

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 31.01.2020

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THE HONOURABLE MR. JUSTICE M. SATHYANARAYANAN

AND

THE HONOURABLE MRS. JUSTICE R. HEMALATHA

W.P.No.2185 of 2020

WMP.No.2557 of 2020

C.Santhi

...Petitioner

Versus

- 1.Union of India
rep.by the Chairman & Managing Director,
BSNL, BSNL Corporate Office,
Sanchar Bhavan, New Delhi 110 001.
- 2.The Chief General manager,
BSNL, Tamil Nadu Circle,
Graemes Road, Chennai 600 006.
- 3.The Principal General Manager,
BSNL, Coimbatore 641 043.
- 4.The General manager,
Nodal Centre,
CMTS, BSNL
Tiruchirappalli 620 001.
- 5.The Registrar,
Central Administrative Tribunal
Chennai Bench,
Chennai 600 104.

...Respondents

PRAYER: Writ petition filed under Article 226 of the Constitution of India prays to issue a Writ of Certiorarified Mandamus calling for the records of the 5th respondent viz., Central Administrative Tribunal, Chennai Bench in O.A No.310/00040/2020 dated 24.01.2020 and quash the same in so far as it declines to grant interim relief to the petitioner herein and consequently forbear the respondents 1 to 4 from discharging

the petitioner from service on 31.01.2020.

For Petitioners : Mr.V.Vijay Shankar
For Respondents : Mr.S.Udhayakumar
Standing counsel for BSNL

ORDER

[Order of the Court was made by M.SATHYANARAYANAN, J.]

The petitioner is an employee of Bharat Sanghar Nigham Limited (BSNL)/a public sector undertaking and he joined as Junior Telecom Officer in the Department of Telecommunications on 27.01.1998 and on formation of BSNL, with effect from 01.10.2000, he was absorbed as JTO in BSNL and got promoted as Sub Divisional Engineer (SDE) with effect from 22.06.2009 and at present, she is working as SDE(GMSC), Office of DE (NSS), IMPCS Section, Sai Baba colony, Coimbatore 641 011 and the petitioner has unblemished record of 21 years of service.

2. It is further averred by the petitioner that BSNL has introduced a scheme called BSNL Voluntary Retirement Scheme, 2019 vide communication dated 04.11.2019 and as per the said notification, the said Scheme was remain open between 04.11.2019 and 03.12.2019 upto 05.30p.m. and the effective date of voluntary retirement would be 31.01.2020 afternoon. The Scheme also provides for withdrawal of the option, in respect of Voluntary Retirement Scheme and the same is to be done before the time of date of closing option on 05.30 pm on 03.12.2019.

3. The petitioner admittedly applied through online opting for Voluntary Retirement on 03.12.2019 and during the course of the day, having felt that she had left out service of 9 years in the normal course and taking into account several domestic and financial constrains, felt that option to go on Voluntary Retirement scheme may not be ideally suited to her and hence took decision to go through the prescribed process for withdrawal of the Voluntary Retirement Scheme option and accordingly, the petitioner had looked into said ERP/ESS portal at closing minute exactly on 03.12.2019 and in the absence of clear understanding, she mistook the option and due to which she has been treated as opted for VRS-2019.

4. Mr.V.Vijayashankar, learned counsel appearing for the petitioner made a plea that on account of the fact that it could not be accessed at a particular time and second, may be on account of heavy traffic on the concerned line, the petitioner

was not in a position to exercise the option for withdrawal of Voluntary Retirement Scheme and she also exhibited her bonafide by submitting a representation dated 04.12.2019, immediately on the next day, which is also available at page no.20 of the typed set of documents. The learned counsel for the petitioner, on the legal plea, has invited the attention of this Court to the BSNL Voluntary Retirement Scheme-2019 and guidelines to facilitate the exercise of option by employees dated 04.11.2019 as well as Annexure-I of VRS Scheme of BSNL employee and would submit that the effective date of Voluntary Retirement Scheme will be on 31.01.2020 and therefore, physical copies shall also be done within three days from the date of option and since the effective date has been fixed on 31.01.2020 afternoon, the petitioner till such time is entitled to withdraw the said Voluntary Retirement Scheme and would further reiterate that though bonafide attempts have been made to withdraw the Voluntary Retirement Scheme option, on account of heavy traffic and more particularly that it should also be done through online mode, she could not do so.

5. The learned counsel appearing for the petitioner has drawn the attention of this Court to the impugned order passed by the Tribunal in declining the prayer for interim relief and would submit that the Tribunal, while declining the prayer for interim relief, has virtually decided the main application itself and in the light of the fact that the petitioner has also rendered 25 years of service, no harm will be done to the Management of BSNL in permitting the petitioner's service to continue till the disposal of the Original Application and hence prays for appropriate orders.

6. Per contra, Mr.S.Udhayakumar, learned Standing Counsel who accepts notice on behalf of the respondents 1 to 4 would submit that many of the BSNL employees like the petitioner has exercised the option of withdrawal of Voluntary Retirement Scheme on the date fixed for closure of the option on 03.12.2019 and inviting attention of this Court to the chart given would submit that the petitioner is also having technical qualification and also aware of the consequences of submission of Voluntary Retirement Application and terms and conditions of the Scheme and though she would plead that due to technical reasons, she was not in a position to withdraw the Voluntary Retirement Application, the same cannot be considered and adjudicated by this Court at this stage and also placed reliance upon the decision of the Honble Supreme Court of India in Madhya Pradesh State Road Transport Corporation Vs. manoj Kumar and Others (2016 (9) SCC 375).

