IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.06.2017

CORAM:

THE HON'BLE MR.JUSTICE HULUVADI G RAMESH
AND
THE HONOURABLE MR.JUSTICE A.D.JAGADISH CHANDIRA

Writ Appeal Nos.616 and 753 to 758 of 2017
and
C.M.P.Nos.8586/17,10332 to 10337 of 2017

Hindustan Photo Films Manufacturing Company Limited, Indu Nagar, Ootacammand, The Nilgiris - 643 005, Tamil Nadu.
... Appellant in W.A.616/2017& 2nd Respondent in W.A.Nos.753 to 758/2017

The Government of India, rep.by its Secretary, Department of Heavy Industries & Public Enterprises, Udyog Bhavan, New Delhi-110 011.
... Appellant in W.A.Nos.753 to 758 of 2017 & 2nd Respondent in W.A.No.616/2017

Versus

M/s.Hindustan Photo Films Workers Welfare Centre (CITU) rep.by its General Secretary.
... Ist Respondent in W.A.616/2017, 753 & 757/2017

M/s.Indu Films Officer's Association (IFOA) rep.by its General Secretary.
... Ist Respondent in W.A.754/2017

M/s.Film Factory Workers Union, rep.by its Secretary.
... Ist Respondent in W.A.755/2017

M/s.Anna Indu Employees Union (AIEU), rep.by its Secretary.
... Ist Respondent in W.A.756/2017

M/s.Indu Employees Progressive Union (LPF) rep.by its General Secretary.
... Ist Respondent in W.A.758/2017

The Commissioner of Income Tax,
No.121, Uthamar Gandhi Salai,
Chennai-600 034. ... 3rd Respondent in all W.As.

Writ Appeals filed under Clause 15 of Letters Patent against the common order passed by the learned SingleJudge dated 17.03.2017 made in W.P.No.18566, 18608, 18609, 18610, 18788 and 18789 of 2015.

Prayer in 18566,18608,18609,18610,18788,18789/2015:

Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Declaration to declare that the letter bearing Ref. No.19(2)/2013-PE.III, dated 20.03.2014, issued by the first respondent read with Circular No.P1/14/59/VRS, dated 21.03.2014, issued by the second respondent as illegal and unconstitutional in so far as the quantum of payment and consequently direct the respondents to pay compensation to all the employees of the second respondent, who have retired/retire under the Voluntary Retirement Scheme announced by the letter dated 20.03.2014, issued by the first respondent read with the circular dated 21.03.2014, issued by the second respondent, on the following basis; a) 72 months salary on the 2007 pay scales to each employee; b) arrears of pay on 2007 pay scales to each employee; c) no deduction towards income tax on the severance package payable under the VRS Scheme; d) No deduction of the amount of Recoverable Monthly Advance, Special Performance Allowance and Adjustable Advance paid to the employees so far and e) Permitting the employees to occupy the staff quarters of the second respondent at Udagamandalam till 01.05.2016, at the same rate of rent charged until the Voluntary Retirement Scheme.

For Appellant in W.A.616/2017 & For Respondent-2 in W.A.753 to 758/2017	..	Mrs.Rita Chandrasekaran for M/s Aiyar And Dolia
For Appellant in W.A.753 to 758/2017	..	Mr.G.Rajagopalan, Addl. Solicitor General for Mr.V.Venkatesan, SCGSC.
For Respondent-1 in W.A.616/2017	..	Mrs.R.Vaigai, Sr.Counsel for M/s. Anna Mathew.
753 & 757/2017		
For Respondent-3 in All W.As.	..	Mrs.Hema Muralikrishnan, Sr.Standing Counsel for Income Tax Department.

COMMON JUDGMENT

(Judgment of the Court was delivered by Huluvadi G Ramesh, J)

Heard Mr.G.Rajagopalan, learned Additional Solicitor General, assisted by Mr.V.Venkatesan, Senior Central Government Standing Counsel for the Government of India; Mrs.R.Vaigai, learned Senior Counsel appearing for the employees, Mrs.Rita Chandrasekaran, learned counsel appearing for the Hindustan Photo Films Manufacturing Company Limited, and Mrs.Hema Muralikrishnan, learned Senior Standing Counsel appearing for the Income tax Department.

