BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 19.01.2017

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBBIAH
and
THE HONOURABLE MRS. JUSTICE J.NISHA BANU

W.A.(MD)No.1257 of 2016
and
C.M.P.(MD).No.8537 of 2016

1.The Joint Commissioner of Income Tax Range -I,
Madurai Central Revenue Building,
No.2, Rathinasamy Nadar Road,
Madurai 625 002.

2.The Chief Commissioner of Income Tax,
Cadre Controlling Authority (CCA),
No.122, Mahatma Gandhi Road,
Nungambakkam,
Chennai - 600 034.

3.The Chairman,
Central Board of Direct Taxes,
North Block, New Delhi. .. Appellants/Respondents

Vs.

A.Jothi .. Respondent/Petitioner

Writ Appeal has been filed under Clause 15 of the Letters Pattent, against the order dated 21.06.2016, made in W.P.(MD). No.13640 of 2011 by a learned Single Judge of this Court.

Prayer in WP(MD). 13640/ 2011 :
Writ Petition filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorarified Mandamus or any other appropriate Writ or Order or Direction particularly in the nature of Writ, calling for the records pertaining to the impugned order of the 2nd respondent in his Memorandum Letter dated 18.10.2011 and quash the same and direct the respondents to give appointment to the petitioner's son A. Prabhu on compassionate grounds.

For Appellants : Mr.V.Vijayshankar
For Respondent No.1 : Mr.M.R.Sreenivasan,
for Mr.R.Nandakumar

JUDGMENT

(Judgment of the Court was delivered by **R.SUBBIAH, J.)**

This appeal has been filed by the Income Tax Department as against the order dated 21.06.2016 passed in W.P(MD).No.13640 of 2011 whereby and whereunder a learned Single Judge of this Court has quashed the impugned order passed by the second respondent rejecting the claim of the respondent for compassionate appointment and directed the appellants herein to consider the application submitted by the respondent on merits and in accordance with the relevant scheme.

2.The brief facts which are necessary to decide this writ appeal are as follows;

(a) The respondent herein is the widow of Late.J.Anthony, who served under the appellants herein, got voluntary retirement on medical ground on 31.07.2006 and died due to Chronic Schizophrenia on 15.11.2009. Since her husband had retired voluntarily on medical ground, she can claim compassionate appointment. Hence, she has submitted an application on 13.12.2006 to the first appellant requesting to provide compassionate appointment to his son Mr.A.Prabu. Thereafter, she has sent several remainders to the appellants. While so, on 18.10.2011, the second respondent sent the impugned letter rejecting the claim of the respondent without any valid ground. Challenging the said order, the respondent has filed the writ petition.

(b) The first appellant has filed a counter affidavit admitting that the respondent's husband retired on medical ground. Hence, the learned Single Judge directed the appellants herein to consider the application submitted by the respondent for compassionate appointment along with the relevant scheme. However, aggrieved over the same, the appellants have come up with this appeal.

3.When the matter was taken up for consideration, the learned counsel appearing for the appellants submitted that as per Rule 38 of the Central Civil Service (Pension) Rules, the legal heirs of an employee of the appellants is entitled for compassionate appointment only on two grounds i.e., (a) the employee died in harness and (b) the employee retired on medical grounds. In the instant case, the husband of the respondent himself voluntarily retired. Therefore, the son of the respondent is not entitled for compassionate appointment. Thus, he sought for setting aside the impugned order of the learned Single Judge.

4.Heard the learned counsel appearing for the respondent on the above submission made by the learned counsel for the appellants.

5.Admittedly, it is not in dispute that while the respondent's husband was in service, he suffered continuous illness viz., Chronic Schizophrenia and he was not in a position to perform his duty. Under such circumstances, according to the respondent, her husband was asked to go on voluntary retirement. Accordingly, he had taken voluntary retirement on medical ground. Even after retirement, he was under continuos treatment and died on 15.11.2009. In such circumstances, either the respondent's husband or the respondent cannot be found fault with for any omission or commission. Considering the peculiar circumstances of the case, the learned Single Judge has quashed the impugned rejection order and also directed the second appellant to consider the application of the respondent for compassionate appointment to her son on merits and in accordance with the relevant scheme. We do not find any infirmity in the order passed by the learned Single Judge. However, we make it clear that this judgment shall not be taken as a precedent for other cases.

6. In the result, this writ appeal fails and accordingly, dismissed. No costs. Consequently, connected miscellaneous petition is also dismissed.

Sd/-
Assistant Registrar (CS-III)

/True Copy/

Sub Assistant Registrar

gcg

To,

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3.The Chairman,
Central Board of Direct Taxes,
North Block, New Delhi.

+1CC to Mr.M.R.Sreenivasan, Advocate Sr.No.3446

GJM/PM/9.3.17-3p-5c