

IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.6245 OF 2009

STATE OF TAMIL NADU AND ORS.

...APPELLANT(S)

VERSUS

P. VIJAYAKUMAR

...RESPONDENT(S)

O R D E R

R. BANUMATHI, J.

1. This appeal arises out of judgment and order dated 10.01.2008 passed by the High Court of Madras in W.P. No. 38798 of 2005 in and by which the High has affirmed the order of the Tamil Nadu Administrative Tribunal and setting aside the order of termination and directing to consider the case of the respondent on compassionate ground.

2. On account of death of respondent's father who was working as Secondary Grade Teacher, on 29.12.1987 the respondent was appointed as a Waterman on temporary basis on compassionate ground. However, on 22.09.1988, the respondent was terminated from the service. The respondent filed the Writ Petition No. 14888 of 1988 which was later transferred to the Tamil Nadu Administrative Tribunal as T.A. No. 160/1994. Even when the said application was pending before the Administrative Tribunal, the respondent filed another O.A. No. 1941 of 1991 which came to be dismissed by the

Tribunal on 27.11.1991. In the said order dated 27.11.1991, the Tribunal noted that the appointment of the respondent has been made on temporary basis and that the employment was not regularized and, therefore, the respondent cannot make a grievance of his termination. The Tribunal pointed out that as per G.O.Ms.No.998, Labour and Employment Department dated 02.05.1981, if any member of the family was employed then the person is not entitled to appointment on compassionate basis and, therefore, the Government has taken a correct decision in terminating the appointment of the respondent.

3. Without taking note of the order dated 27.11.1991 (passed in O.A. No. 1941 of 1991), the Tribunal decided the T.A.No.160 of 1994 and vide order dated 12.01.2004, the Tribunal has set aside the order of termination of the respondent dated 22.09.1988. Accordingly, the Tribunal directed the appellant to reinstate the respondent. Learned counsel appearing on behalf of the State of Tamil Nadu has submitted that the respondent has also filed O.A. No. 6038/1994 which came to be disposed of by the Tribunal directing the authorities to consider the case of the respondent. Learned counsel has also pointed out that the respondent has filed another petition before the Tribunal viz. O.A. No. 2929/1997 which was dismissed as withdrawn.

4. The Writ Petition filed by the appellant challenging the order of the Tribunal dated 12.01.2004 was dismissed by the Division Bench by the order dated 10.01.2008. The High Court has pointed out that the order of termination is not

justified and the Tribunal rightly allowed the T.A. No. 160/1994. The Division Bench also held that the plea of *res judicata* is essentially based on facts and ought to have been raised before the Tribunal and cannot be permitted to be raised in the writ petition.

5. Learned counsel appearing on behalf of the appellants submitted that the Tribunal and the High Court erred in not taking note of the order passed in O.A. No. 1941/1991 and the subsequent orders passed by the Tribunal and the High Court are hit by the principle of *res judicata*. Learned counsel for the appellants has drawn our attention to G.O.Ms.No.998, Labour and Employment Department dated 02.05.1981 where it was ordered that if there was already an earning member in the family of the Government servant who died in harness, the other dependents of the deceased Government servant would not be eligible for appointment in the Government service or other Government undertakings without reference to the Employment Exchange. In the present case, the brother of the respondent was already employed in the Railway Mail Service under the Central Government and, therefore, as per the said G.O.Ms.No.998, Labour and Employment Department he was not entitled for the compassionate appointment. In our considered view, the High Court erred in not taking note of the said G.O.Ms.No.998, Labour and Employment Department and also the order of the Tribunal in O.A. No. 1941/1991 which came to be dismissed on 27.11.1991. It is also pointed out that the respondent is out of the employment for more than 30 years.

In such view of the matter, the respondent cannot be directed to be reinstated.

6. In the result, the impugned order is set aside and the appeal is allowed.

.....J.  
[R. BANUMATHI]

NEW DELHI  
24TH JULY, 2019

.....J.  
[A.S. BOPANNA]

ITEM NO.101

COURT NO.7

SECTION XII

S U P R E M E C O U R T O F I N D I A  
R E C O R D O F P R O C E E D I N G SCivil Appeal No(s). 6245/2009

STATE OF TAMIL NADU AND ORS.

Appellant(s)

VERSUS

P. VIJAYAKUMAR

Respondent(s)

Date : 24-07-2019 This appeal was called on for hearing today.

CORAM :

HON'BLE MRS. JUSTICE R. BANUMATHI  
HON'BLE MR. JUSTICE A.S. BOPANNAFor Appellant(s) Ms. Purbitaa Mitra, Adv.  
Ms. A. Jaswanthi, Adv.  
Mr. K. V. Vijayakumar, AORFor Respondent(s) Mr. Romy Chacko, AOR  
Mr. Shubham Singh, Adv.UPON hearing the counsel the Court made the following  
O R D E R

The appeal is allowed in terms of the signed order.

Pending application(s), if any, shall also stand disposed  
of.(MADHU BALA)  
COURT MASTER (SH)  
(Signed order is placed on the file)(NISHA TRIPATHI)  
BRANCH OFFICER