

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 08.11.2016
DELIVERED ON : 29.11.2016

Coram

The Honourable Mr. Justice RAJIV SHAKDHER

Writ Petition Nos. 24460, 24355 and 25491 of 2013
& connected Miscellaneous Petitions

Film Factory Workers Union
(Affiliated to INTUC)
rep. by its General Secretary
Mr. H. Radhakrishnan
No. 24, Temporary Colony,
Indunagar Township
Ootacamund - 5
The Nilgiris

... Petitioner in W.P.No. 24460 of 2013

Hindustan Photo Film Workers'
Welfare Centre (CITU),
rep. by its Secretary,
Indu Nagar, Ootacamund,
The Nilgiris - 643 005
Tamilnadu

.. Petitioner in W.P.No. 24355 of 2013

1. Anna Indu Employees Union
(Affiliated to Anna Thozichanga Perarai - ATP)
rep. by its Secretary,
Mr. M. Bheemaraj, Indunagar,
Ootacamund - 5.
The Nilgiris
2. Indu Employees Progressive Union
(Affiliated to Labour Progressive Federation LPF)
rep. by its Secretary,
Mr. A. Solomon Mahaveerar
Type - II Quarters No. 19,
Indunagar, Ootacamund - 5.
The Nilgiris
3. HPF Staff Union
(Affiliated to Bharat Mazdoor Sangh)
rep. by its Secretary

Mr.N.Balakrishnan
Indunagar, Ootacamund - 5
The Nilgiris

4. Photo Film Officers Association
rep. by its President
Mr.K.Raghunathan,
Ootacamund - 5
The Nilgiris

.... Petitioners in W.P.No.25491 of 2012

Vs.

1. Government of India
rep. by its Secretary
Department of Heavy Industries
New Delhi.
2. Hindustan Photo Films Limited
rep. by its Managing Director
Indu Nagar, Udhagamandalam
The Nilgiris.

.... Respondents in W.P.Nos.24460 and
25491 of 2013

1. Hindustan Photo Films Manufacturing Co. Ltd.
Indu Nagar, Ootacamund,
The Nilgiris - 643 005, Tamilnadu.
2. Government of India
rep. by its Joint Secretary
Department of Heavy Industries
Ministry of Heavy Industries & Public
Enterprises,
Udyog Bhavan, New Delhi.

.. Respondent in W.P.No.24355 of 2013

W.P.No.24460 and 25491 of 2013:

PETITION filed under Article 226 of The Constitution of India praying for the issuance of Writ of Certiorari calling for the records of the 2nd respondent pertaining to its impugned circular bearing Reference No.PI/IR dated 31.07.2013 and quash the same.

W.P.No.24355 of 2013:

PETITION filed under Article 226 of The Constitution of India praying for the issuance of Writ of Certiorarified Mandamus calling for the records relating to the circular bearing No.Ref:P1/14/59/VRS dated 10.07.2013 read with circular bearing No.Ref: P1/IR dated 31.07.2013 issued by the 1st respondent herein, quash the same and consequently direct the respondents to continue to make the payment of Special Performance Allowance and adjustable amount as per settlements dated 17.08.2009 and 25.04.2011 until changed by another negotiated settlement as per law, including arrears from April 2013.

For Petitioners in the above W.Ps : Ms.R.Vaigai, Sr.Counsel
for M/s.Anna Mathew

For R2 in W.P.Nos.24460 & 25491
and for R1 in W.P.No.24355 of 201 : Mrs.Rita Chandrasekar
for M/s.Aiyar & Dolia

For Govt. of India : Mr.G.Rajagopal,
Addl. Solicitor General
Assisted by Mr.A.Murugan, CGSC
Mr.J.Narayanaswamy,
SSC(IT) for Income Tax Department

C O M M O N O R D E R

1. The Writ Petitions, referred to above, seek to challenge the action of the respondents, whereby, monies paid, in the form of allowances, are sought to be adjusted against terminal benefits, payable to employees under a Voluntary Retirement Scheme (in short VRS Scheme), formulated by the Hindustan Photo Films Manufacturing Co. Ltd., (in short HPF).

