BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 07.01.2021

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THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P.(MD) No.15755 of 2020
and W.M.P.(MD).No.13200 of 2020

N.Janaki ... Petitioner

Vs.

1.The Principal Secretary to Government of Tamil Nadu,
Commercial Tax Department,
Secretariate, Chennai - 9.

2.The Joint Commissioner,
Commercial Taxes, Madurai Division,
Madurai - 20.

3.The Joint Commissioner (Enforcement)
Commercial Taxes,
Madruai - 20. .. Respondents

PRAYER : Writ petition filed under Article 226 of the Constitution of India to issue a writ of Certiorarified mandamus, calling for the records connected with the impugned order passed by the 2nd respondent in Na.Ka.A 10/3076/2015 dated 19.09.2018 and in Na.Ka.No.A 10/3076/2015 dated 03.10.2020 which was enclosed in the letter of the 3rd respondent communicated to the petitioner in Na.Ka.No.A 4 /1230/2020 dated 12.10.2020 rejecting the claim of the petitioner for appointment on Compassionate Grounds to the petitioner's daughter N.Swetha and quash the same and consequently direct the respondents to consider the claim of the petitioner for appointment on Compassionate Ground to the petitioner's daughter in any one of the suitable post considering the qualification of the petitioner's daughter.

For Petitioner : Mr.S.Govindan
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 2nd respondent in Na.Ka.A 10/3076/2015 dated 19.09.2018 and in Na.Ka.No.A 10/3076/2015 dated 03.10.2020 which was enclosed in the letter of the 3rd respondent communicated to the petitioner in Na.Ka.No.A 4 /1230/2020 dated 12.10.2020 rejecting the claim of the petitioner for appointment on Compassionate Grounds to the petitioner's daughter N.Swetha and consequently to direct the respondents to consider the claim of the petitioner for appointment on Compassionate Ground to the petitioner's daughter in any one of the suitable post considering the qualification of the petitioner's daughter.

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

3.The petitioner's husband, while working as an Deputy Commercial Tax Officer in the Commercial Tax Department, died due to Blood Cancer on 11.04.2011. The petitioner had made an application to the respondents on 05.06.2013, seeking for compassionate appointment to her daughter, who was a minor at the time of his father's death. She attained the age of majority in the year 2020. In the meantime, it is claimed that the petitioner had made three other representations on 30.09.2015, 26.12.2016 and 16.09.2020, seeking for compassionate appointment in favour of her daughter. By considering the applications of the petitioner dated 05.06.2013, 08.06.2015 and 01.10.2015, the present impugned order, dated 19.09.2018 came to be passed by the respondents, rejecting the claim for compassionate appointment, on the ground that, on the date of completion of the 3-year period for making an application for compassionate appointment, the petitioner's daughter was a minor and therefore, the petitioner's daughter was ineligible to be considered for compassionate appointment, in view of the G.O (Ms) No.155, Labour and Employment (Q1) Department, dated 10.12.2017. Challenging the said order dated 19.09.2018, 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 by 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's daughter was a minor at the time of her father's death, the petitioner/mother had made an application within 3 years from the date of the death of her husband, seeking compassionate appointment in favour of her daughter. By applying the propositions laid down in the aforesaid decisions, it could be said that the last application given by the petitioner on 16.09.2020 is in continuance of the earlier application made by herself on 05.06.2013 and since the petitioner's last application dated 16.09.2020 was within a period of 3 years from the date of her daughter's attaining majority, the respondents are not justified in rejecting the petitioner's application, on the ground that the petitioner's daughter 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 passed by the 2nd respondent in Na.Ka.A 10/3076/2015 dated 19.09.2018 and in Na.Ka.No.A 10/3076/2015 dated 03.10.2020, which was enclosed in the letter of the 3rd respondent communicated to the petitioner in Na.Ka.No.A 4 /1230/2020 dated 12.10.2020 rejecting the claim of the petitioner for appointment on Compassionate Grounds to the petitioner's daughter N.Swetha 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. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

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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 Principal Secretary to Government of Tamil Nadu,
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2.The Joint Commissioner,
Commercial Taxes, Madurai Division,
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3.The Joint Commissioner (Enforcement)
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+1 CC to SGP (SR-658[F] dated 08/01/2021)

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