

(1999) 10 KAR CK 0035
In the Karnataka High Court
Case No : Writ Petition No. 35105 of 1994

Smt. Pushpavathi and Others

APPELLANT

Vs

The Chairman and Managing Director, Karnataka State Road
Transport Corporation, Bangalore and Others

RESPONDENT

Date of Decision : 05-10-1999

Acts Referred:

Industrial Disputes Act, 1947 — Section 12, 18 (1)
Workmens Compensation Act, 1923 — Section 2 (1) (I)

Citation : (2000) ILR (Kar) 1901 : (2000) 6 KarLJ 308 : (2000) 2 KCCR 25 SN

Hon'ble Judges : V. Gopala Gowda, J

Bench : Single Bench

Advocate : Sri M.C. Narasimhan, Sri M.C. Pyati and Sri B. Prabhudevaru, for the Appellant; Smt. Meena Ramachandran, for the Respondent

Judgement

1. The first petitioner is the mother of the petitioners 2 to 4 and the legally wedded wife of late Rajanna who was working as a Conductor in the Karnataka State Road Transport Corporation (hereinafter called as "Corporation" in short), have filed this writ petition seeking common relief by issuing a writ of certiorari to quash the order dated 12/18-10-1994 Annexure-H issued by the 3rd respondent and further have sought for issuance of a mandamus to the respondents to consider the case of the 2nd petitioner for his appointment in any suitable post on compassionate grounds, as there are no other members of the petitioners family earning for their bread. Therefore, the present petition is filed urging various facts and legal contentions.

2. The brief facts which are necessary for the purpose of considering the rival contentions of the parties are stated as hereunder:

Late Rajanna, husband of the first petitioner and father of the petitioners 2 to 4 was working as a Conductor in the 3rd respondent in Chickmagalur Depot of the Corporation. While he was in service, he was suffering from Parkinsonism disease. Therefore, he submitted representations dated 2-9-1992 and 2-11-1992

to the 3rd respondent requesting him to post him as Second Division Clerk on medical grounds by producing medical certificate issued by the NIMHANS. Later as per the directions of the Corporation, he has appeared before the Medical Board at Chamarajendra Hospital at Hassan. The said Medical Board examined and certified that he has completely and permanently incapacitated and further service of him in any post in the Corporation is not possible as he has been suffering from Parkinsonism disease and he was issued with the certificate dated 3-3-1993 vide Annexure-A.

3. The 3rd respondent instead of providing an alternative job as per Regulation 20(3) of the KSRTC {C and R} Regulations (hereinafter referred to as "Regulations" in short), and therefore late Rajanna was compulsorily retired vide order dated 6-4-1993 as per Annexure-B. Therefore, late Rajanna represented to the first respondent-Corporation stating that he has become medically incapacitated to work in the Corporation and requested to provide employment to the second petitioner who is his son on compassionate ground, as he had passed PUC course and there were no other bread earning members in the family of the petitioners as all the family members were depending on late Rajanna for their livelihood. The 2nd respondent intimated to the KSRTC Staff and Workers Federation who took up the case of the second petitioner, stating that the representation of the deceased Rajanna was forwarded to the 3rd respondent for taking action as per the circular bearing No. 840 of 1991, dated 13-4-1993 vide Annexure-E. It is stated that no action was taken by the respondents on the representation of the deceased Rajanna. Therefore, the petitioners 1 and 2 filed Writ Petition No. 7712 of 1994 before this Court and sought for issuance of a writ of mandamus directing the respondents to provide suitable employment to the second petitioner. The said writ petition was disposed of on 13-4-1994 in terms of the following order;

"As long as permanent disability of Rajanna is not disputed, one of the dependents of the family is entitled for appointment on compassionate grounds. Hence, this petition is allowed. The respondents are directed to consider the case of the 2nd petitioner on compassionate grounds within six months from the date of receipt of this order".

The said order was not challenged by the respondents-Corporation and it has become final. In pursuant to the order passed in the writ petition which became final, again the 3rd respondent directed late Rajanna to appear before the Medical Board on 17-9-1994 based on the representation made to the 2nd respondent on 5-5-1994. The 3rd respondent instead of obeying the order passed by this Court in the writ petition referred to above, he had issued another endorsement bearing No. 8364 of 1994, dated 12/18-10-1994 rejecting the claim of the second petitioner for appointing him on compassionate grounds vide Endorsement Annexure-H, which is impugned in this petition.

