IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON	05.07.2021
PRONOUNCED ON	01.09.2021

CORAM:

THE HONOURABLE MR. JUSTICE M.S.RAMESH

W.P.Nos.33081, 33927, 34487, 36195 & 40571 of 2016
and
WMP.Nos.28563, 28564, 29287, 29288, 29731, 31137, 31138, 34574 & 34575 of 2016

In W.P.No.33081 of 2016

R.Ananthanarayanan ... Petitioner

Vs.

1.The Secretary,
Government of Tamil Nadu,
Food and Consumer Protection
(A2) Department,
Fort St. George, Chennai-9.

2.The Chairman and Managing Director,
Tamil Nadu Warehousing Corporation,
No.82, Anna Salai,
Guindy, Chennai-600 032.

3.The Director,
Bureau of Public Enterprises,
Finance Department,
Government of Tamil Nadu,
Secretariat, Chennai-600 009. ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, calling for the records pertaining to G.O.(Ms) No.136 dated 09.12.2014 of the first respondent, quash the same and consequently, to direct the respondents to implement the pension scheme to the retired employees of the second respondent.

In W.P.No.33927 of 2016

V.Dhakshininamoorthy ... Petitioner

Vs.

1.The Secretary,
Government of Tamil Nadu,
Food and Consumer Protection
(A2) Department,
Fort St. George, Chennai-9.

2.The Chairman and Managing Director,
Tamil Nadu Warehousing Corporation,
No.82, Anna Salai,
Guindy, Chennai-600 032.

3.The Director,
Bureau of Public Enterprises,
Finance Department,
Government of Tamil Nadu,
Secretariat, Chennai-600 009. ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, calling for the records pertaining to G.O.(Ms) No.136 dated 09.12.2014 of the first respondent, quash the same and consequently, to direct the respondents to implement the pension scheme to the retired employees of the second respondent.

In W.P.No.34487 of 2016

1.V.Sivasubramanian
2.A.Rajaram ... Petitioners

Vs.

1.The Principal Secretary,
Government of Tamil Nadu,
Food and Consumer Protection
(A2) Department,
Secretariat, Chennai-9.

2.The Chairman and Managing Director,
Tamil Nadu Warehousing Corporation,
No.82, Anna Salai,
Guindy, Chennai-600 032.

3.The Director,
Bureau of Public Enterprises,
Finance Department,
Government of Tamil Nadu,
Secretariat, Chennai-600 009. ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified

Mandamus, calling for the records pertaining to G.O.(Ms) No.136 dated 09.12.2014 of the first respondent, quash the same and consequently, to direct the first respondent to pass G.O. to grant pension to the employees of the second respondent Corporation on par with the Tamil Nadu Government Employees as proposed in the resolution No.583 of the 220th Board meeting of the second respondent Board dated 05.11.1999.

In W.P.No.36195 of 2016

K.Dhanasekaran ... Petitioner

Vs.

1.The Secretary,
Government of Tamil Nadu,
Food and Consumer Protection
(A2) Department,
Fort St. George, Chennai-9.

2.The Chairman and Managing Director,
Tamil Nadu Warehousing Corporation,
No.82, Anna Salai,
Guindy, Chennai-600 032.

3.The Director,
Bureau of Public Enterprises,
Finance Department,
Government of Tamil Nadu,
Secretariat, Chennai-600 009. ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, calling for the records pertaining to G.O.(Ms) No.136 dated 09.12.2014 of the first respondent, quash the same and consequently, to direct the respondents to implement the pension scheme to the retired employees of the second respondent.

In W.P.No.40571 of 2016

J.Gangabai ... Petitioner

Vs.

1.The Principal Secretary,
Government of Tamil Nadu,
Food and Consumer Protection
(A2) Department,
Fort St. George, Chennai-9.

2.The Chairman and Managing Director,
Tamil Nadu Warehousing Corporation,
No.82, Anna Salai,
Guindy, Chennai-600 032.

3.The Director,
Bureau of Public Enterprises,
Finance Department,
Government of Tamil Nadu,
Secretariat, Chennai-600 009. ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, calling for the records pertaining to G.O.(Ms) No.136 dated 09.12.2014 of the first respondent, quash the same and consequently, to direct the respondents to implement the pension scheme to the petitioner retired employee of the second respondent.

For Petitioner : Mr.K.Harikrishanan
in W.P.33081, 33927, 36195, 40571 of 2016

For Petitioner : Mr.S.T.Varadarajulu
in W.P.34487/2016

For Respondent-1:Mr.K.V.Sajeev Kumar
Counsel for Government

For Respondent-2 :Mr.S.Gunasekaran

For Respondent-3:Mr.K.Tippusulthan
Counsel for Government
(in all wps)

C O M M O N O R D E R

These Writ Petitions are heard through Video Conferencing on 05.07.2021.

