



W.A.No.837 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.03.2024

CORAM

THE HON'BLE Mr. JUSTICE R.SURESH KUMAR
AND
THE HON'BLE Mr. JUSTICE K.KUMARESH BABU

W.A.No.837 of 2020
and
C.M.P.No.10611 of 2020

1.The Commissioner,
Greater Chennai Corporation,
Rippon Building,
Chennai.

2.The Assistant Commissioner/Zonal Officer,
Zone-V, Greater Chennai Corporation,
No.183, E V R Periyar Salai,
Kilpauk, Chennai – 600 010.

... Appellants

Vs.

K.Padmanabhan

... Respondent

Prayer : Appeal filed under Clause 15 of the Letters Patent Act, praying
to set aside the order dated 03.08.2020 made in W.P.No.3820 of 2011.

For Appellants : Mr.R.Gopinathan

For Respondent : Not ready in notice



W.A.No.837 of 2020

JUDGMENT

WEB COPY(Judgment of the Court was delivered by R.SURESH KUMAR, J.)

This intra-Court appeal has been directed against the order passed by the Writ Court dated 03.08.2020 made in W.P.No.3820 of 2011.

2. That the respondent/petitioner's father initially was working in the appellant Corporation since he died his mother was given employment by the Corporation and she also died in harness on 27.08.2002. Therefore, in whose place seeking compassionate appointment the writ petitioner/respondent had approached the appellant Corporation, however during that period it seems that there had been ban for making the appointment, hence he was not permitted to make his plea to seek for compassionate appointment.

3. However, once the ban has been lifted the petitioner had made the request on 19.09.2008 followed by reminders dated 08.11.2008 and 10.11.2008 and those applications having been scrutinised was put under process by the appellant Corporation and sent communication to the respondent/writ petitioner to produce some more documents.



W.A.No.837 of 2020

WEB COPY

4. On such compliance from the petitioner/respondent, on 30.01.2009 the appellant Corporation had written to the Tahsildar concerned to verify the penury and indigent circumstances of the family of the applicant i.e. the writ petitioner/respondent and to file a report.

5. In response to the said compliance asked by the Corporation, the Tahsildar concerned after having verified the properties i.e., movables and immovables as well as the circumstances of the family whether he is poor or not, had given a report dated 09.07.2009 where he had given a report in support of the writ petitioner/respondent to state that the family had been in indigent circumstances.

6. Thereafter, instead of considering the application since the Chennai Corporation had passed an order on 01.12.2010 stating that the mother of the respondent/petitioner since died on 27.08.2002 within three years period since no application had been given for seeking compassionate appointment, on that ground the application cannot be considered, therefore it is to be rejected accordingly it was rejected. Challenging the said order dated 01.12.2010 passed by the Chennai



W.A.No.837 of 2020

Corporation, the respondent/writ petitioner had moved the said writ petition.

7. The learned Judge who heard the said writ petition having taken note of these developments where even though the mother of the respondent/petitioner died on 27.08.2002 why he could not make immediate application even though he was ready and willing to seek compassionate appointment as he has been 24 years of age at the time, because of the ban that was in force therefore after the lifting of the ban such an application was given on 19.09.2008 followed by reminders since had been given by the respondent/petitioner, the same having been considered and process undertaken by the appellant Corporation and this has been referred in paragraph 9 and 10 of the order impugned by the learned Judge which reads thus:

“9. Though the argument put forth by the learned counsel for the respondents that there was a ban only for recruitment and the petitioner should have sent the application at least within three years of her demise, sounds good, it is not known as to why the 1st respondent sent a communication to the petitioner in the year 2008 for production of various documents, apart from directly



WEB COPY



W.A.No.837 of 2020

addressing a letter to the Tahsildar on 30.01.2009 to verify and report as to whether the petitioner's family was really in indigenous circumstances. In response to the said letter, the Tahsildar also sent a communication dated 09.07.2009 along with a certificate to the Corporation, explaining the indigenous circumstances. Therefore, the rejection mainly on the ground of non production of the certificate as could be seen from Paragraph Nos.5 & 6 of the counter affidavit, cannot stand in the eye of law. For better appreciation, Paragraph Nos.5 & 6 of the counter are extracted below:

“5. I submit that the Assistant Executive Engineer, Unit-15 has addressed a letter, dated 16.12.2008 to the Tahsildar, Mylapore - Triplicane Taluk requesting them to furnish the certificate about the property and family details etc. of the petitioner. Even still the relevant certificate has not yet been received by the respondent from the above Tahsildar or from the petitioner. The petitioner fail to submit his representation in time as per the rules of the compassionate grounds appointment norms. Hence, the petitioner's representation cannot be considered.

6. I submit that the representation of the petitioner has been rejected due to belated submission after lapse period of three years from the date of his Mother's death, as per the Government Letter No.42119/Ma.Na.3/07/2, Municipal Administration and Water Supply Department,



W.A.No.837 of 2020

dated 11.04.2008.”

10. In the typeset of papers, the petitioner has annexed the certificate forwarded by the Tahsildar directly to the Assistant Executive Engineer, Unit-15 and having duly received the same by the Corporation, the contra statement made by the 2nd respondent in the counter affidavit is highly deprecated. M/s.R.Lalitha, I.A.S., who was the then Commissioner i/c made such an incorrect statement in the counter affidavit. Of course, though the counter affidavit would have been drafted by her Subordinate with the assistance of the counsel for the Corporation, being an I.A.S. Officer, it is her bounden duty to ascertain the entire facts before ascribing her signature. Therefore, this Court is of the view that for no fault of the petitioner, he cannot be made to languish for more than a decade and he is entitled to be appointed on compassionate ground.”

