BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 05.01.2021
CORAM

THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P.(MD) No.15806 of 2020

S.Senthil Guru ... Petitioner

Vs.

1.The Commissioner of Commercial Tax,
Ezhilagam, Chepauk,
Chennai – 600 005.

2.The Joint Commissioner of Commercial Tax,
O/o. The Joint Commissioner of Commercial Tax,
Madurai Division, Commercial Tax Complex,
Madurai.

3.The Commercial Tax Officer,
Office of Commercial Tax,
Theni. .. Respondents

PRAYER : Writ petition filed under Article 226 of the Constitution of India to issue a writ of Certiorarified mandamus, calling for the records pertaining to the order passed by the 3rd respondent vide Na.Ka.No.89/2018/A2, dated 06.07.2018 and the consequential impugned order passed by the 2nd respondent vide Na.Ka.A10/3501/2015 dated 14.10.2019 and quash the same and consequently direct the respondents to appoint the petitioner in any suitable post on compassionate ground in the Department of Commercial Tax.

For Petitioner : Mr.D.Shanmugaraja Sethupathi
For Respondents : Mrs.J.Padmavathi Devi
Special Government Pleader

O R D E R

This writ petition has been filed for issuance of Writ of Certiorarified mandamus, to quash the impugned order passed by the 3rd respondent vide Na.Ka.No.89/2018/A2, dated 06.07.2018 and the consequential impugned order passed by the 2nd respondent vide Na.Ka.A10/3501/2015 dated 14.10.2019 and consequently direct the respondents to appoint the petitioner in any suitable post on compassionate ground in the Department of Commercial Tax.

2.Heard Mr.D.Shanmugaraja Sethupathi, learned counsel appearing for the petitioner and Mrs.J.Padmavathi Devi, learned Special Government Pleader, appearing for the respondents.

3.The petitioner's father while working as an Assistant in the Commercial Tax Department, died in harness on 19.12.2013. The petitioner's mother had made an application to the respondents on

01.12.2014, seeking for compassionate appointment to any of the legal heirs of the deceased employee. The petitioner herein is the son of the deceased employee, who was a minor at the time of his father's death. He attained the age of majority on 26.06.2017. Thereafter, it is claimed that the petitioner's mother had made two other representations on 29.06.2017 and 08.11.2017, seeking for compassionate appointment in favour of the petitioner. The petitioner has also given a representation on 26.02.2020, seeking for compassionate appointment for himself. By considering the original application of the petitioner's mother dated 01.12.2014, the present impugned order, dated 06.07.2018 came to be passed by the respondents, rejecting the claim for compassionate appointment on the ground that on the date of completion of 3-year period, for making an application for compassionate appointment, the petitioner was a minor and therefore, on that ground the petitioner was ineligible to be considered for compassionate appointment, in view of the Government Letter dated 04.05.2010. Challenging the said order dated 06.07.2018, the present writ petition has been filed.

4.The issues revolving around the procedure for compassionate appointment were considered in various writ petitions before this Court, as well as before the Honourable Supreme Court. Among such dictums laid in these judgments, it has been held by a Honourable Division Bench of this Court in the case of ***Chief Engineer/Personnel, TNEB Vs. S.Suder*** reported in ***MANU/TN/0635/2009***, that an application for compassionate appointment can be made by a person within 3 years from the date on which he/she attains majority. The Honourable Supreme Court in the case of ***Syed Khadim Hussain Vs. State of Bihar*** reported in ***2006 (9) SCC 195***, has also held that when a Widow has submitted an application in time, the Authorities should consider such application expeditiously and grant an appointment to the minor who had attained majority owing to the pendency of the application.

5.In the present case, though the petitioner was a minor at the time of his father's death, his mother had made an application within 3 years from the date of the death of his father, seeking compassionate appointment in favour of any of his legal heirs. On attaining majority, (i.e., on 26.06.2017), the petitioner had also given a representation dated 26.02.2020, seeking for compassionate appointment for himself. By applying the propositions laid down in the aforesaid decisions, it could be said that the application given by the petitioner on 26.02.2020 is in continuance of the earlier application made by the mother of the petitioner on 01.12.2014 and since the petitioner's application dated 26.02.2020 was within a period of 3 years from the date of his attaining majority, the respondents are not justified in rejecting the petitioner's application on the ground that the petitioner was a minor within the stipulated period of 3 years from the date of death of the employee. As such, the impugned order itself cannot be sustained.

6.In the result, the impugned order passed by the third respondent vide Na.Ka.No.89/2018/A2 dated 06.07.2018 and the consequential impugned order passed by the 2nd respondent vide Na.Ka.A10/3501/2015 dated 14.10.2019 are hereby quashed and the matter is remanded back to the second respondent for reconsideration. The second respondent shall take into consideration the observations made by this Court in the present order and accordingly, pass fresh orders atleast within a period of twelve weeks from the date of receipt of a copy of this order. While passing such orders, the second respondent shall not quote the three year limitation period for filing the application, as a bar or state that the petitioner was a minor during the check period of three years from the date of the employee's death.

7.The writ petition stands allowed accordingly. No costs.

Sd/-

Assistant Registrar (AE)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

TM

Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the Advocate/litigant concerned.

To

1.The Commissioner of Commercial Tax, Ezhilagam, Chepauk, Chennai - 600 005.

2.The Joint Commissioner of Commercial Tax, O/o. The Joint Commissioner of Commercial Tax, Madurai Division, Commercial Tax Complex, Madurai.

3.The Commercial Tax Officer, Office of Commercial Tax, Theni.

+1 CC to M/s.D.SHANMUGARAJA STHUPATHI, Advocate (SR-505[F] dated 07/01/2021)

+1 CC to M/s.SPL GP (SR-262[F] dated 06/01/2021)

W.P.(MD) No.15806 of 2020
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SR(CO)
KB(20.01.2021) 3P 6C