2. The facts involved in all the aforesaid Writ Petitions are one and the same and therefore, all the cases are disposed of through a common order.

3. The retired employees of the Tamil Nadu Warehousing Corporation (hereinafter referred to as 'Corporation') seeks for a direction to the Government for granting pension to them on par with the pension scheme of the employees of the Tamil Nadu Government, in these Writ Petitions. In connection with this

request, they have sought for quashing of G.O.Ms.No.136, Cooperation, Food and Consumer Protection (A2) Department, dated 09.12.2014, through which the Government had implemented the pension scheme for the employees of the Corporation, equivalent to Employees' Pension Scheme, 1995 under the Employees Provident Funds and Miscellaneous Provisions Act, 1952.

4. At the outset, this Court is of the view that the prayer cannot be maintained. Earlier when the employees union of the Corporation had sought for implementation of a pension scheme for their employees, this Court in its order dated 24.01.2011 passed in W.P.Nos.28269 & 34640 of 2007, etc., [Tamil Nadu Warehousing Corporation Employees Union, Rep. by its Joint Secretary, Rasipuram, Namakkal District V. V.Sivasubramanian & others] and etc., had permitted the Corporation to proceed with the scheme formulated by them. The order reads as follows:-

> "4.In such view of the matter, making it clear that under the Scheme propounded by the second respondent for the purpose of pension of its employees, the State Government shall not be financially implicated, the order of the first respondent is set aside, permitting the second respondent to proceed with the said Scheme created by the second respondent for its employees. It is made clear that the effect of the said Scheme formulated by the second respondent shall be with effect from 16.11.1995, as it is submitted by the learned counsel."

5. The Government's appeal before the Hon'ble Division Bench of this Court came to be dismissed through an order dated 06.03.2012 passed in W.A.No.285 of 2012, upholding the order of the learned Single Judge, in the following manner:-

> "7. The only apprehension of the State Government is that there should not be any financial commitment to the Government of Tamil Nadu. In fact, the learned Single Judge has also noticed the stand taken by the Warehousing Corporation, and stated that such an apprehension is unfounded. However, in order to make things more clear and apparent, the stand taken by the Tamil Nadu Warehousing Corporation is quoted herein below:-
>
> 'The respondent Corporation is having sufficient funds to introduce the pension scheme to its employees out of the revenue resource of Employees Provident Fund Contribution and will continue in the years to come without any difficulty. It is again stressed that there will not be any financial commitment to the first

> respondent-Government of Tamil Nadu.
>
> If the Government of Tamil Nadu issue suitable orders, Tamil Nadu Warehousing Corporation is ready to introduce and implement the pension scheme to the employees of this Corporation at any time, without any financial assistance from the Tamil Nadu Government.'
>
> 8.In view of the categorical assertion made by the Corporation, it is seen that they are ready to introduce and implement the pension scheme to the employees of the Corporation at any time without any financial assistance from the Tamil Nadu Government. Therefore, the apprehension of the State Government is unwarranted. Accordingly, we dispose of this appeal by recording the statement made by the Tamil Nadu Warehousing Corporation in the counter affidavit, which is quoted herein before."

6. The further appeal before the Hon'ble Supreme Court was also dismissed on 21.11.2014. In this background, the Government had passed the impugned order in G.O.Ms.No.136, Cooperation, Food and Consumer Protection (A2) Department, dated 09.12.2014 for implementation of the pension scheme formulated by the Corporation. Challenging the sanctity of the impugned Government Order, Contempt Petitions came to be filed in Cont.P.Nos.2013 & 2014 of 2014, which were dismissed by this Court on 02.09.2016 holding that, G.O.(Ms) No.136 dated 09.12.2014, is in conformity with the orders passed by the Writ Court in W.P.Nos.28269 & 34640 of 2007 etc. With such observations, the validity of the said Government Order was ratified. When this Court had categorically held that the impugned Government Order in G.O.(Ms) No.136 dated 09.12.2014, is in conformity with the orders passed in the Writ Petitions, touching upon the Employees Pension Scheme framed under the Act and such an order has not been put under further challenge, the present Writ Petitions seeking for quashing of the same Government Order, cannot be sustained, since it would be hit by the principles of res-judicata.

