

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED :17.11.2017
CORAM
THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM
W.P.No.974 of 2014
and
M.P.Nos.1,2 and 4 of 2014

K.Pandurangan

..Petitioner

vs

1.The Secretary to
Government of Tamil Nadu,
Municipal Administration and
Water Supply Department,
Fort St.George, Chennai - 9.

2.The Director of Special Village Panchayat,
Kuralagam Buildings, Chennai - 108.

3.The District Collector,
Tiruvannamalai, Tiruvannamalai District.

4.The Executive Officer,
Chetpet Selection Grade Town Panchayat,
Chetpet Tiruvannamalai District.

.. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India calling for the records relating to the proceedings of the memo issued by the 2nd respondent in Memo Na.Ka.No.5839/2008/A2, dated 23.06.2008 and quash the same and consequently to, direct the respondents 1 to 3 to appoint the Petitioner either as Junior Assistant or Bill collector in any of the Town Panchayats in Tiruvannamalai District or elsewhere in terms in G.O.Ms.No.1499, Labour and Employment(Q1) Department dated 03.08.1989 & G.O.Ms.No.206 MAWSS (TP-1), dated 02.11.1955 from the date of his initial appointment with all attendant benefits without reference to the letter of the 1st respondent issued in No.30900/T-1/2007-19, dated 02.11.2010.

For Petitioner : Mr.P.J.Thirumoorthy

For Respondents : Mr.R.Vijayakumar

Additional Government Pleader

O R D E R

The amended prayer in this writ petition is to call for the records in pursuant to the orders passed by the second respondent in Memo No.Na.Ka.No.5839/2008/A2, dated 23.06.2008 and quash the memo and consequently direct the respondents 1 to

3 to appoint the writ petitioner either as Junior Assistant or Bill Collector in any of the Town Panchayats in Tiruvannamalai District or elsewhere in terms in G.O.Ms.No.1499, Labour and Employment(Q1) Department, dated 03.08.1989 & G.O.Ms.No.206 MAWSS(TP-1), dated 02.11.1955 from the date of his initial appointment with all attendant benefits without reference to the letter of the 1st respondent issued in No.30900/T-1/2007-19, dated 02.11.2010.

2.The learned counsel appearing on behalf of the writ petitioner strenuously contended that the father of the writ petitioner was employed as Night Watchman in the 4th respondent Town Panchayat and passed away on 23.11.1994, while he was in service. The petitioner claims that his father was the sole breadwinner of the family and on account of his sudden demise of his father, the family was in penurious circumstances. Accordingly, the petitioner submitted an application seeking Compassionate Appointment. The respondent considered the case of the writ petitioner and he was appointed as Night Watchman on 01.03.1995 on compassionate grounds. The writ petitioner is continuing in the post of Night Watchman for the past about 22 years.

3.The learned counsel for the petitioner states that the Government issued G.O.Ms.No.1499 Labour and Employment(Q1) Department, dated 03.08.1989 stating that if the legal heirs of the deceased employee is qualified for the post of Junior Assistant, then their case is to be considered for appointment to the post of Junior Assistant. Relying on the said G.O., the learned counsel states that the petitioner has passed SSLC and therefore, he is fully qualified for appointment to the post of Junior Assistant. Accordingly, the petitioner ought to have been accommodated in the post of Junior Assistant.

4.The learned Additional Government Pleader appearing on behalf of the respondents made a submission that the said G.O.Ms.No.1499, Labour and Employment (Q1) Department, dated 03.08.1989 was replaced.

5.The learned Additional Government Pleader made a submission that a revised Government Order was issued in G.O.Ms.No.206, Municipal Administration and Water Supply Department, dated 02.11.1995 and pursuant to that G.O., the writ petitioner was appointed in the post of Watchman on compassionate grounds and therefore, he cannot now claim further appointment to the post of Junior Assistant.