1.1. It is the assertion of the petitioners that, the adjustment of allowances is contrary to the terms of the settlements, arrived at with the management of HPF, from time to time, and, therefore, no adjustment can be made, as is sought to be attempted by the HPF, by taking recourse to the circulars, dated 10.07.2013 and 31.7.2013.

2. I may only note, at the very outset that, while what is indicated above is the main thrust of the three Writ Petitions placed before me, the reliefs claimed are slightly different, inasmuch as, in so far as Writ Petition No.24355 of 2013 is concerned, the challenge is laid to both circulars, i.e., circulars dated 10.07.2013 and 31.07.2013, while in the other two Writ Petitions, there is only a challenge to the second circular, i.e., circular dated 31.07.2013.

2.1. It may also be pertinent to note that in W.P.No.24355 of 2013, a further relief is sought, in the form of a direction to the respondents, for continued payment of Special Performance Allowance (in short SPA) and adjustable amount, as per the terms of the settlements, dated 17.08.2009 and 25.4.2011, till such time they are varied, if at all, via negotiated settlements. Payment of all arrears is also sought, commencing from April, 2013.

2.2. This latter part of the relief is not sought for by the petitioners in the other two Writ Petitions being: W.P.Nos.24460 and 25491 of 2013.

2.3. It is common ground as between parties appearing in the matter that the decision in W.P.No.24355 of 2013 would cover the issues raised in the other two Writ Petitions. As would be evident, the reliefs sought for in W.P.No.24355 of 2013, in effect, could be exemplified as the genus, whereas, the relief sought for in other two Writ Petitions are only a specie of the said genus. The genus would cover, quite clearly, the specie.

3. Before I advert to the submissions of counsels appearing for both sides, I would like to allude to the broad facts, which, possibly have led to the institution of these Writ Petitions.

Prefatory facts:

4. The petitioners before me are, in effect, workers union representing various workmen of HPF. The workers union, which has filed W.P.No.24355 of 2013 represents 70 workmen, while the workmen union, which has filed W.P.No.25491 of 2013, represents 547 workmen; likewise the workers union, which has filed W.P.No.24460 of 2013, represents 138 workmen. Therefore, in all, approximately, 755 workmen are represented before this Court, via their respective Unions.

5. There is, however, no dispute about the fact that the petitioners represent workmen who are employees of HPF.

5.1. It appears that, at one point of time, HPF had employed nearly 4500 workmen, who over a period of time, appear to have left the services of HPF, by taking recourse to Voluntary Retirement Schemes (VRS) announced by its management, albeit, periodically, since 1991. The exodus of workmen over the years was brought about as neither the fortunes of HPF could be revived nor, did any wage revision take place, resulting in a situation, that the livelihood of workmen had to be sustained, by according them, allowances, from time to time, under the settlements executed in that behalf.

6. For the record, it may be noted that on account of the continued loss that HPF suffered, its net worth got completely eroded and consequently, based on a reference filed by HPF under Section 15 of the Sick Industrial Companies (Special Provisions) Act, 1985 (in short SICA), it was declared a sick industrial company. The record shows that the reference was filed, in on about, 14.10.1995.

6.1. The record also reveals that attempts made at reviving HPF failed and resultantly, the Board for Industrial and Financial Reconstruction (BIFR), vide order dated 30.01.2003, recommended the winding up of HPF, in exercise of its powers under Section 20(1) of SICA. It appears, that this recommendation of the BIFR to wind up HPF was not immediately known to the petitioners, consequently, institution of the appeal, which was finally preferred against the order of BIFR, was delayed.

6.2. As a matter of fact, the appeal, which was preferred to the Appellate Authority for Industrial and Financial Reconstruction (in short AAIFR), was numbered as Appeal No.118 of 2003. Evidently, in order to have its appeal listed at the earliest, the petitioners filed an appeal without appending a certified copy of the BIFR order, dated 30.01.2003.

