

WMP No.11908 of 2019
in WP No.7556 of 2017

S.MANIKUMAR, J.,
AND
SUBRAMONIUM PRASAD, J.,

[Order of the Court was made by **S.MANIKUMAR, J.**]

Earlier, writ petitioner has filed the writ petition for a writ of declaration, declaring that the order No.2016/E(O)II/1/8 dated 22.03.2017 issued by the Under Secretary / R(O)II/Railway Board, the 3rd respondent herein, appointing the 6th respondent as a Technical Member to the Railway Claims Tribunal, Ernakulam Bench, is illegal, arbitrary and unconstitutional.

2. Subsequently on 28.03.2017, we granted interim stay in WMP No.8237 of 2017 in WP No.7556 of 2017 and the same is as under.

"There shall be an interim stay of the operation of all further proceedings, pursuant to the order No.2016/E(O)II/1/8 dated 22.03.2017, issued by the Under Secretary / E(O)II/ Railway Board, 3rd respondent herein".

3. In the meanwhile, the Senior Personnel Officer/Gaz, Southern Railway, has passed orders dated 27.03.2017 granting permission to the 6th respondent to voluntarily retire from the post of CCM/Southern Railway and join as Member (Technical) in Railway Claims Tribunal at Ernakulam Bench.

4. Another order dated 28.03.2017 has also been passed by Under Secretary / E(O)II/ Railway Board, 3rd respondent herein permitting Mr.Ajeet Kumar Saxena,

6th respondent to join the office of Member (Technical), Railway Claims Tribunal, Ernakulam Bench, subject to the outcome of investigation of CBI in compliance of Orders dated 24.11.2016 of Hon'ble Madurai Bench of High Court of Madras in WP (MD) No.21214 of 2016 in the matter of M.Ramesh Vs. Central Bureau of Investigation (CBI), New Delhi.

5. In the light of the subsequent developments from 22.03.2017, i.e., the offer of appointment to the office of Member (Technical), Railway Claims Tribunal, Ernakulam Bench, petitioner has filed WMP No.11908 of 2019 in WP No.7556 of 2017, seeking for amendment of the prayer in the writ petition as hereunder.

“to permit the petitioner to Amend the prayer in WP No.7556/2017 as Writ of Declaration, declaring that the order No.2016/E(O)II/1/18 dated 22.3.2017 issued by the 3rd respondent read with the Order No.HPB(O) 185/2017 dt.27.03.2017 issued by the 5th respondent along with the Order No.2016/E(O)II/1/B dt.28.03.2017 issued by the 3rd Respondent, is so far as it granted illegal and unlawful benefits to the 6th respondent by relieving on voluntary retirement and appointing him as Technical Member to the Railway Claims Tribunal, Ernakulam Bench, is illegal, arbitrary and unconstitutional - instead of - Writ of Declaration, declaring that the order No.2016/E(O)II/1/8, dated 22.3.2017 issued by the Under Secretary/E(O)II/ Railway Board the 3rd respondent herein appointing the 6th respondent as a Technical Member to the Railway Claims Tribunal, Ernakulam Bench, is illegal, arbitrary and unconstitutional.”

the amendment in so far as the amendment challenging the appointment to the post of Member (Technical), Railway Claims Tribunal, Ernakulam Bench, i.e., order dated 28.03.2017. Mr.P.T.Ramkumar, learned counsel for the railways has no objection for the amendment, insofar as appointment order dated 28.03.2017 is concerned.

7. However, both the learned counsel for the Railways as well as 6th respondent seriously objected to the challenge of order dated 27.03.2017, permitting voluntary retirement of 6th respondent.

8. We have heard the learned counsel for the parties and perused the materials available on record.

9. In the case on hand, we are concerned as to whether an offer of appointment dated 22.03.2017 and consequently, appointment to the office of Member (Technical), Railway Claims Tribunal, Ernakulam Bench, can be made, pending investigation into a criminal case, registered against the 6th respondent. Averments and grounds were only to that effect.