2.Writ Appeal No.616 of 2017 has been filed by the Hindustan Photo Films Manufacturing Company Limited, challenging the order passed by the learned Single Judge in so far as the observations made in para 34(v) and (vi) of the order passed by the learned Single Judge which read as under:

> "(v) The respondents shall comply with the above directions within a period of one month from the date of receipt of a copy of this order as during the pendency of these writ petitions, all the employees have exercised their right to accept the severance package though without prejudice to their rights in the writ petition. Now, the writ petition has been finally disposed of, it is only the implementation of the severance package which shall be done within one month from the date of receipt of a copy of this order.
>
> (vi) As agreed to by the employees the HBF, all the employees on receipt of the severance packages in terms of the above direction shall vacate and hand over vacant possession of the quarters within a period of one month from the date on which they received the monetary benefits. No costs. Consequently, connected Miscellaneous Petitions are closed."

3. Writ appeal Nos.753 to 758 of 2017 have been filed by the Secretary, Government of India, Department of Heavy Industries and Public Enterprises, challenging the common order passed by the learned Single Judge dated 17.03.2017 made in W.P.No.18566, 18608, 18609, 18610, 18788 and 18789 of 2015.

4.The Appellant Company was declared as a Sick Industrial Company and the Board for Industrial and Financial Reconstruction (BIFR) vide order dated 30.01.2003, recommended the winding up of Hindustan Photo Films Manufacturing Company Limited. On appeal, the Appellate Authority for Industrial and Financial Reconstruction (AAIFR) vide order dated 07.06.2005, confirmed the order of BIFR. The Ministry of Heavy Industries and Public Enterprises, Government of India, by its letter dated 20.03.2014, approved the VRS package for the employees of Hindustan Photo Films Manufacturing Company Limited. Hindustan Photo Films Manufacturing Company Limited issued a Circular dated 21.03.2014 with regard to the implementation of VRS package.

5.The employees union challenged the letter dated 20.03.2014 of of the Government of India and the circular dated 21.03.2014 of Hindustan Photo Films Manufacturing Company Limited by filing W.P.No.18566 of 2015 and prayed for:

> "(a) 72 months salary on the 2007 pay scales to each employee;
> (b) Arrears of pay on 2007 pay scales to each employee;
> (c) No deduction towards the amount of Recoverable monthly Advance; Special Performance Allowance and Adjustable Advance paid to the employees so far as; and
> (e) permitting the employees to occupy the staff quarters of the 2nd respondent at Udagamandalam till 1.5.2016 at the same rate of rent charged until the Voluntary Retirement Scheme."

6.The learned Single Judge while rejecting the claim of the employees to declare the proceedings dated 20.03.2014 and 21.03.2014 as illegal, directed implementation of the severance package within one month and on receipt of the severance packages, the employees were directed to vacate and hand over vacant possession of the quarters within a period of one month. It was also held that no income tax is recoverable from severance package.

7.Assailing the said common order, the Management as well as the Central Government have filed these appeals.

8.The Cabinet Committee on Economic Affairs approved the VRS package for the employees of Hindustan Photo Films Manufacturing Company Limited and the same was communicated to the company vide proceedings dated 20.03.2014 of the Government of India. By the said proceedings it was conveyed that a sum of Rs.181.54 Crore in the form of Non-Plan Loan from the lump sum provision for 'implementation of Voluntary Retirement Scheme and Statutory Dues' is provided for implementation of VRS at 2007 notional pay scales without any arrears as one time relaxation of DPE guidelines for all the employees of HPF.

9.Admittedly, the Hindustan Photo Films Manufacturing Company Limited is a Public Sector Undertaking. As a policy decision, a scheme of VRS was floated by the Central Government, for which most of the workers opted. The remaining workers opted later by 15.10.2016. But, as submitted by the learned senior counsel for the workmen the fact remains that in C.P.No.114 of 2003, dated 24.01.2017, it has been held that when the scheme is floated, there is no limitation fixed, rather it was to implement the scheme with workable directions, the concerned official of the Ministry was directed to file an affidavit as to the total amount sanctioned for the severance package payable under the VRS Scheme, the head of account, to which, it would be credited and the manner in which, the amount would be disbursed to the employees. It is also observed that the concerned official of the Ministry shall also file relevant annexures which led to the sanctioning of the funds by the Union Government.

10.It appears that though all the workmen had opted for VRS Scheme now different decision is taken by the Government without any consideration. In view of the policy decision by the Cabinet Committee, we feel it not to accept the stand taken by the person in-charge of the Department to file appeal against the order already passed, wherein the Central Government's view was to offer VRS to all workmen. The stand of the Central Government now that only some had been come forward to opt for VRS Scheme early appears to be redundant. Admittedly, it is the Cabinet Committee of the Central Government took the policy decision to offer VRS Scheme. The consent of the remaining workmen once again seeking for VRS Scheme although late, was already accepted as noted in this Court's order dated 29.11.2016, when the Central Government assured that VRS funds will be released to all workmen. When such of petitions are filed by the remaining workmen through the association seeking for extension of the benefit, the decision taken by the person on behalf of the Central Government it appears to be without appreciating the Scheme floated by the Government to protect the interests of the workmen to put an end of the litigation to settle the VRS to all the workmen.