7. Apart from this, the very basis on which the petitioners' claim for the benefit of pension on par with the Tamil Nadu Government employees is unfounded. When the issue with regard to implementation of a pension scheme to the employees of the Tamil Nadu Warehousing Corporation came for consideration before this Court in W.P.Nos.28269 & 34640 of 2007 etc., this Court in its order dated 24.01.2011, had taken into consideration of the scheme propounded by the Corporation in line with the Employees' Pension Scheme, 1995 and by establishing that the formation of

the scheme will not have any financial implication on the State Government and permitted the Corporation to proceed with the pension scheme. The recitals of the said order reads as follows:-

"Under the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 and as per the powers conferred therein, the Central Government has framed the Employees' Pension Scheme, 1995 and the benefits conferred under the said Scheme have been granted with effect from 16.11.1995. It is in furtherance of the said Scheme framed in the year 1995 and in deference of the same, the second respondent has introduced and implemented the Pension Scheme for its employees. As per the terms and conditions of the said scheme introduced by the second respondent, there is no financial implication imposed on the State Government, as it was available under the Original Scheme, viz., Employees' Pension Scheme, 1995. The Scheme framed by the second respondent is a self-contained one, by which the contributions have been made by both the employer and the employees without imposing any financial implication on the Government.

2. While such Scheme framed by the second respondent was as per the Employees' Pension Scheme, 1995, certainly the apprehension of the first respondent that monetary liability is likely to be imposed on the Government as a perennial financial commitment has no basis. In fact, that is the specific stand of the second respondent/Employer also, who submits that the financial commitment of the Government has been totally dispensed with and the benefits under the Pension Scheme created by the second respondent has been articulated only between the employer and the employees.

3. In view of the such categoric stand taken by the second respondent, as it is available on record, the stand of the Government as if there is going to be a perennial financial commitment in respect of the second respondent, which is certainly owned by the State Government as a shareholder for 50%, has no basis. Admittedly, 50% of the share of the second respondent is owned by the State Government, while the remaining 50% is owned by the Government of India. Under such circumstances, I am of the considered view that the apprehension of the State Government as if the financial implication

is going to be imposed on it is unfounded.”

8. From the aforesaid extract, it could be seen that the High Court had only ratified the proposal for introduction of the pension scheme on line with the Employees' Pension Scheme, 1995. In the appeal filed against the aforesaid order, the Hon'ble Division Bench also limited the interference on the financial implication of the State Government alone and did not interfere with the findings of the learned Single Judge. A co-joint reading of the aforesaid two proceedings before this Court would reveal that the High Court had ratified and permitted the Tamil Nadu Warehousing Corporation to proceed with the pension scheme, in the lines of the Employees' Pension Scheme, 1995. While that was the finding of the High Court, this Court is unable to comprehend as to how the petitioners can insist for a direction to the State Government to alter the scheme and bringing it on par with the pension applicable to the Tamil Nadu Government servants. Such a direction would be contrary to the findings of both the learned Single Judge, as well as, the Hon'ble Division Bench, as extracted above.

9. This apart, the decision to introduce a particular mode of pension scheme to the employees of the Tamil Nadu Warehousing Corporation, is a policy decision of the State Government. It is a well settled proposition that the High Court, exercising its power under Article 226 of the Constitution of India, will not normally interfere and give direction to the State Government for exercise of such policy decisions, which is also impermissible in law.

10. For all the foregoing reasons, I do not find merits in these Writ Petitions. Accordingly, the Writ Petitions stand dismissed. Consequently, the connected Miscellaneous Petition (s) are closed. There shall be no orders as to costs.

Sd/-
Assistant Registrar(CS-III)

//True Copy//

Sub Assistant Registrar

DP

Note:Issue order copy on 03.09.2021

To

1.The Principal Secretary/Secretary,
Government of Tamil Nadu,
Food and Consumer Protection
(A2) Department, Fort St. George, Chennai-9.

2.The Chairman and Managing Director,
Tamil Nadu Warehousing Corporation,
No.82, Anna Salai,
Guindy, Chennai-600 032.

3.The Director,
Bureau of Public Enterprises,
Finance Department,
Government of Tamil Nadu,
Secretariat, Chennai-600 009.

+1cc to Mr.S.T.Varadarajulu, Advocate, S.R.No.44032
+4cc to Mr.K.Harikrishanan, Advocate, S.R.No.44125,44122
44123,44124(20/09/21)
+4cc to Mr.S.Gunasekaran, Advocate, S.R.No.44486, 44487,
44491, 44490(20/09/21)
+1cc to the Government Pleader SR.44293(20/09/2021)

W.P.Nos.33081, 33927, 34487, 36195 & 40571 of 2016
and
WMP.Nos.28563, 28564, 29287, 29288, 29731, 31137,
31138, 34574 & 34575 of 2016

NMI(CO)
CB(03/09/2021)