8. In view of these peculiar facts and circumstances, where the application of the respondent/petitioner having been processed by getting additional information from the respondent/petitioner and after getting the input from the Tahsildar with regard to the penurious and indigent circumstances of the family of the writ petitioner/respondent, the application ought to have been considered on merits of the said inputs,



W.A.No.837 of 2020

instead, all of a sudden since the Corporation has passed an order on 01.12.2010 by citing the three years period rule knowing well that the application could not be entertained by the Corporation immediately after the death of the employee because of the ban which was in force, the learned Judge had come to the conclusion that, the action on the part of the Chennai Corporation cannot be approved and therefore, the learned Judge has gone to the extent of giving a positive direction in the order impugned to the Chennai Corporation to give appointment to the respondent/writ petitioner on or before November 2020, otherwise it shall be deemed that he has been appointed from 01.09.2020 and from that date the respondent/petitioner also would be entitled for getting salary.

9. Assailing the said order even though Mr.R.Gopinathan, learned counsel appearing for the appellant Corporation had submitted that, such a positive direction cannot be given and moreover within the three years period since no application had been made, such direction ought not to have been made by the learned Judge, we have not impressed with the said contention, because, the application submitted in the year 2008 by the respondent/petitioner having been entertained and acted upon, the writ petitioner/respondent had submitted the application in 2008 despite



W.A.No.837 of 2020

the fact that the mother of the petitioner since died on 27.08.2002, the reason for such belated application is because of the ban that was prevailing during the relevant time.

10. This position has not been disputed by the Chennai Corporation.

11. Moreover, the Corporation also had acted upon by receipt of the said application even in the year 2008 and they sought for additional input from the respondent/petitioner and on receipt of such additional input, they referred the matter to the concerned Tahsildar to have an inspection and file a report with regard to the penurious circumstances of the family of the respondent/writ petitioner, that has also been complied with the Tahsildar, of course in favour of the respondent/writ petitioner.

12. After having undertaken all these activities by completing the process of the application, all of a sudden the Chennai Corporation has come out with the order on 01.12.2010 rejecting the application of the respondent/petitioner only on the ground that within three years the application has not been given.



W.A.No.837 of 2020

WEB COPY 13. Therefore, the said reason stated in the said order dated 01.12.2010 would not stand in the legal scrutiny and therefore the learned Judge has set aside the said order of course rightly, to that extent we do not want to interfere with the said order passed by the learned Judge.

14. However, the learned Judge has given a positive direction in the operative portion of the order impugned in para 11 that, the Writ Petition is allowed and the impugned order dated 01.12.2010 passed by the 1st respondent is hereby set aside and the Corporation was directed to provide employment to the petitioner on compassionate ground on or before the end of November, 2020 and in case the petitioner is not provided with the employment on or before the expiry date, he is deemed to have entered into service from 01.09.2020 and is entitled to the salary of last grade employee, which could be recovered from the Officer responsible to comply with the order.

15. Because of this portion of the order passed by the learned Judge, certainly the appellant Corporation is aggrieved, therefore the



W.A.No.837 of 2020

learned Standing Counsel would make submissions stating that, if at all any consideration to be made on the basis of the input supplied by the petitioner/respondent as well as the Tahsildar concerned as sought for by the Chennai Corporation, such kind of consideration could be possible at the hands of the Chennai Corporation, but as a matter of right the respondent/writ petitioner cannot seek for compassionate appointment, for which such a positive direction could not have been given.

16. The said submission made by the learned Standing Counsel appearing for the appellant/Chennai Corporation is appealing to us. In order to rebut the same, even though notice had been served on the counsel who appeared for the respondent/writ petitioner before the Writ Court and his name though had been printed in the cause list, he is not present before this Court.

17. Nevertheless we are of the view that, the reason cited by the Chennai Corporation in passing an order dated 01.12.2010 citing three years rule for making application would not be available in this case because of the facts that has been narrated herein above.



W.A.No.837 of 2020

18. Therefore, application submitted by the petitioner/respondent on the basis of the input supplied by him as well as further input or report submitted by the Tahsildar by report dated 09.07.2009 shall be considered and the said application shall be decided on merits with regard to the plea of the respondent/petitioner for getting compassionate appointment.

19. It is made clear that, in view of the report of the Tahsildar since the family of the respondent/writ petitioner is in penurious and indigent circumstances, that shall be taken in account by the Corporation while deciding the said application, as we directed herein. The needful as indicated above shall be undertaken by the appellant Corporation in considering the application and passing orders within a period of two months from the date of receipt of a copy of this judgment.

20. Except this, the other directions given by the learned Judge in para 11 of the impugned order is hereby set aside and the order passed by the learned Judge in the order impugned dated 03.08.2020 therefore is hereby modified to the extent indicated above with the aforesaid directions.



W.A.No.837 of 2020

WEB COPY 21. With these directions, this Writ Appeal is ordered accordingly.

However, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

[R.S.K., J.] [K.B., J.]
07.03.2024

Index : Yes/No

Speaking Order : Yes/No

Neutral Citation : Yes/No

Sgl



WEB COPY



W.A.No.837 of 2020

R. SURESH KUMAR, J.
and
K.KUMARESH BABU, J.

Sgl

W.A.No.837 of 2020

07.03.2024