11.It appears the workmen in the writ petitions have already accepted VRS Scheme. Counsel appearing for the company contends that when the valuable quarters which are in occupation of the workmen, unless they vacate they will be in a difficult position to proceed further for liquidation.

12. In the meanwhile, there is also claim of the Income Tax Department to deduct TDS out of the amount which is to be paid to the workmen by way of VRS Scheme. It is brought to the notice of the Company Court that deduction of TDS it appears that it may be run up to 4 Crores. Learned Senior Standing Counsel for the Income Tax Department, then representing before the Company Court informed that if a representation is given by one of the workmen through their Union the same would be placed before the Central Board of Direct Taxes in this regard for necessary consideration. Since already the learned Standing Counsel for the Income Tax Department has offered a scheme to place the matter before the Central Board of Direct Taxes as to the deduction of the amount at source by way of TDS to the tune of 4 Crores once again delayed elsewhere if

the association or any individual files an application to seek such concession. So far as the deduction of TDS is concerned already given opportunity to the Standing Counsel appearing on behalf of the Income Tax Department. It is observed that TDS would not be applicable to the case on hand.

13.Now, it appears as practice in respect of earlier settlement amount, the income tax department also exercise its rights seeking for TDS amount. Such being the case, there could not be any dispute once again by filing appeal or otherwise to the Income Tax Department if the amount cannot be subject to tax at source or TDS or collect income tax from the workmen concerned. However, any such observation to be made by this Court as already observed by this Court it should not be in the way of the right available to the Department with regard to challenge of the said finding by the learned Single Judge. There is a direction in respect of other workers to deposit the TDS amount in a ESCROW Account. The same will apply to the workers herein also.

14.In such view of the matter while dismissing the appeals preferred by the Government of India, the writ appeal filed by the Hindustan Photo Films Company is disposed of directing the Company not to initiate proceedings to wind up the Company so as to create a charge on some other person. The first charge over the assets of the company is in favour of the workmen. Since the Central Government has undertaken to settle the matter through VRS Scheme the rights of the workmen is transferred to the Central Government to that extent. So far as the liability of the company, if any in respect of other bank authorities or any other persons would come later.

15.However, we appreciate the decision which was taken by the Central Government in time without standing on any technicality when it floated in the Cabinet as a policy decision to settle the claims of the workmen by way of VRS Scheme. Some of the workmen opted for VRS Scheme and some of them having apprehensions have opted for the same at subsequent stage. The appeals filed by the Government are unsustainable. The person who was in-charge of the Department who did not understand the settlement mooted out by the Central Government. However, the decision taken by the person who is in-charge of the department, to file the appeals against the order of the learned Single Judge, without placing the matter before the Cabinet, we feel it a non-est decision. We direct the Central Government to expedite the VRS Scheme, preferably within a period of two months, before that, deposit the amount. So far as the case of the company is concerned as indicated above since the burden of the company is taken over by the Central Government in the VRS Scheme and first charge over the assets of the company is in favour of the workmen. Because the company is facing the burden of winding up and other aspects, if there is any claim other than the Central Government Scheme, then it could be delayed elsewhere.

16.We modify the order of the learned Single Judge to the effect that there is no burden on the company to that extent. So far as the liquidation proceedings is concerned, the first charge over the assets of the company will be on the Central Government since they step into the shoes of the workmen by taking over to discharge the burden of the company by way of VRS Scheme and for the remaining charge is concerned it is for the liquidator to decide on the issue.

17.Accordingly, we dispose of the appeal filed by the Company, modifying the order of the learned Single Judge. Two months time is granted to the Central Government to implement the VRS Scheme from the date of receipt of this order.

Sd/-
Asst.Registrar (CS V)

/true copy/

Sub Asst. Registrar

gr.

To:

1.The Secretary,
Department of Heavy Industries &
Public Enterprises,
Udyog Bhavan, New Delhi-110 011.

2.The Commissioner of Income Tax,
No.121, Uthamar Gandhi Salai,
Chennai-600 034.

+1cc to Mrs.Hemamuralikrishnan,Advocate sr.45244

+6cc to Ms.Ama mathew,Advocate sr.45152

+1cc to Mr.S.Venkatesan,CGSC,sr.45092

+1cc to Mrs.Rita Chandrasekaran,Advocate sr.45357

W.A. Nos.616 and
753 to 758 of 2017

ss(4/8/2017)