10. We are not concerned as to the validity of an order of voluntary retirement dated 27.03.2017 issued by the authorities facilitating the 6th respondent to join the office of Member (Technical), Railway Claims Tribunal,

Ernakulam Bench. Voluntary retirement is a matter between the employer and employee. Correctness of the order is not independently challenged in this writ petition, except by way of additional pleadings.

11. Having regard to the above, we are not inclined to accept the plea of the writ petitioner to include the challenge to the order of voluntary retirement, however, permit him to challenge the order of appointment dated 28.03.2017. In sum and substance, we hold that the challenge is restricted to the offer of appointment of 6th respondent as Member (Technical), Railway Claims Tribunal, Ernakulam Bench, dated 22.03.2017, and the appointment order dated 28.03.2017, respectively.

12. Amendment is ordered and the amended prayer is as hereunder

“Writ of Declaration, declaring that the order No.2016/E(O)II/1/18 dated 22.3.2017 issued by the 3rd respondent along with the Order No.2016/E(O)II/1/B dt.28.03.2017 issued by the 3rd Respondent, is so far as appointing him as Technical Member to the Railway Claims Tribunal, Ernakulam Bench, is illegal, arbitrary and unconstitutional”.

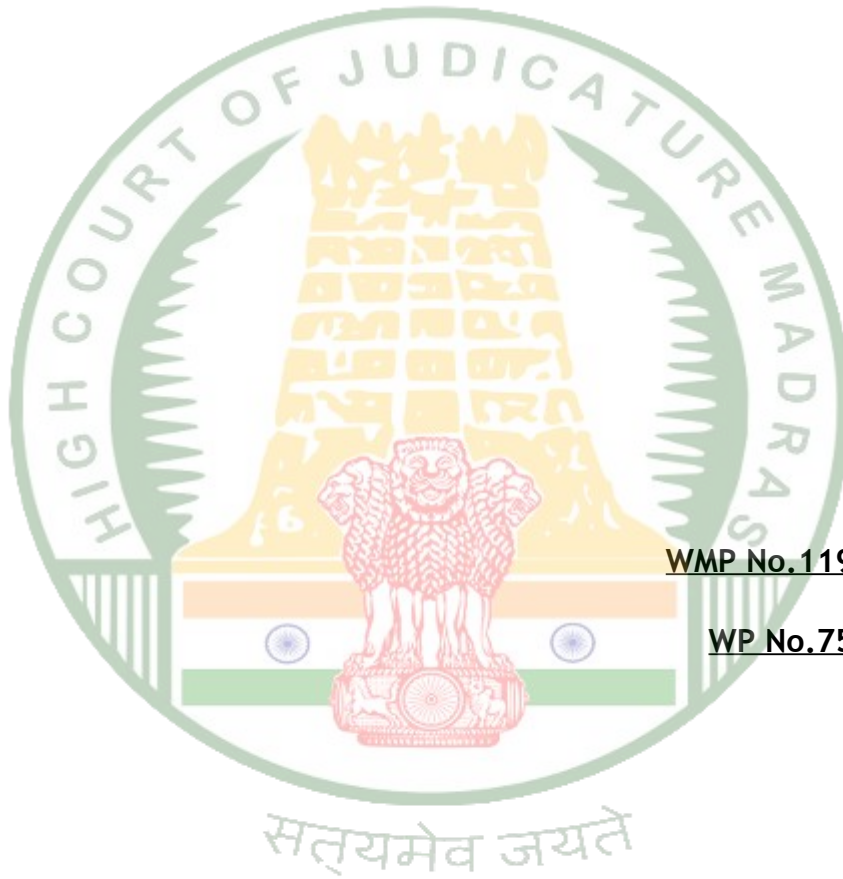
13. WMP No.11908 of 2019, is ordered, accordingly.

[S.M.K.,J.] [S.P., J.]
22.04.2019

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S.MANIKUMAR, J.,
AND
SUBRAMONIUM PRASAD, J.,

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