6.The learned Additional Government Pleader states that the scheme of compassionate appointment is to provide appointment in order to mitigate the financial circumstances arising on account of the sudden death of the deceased Government employee. The

scheme of appointment is to be provided only to mitigate the penurious circumstances of the family of the deceased employee. Further, an appointment is to be provided, based on the availability of vacancies in the department and by considering the qualifications and other eligibility criteria. The writ petitioner has passed only SSLC and considering the qualifications and availability of vacancies, he was appointed as Watchman with effect from 01.03.1995. Once an order of appointment was issued on Compassionate ground, thereafter there is no provision under the scheme to re-consider the case for further appointment to a higher post.

7. The very purpose of the scheme of compassionate appointment is to provide an appointment to mitigate the circumstances arising on account of the sudden death of an employee. When the appointment was offered and the petitioner had accepted the offer of appointment, thereafter, he cannot seek further appointment to the higher post. All further appointment can be secured only by participating in the open competitive process under the recruitment rules in force. Thus, the very claim is absolutely misconceived and once an appointment was given under the scheme of compassionate appointment, there is no right to claim further appointment.

8. This Court of the view that appointment can never be claimed as a matter of right. Scheme of compassionate appointment is a concession. Even a compassionate appointment can never be claimed as a right. All appointments to a public post shall be provided only under the constitutional schemes by adhering to the recruitment rules in force. Equal opportunity of public employment is a constitutional mandate. Any special scheme created by the State in this regard must be implemented in its terms and conditions and the schemes like compassionate appointment cannot be enlarged by way of providing second appointment to the same person. The legal principles in this regard is that scheme of compassionate appointment being a special scheme cannot be extended, so as to provide an appointment to a higher post after joining in a particular post by the person claiming compassionate appointment.

9. In the case on hand, the writ petitioner submitted an application, which was duly considered by the respondent and he was appointed in the year 1995 in the available vacancy as Night Watchman. Thus, the right ends there itself. The petitioner on account of the death of his father cannot further claim that he should be appointed in a higher post of Junior Assistant. Hypothetically, this Court has to consider, if such claims are entertained by the Courts then every person will claim higher posts, after acquiring the qualifications. Even in the present case, if the petitioner acquire the qualification of degree then there is every possibility for him to claim the higher post

including the Group I Officer. Thus, the very claim to be considered only with reference to the legal principles and the terms and conditions of the schemes introduced by the Government. Even, this Court has to consider, the scheme, only if it violates the constitutional perspective, then the Courts are at duty to reject or quash the same as unconstitutional. Even the scheme of compassionate appointment will be in violation of Articles 14 and 16 of the Constitution of India, if it is enlarged by providing large number of appointments.

10. In a scheme of appointment, a person is appointed without any merit assessment or without following the rules of reservation and without having any process of selection. Thus, a mere death provides a concession for the legal heirs to secure a public employment. Such a special scheme of concession if extended to large number of people, then the principles of equal opportunity enunciated in the constitution will be infringed. Thus, this Court of the view that equal opportunity being a constitutional mandate has to be followed scrupulously by the State, while introducing and implementing such special and concessional schemes.

11. This Court has to show greater concern over the young youth of this Country, who are acquiring qualifications, preparing for competitive examinations by burning the mid night lamp. When they are preparing for long time to participate in the competitive examinations and secure public employment, if the Government starts providing such special schemes in large number, then, certainly it will amount to violation of Articles 14 and 16 of the Constitution of India. This being the view of this Court, the claim of the writ petitioner that he should be appointed in the higher post is absolutely untenable.

12. The learned counsel for the writ petitioner relied upon the judgment of this Court passed in W.P.No.19932 of 2008 dated 15.06.2011.

13. On a perusal of the order passed in the above writ petition, this Court is of the opinion that the particular facts of that case was considered by the Court and it was stated in G.O.Ms.No.206, dated 02.11.1995, this Court found that the category mentioned therein includes Night watchman, Office Assistant and Record Clerk, etc, the sweeper cannot be placed on a higher pedestal for denying the benefit relating to the error as stated above. The 4th respondent therein had already recommended for amendment of the said Government Order, if necessary. Moreover, the Government itself has recommended the case of the writ petitioner, as in the case of similarly placed persons who were given the appointment in G.O.Ms.No.407 dated 02.08.2001 and in G.O.Ms.No.102 dated 12.03.2008. The 4th

respondent therein has given its concurrence and therefore, cannot deny the concurrence in this case alone. Thus, this Court is of an undoubted opinion that the particular facts and circumstances of the case was considered by the learned Judge, while granting the relief. However, the legal principles for relevance to the scheme of compassionate appointment and the rights of the legal heirs of the deceased employee are not settled in the above orders.