4. The petitioners submit that the deceased Rajanna was suffering both physically and mentally on account of suffering from serious ailment, ultimately

he died on 4-11-1994. It is contended by the petitioners that they have made representation on 5-12-1994 to the first respondent for not having taken action as per the directions issued by this Court in the earlier writ petition and providing employment to the second petitioner on compassionate ground as per the rules framed by the Corporation from time to time. It is contended by the first petitioner that if the first respondent-Corporation would have provided an alternative job as per the regulations to the deceased Rajanna, he would not have suffered mentally and physically and on account of which he died. It is contended that the impugned endorsement issued by the respondents is in contravention of the judgment of this Court in the case of Basavaraj Fakirappa Manvi v Managing Director, Karnataka State Road Transport Corporation, Bangalore and Others, and the judgment of the Apex Court in the case of Smt. Sushma Gosain and Others v Union of India and Others . However, the learned Counsel Mr. M.C. Narasimhan appearing on behalf of the petitioners" Counsel Mr. M.C. Pyati, would submits that the action of the respondents is in contravention of law, settlements and the regulations referred to above. Therefore, he would submits that the petitioners are entitled for the reliefs sought for in this writ petition.

5. The respondents have filed another statement opposing the prayer sought for in this writ petition urging various contentions. The deceased Rajanna was permitted to retire in accordance with the Corporation's Voluntary/Compulsory Retirement Regulation, 1984 as he was physically incapacitated for further service in the Corporation on account of the ailment of Parkinsonism disease, which he had suffered. The respondents rejected the request of the second petitioner for appointing him on compassionate ground vide its endorsement dated 12/18-10-1994 stating that he was not entitled for appointment on compassionate ground in the Corporation. Further it is contended at paragraph 4 of the counter-statement that as per the Circular No. 840, dated 9-10-1991, the dependents of the employees of the Corporation who were retired from service either voluntarily compulsorily from 1994 are not entitled for appointment in the Corporation on compassionate ground. Therefore, the second petitioner and other petitioners who are dependents of the deceased employee are not entitled for appointment on compassionate ground, as the deceased Rajanna was compulsorily retired under the regulations. Further, it is stated that as per the above said circular, appointment of the dependents of the deceased/disabled employees should have total and permanent disablement as defined u/s 2(1)(I) of the Workmen's Compensation Act, 1923 ("W.C. Act" in short). Then, only the dependents of the deceased employees who are either voluntarily or compulsorily retired from service are entitled for appointment in the Corporation on compassionate ground. The deceased Rajanna, the husband of the first petitioner has not suffered permanent and total disablement as defined u/s 2(1)(I) of the W.C. Act as there was no accident occurred during and in the course of employment. Therefore, the claim made by the petitioners with the respondents is not tenable in law,

6. Further, it is stated that the Corporation has considered the claim of the second petitioner on the basis of the order passed by this Court in the writ petition filed by the first and second petitioners as per the directions of this Court and the case of the petitioners was considered as per the regulations and the circular applicable and rejected the claim stating that the second petitioner is not entitled for appointment on compassionate ground in the Corporation. In support of the said contention, they have placed reliance on the judgment of this Court in the case of *Gayathri v Managing Director, Karnataka State Road Transport Corporation, Bangalore and Another*, wherein this Court has held the scheme framed by the Corporation for providing compassionate ground employment not to be extended to the cases where employee was required to leave the services on account of health ground. Therefore, the petitioners cannot claim as a matter of right, an appointment in the Corporation on compassionate ground. The respondents-Corporation by way of additional counter, it is contended by them stating that during the pendency of the writ petition, the retirement benefits such as PF amount of Rs. 44,620/- was paid to the petitioners. Therefore, the petition is liable to be rejected. Further, it is stated that the second petitioner is not entitled for appointment on compassionate ground by virtue of circular dated 16-2-1978, as the same was not in force as on the date of retirement of the husband of the first petitioner who was compulsorily retired by an order dated 6-4-1993. The settlement dated 16-12-1978 shall be supplement to the Memorandum of settlement signed on 6-6-1977. Its duration shall be with the agreement of settlement dated 6-6-1977 upto 31-12-1979. Therefore, the said settlement was not in force as on the date of compulsory retirement of deceased employee Rajanna. Further, strong reliance is placed by the learned Counsel Smt. Meena Ramachandran on behalf of the respondents on the judgment of the Supreme Court in the case of *Life Insurance Corporation of India v Mrs. Asha Ramachandra Ambekar and Another*, wherein, the Apex Court has held that the Court cannot order for appointment on compassionate ground contrary to the statutory regulations and the instructions.

