective of the religion to which they belong to, is a piece of legislation bringing about uniformity in the law relating to marriages under the said enactment and is an example of legislation which is driven towards Uniform Civil Code envisaged under Article 44 of the Constitution of India, which is a Directive Principle of State Policy. Hence, having regard to the above position of law under the

Special Marriage Act, 1954, which applies to persons *de hors* any religion that they may be practicing or any personal law applicable to them based on their religion and having regard to the judgment of the Hon'ble Supreme Court in *V.R.Tripathi*, it is just and necessary to protect the rights of the children born from all void or voidable marriages and extend the benefit of the Rules or Regulations concerning compassionate ground appointments to all such children, *de hors*, the personal law applicable to them in the context of the marriage being void or voidable under the said personal law. This, in our view would bring about uniformity and parity *vis-à-vis* all illegitimate children born out of the void or voidable marriages under the laws applicable to the parties. We are constrained to make the aforesaid observations in order to protect the children born out of void and voidable marriages under any of the personal laws applicable in India or the Special Marriage Act, 1954 irrespective of whether the personal law confers such legitimacy or not.

56. Of course, it is for the Parliament to legislate on the conferment of legitimacy on children born out of the void or voidable marriages under the personal law other than the Hindu Marriage Act and the Special Marriage Act,

1954, as under these two enactments such legitimacy is conferred. But, for the limited purpose of this case, we find that children born out of void and voidable marriages under other personal laws, where there is no provision for conferment of legitimacy, must also have equal protection of the law by treating them on par with children born out of void and voidable marriages under the Hindu Marriage Act or the Special Marriage Act, 1954, insofar as the appointment on compassionate basis is concerned, as interpreted by us, under the Regulations under consideration and in light of the judgment of the Hon'ble Supreme Court in *V.R.Tripathi*.

57. We *quote* that "no child is born in this world without a father and a mother. A child has no role to play in his/her birth. Hence, law should recognise the fact that there *can* be illegitimate parents, but no illegitimate children" *:Lakshmi Shanthakumar*. Therefore, it is for the Parliament to bring about uniformity in law *vis-à-vis* legitimacy of children. Thus, it is for the Parliament to determine in what way protection could be extended to children born outside a valid marriage.

*\*Corrections carried out V.C.O. dated 16/07/2021.*

58. On the aspect of circulars issued under various statutes by the concerned Government Departments, learned Additional Government Advocate, Smt.Vani H. (who is present in Court) by way of assistance to the Court brought to our notice the judgment of the Hon'ble Supreme Court in the case of ***Commissioner of Central Excise, Bolpur vs. Ratan Melting & Wire Industries [(2008)13 SCC 1]***, wherein it has been observed as under:

*"7. Circulars and instructions issued by the Board are no doubt binding in law on the authorities under the respective statutes, but when the Supreme Court or the High Court declares the law on the question arising for consideration, it would not be appropriate for the court to direct that the circular should be given effect to and not the view expressed in a decision of this Court or the High Court. So far as the clarifications/circulars issued by the Central Government and of the State Government are concerned they represent merely their understanding of the statutory provisions. They are not binding upon the court. It is for the court to declare what the particular provision of statute says and it is not for the executive. Looked at from another angle, a circular which is contrary to the*

statutory provisions has really no existence in law.”

(underlining by us)

59. Therefore, in the instant case, when we have interpreted the Regulations, the Circular - which is contrary to the interpretation of the Regulations made by us, cannot be binding on the parties.

60. In the circumstances, we set aside the Orders of the learned Single Judge in the Writ Petition as well as the Review Petition. We quash the communication dated 11.03.2015 addressed to the fourth respondent by the third respondent (Annexure-B). We also quash the Circular bearing No.KPTCL/B5/721/80-81 dated 23.09.2011 to the extent that, in clause(2) it is stated as under:

“Under no circumstances, the second wife or her children are eligible for compassionate grounds appointment, if the marriage has taken place during the subsistence of the first marriage, insofar as it deals with children of second wife, if the marriage has taken place during the subsistence of first marriage.”

61. The appeal is **allowed** in the aforesaid terms.

The respondents herein are directed to consider the application made by the appellant herein in accordance

with the observations made above and in accordance with law. The said consideration shall be made within a period of two months from the date of receipt of certified copy of this judgment, as the employee died on 10.06.2014 which was seven years ago.

Parties to bear their respective costs.

**Sd/-  
JUDGE**

**Sd/-  
JUDGE**

SSD/AP