6.3. It is the say of the petitioners that an application for exemption was filed in that behalf and that, this aspect was not taken note of by the AAIFR, while dismissing the appeal vide order dated 07.06.2005. The petitioners, were thus, aggrieved, as according to them, the dismissal of the appeal by the AAIFR was on a technical ground.

7. It is in this background that a Writ Petition was preferred in this Court against the order passed by AAIFR, which was numbered as W.P.No.24417 of 2005. The said Writ Petition was admitted by this Court on 29.07.2005. There was yet another Writ Petition filed against the very same order of the AAIFR. This being Writ Petition No. 19640 of 2005.

7.1. I may only note that these Writ Petitions came up for hearing came up before me, on 29.08.2016. On the said date, I proceeded to accept the recommendation of the BIFR and, accordingly, disposed of the said Writ Petitions, as there was, to my mind, no possibility of reviving HPF, since, the Government of India (GOI) had clearly indicated that it was not possible for it to support its revival and/or bring about its rehabilitation.

7.2. The net result, is that, the decision to wind up HPF has attained finality. I may only note that, while passing order dated 29.08.2016, I had entered a caveat, which is that, the said order would not come in the way of the petitioners agitating issues raised in the other Writ Petitions, which included the captioned Writ Petitions.

8. Continuing with the narrative, it is important to note that the petitioners in support of the reliefs sought by them, HAVE made the following assertions:

i) That there had been no pay revision, since 1987 qua workmen of HPF, while employees of other Public Sector Undertakings (PSUs) had received benefits of pay revisions every 10 years right up till 2007.

ii) That they have periodically entered into settlements with the management of HPF under Section 12(3) and 18(1) of the Industrial Disputes Act, 1947 (in short the ID Act) via which, the workmen were paid 20% of the salary as Repayable Monthly Advance (in short RMA), which was only to be adjusted against arrears payable to them, upon pay revision. In this behalf, reference has been made to settlements dated 11.09.2002, 18.04.2003 and 03.02.2004.

iii) That the aforesaid arrangement for payment of RMA was continued under a further settlement arrived at between the workmen and the management of HPF, dated 30.06.2004, which was executed in consonance with the provisions of Section 18(1) of the ID Act.

iv) On account of accumulation of RMA, which had reached "unbearable levels", yet another settlement was arrived at, between the workmen and the management of HPF, on 19.08.2009, whereby, a decision was taken to discontinue RMA, with effect from August, 2009. It was further agreed that the amount

accumulated, on account of the non-payment of RMA, between September, 2002 and July, 2009, could ONLY be adjusted against pending arrears of wage revision due and payable to the workmen. Pertinently, this settlement superseded earlier memorandum of settlements executed between the workmen and the management of HPF.

v). Within two days of execution of the memorandum of settlement dated 17.08.2009, a fresh memorandum of settlement dated 19.08.2009 was executed between the workmen and the management of HPF. By virtue of this settlement, the workers were to be paid SPA, equivalent to 20% of the salary, which included, Basic pay, D.A., two (2) increments and personal pay. The SPA was payable to all permanent employees, uniformly, from August, 2009. It was also agreed that payment of SPA would continue till the implementation of the revival proposal submitted to the GOI by the HPF or upon triggering of wage revision.

v.a) Furthermore, parties to the settlement also agreed that SPA would not be included in any other computation. This settlement was also executed under the provisions of Section 18 (1) of the ID Act. Nearly, 1 1/2 years later, i.e., on 25.04.2011, a Memorandum of Understanding (in short MOU) was executed between an entity, described as, "Save HPF Committee" and the management of HPF.