7. The first respondent-Corporation being a statutory Corporation bound by the statutory regulations which have been framed in exercise of power u/s 45 of the Road Transport Corporation Act of 1950 as the Karnataka State Government has approved the KSRTC Compulsory/Voluntary Retirement Regulations of 1984. Therefore, there is no provision under the said regulations for providing for appointment of the dependents of either the voluntarily or compulsorily retired employees of the Corporation on compassionate ground. Further, reliance is placed on the Division Bench judgment in the case of *R.V. Krishnappa v Karnataka Electricity Board, Bangalore*, wherein this Court has held that appointment of the dependant persons of the ex-employees of Corporation on compassionate ground should be made strictly in accordance with the statutory rules and instructions. Therefore, the Corporation has issued Circular No. 840, dated 9-10-1991, which has clarified with the employees of the Corporation stating that employees of the Corporation who have retired either on voluntary

or compulsory retirement under the regulations, they are not entitled to get their dependants appointed in their places on compassionate ground for earning the livelihood of the members of the family of such ex-employees of the Corporation.

8. The arguments of the learned Counsels of both the parties were heard at length in this matter, having regard to the rival contentions urged on behalf of the parties this Court proceeds to pass the order, after considering the legal submissions and answering the legal contentions raised in this petition. This Court at an earlier occasion passed an order in W.P. No. 7712 of 1994 dated 13-4-1994 wherein this Court has held at paragraph 3 of that order to the effect that as long as permanent disability of left hand of the deceased Rajanna, the father of the second petitioner is not disputed, one of the defendants of the family is entitled for appointment on compassionate ground. Therefore, the petition filed by the petitioners 1 and 2 was allowed with a direction to the first respondent-Corporation to consider the case of the 2nd petitioner for his appointment in a suitable post in the Corporation on compassionate ground within 6 months from the date of receipt of the order. That order has become final and the said order is binding between the parties. Mr. M.C. Narasimhan has rightly placed reliance upon the judgment of the Apex Court in *State of Punjab and Others v Mis, Surinder Kumar and Company and Others*, the Apex Court after considering Section 11 of the CPC at paragraph 5 of the judgment has laid down the law as hereunder, the relevant portion reads thus:

"5. In such a situation can the Division Bench direct the Appellate Authority to go into the question of mala fides. It is seen that in the first round of litigation when the High Court had not gone into the question of mala fides, though the Minister was impleaded as a party, it had remitted the matter for disposal on merits. Obviously, the words "might and ought" used in Section 11 of the CPC stand in the way, and therefore, it operates as res judicata for raising the same question in the present writ petitions. The High Court could not have gone into that question, much less giving direction to the Appellate Authority, namely, the Excise and Taxation Commissioner, to go into the question".

9. The legal contentions urged in the counter-statement filed by the respondents in this petition was not urged by the Corporation in the previous writ petition proceedings when the endorsement issued by the Corporation wherein it has referred to appointment of the second petitioner on compassionate ground, was challenged before this Court. This Court after hearing the parties has disposed of that petition and this Court has directed the Corporation to consider the case of the petitioners holding that the dependant, the second petitioner of the deceased Rajanna, is entitled for appointment in any suitable post in the Corporation on compassionate ground. That order between the parties has become final. Therefore the law laid in the case referred to above with all fours applicable to the facts of this case, as the real controversy between the parties was decided on merits in that petition and therefore, it operates as res judicata. In this view of the matter the Corporation was precluded from taking untenable contentions as

has been urged in this case, therefore the legal submission made by the learned Counsel for Corporation that the petitioners are not entitled for the benefit of the circular issued by the Corporation and the case of the petitioners do not fall within the definition of Section 2(1)(l) of the W.C. Act, 1923, are all untenable in law, hence the contentions urged by the learned Counsel on behalf of the Corporation are liable to be rejected, accordingly the same are rejected.

