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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 24.09.2018

CORAM

THE HON'BLE MR.JUSTICE M.M.SUNDRESH
AND

THE HON'BLE MR.JUSTICE N.SATHISH KUMAR

W.A.(MD)No.1232 of 2018
and C.M.P.(MD) No.8613 of 2018

A.Felix Rajamanickam

... Appellant/Petitioner

Vs.

1.The Commissioner for Municipal Administration,
Ezhilagam,
Chepauk,
Chennai - 600 005.

2.The Commissioner,
Madurai Corporation,
Madurai.

... Respondents/Respondents

PRAYER:Writ Appeal filed under Clause 15 of Letter Patent against the order passed by this Court in W.P.(MD)No.4808 of 2014 dated 22.02.2018.

Prayer in WP(MD).No. 4808/ 2014 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a writ of Certiorarified Mandamus calling for the records relating to the order passed by the 2nd respondent in his proceedings B30/Ma.Ni.11/15861/2008 dated 14.2.2014 and quash the same and further direct the respondents to appoint the petitioner on compassionate ground in any one of the suitable post according to his qualification by fixing a time limit and pass such further or other orders as this Honble court.

For Appellant

: Mr.A.Thirumurthy

For 1st Respondent

: Mr.N.Shanmuga Selvam,
Additional Government Pleader

For 2nd Respondent

: Mr.R.Murali
Standing Counsel

JUDGMENT

(Judgment of the Court was delivered by M.M.SUNDRESH, J)

This is a second round of litigation, which started before this Court in the year 2008. Despite the fact that a decade has passed, the appellant is yet to get the relief. The appellant's father was working as electrician with respondent No.2. While attending the work during the visit of former Chief Minister, he met with an accident while erecting the electric pole. This had happened on 17.10.1992. In the meanwhile, he was one of the parties before the Labour Court, seeking regularization of his job. An award was passed by the Labour Court, directing the second respondent to regularize the services of all the persons including appellant's father by award dated 13.11.1992. In due compliance, all of them have been made permanent through the orders of regularization except the appellant's father, who died in the interregnum. The request made for compassionate appointment was rejected on the ground that the appellant's father was not a permanent employee. The learned Single Judge in W.P.(MD) No.3745 of 2008 rejected the said contention, which was confirmed by the Division Bench in W.A.(MD) No.12 of 2012 dated 31.01.2012 through the following paragraphs:

"9.A perusal of the orders passed by the appellant Corporation as early as 11.08.1993, on an application made by the respondents seeking pensionary benefits and compassionate appointment, shows that the plea of the respondents was rejected only on the ground that the deceased was not a permanent employee. It is a matter of relevance herein to point out that the Labour Court has granted relief as early as 1992 in respect of similarly placed temporary employees and if there was no tragic incident in which Arulandam died, he would have also got the same benefit. In the circumstances, we do not find any justifiable ground for the appellant Corporation to state that since Arulanandam was not a permanent employee, the claim of the respondents could not be accepted.

10.It is seen from the documents placed before this Court that the respondents have been making periodical requests before the appellant Corporation and ultimately they landed before the Chief Minister's Grievance Cell. Taking note of the conduct of the respondents in making repeated requests to the appellant Corporation, we do not find any justifiable ground to accept the plea of the appellant Corporation that there was inordinate delay and that the family of the deceased employee was able to eke their livelihood without making any complaint all along. Taking into account the facts and circumstances and going through the order of the learned Single Judge, we find that there are absolutely no merits for the appellant plead before us that the order passed by the learned Single Judge in directing the appellant Corporation to grant compassionate appointment warrants interference. In the circumstances, satisfied with



the reason given by the learned single Judge, we have no hesitation in rejecting the plea of the appellant.