9. In sum, what was inter alia agreed to, according to me, in so far as the payment of monies to workmen was concerned, was recorded in Clause 1 to 4 of the settlement. These clauses are replicated hereunder, for the sake of convenience:

" a. The Adjustable Amount equivalent to 60% of 1987 wage scales (Basic + DA + VDA + Two Increments + Personal Pay) will be paid in the salary to all the permanent Employees uniformly from the month of April 2011 onwards. This will include the amount of Rs.3,000/- being paid every month.

b. The payment of this amount will be continued till a decision on the Company's Revival & implementation of Wage Revision is taken by the Government.

c. This amount will not be recovered/withheld from the terminal benefits of the employees who are leaving the Company on VRS/Superannuation/natural attrition and resignation.

d. This amount will be adjusted against the Wage Revision."

(Emphasis is mine)

10. The record would also show that a department - Preliminary Standing Committee on Industry, vide its report generated in and about May, 2011 had recommended the revival of HPF.

10.1. As alluded to above, revival of HPF could not take place, despite attempts made in that behalf; which, in any event, now is a closed chapter on account of the recommendation made by BIFR having been accepted by this Court.

10.2. Suffice it to say that, on 28.11.2012, HPF issued a circular calling upon its employees to apply for voluntary retirement under its VRS Scheme by 10.12.2012.

11. As was indicated herein above, VRS was made available to workmen by HPF via circulars issued, from time to time, whereby, many workmen who opted for such Schemes and have, since then, exited HPF.

11.1. The petitioners assert that terminal benefits paid under the earlier Schemes were not subject to adjustment in respect of allowances paid in the interregnum.

12. This position, has evidently been varied, as it appears, to the detriment of the terms of the engagement of the remaining employees of HPF - inasmuch as, with the issuance of the two impugned circulars, i.e., circulars dated 10.07.2013 and 31.07.2013, an attempt is made to adjust the allowances paid against terminal benefits.

13. It is, this threatened action of the management of HPF, which has propelled the petitioners to approach this Court via the instant Writ Petitions.

14. It is pertinent to note that, vide order, dated 30.08.2013, passed in W.P.No.24355 of 2013, a single Judge of this Court had stayed the operation of the two impugned circulars referred to above.

15. It is in this background that the aforementioned Writ Petitions have come up for hearing before me.

Submissions of counsels:

16. In support of the case of the petitioners, arguments have been advanced by Ms.R.Vaigai, learned Senior Advocate and, in opposition, on behalf of the respondents, submissions have been advanced by Mr.G.Rajagopal, learned Additional Solicitor General.

17. Ms.R.Vaigai, broadly, made the following submissions.

17.1. First, when, allowances are paid to the employees, in furtherance of the settlements arrived at under Section 12(3) and Section 18(1) of the ID Act, adjustments, if any, qua the allowances paid, can only be made in accordance with the terms contained in the said settlements.

17.2. Second, the settlements arrived at in the instant case provide that the adjustment of allowances paid would not be made against terminal benefits - payable under the VRS.

17.3. Third, as per the terms of the settlements, adjustment of allowances could only be made against the arrears of wage/pay revision. Since, there was no wage/pay revision, the attempt at permitting adjustment of allowances against terminal benefits via the impugned circulars fell foul of the settlements arrived at by HPF with its workmen.

17.4. Last, though not the least, the terms of the settlement(s) were sacrosanct and, would continue to bind the parties, even after the expiry of the period, if any, fixed under the settlement(s), as, variation, qua the terms of the settlement(s), can take place, only via a mutually negotiated settlement(s) arrived at between the concerned parties.

17.5. In support of her submissions, Ms.R.Vaigai, relied upon the following judgments of the Supreme Court:

- a) LIC V. D.J.Bahadur & Others - 1981(1) SCC 315
- b) M/s.Tata Iron and Steel Co. Ltd. V. The workmen and others - 1972 (2) SCC 383.

18. In opposition, Mr.G.Rajagopal, while taking me through the history of the case, emphasized the fact that all advances and allowances were paid by HPF, in violation of the Department of Public Enterprises Guidelines (in short the DPE guidelines) and, without the approval of the GOI, Department of Heavy Industry (in short DHI).