10. The second legal contention urged by the learned Counsel Mr. M.C. Narasimhan that the Circular No. 840, dated 9-10-1991 upon which strong reliance is placed by the Corporation and the impugned endorsement issued by it stating that the second petitioner is not entitled for appointment in the Corporation on compassionate ground is also not legal, is the submission of the learned Counsel Mr. M.C. Narasimhan, wherein he has contended that the definition of Section 2(1)(l) of the W.C. Act, 1923 is not exhaustive but it is illustrative. Section 2(1)(l) of the Act referred to above is extracted as hereunder:

"(1) Total disablement: Means such disablement, whether of a temporary or permanent nature, as incapacitates a workman for all work which he was capable of performing at the time of the accident resulting in such disablement:

Provided that permanent total disablement "shall be deemed to result from every injury specified in Part I of Schedule I or from any combination of injuries specified in Part II thereof where the aggregate percentage of the loss of earning capacity, as specified in the said Part II against those injuries, amounts to one hundred per cent or more".

As per the said section, the disablement has to be total and permanent as per either under Part I or Part II of the Schedule I appended to the Act. This legal contention has been examined by this Court with reference to the factual aspects of this case. Much reliance is placed on by the learned Counsel Mr. M.C. Narasimhan on the certificate issued by the Medical Board of Chamarajendra Hospital, at the instance of the Corporation deceased Rajanna has appeared before the Board. The Board after examining him has certified that late Rajanna who was working as a conductor in the Corporation was completely and permanently incapacitated for further service of any kind in the department to which he belongs, as it was not possible for him on account of Parkinsonism disease of which he was suffering. This certificate was accepted by the Corporation and permitted him to compulsorily retire from the service vide order of the third respondent letter dated 6-4-1993, with reference to the said certificate the reference is made at Serial No. 4 in the order. Therefore, the contention of the Corporation that deceased Rajanna, its employee had not suffered the total and permanent disablement as defined u/s 2(1)(l) read with either under Part I or Part II of the Schedule I of the W.C. Act, then only the Circular Annexure-R1 is applicable to claim compassionate ground appointment by the second petitioner, who has claimed compassionate ground appointment after the services of the deceased Rajanna was terminated on account of his compulsory retirement. The submission of the learned Counsel Mr. M.C.

Narasimhan that the enumeration of various employment injuries describing percentage of loss of earning capacity of an employee either under Part I or Part II of the Schedule I of the W.C. Act are not exhaustive but they are illustrative. What was examined by the Medical Board of late employee Rajanna who was an employee of the Corporation has appeared before the Board, as he was suffering from permanent total disablement, notwithstanding the fact that he did not suffer from any one of the injuries which are enumerated in the Schedule I of either under Part I or Part II of the Act with reference to the definition of Section 2(1)(I) of the Act. Therefore the submission of the learned Counsel for the petitioners is tenable for the reason that the Medical Board has certified that the deceased Rajanna was completely and permanently incapacitated for further service in the Corporation, which certificate has been certified by the Competent Medical Board. Therefore, the non-enumeration of the Parkinsonism ailment either in Part I or Part II of Schedule I of the W.C. Act does not disentitle the person/employee, if the Medical Board certifies that he has completely and permanently incapacitated for rendering service in the Corporation. Therefore, the ailment an account of which he was suffering and on account of which he became permanently disabled can also be taken into consideration to hold that the case of deceased Rajanna falls within the purview of the definition of Section 2(1)(I) of the W.C. Act as the nature of injuries and the percentage of disablement described in the Schedule I of either under Part I or Part II are not exhaustive, but they are illustrative. And further, the Medical Board certificate in favour of late Rajanna was accepted by the first respondent-Corporation. Having accepted the said certificate and permitted the deceased employee Rajanna was retired compulsorily from his service, therefore it is not open for the Corporation to turn round and contend that the Circular Annexure-R1 has no application to the facts of the case. The contention urged in the counter-statement by the first respondent-Corporation is also not tenable in law for another reason that this Court in the earlier writ petition it has recorded a finding at paragraph 3 of the order holding that the deceased Rajanna was incapacitated, the said finding is recorded in the order on the basis of the contentions urged by the parties after hearing the learned Counsel appearing on behalf of the parties wherein this Court has held that as long as permanent disablement of deceased Rajanna was not disputed, one of the dependants of his family is entitled for appointment in the Corporation on compassionate ground. Therefore, the contention of the Corporation that the Circular Annexure-R1 has no application to the facts of the case for the reason that the deceased Rajanna has not suffered permanent disablement an account of suffering from any one of the employment injuries enumerated in the Schedule I of either under Part I or II of the Act, which has caused total permanent disablement to him cannot be accepted by this Court as the said contention urged by the learned Counsel for the Corporation is not tenable and therefore the submission made on behalf of the Corporation cannot be accepted by this Court, as the same is not tenable in law for the reasons recorded by me in this paragraph.