14. This Court is to draw a fine distinction between the orders passed by the Courts and the Judgment which are binding precedents settled in this regard. It is well settled in law that the ratio of a decision has to be understood with regard being had to its context and factual exposition. The ratiocination in an authority is basically founded on the interpretation of the statutory provision. If it is based on a particular fact or the decision of the Court is guided by the specific nature of the case, it will not amount to the ratio of judgment.

15. Lord Halsbury in Quinn Vs Leathem [1901 AC 495 : (1900-03) ALL ER Rep 1 (HL)] has ruled:

"...every judgment must be read as applicable to the particular facts proved, or assumed to be proved, since the generality of the expressions which may be found there are not intended to be expositions of the whole law, but are governed and qualified by the particular facts of the case in which such expressions are to be found".

16. The Three-Judge Bench in Union of India and others v. Dhanwanti Devi and others [JT 1996 (8) SC 306], while adverting to the concept of precedent under Article 141 of the Constitution, has opined thus:

"Before adverting to and considering whether solatium and interest would be payable under the Act, at the outset, we will dispose of the objection raised by Shri Vaidyanathan that Hari Krishnan Khosla Case [1993 (Suppl.2) 149] is not a binding precedent nor does it operate as ratio decidendi to be followed as a precedent and is per se per incuriam. It is not everything said by a Judge while giving judgment that constitutes a precedent. The only thing in a Judge's decision binding a party is the principle upon which the case is decided and for this reason it is important to analyse a decision and isolate from it the ratio decidendi. According to the well-settled theory of precedents, every decision contains three basic postulates-(i) findings of material facts, direct and inferential. An inferential finding of facts is the inference which the Judge draws from the direct, or perceptible facts; (ii)

statements of the principles of law applicable to the legal problems disclosed by the facts; and (iii) judgment based on the combined effect of the above. A decision is only an authority for what it actually decides. What is of the essence in a decision is its ratio and not every observation found therein nor what logically follows from the various observations made in the judgment. Every judgment must be read as applicable to the particular facts proved, or assumed to be proved, since the generality of the expressions which may be found there is not intended to be exposition of the whole law, but governed and qualified by the particular facts of the case in which such expressions are to be found. It would therefore, be not profitable to extract a sentence here and there from the judgment and to build upon it because the essence of the decision is its ratio and not every observation found therein. The enunciation of the reason for principle on which a question before a court has been decided is alone binding as a precedent. The concrete decision alone is binding between the parties to it, but it is the abstract ratio decidendi, ascertained on a consideration of the judgment in relation to the subject-matter of the decision, which alone has the force of law and which, when it is clear what it was, is binding. It is only the principle laid down in the judgment that is binding law under Article 141 of the Constitution. A deliberate judicial decision arrived at after hearing an argument on a question which arises in the case or is put in issue may constitute a precedent, no matter for what reason, and the precedent by long recognition may mature into rules of state decision. It is the rule deductible from the application of law to the facts and circumstances of the case which constitutes its ratio decidendi.

Therefore, in order to understand and appreciate the binding force of a decision it is always necessary to see what were the facts in the case in which the decision was given and what was the point which had to be decided. No judgment can be read as if it is statute. A word or a clause or a sentence in the judgment cannot be regarded as a full exposition of law. Law cannot afford to be static and therefore, Judges are to employ an intelligent technique in the use of precedents."

17. In view of the legal principles in this regard, this Court is not inclined to consider the case of the writ petitioner since the scheme of compassionate appointment and its benefit was already extended to the writ petitioner and he was appointed to a post. Thus, he cannot seek any further

concession in this regard for appointment to a higher post of Junior Assistant.