18.1. Learned Additional Solicitor General went on to say that, when, the matter was brought up before the Board of Directors of HPF, at a meeting held on 21.06.2011, the Board did not give its approval to the MOU executed in April, 2011. It was submitted that HPF had not submitted any proposal to DHI and that, HPF referred the matter to DHI only on 16.07.2012, in response to its earlier communication dated 30.03.2012.

18.2. Learned Additional Solicitor General stressed the fact that, as a result of this situation developing, DHI, vide letter dated 20.06.2013, directed HPF to stop the release of advances and allowances and, instead, to proceed to make recoveries qua all allowances and advances, which were in violation of DPE guidelines.

18.3. It was further contended that DHI, vide communication dated 08.07.2013, had requested HPF to send a proposal for release of funds, which would necessarily, be required to accord terminal benefits to those employees, who had opted for VRS, with the caveat that, all advances and allowances would be duly recovered prior to payment of such terminal benefits.

18.4. In sum, the learned Additional Solicitor General submitted that the impugned circulars were issued on account of the fact that they did not have the approval of DHI.

Reasons:

19. Having heard the learned counsel for the parties and perused the record, I am of the view that the impugned circulars cannot be sustained for various reasons.

19.1. Firstly, the advances and allowances referred to above, i.e., RMA and SPA, have been in vogue since 2002. The workmen of HPF were paid RMA between September, 2002 till August, 2009. The payment of RMA was only discontinued vide settlement dated 17.08.2009. Thereafter, based on the settlement dated 19.08.2009, the workmen of HPF were paid SPA. With effect from 25.4.2011, the employees were paid adjustable amounts, which were equivalent to 60% of the 1987 wage scale. The adjustable amount was to include an amount of Rs.3,000/-, which was to be paid every month.

19.2. As indicated above, the financial position of HPF has been weak at least since October, 1995, which is, when a reference was filed with the BIFR under Section 15 of the SICA. The GOI/DHI would have been in know of the fact that such a reference was filed with the BIFR. The attempts made by the BIFR to rehabilitate HPF could not have by-passed the GOI/DHI. Therefore, as a logical corollary, the matter pertaining to payment of allowances to workmen would have come to fore between October, 1995 and January, 2003, when, the recommendation to wind up HPF was made by BIFR.

19.3. Thus, in these circumstances, I am unable to accept the submission of the learned Additional Solicitor General that GOI/DHI, all these years, was unaware of the fact that settlements had been arrived at with its workmen by the

management of HPF.

19.4. Secondly, even assuming that the GOI was unaware of the settlement, to my mind, it could have no impact on the settlements, as these were settlements executed between the employees and their employer, i.e., HPF.

19.5. It is not the case of the employer, i.e., HPF that settlements were not executed with its employees. HPF is a separate juridical entity, notwithstanding the fact, that it is a company, which is evidently, wholly owned by GOI. GOI, perhaps, had the power to influence the outcome, qua payment of allowances, albeit, at the appropriate stage and time, via the Board of Directors of HPF.

20. It is a settled law that the Board of Directors of a company are not governed by the writ of its shareholders. They are to do what is best in the interest of the company. At best, a shareholder, if it is not happy with the functioning of the Board of Directors, can seek their removal. No such action was taken by the shareholder, i.e., the GOI. The GOI, I am sure, in its capacity as a shareholder, would have been receiving reports as well as financial statements of HPF.

20.1. Therefore, to now suggest that the GOI was in the dark, till July, 2011 is a submission, which I am not willing to accept. In any event, in so far as the workmen are concerned, they executed settlements with the management of HPF, i.e., a management, which had the ostensible authority in law to enter into such settlements. The interest of the employees cannot, at this stage, be compromised, based on what I would term as a specious submission, which is that, HPF had no authority to enter into such settlements. If there was any lack of authority, it would, to my mind, be protected by the doctrine of indoor management. The workmen, in my opinion, acted in good faith, by relying upon the ostensible authority of those who represented HPF.