11. The another important contention urged by the learned Counsel Mr. M.C. Narasimhan appearing on behalf of the petitioner is that the Corporation is an Industry as defined u/s 2(j) of the Industrial Disputes Act, 1947 (hereinafter called as "I.D. Act" in short). Therefore, the provisions of the I.D. Act has got application to the employees who are working in the Corporation. There are number of settlements arrived at between the Trade Union of the Workmen and the Corporation and strong reliance is placed on the Clause 7(a) of the settlement dated 16-2-1978 which reads thus:

"7. Appointment of sons and daughters of the deceased employees.--(a) The son or the daughter of the widow of an employee who "dies in service" or who becomes "disabled in service" warranting termination from service will be eligible to get employment in the Corporation as per his or her suitability to the post, as per the qualifications prescribed in the Cadre and Recruitment Regulations and if there are vacancies, provided the employee concerned dies or becomes disabled leaving his family in financial distress. Only one member out of the family should be provided with employment, under this clause.

(b) If such an employee, who dies or becomes disabled has left only minor children, then only the member of the employee's family after he/she attains the majority may be provided with employment, provided he/she fulfills the qualification , prescribed in the Cadre and Recruitment Regulations and provided there is a vacancy for such a post in the Corporation.

(c) Such employment will be provided only once to one member of the family as mentioned above. No subsequent transfer of employment from member of the family to another member will be permitted".

After termination of the said settlement, subsequent settlements have been signed by the Corporation and the KSRTC Staff and Workers Union Federation. After 1978, two settlements dated 17-7-1989 and 27-12-1995 are entered between the parties referred to above. The benefit granted already in favour of the employees of the Corporation under the earlier settlement Clause 7 of 1978 settlement shall be deemed to have been continued in the subsequent settlements for providing employment to the dependant persons of the deceased persons or retired employees of the Corporation on the ground of permanent and total disablement. He further submits that the settlement is binding between the parties. The said Clause 7 of the 1978 settlement has been continued in the subsequent settlements as there is no substituting clause regarding compassionate ground appointments to the dependant family members of the either permanent and total disablement employees or employees who died during and in course of employment. In this view of the matter, the settlement between the parties are binding between the parties in view of Section 12 read with Section 18(1) of the I.D. Act, which have got statutory force. The clause under the previous settlement regarding providing compassionate ground appointment to the dependant persons of the employees of the Corporation under Clause 7 of 1978 settlement has been saved under Clause 33 of 1995

settlement as the said clause has not been substituted in the subsequent settlement by the Corporation, hence the same benefit in favour of employees providing appointment on compassionate ground to the dependant family members of the employee is a must by the Corporation in view of the law declared by the Apex Court in *Management of Karnataka State Road Transport Corporation, Bangalore v Karnataka State Road Transport Corporation Staff and Workers' Federation* , the relevant paragraph 20 of the said judgment is extracted as hereunder:

"20. But even on an assumption that the aforesaid notification satisfied the requirements of Section 19, sub-section (2) for terminating the settlement dated 28th July, 1988, even then till a new settlement laying down fresh terms of settlement on the question of Payroll Check-off Facility saw the light of the day, the binding effect of the 1988 settlement has to continue to bind the parties by way of contractual obligations. This aspect is well-settled by a three Judges Bench decision of this Court in *Life Insurance Corporation of India v D.J. Bahadur* , supra, Krishna Iyer, J., speaking for the Supreme Court at page 1114 (of SCR) : (at P. 2193 of AIR) of the report, has made the following pertinent observations:

"The core question that first falls for consideration is as to whether the settlements of 1974 are still in force. There are three stages or phases with different legal effects in the life of an award or settlement. There is a specific period contractually or statutorily fixed as the period of operation. Thereafter, the award or settlement does not become non est but continues to be binding. This is the second chapter of legal efficacy but qualitatively different as we will presently show. Then comes the last phase. If notice of intention to terminate is given u/s 19(2) or 19(6) then the third stage opens where the award or the settlement does survive and is in force between the parties as a contract which has superseded the earlier contract and subsists until a new award or negotiated settlement takes its place. Like nature, law abhors a vacuum and even on the notice of termination u/s 19(2) or 19(6) the sequence and consequence cannot be just void but a continuance of the earlier terms, but with liberty to both sides to raise disputes negotiate settlements or seek a reference and award. Until such a new contract or award replaces the previous one, the former settlement or award will regulate the relation between the parties. Such is the understanding of industrial law at least for 30 years as precedents of the High Courts and of this Court bear testimony. To hold to the contrary is to invite industrial chaos by an interpretation of the I.D. Act whose primary purpose is to obviate such a situation and to provide for industrial peace. To distill from the provisions of Section 19 a conclusion diametrically opposite of the objective, intendment and effect of the section is an interpretative stultification of the statutory ethos and purpose. Industrial law frowns upon a lawless void and under general law the contract of service created by an award or settlement lives so long as a new lawful contract is brought into being. To argue otherwise is to frustrate the rule of law. If law is a means to an end -- order in society -- can it commit functional

harakiri by leaving a conflict situation to lawless void"?"

In the above said judgment, law regarding binding effect of the settlement between the parties has been laid down by the Apex Court, after following the judgment of the Apex Court namely D.J. Bahadur's case, *supra*. The said judgment has been approved by the Constitutional Bench, of the Apex Court in the case of Ashoka Marketing Limited and Another v Punjab National Bank and Others . In this view of the matter, the impugned endorsement issued by the respondent-Corporation that the Circular No. 840, dated 9-10-1991 Annexure-R1 is not applicable to the facts of the case and the Corporation completely ignored the binding clauses of the settlements of 1978, 1989 and 1995 and the impugned endorsement has been issued by the Corporation in violation of the binding settlements and the law declared by the Apex Court in the cases referred to above. Therefore, the submission of the learned Counsel Mr. M.C. Narasimhan is that the Corporation has wrongly not applied the circular at Annexure-R1 to the facts of this case and further ignoring the statutory rights conferred upon the employees in pursuant to the settlements which are binding between the parties, the non-consideration of the application submitted by the second petitioner having regard to the fact that the deceased Rajanna was compulsorily retired by the Corporation in exercise of its powers under the regulations of 1984 on the ground that he was completely and permanently disabled to render service in the Corporation is accepted by the respondent 3 vide his order of compulsory retirement passed by him as per Annexure-B, dated 6-4-1993 shall be accepted as the same is well-founded. Therefore, the impugned endorsement issued by the Corporation *ex facie* is not only ill contravention of definition of Section 2(1) (I) Part I and Part II of the Schedule I of the W.C. Act but also in contravention of Clause 7 of 1978 settlement which clause has been further saved under Clause 33 of 1995 settlement and therefore the said clause has been continued to operate in the subsequent settlements, in the Corporation, in view of the law declared by the Apex Court in the case of Management of Karnataka State Road Transport Corporation, referred to *supra* in the preceding paragraph of this order, therefore the said settlements are binding between the parties.