7. The learned counsel appearing for the petitioner in response to the said submission would submit that facts of the said case have no application to the case on hand, for the reason that the Madhya Pradesh State Road Transport Corporation was sought to be wound up, whereas in the present case on hand, BSNL continues to be in existence and the VRS scheme is meant only for persons who want to go voluntarily, so that administration can be trimmed and as such the said decision has no application to the case on hand and also in the light of the well settled legal position that before acceptance of the option of VRS, employee is entitled to withdraw the same before the effective date, fixed on 31.01.2020.

8. This Court has considered the rival submission and also perused the materials placed before it.

9. The Scheme and the Annexure contemplates that option seeking VRS shall remain open between 04.11.2019 and 31.12.2019 upto 05.30 PM and the effective date of VRS was fixed on 31.01.2020. It appears from the submission made by the learned counsel appearing for the petitioner that the petitioner made an option to go for VRS at a closing hours on 03.12.2019 and considering her left out service of 9 years and several domestic and financial constraints, took decision to withdraw the Voluntary Retirement Scheme and according to the learned counsel appearing for the petitioner, due to heavy traffic in the particular line, she could not do so and she also exhibited her bonafide by informing the said fact in the form of representation dated 04.12.2019, which was submitted on the next date of closure of VRS option.

10. In the considered opinion of this Court, the said plea made by the learned counsel appearing for the petitioner should also be urged before the Tribunal and admittedly the main Original Application is pending. The Tribunal, exercised it's discretion by recording reasons and has declined the interim relief sought for.

11. This Court, in exercise of it's power of judicial review, is of the considered view that in the facts and circumstances of the case, is not inclined to interfere with the order declining the interim relief. This Court is also observes that the Tribunal in the impugned order made certain observations and findings and it came to be rendered at an interlocutory stage.

12. It is a well settled legal position that any observation or finding given at interlocutory stage should not influence the mind of Court / Tribunal, while deciding the matter and therefore, the Tribunal has to decide the Original application on it's own merits and in accordance with law.

13. In the light of the dismissal of this Writ Petition, in all probability, the Voluntary Retirement Application submitted by the petitioner is likely to be accepted. If the petitioners succeed in the Original Application, she may be entitled to all consequential reliefs and benefits and the break in service in pursuant to the interim orders, may not be put against her. The Tribunal is requested to accord priority and give disposal to the main Original Application, as expeditiously as possible and not later than 3 months from the date of receipt of a copy of this order.

14. The Writ Petition stands dismissed subject to above observation. No costs. Consequently connected miscellaneous petition is dismissed.

Sd/-
Asst.Registrar (CS I)

/true copy/

Sub Asst. Registrar

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To

1.The Chairman & Managing Director,
Union of India
BSNL, BSNL Corporate Office,
Sanchar Bhavan, New Delhi 110 001.

2.The Chief General manager,
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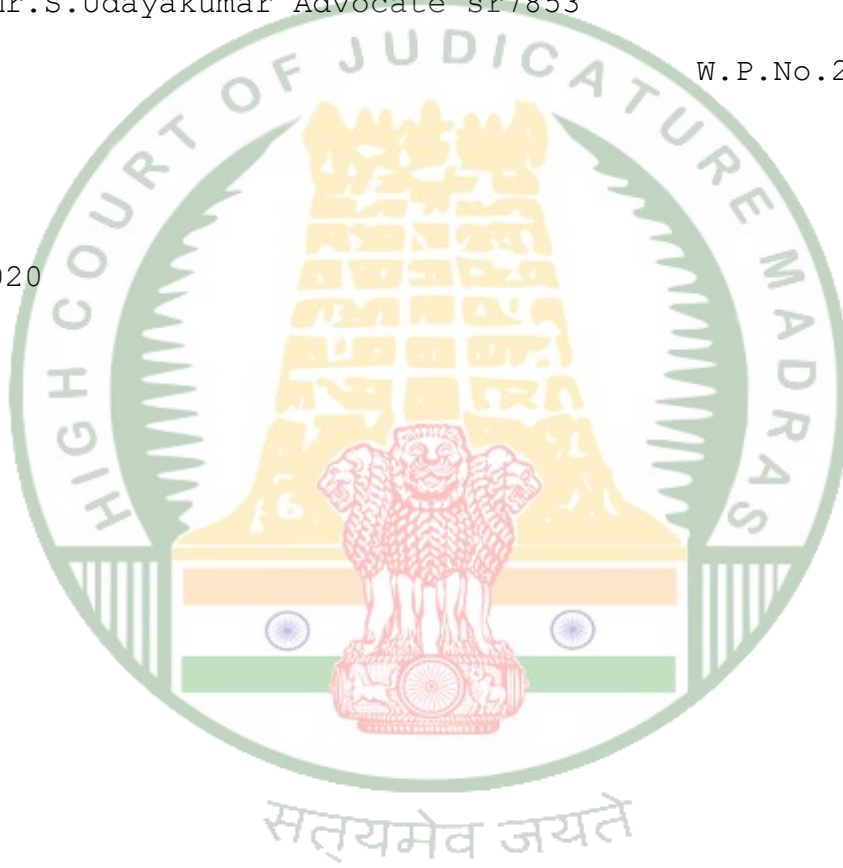
5.The Registrar,
Central Administrative Tribunal
Chennai Bench,
Chennai 600 104.

+1 cc to Mr.V.Vijayshankar Advocate sr8066

+1 cc to Mr.S.Udayakumar Advocate sr7853

W.P.No.2185 of 2020

gj (co)
aa11/03/2020



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