



W.A.(MD) No.315 of 2023

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 13.04.2023

CORAM:

**THE HONOURABLE MR.JUSTICE R. SUBRAMANIAN
and
THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI**

W.A.(MD) No.315 of 2023

against

W.P.(MD) No.9499 of 2020

J.Gladson Julius

... Appellant/Petitioner

-VS-

1.The Director of Elementary Education,
College Road,
Chennai-6.

2.The Chief Educational Officer,
Office of the Chief Educational Officer,
Pudukottai District.

3.The District Educational Officer,
District Educational Office,
Aranthangi, Pudukkottai District.

4.The Block Educational Officer,
Aranthangi Union,
Pudukottai District.

... Respondents/Respondents



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PRAYER: Appeal filed under Clause 15 of the Letters Patent to set aside the order dated 21.12.2022 made in W.P.(MD) No.9499 of 2020 of this Court.

For Appellant : Mr.S.Kumar

For Respondents : Mr.D.Sadiq Raja
Additional Government Pleader

JUDGMENT

[Judgment of the Court was delivered by R. SUBRAMANIAN, J.]

The order dated 21.12.2022 under challenge cannot be sustained. We find that the Writ Court was misled into dismissing the writ petition, by the learned Additional Government Pleader, by interpreting the order of this Court dated 29.07.2019 in W.P.(MD) No.12134 of 2018 wrongly.

2. The matter relates to compassionate appointment. The appellant's mother, who was working in the Education Department, died in harness on 21.10.2010. At the time of her death, the appellant was 13 years. Therefore, the appellant's father made an application on 10.10.2013 seeking compassionate



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appointment for the appellant. That application was not disposed of. Thereafter, after attaining majority, the appellant made a representation on 04.07.2016 seeking compassionate appointment. The third respondent recommended the cause of the appellant and forwarded the same to the first respondent. The first respondent rejected the appellant's application on 22.03.2017 on the ground that the appellant's father was eligible for compassionate appointment as well as on the ground that the appellant had filed the application after three years of the death of the mother. This rejection order was challenged before this Court in W.P. (MD) No.12134 of 2018. This Court, after hearing the learned Special Government Pleader, disposed of the writ petition as follows:

“6. The core issue involved in the present petition is as to whether the application seeking compassionate appointment has been submitted within a period of three years, as per G.O.Ms.No. 202, Labour and Employment Department, dated 08.10.2007 or not?

7. According to the petitioner, his father made an application on behalf of the petitioner on 10.10.2013. At the time of making application, the petitioner was a minor, aged about 12 years and after attaining majority, immediately, the petitioner made an application to the respondents and the application submitted by the petitioner is within a period of three years.



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Therefore, the reason assigned by the first respondent in the impugned orders is unsustainable. (emphasis supplied)

8. The other issue involved in the petition that the petitioner's father is eligible for compassionate appointment is concerned, the same has to be considered by the authorities, after providing an opportunity to the petitioner by placing all the relevant materials and ultimately, if it is found that the petitioner's father is eligible for employment, then, it is always open to the respondents to reject the application.

9. In such circumstances, the impugned orders of the first respondent are quashed and this writ petition is allowed and the matter is remitted to the first respondent to decide the application afresh, after affording an opportunity to the petitioner, by placing all the relevant materials and also to consider the eligibility of the petitioner's father and pass orders on merits and in accordance with law, within a period of twelve weeks from the date of receipt of a copy of this order. No costs."

3. A reading of the above order of this Court shows that this Court had decided the question of limitation and had come to a definite conclusion that the application was within time. The remand was made only for the purpose of deciding whether the appellant's father is eligible for compassionate appointment or not. After remand, the District Educational Officer, Aranthangi by his order



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dated 07.11.2019 rejected the appellant's application on the ground that it is barred by limitation. In support of his reasoning, he had relied upon the Government Letter No.202, dated 08.10.2007 and the Government Order in G.O.Ms.No.155, Labour and Employment Department dated 10.12.2014. It is this rejection order which was challenged before the Writ Court. The Writ Court relied upon the subsequent Full Bench judgment of this Court to non-suit the appellant/writ petitioner.

4. We do not think that the Writ Court's action could be upheld. It is settled position of law that an order *inter parties*, even if it is wrong, is binding on the parties. A party to a litigation cannot resile from an order which he/she had suffered on the ground that there is a subsequent change in law or subsequent change in the thinking of the Court. The issue relating to limitation as between the appellant and the respondents was decided by this Court finally in W.P.(MD) No.12134 of 2018 on 29.07.2019. The letter and the Government Order referred to by the third respondent in the order impugned in the writ petition were very much available on that date. Therefore, it is deemed that this Court had gone into



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the question and held that the application was within time. No doubt, the Full Bench of this Court has subsequently said that the scheme has to be followed and any deviation in this scheme will not be permitted. This decision of the Full Bench cannot nullify the order, *inter parties*, made in W.P.(MD) No.12134 of 2018. If we are to sustain the reasoning of the Writ Court, the rights of the parties will never get settled and as and when there is any change in law, there will be another litigation. The very object of granting finality to the litigation will stand nullified. Therefore, the Writ Appeal will stand allowed, the order of the Writ Court dated 21.12.2022 made in W.P.(MD) No.9499 of 2020 is set aside. The writ petition in W.P.(MD) No.9499 of 2020 will stand allowed and there will be a direction to the respondents to consider the 'eligibility question' alone within a period of two weeks from the date of receipt of a copy of this judgment and offer employment to the appellant, if his father is found ineligible. No costs.

[R.S.M., J.] [L.V.G., J.]
13.04.2023

NCC : Yes
Index : Yes
Internet : Yes
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