

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Order Reserved On : 02.11.2018

Order Pronounced On : 01.03.2019

CORAM:

THE HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

W.P.No.14783 of 2009

V.Dhakshina Moorthy

... Petitioner

Vs.

The Tamil Nadu Warehousing Corporation,  
Rep. By its Chairman-cum-Managing Director,  
82, Anna Salai, Guindy, Chennai-600 032.

... Respondent

PRAYER: Writ Petition has been filed under Article 226 of the Constitution of India seeking a Writ of Certiorarified Mandamus, calling for the concerned records relating to the proceedings in So.Nu.Aa.No.9947/04/E4 dated 23.12.2004 and RCK.Dis.3295/2005/E3 dated 22.09.2005 passed by the respondent and quash the same in so far as the denial of the petitioner's benefit of the voluntary retirement scheme under G.O.Ms.No.158, Finance (BPE) Dept. dated 13.05.2002 and consequently direct the respondent to confer the benefit of G.O.Ms.No.158, Finance (BPE) Dept. dated 13.05.2002 on the petitioner.

For Petitioner : Mr.T.Sundaravadanam

For Respondent : Mr.S.A.Hafiz

O R D E R

The petition has filed under Article 226 of the Constitution of India for a writ in the nature of Certiorarified Mandamus, calling for the records relating to the proceedings in So.Nu.Aa.No.9947/04/E4 dated 23.12.2004 and RCK.Dis.3295/2005/E3 dated 22.09.2005 passed by the Tamil Nadu Warehousing Corporation and quash the same in so far as the denial of the petitioner's benefit of the voluntary retirement scheme under G.O.Ms.No.158, Finance (BPE) Dept. dated 13.05.2002 and consequently direct the respondent to confer the benefit of G.O.Ms.No.158, Finance (BPE) Dept. dated 13.05.2002 and direct the respondent to confer the benefit of the said G.O to the petitioner.

2. The petitioner entered in to the service in the Corporation as a Junior Assistant. While holding the post of Regional Manager at Tirunelveli, the petitioner has given an application to opt for Voluntary Retirement Scheme. His request was considered by the Managing Director, who passed an order in PROC.RO.9947/04/E4 dated 23.12.2004, allowing him to take voluntary retirement. However, the petitioner was not given voluntary retirement under a special scheme as per TNWC General and Staff Regulations, 1965, which had been brought about in compliance with G.O.Ms.No.158 (BPE) Dept. dated 13.05.2002.

3. The petitioner has filed the present writ petition after 4 years, after exercising the option for Voluntary Retirement Scheme on 31.01.2005. The petitioner gave representation to the respondent to consider his request and permit him to exercise his option for Voluntary Retirement in the special package which has been extended to 24 members in Tamil Nadu Warehousing Corporation. The said request of the petitioner has been rejected by the Managing Director of the respondent by an order dated 22.09.2005. After the rejection of the representation, the writ petitioner has also send a grievance petition to the Chief Minister's Special Cell which was forwarded to the Tamil Nadu Warehousing Corporation and the same also rejected by an order dated 09.05.2006.

4. The petitioner has challenged the order dated 22.09.2005 passed by the respondent Corporation rejecting his request for permission to go on Voluntary Retirement under the special scheme as per the Tamil Nadu Warehousing Corporation General and Staff Regulations, 1965. The respondent have filed a counter stating that the writ petitioner is not entitled to the benefit of the scheme, because the petitioner while exercising his option of Voluntary Retirement Scheme working as a Regional Manager and there was only one post of Regional Manager. It is stated that it is the policy decision of the respondent that there is only one post available, then the special scheme is not applicable in such cases.

5. Heard the counsel for the parties.

6. The Government of India issued the G.O.Ms.No.158 dated 13.05.2002, bringing out the voluntary Retirement Scheme to deal with the situation of surplus manpower in the State Public Sector undertakings. The petitioner as stated earlier by his representation dated 31.10.2004 sought permission to go on Voluntary Retirement. The petitioner was permitted to avail Voluntary Retirement, but not under the special scheme which was introduced in Warehousing Corporation pursuant to the G.O.Ms.No.158 dated 13.05.2002.

7.The grievance of the petitioner is that, the petitioner ought to have been given the benefit of the special scheme under Rule 10(1) of TNWC, General and Staff Regulations,1965, in accordance with the special package announced under the G.O.Ms.No.158 dated 13.05.2002. It is stated by the counsel for the respondent that the Voluntary Retirement Ex-gratia amount as per G.O.Ms.No.158, Finance (BPE) dated 13.05.2002 is placed before the Board of Directors on 11.10.2002 and it was adopted but with certain riders.

8. The resolution read as under:-

"Adopted. The Board however observed that the question of implementation of the G.O will only in respect of posts that will be declared surplus and not filled later on."