12. In this view of the matter, the contention urged by the learned Counsel Mrs. Meena Ramachandran appearing on behalf of the respondents contending that the deceased Rajanna was not completely and permanently disabled as enumerated in Schedule I of either under Part I or Part II of the W.C. Act, 1923 cannot be accepted as the same is not tenable in law for the reasons recorded by me in the preceding paragraphs of this judgment. Further, reliance placed on the judgment of this Court namely Gayathri's case, *supra* and Narayan Babu v Karnataka State Road Transport Corporation, unreported judgment rendered by this Court, wherein this Court has placed reliance on the judgment of the Apex Court in Umesh Kumar Nagpal Vs. State of Haryana and Others, with reference to the Circular No. 840 of 1991, dated 9-10-1991 are misplaced, as those judgments are not applicable to the facts of this case. This Court in the case of Narayan Babu and other cases referred to above has not considered the

intention, scope and the purpose of enumeration of various employment injuries enumerated either in Part I or Part II of Schedule I of the W.C. Act with reference to the percentage of permanent and total disablement and further the contentions as advanced by the learned Counsel for the petitioners that the enumeration of the employment injuries in the Schedule I of Parts I and II of the Act as defined u/s 2(1)(I) of the W.C. Act was not exhaustive but illustrative, these legal contentions were not urged and considered in those cases, therefore the submission of the learned Counsel is well-founded and the same shall be accepted. And further, the settlements referred to in this judgment with reference to the law laid down by the Apex Court in the cases of D. J. Bahadur, Management of KSRTC and Ashoka Marketing Limited, have not been considered by this Court in the cases referred to above. Therefore, in my considered view, the aforesaid legal submissions as urged in this case by the learned Counsel for the petitioners were either urged in the said cases or considered by this Court in the cases of Gayathri and Narayan Babu, supra, and the Division Bench judgment in the case of H.D. Bettaiah, supra. Therefore, the said judgments have no application to the facts of the case particularly in the background of medical certificate issued to the deceased Rajanna by the competent Medical Board as he was directed to appear before it to undergo medical examination, accordingly he had underwent the medical examination and he was certified that he was incapacitated for further service in the Corporation, further the legal aspects as urged by the learned Counsel for the petitioners in this case with regard to the settlements, which have got statutory force in law and the question of res judicata between the parties operates in view of the finding recorded by this Court at paragraph 3 in the judgment rendered by this Court in the previous writ petition between the same parties has not been considered by the Corporation. Therefore, the non-consideration of the application of the second petitioner by the respondents despite direction issued by this Court is not proper consideration keeping in view the settlement Clause 7 of 1978 and Clause 33 of 1989 and 1995 settlements and the definition of Section 2(1)(I) of the W.C. Act, in the background of the facts of this case, and reasons assigned by this Court with reference to the rival contentions urged by the parties in the preceding paragraphs, and for the reasons stated supra, by this Court the submission made on behalf of the learned Counsel Mr. M.C. Narasimhan placing reliance on the judgments of the Apex Court and the Circular at Annexure-R1, definition of Section 2(1)(I), Part I and Part II of Schedule I of the W.C. Act, 1923 are well-founded and in the background of medical certificate at Annexure-A, wherein the Medical Board has certified that deceased Rajanna, the father of the second petitioner was completely and permanently incapacitated for rendering his future service in the Corporation, which certificate was accepted by the Corporation and it has compulsorily retired him from his service in exercise of its power under 1984 Regulations and further the reasons assigned in the impugned endorsement are contrary to the law declared by the Apex Court referred to above. Hence, the petitioners must succeed in this petition.

13. For the reasons stated supra, the various contentions and the reliance placed on the judgments of this Court referred to in the preceding paragraph of this judgment by the learned Counsel Mrs. Meena Ramachandran are misplaced, and the said contentions are unfounded and therefore the same cannot be accepted. Hence, I pass the following order.

The writ petition is allowed. Issue rule made absolute. The impugned endorsement Annexure-H, dated 12/18-10-1994 is hereby quashed. A writ of mandamus is given to the respondents to consider the case of the petitioner in the light of the observations made in this judgment and law laid down in this case within 6 weeks from the date of receipt of this order.