

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.07.2018

CORAM :

THE HONOURABLE MRS. JUSTICE V.BHAVANI SUBBAROYAN

W.P. No.22794 of 2008

K. Pandurangan

.. Petitioner

Versus

1. The Secretary to Government of  
Tamilnadu, Municipal Administration  
and Water Supply Department,  
Fort St. George, Chennai.

2. The Director of Town Panchayat,  
Kuralagam, Chennai.

.. Respondents

Prayer: This Writ petition has been filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, calling for the proceedings of the 2<sup>nd</sup> respondent in N.K.No.5839/2008/A2 dated 23.06.2008 and quash the same and consequently direct the respondents to consider the case of the petitioner for appointment to the post of Junior Assistant or Bill Collector as per G.O.M.S.No.206 MAWS Department dated 02.11.1995.

For Petitioner :Mr.V. Vijay Shankar

For Respondents :Mrs.Thangavadhana Balakrishnan  
Additional Government Pleader

ORDER

The petitioner has prayed for a issuance of a Certiorarified Mandamus to quash the proceedings of the 2<sup>nd</sup> respondent in N.K.No.5839/2008/A2 dated 23.06.2008 and quash the same and consequently direct the respondents to consider the case of the petitioner for appointment to the post of Junior Assistant or Bill Collector as per G.O.M.S.No.206 MAWS Department dated 02.11.1995.

2.The petitioner had worked as Night Watchman in Chethupattu Town Panchayat. The father of the petitioner died on 23.11.1994, while he was in service and therefore the petitioner had applied for employment, under the category compassionate grounds and the same was considered, and he was appointed as

Night Watchman on 01.03.1995 and his services was also regularized from the appointment date itself. After that the petitioner came to know about the Government Orders, that the persons appointed on compassionate grounds, can be considered for the posts of Junior Assistant, Bill Collector or Typist subject to their qualification. Since, he was qualified for appointment to such posts he made a representation dated 12.02.1996 to the Executive Officer, Chethupattu Town Panchayat to consider his case for appointment for the said posts.

3. The learned counsel for the petitioner would further contend that even though the Executive Officer, Chethupattu had recommended the petitioner for appointment, to the above mentioned posts by relying on the said G.O, but it was not considered. The petitioner's representation was not considered at that point of time and even after the subsequent vacancies. He was orally informed to discharge the duty of Bill Collector, but not considered for promotion. Again on 23.11.2007 the petitioner sent a request for considering his case as per the said G.O but no action was taken. Hence, the petitioner was constrained to approach this Court by filing a writ petition W.P.No.5647 of 2008, wherein this Court has passed an order on 05.03.2008 directing the second respondent to consider his representation dated 23.11.2007, in the light of the said G.O and to pass an order within a period of four weeks.

4. The second respondent has passed the impugned order dated 23.06.2008 in N.K.No.5839/2008/A2 stating that the petitioner was appointed on 01.03.1995 prior to the issuance of G.O.No.206 dated 02.11.1995 and that the said G.O was under consideration for making certain amendments.

5. Aggrieved over the said impugned order the petitioner has filed another writ petition in W.P.No.974 of 2014 seeking to quash the said impugned order and consequently to direct the respondents in the W.P.No.974 of 2014 and to consider the G.O.Ms.No.1499, Labour and Employment (Q1) and G.O.M.S.No. 206 (MAWSS (TP -1), dated 02.11.1995 from the date of his initial appointment with all attendant benefits without reference to the letter of the 1<sup>st</sup> respondent issued in No.30900/T-1/2007-19 dated 02.11.2010.

6. It is now seen that the same petitioner has filed the present writ petition for the same prayer but stating only different G.O's. but, this Court while considering the claim of the petitioner in W.P.No.22974 of 2014 has ordered as follows:

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 advertng 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 expression 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 alone is 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. Judicial decision arrived at after hearing an argument 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 the 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 decision in this regard for appointment to a higher post or 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 principles 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 order 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.

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.

7. When the petition in W.P.No.22974 of 2014 has been filed subsequently and the same has been decided by this Court there is nothing survives for adjudication in this writ petition. The Hon'ble Court has already rejected the case of the petitioner and the petitioner has suppressed the fact that this writ petition has been filed in 2008 and the pendency of the same even though he has quoted another G.O and claimed compassionate appointment. When the issue has already been taken up and decided the petitioner's act of concealing the pendency cannot be brushed aside. The petitioner is imposed a cost of Rs.2,500/- payable to chief Justice Relief Fund, within a period of 4 weeks for wasting the Court's time and for suppression of facts.

8. This writ petition is dismissed with costs.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

smn

To

1. The Secretary to Government of  
Tamilnadu, Municipal Administration  
and Water Supply Department,  
Fort St. George, Chennai.
2. The Director of Town Panchayat,  
Kuralagam, Chennai.

Copy To

- 1.The Sub Assistant Registrar,  
Accounts Section,  
High Court, Madras.

+lcc to Mr.V.Vijay Shankar, Advocate, S.R.No. 45175  
+lcc to the Government Pleader, S.R.No. 45330

W.P. No.22794 of 2008

SJ(CO)  
GN(03/01/2019)



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