11. As far as the compassionate appointment plea is concerned, as already pointed out, immediately after the demise of Arulanandam, his legal heirs had approached the appellant Corporation seeking compassionate appointment. But, as already stated, the said plea was rejected by the appellant Corporation on the ground that Arulanandham was not a permanent employee at the time of death. Considering the course of action adopted thereafter by the respondents and the decision taken by the appellant herein, we directed the 3rd respondent herein, who happened to be the son of late Arulanandam, to place before us his educational qualification for the appellant Corporation to consider him for employment. Accordingly, today, learned counsel for the respondents has filed an affidavit of the 3rd respondent and the details of his educational qualification. Considering the above stated aspect, in fitness of things, we feel that the appellant Corporation should consider the candidature of the 3rd respondent herein, namely A. Felix Rajamanickam, for giving him appointment on compassionate grounds. The present order is passed taking note of the circumstances under which the said Arulanandam died and the subsequent order passed by the Labour Court granting the relief of absorption of similarly placed persons on permanent basis and also of the fact that compassionate appointment is not a matter of right or an alternate source of employment. In the circumstances stated above, we do not find any justification to accept the plea of the appellant herein on the aspect of compassionate appointment."

Strangely, the very same order was passed as in the earlier occasion, rejecting the application only on the ground of appellant's father being temporary employee at the relevant point of time. It was again challenged. The learned Single Judge after taking note of the law governing compassionate appointment dismissed the Writ Petition. Challenging the same the present Writ Appeal has been filed.

2. The learned counsel appearing for the appellant would submit that the principle of res judicata would apply along with estoppel. In a subsequent proceedings, a learned Single Judge cannot set aside the order of the Division Bench. Therefore, the order requires interference.

3. Per contra, the learned counsel appearing for respondent No. 2 would submit that though the said order passed was verbatim of the earlier order, the petitioner approached belatedly and hence, he is not entitled to get the relief, especially the first application was made when he was a minor.

4. We have considered the rival submissions and perused the materials available on record.



5. In a writ of certiorari, we are concerned with the reasons assigned in an impugned order. Therefore, the contention regarding inability among other things cannot be raised for the first time before us and before the learned Single Judge, after receiving an adverse order. The paragraphs referred to supra are not only binding on the authorities but also the Court including us. When an order has been passed giving finality to an issue, it cannot be permitted to be re-agitated in a subsequent proceedings. Therefore, re-litigation in any form will have to be deprecated strongly. The appellant has been adjudicating for more than a decade. The fact that the appellant's father died in harness during the job is not in dispute. We are conscious of the law governing compassionate appointment. Though it cannot be termed as an entry on merit, but certainly not a back door entry, what the appellant seeks is a mere job, which might lie on the bottom. For the delay caused, the respondent No.2 cannot blame the appellant. The appellant has been running from pillar to post over the years. As we stated above, the impugned order is verbatim reproduced. We are surprised to note why such a ground has not been raised in the impugned order when the Division Bench of this Court has specifically stated that it cannot be sustained in the eye of law. In such view of the matter, we are inclined to set aside the order of the learned Single Judge, who did not consider the earlier order passed by the Division Bench of this Court.

6. In such view of the matter, this Writ Appeal is allowed setting aside the impugned order along with the order of the learned Single Judge and the second respondent is directed to consider the case of the appellant on the ground of qualification alone within a period of 8 weeks from the date of receipt of a copy of this order. We hope and trust that the respondent No.2 will not raise any technical plea for not considering the case of the appellant on merits. Consequently, connected Miscellaneous Petition is closed. No costs.

Sd/-

Assistant Registrar(C.O)

/True Copy/

Sub Assistant Registrar(CS-I)

sj

To

1. The Commissioner for Municipal Administration,
Ezhilagam,
Chepauk,
Chennai - 600 005.



2.The Commissioner,
Madurai Corporation,
Madurai.

+1cc to Mr.A.Thirumurthy, Advocate in SR No.86170

+1cc to Mr.R.Murali, Advocate in SR No.86304

W.A. (MD) No.1232 of 2018

NM/RP/SAR I/12.10.18/5P/5C