9. The counter relies on a Government letter No.50090/BPE/02 dated 17.07.2002 which reads as under:-

" I am directed to state that the VRS is applicable to specific categories of employees who are identified as surplus in the State Public Sector undertaking. As per the orders issued in letter No.7734/BPE/2002-1 Finance Dept. dated 08.05.2002, a Committee of Directors to be constituted to identify the surplus posts before the Board of Directors. Therefore, the question of offering VRS to the employees as per G.O.Ms.No.158, Finance (BPE) Department, dt.13.05.2002 will arise only after identified of the surplus staff by the committee of Directors/Board mentioned above."

10. Since there was no surplus post in the cadre of Regional Manager in the Corporation, the petitioner was permitted to go on Voluntary Retirement without getting the benefit of the special scheme as per the TNWC, General and Staff Regulations,1965, under Rule 10(1). As recorded earlier, the resolution of the Board, specifically states that G.O.Ms.No.158, Finance (BPE) dated 13.05.2002, was implemented in respect of posts that will be declared surplus and not filled later on. Since the petitioner was the lone Regional Manager, his post could not have been treated as surplus and therefore, as per the resolution adopted by the Board, the petitioner was not entitled to special scheme as per G.O.Ms.No.158, Finance (BPE) dated 13.05.2002.

11. The petitioner has not challenged the Board resolution. The Warehousing Corporation has acted as per the Board resolution. It is a decision taken by the State Warehousing Corporation. This Court does not find any infirmity with the Board resolution. The Board resolution only states that such all

those posts which cannot be declared as surplus cannot given the benefit of the special regulation as per G.O.Ms.No.158, Finance (BPE) dated 13.05.2002 which was passed only to remove those persons who are surplus in the public sector undertakings. The resolution is in accordance with the G.O.Ms.No.158, Finance (BPE) dated 13.05.2002.

12. The impugned order passed by the State Warehousing Corporation therefore this Court does not called for any interference. The writ petition is dismissed. No Costs.

Sd/-

Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

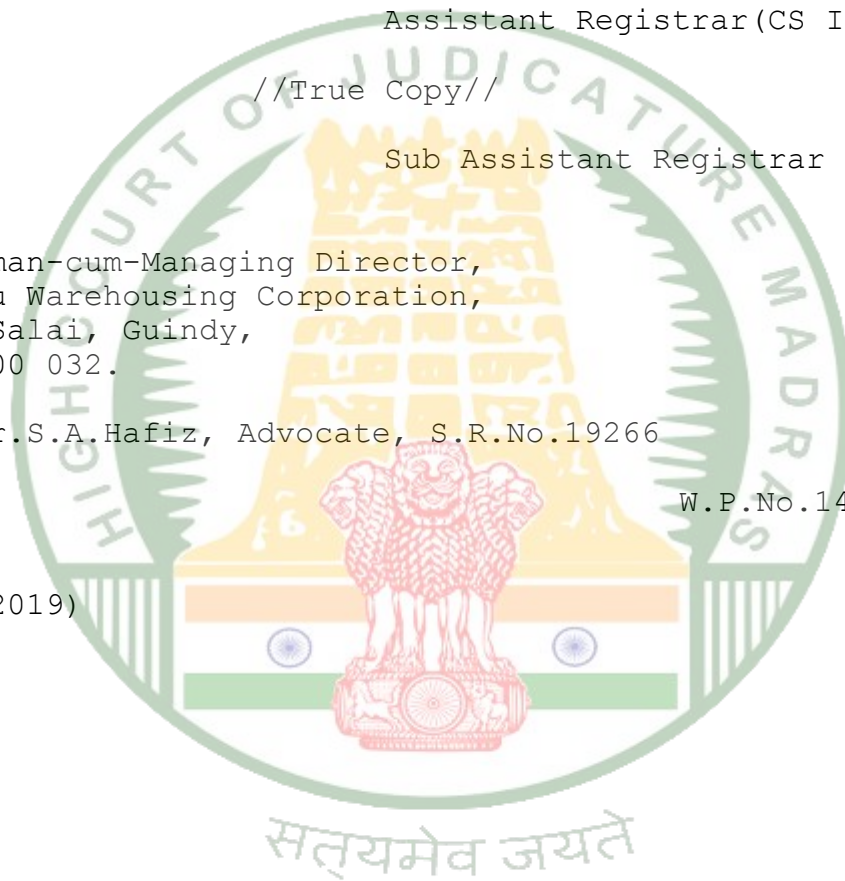
To

The Chairman-cum-Managing Director,  
Tamil Nadu Warehousing Corporation,  
82, Anna Salai, Guindy,  
Chennai-600 032.

+lcc to Mr.S.A.Hafiz, Advocate, S.R.No.19266

W.P.No.14783 of 2009

BS (CO)  
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