20.2. Therefore, if the settlements are in order, as has been concluded by me, herein above, the adjustment of advances/allowances, adverted to above, which would include RMA, SPA and Advance Amounts (AA) can only be made, in accordance with the terms of the settlement.

21. Ms.R.Vaigai, in my view, has correctly argued that the terms of settlement are sacrosanct and that they could be only varied by a mutually negotiated settlement arrived at between the employees and the management of HPF (See LIC V. D.J.Bahadur

& Others - 1981(1) SCC 315). The settlements, as has been correctly submitted by Ms.R.Vaigai, will operate even beyond the tenure of the settlement, as in law, there cannot be a vacuum. A settlement can only be replaced and/or substituted by another negotiated settlement.

21.1. Therefore, as agreed to between the parties, the advances and allowances, which are subject matter of the settlements alluded to above, could have been adjusted only against payments made towards arrears of wage/pay revision.

22. It is the admitted case of the respondents that there has been no wage revision after 1987. Therefore, quite clearly, the two impugned circulars, i.e., circular dated 10.7.2013 and 31.7.2013 which authorize recovery of advances and allowances paid to the employees of HPF in the form of RMAs, SPAs and AAs against terminal benefits payable under VRS are clearly contrary to the terms of the settlements alluded to above.

23. Accordingly, I have no hesitation in quashing the impugned circulars, i.e., circulars dated 10.07.2013 and 31.07.2013. It is ordered accordingly.

24. I may note at this juncture that, the further relief sought for by the petitioners in W.P.No.24355 of 2013, which is, that a direction to be issued to the respondents for continued payment of SPA and adjustable amount as per settlements dated 17.8.2009 and 25.4.2011, need not dwelled upon by me, any further, in view of the following facts, which are emerged during the course of hearing.

24.1. Ms.R.Vaigai, indicated to me, in no uncertain terms, that despite the interim order of this Court dated 30.09.2003, HPF has not paid the said allowances and/or amounts. Ms.R.Vaigai, has further indicated to me that, almost all workers, save and except, a small number, amounting to 44 in all, have opted for VRS and have, thus, sought severance, with effect from 15.10.2016.

24.2. According to the learned senior counsel, the ball rests in the Court of the respondents, as payments have not been made, despite the workmen seeking severance. Therefore, for the moment, there is no need to issue a direction for payment of allowances and advances, adverted to above, as a vast majority of workmen, especially, those, who are represented before me in the captioned Writ Petitions, have clearly opted for VRS.

24.3. This is, especially so, as Mr.G.Rajagopal, the learned Additional Solicitor General has indicated to me during the course of the hearing that GOI will release the requisite funds, shortly, to HPF for onward payment to those workmen, who have opted for VRS.

25. In so far as the violation of the interim order is concerned, i.e., I am told that, it is a subject matter of a contempt petition filed by the petitioner, which is numbered as: Contempt Petition No.2414 of 2013.

25.1. Therefore, that aspect of the matter, which concerns stoppage of allowances and adjustable amounts, would be examined, when, the Contempt Petition, is taken up for hearing.

26. Accordingly, the captioned Writ Petitions are disposed of in terms of the directions contained herein above, leaving the parties to bear their own costs. Consequently, the connected Miscellaneous Petitions are also, closed.

Sd/-

Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

To

1. The Secretary, Government of India
Department of Heavy Industries
New Delhi.

2. The Managing Director
Hindustan Photo Films Limited
Indu Nagar, Udhagamandalam
The Nilgiris.

+6cc to Mr.S.MEENASHI, Advocate, S.R.No.69988

+1cc to M/S.AIYAR & DOLIA, Advocate, S.R.No.70013

Pre-Delivery Order in

W.P.Nos.24460, 24355 and 25491 of 2013
& connected Miscellaneous Petitions

CO(PPA)

CP 02/01/2017