18.This Court is also of the opinion that all the orders passed by the Constitutional Courts cannot be followed as legal precedents nor of binding nature. The judgments in which the legal principle are settled alone to be followed as legal precedents and the same would be binding on all other Sub-ordinate Courts. Thus, the order passed with relevance to the particular facts and circumstances of a case, cannot be cited as a legal precedent so as to follow the same in perpetuity. Thought process in the field of law is growing drastically and magnificently. Thus, in the growing field of law, opinions are also undergoing various changes. What would be the best opinion and the legal principles to be followed by the Courts are to be decided only by applying the facts and circumstances of each case. It is not as if a mere similarity alone can be considered, while extending the benefit of order, earlier passed by this Court. A mere similarity alone cannot be construed as conclusive and the application of law in the changed circumstances are also to be looked into, before extending the benefit if any granted in earlier orders by the Courts.

19.Under these circumstances, this Court is of an opinion that the relevant factors alone will constitute the application of an order earlier passed or not. This being the consideration to be shown in the case on hand, this Court is not inclined to consider the submissions made on behalf of the writ petitioner, this Court has to go by the legal principles settled by the Apex Court of India and the Hon'ble Division Bench of this Court in the matter of the scheme of compassionate appointment.

20.In view of this, no further adjudication is required on the grounds raised in this writ petition. Accordingly, the writ petition stands dismissed. However, there shall be no order as to costs. Consequently, connected miscellaneous petitions are also closed.

Sd/-

Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

To

1.The Secretary to
Government of Tamil Nadu,
Municipal Administration and
Water Supply Department,
Fort St.George, Chennai - 9.

2.The Director of Special Village Panchayat,
Kuralagam Buildings, Chennai - 108.

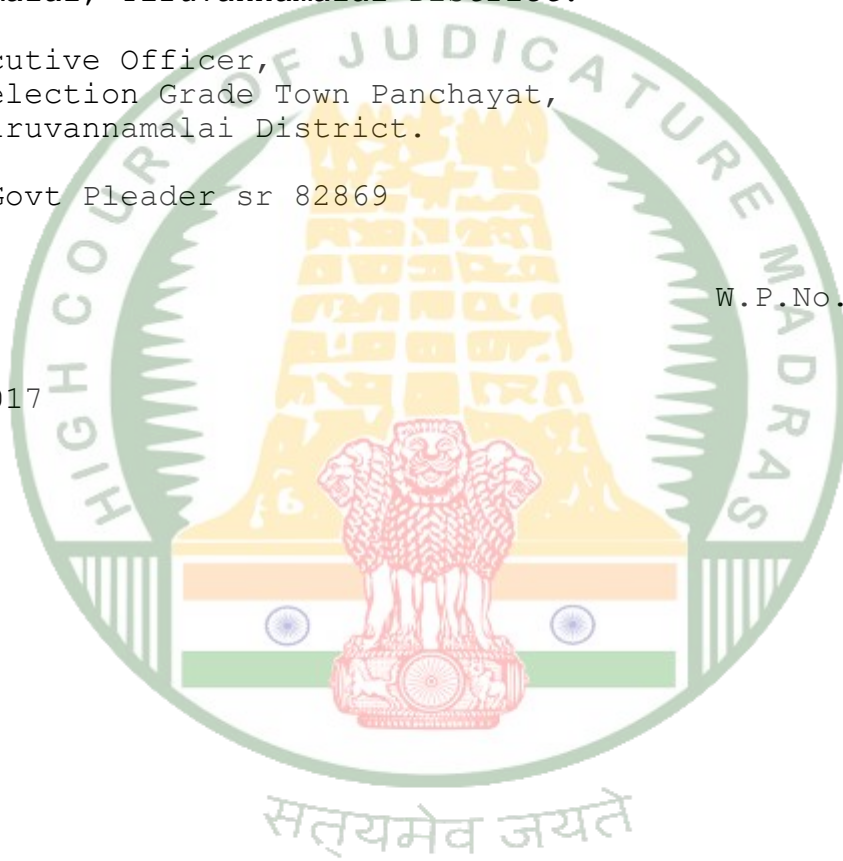
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4.The Executive Officer,
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Chetpet Tiruvannamalai District.

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