

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:25.10.2018

CORAM:

THE HONOURABLE MR. JUSTICE M.SATHYANARAYANAN
AND
THE HONOURABLE MR. JUSTICE N.SESHASAYEE

W.A.No.1475/2016 inWP.No.25485/2012

VR [HPF] Senior Citizens Welfare Association
represented by its Secretary
Mr.G.Subramanya Kaushik
D.No.43, Kailassam Pillai Street
Kadal, Finger Post P.O
Ootacamund 643006.

.. Appellant

Vs

1 The Secretary
Union of India
[Ministry of Heavy Industries
and Public Enterprises],
[Department of Public Enterprises]
Block No.14, CGO Complex
Lodhi Road, New Delhi.

2 The Chairman-cum-Managing Director
Hindustan Photo Films, Indu Nagar
Ootacaumund-643 006.

.. Respondents

Prayer:- Writ Appeal filed under section 15 of the Letters
Patent against the judgment dated 10.08.2016 passed in
WP.No.25485/2012.

WP.No.25485/2012

This writ Petition is filed under Article 226 of the
Constitution of India, to issue a writ of Mandamus directing the
2nd respondent to grant wage revision to the members of the
petitioner mentioned in the annexure to the writ petition @ 60%
as adjustable amount as sanctioned to the existing employees of
the 2nd Respondent as per the Memorandum of Understanding dated
14.8.95.

For Appellant	: Mr.M.Santhanaraman
For R1	: Mr.J.Madhana Gopal Rao
For R2	: Mrs.Rita Chandrasekaran

JUDGMENT

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

By consent, the writ appeal is taken up for final disposal.

2 The writ petitioner is the appellant herein.

3 The writ petitioner Association filed WP.No.25485/2012 against the respondents herein praying for issuance of a writ of mandamus or any other writ or appropriate direction in the nature of writ, directing the 2nd respondent, viz., the Hindustan Photo Films [HPF] to grant wage revision to the members of the petitioner mentioned in the annexure to the writ petition at the rate of 60% as adjustable amount as sanctioned to the existing employees of the 2nd respondent as per the Memorandum of Understanding [MOU] dated 14.08.1995, within the time frame to be fixed by the Court.

4 The affidavit filed in support of the writ petition has been sworn to by the Secretary of the said Association, who would aver among other things that the members of the Writ Petitioner Association are retired from service on Voluntary Retirement Scheme [VRS] announced by the 2nd respondent between the years 1992 and 1997 and they are entitled to wage revision which were given to the existing employees as per MOU dated 14.08.1995 signed between the Management and Trade Unions and it is also the case of the writ petitioner that the 2nd respondent had sanctioned 5% of the wage revision during the year 1997 and also during the year 2000 to all the employees including the members of the writ petitioner Association and however, no wage revision has been granted to them by citing slump in the business of the company.

5 In sum and substance, it is the case of the writ petitioner Association that the 2nd respondent, viz., HPF, had withheld the wage revision to its members, which has been granted to the existing employees and the same is contrary to the terms of MOU dated 14.08.1995 and therefore, by filing the writ petition, prayed for a positive direction.

6 The writ petition was entertained and notices were ordered. The Chairman-cum-Managing Director of the 2nd respondent has filed the counter affidavit, wherein he would aver that during the year 1995-1996, the net worth of the company became negative and as a consequence, the company was referred to the Board for Industrial Finance and Reconstruction

[BIFR] and vide proceedings dated 23.01.1996, BIFR had declared HPF as a sick company and the rehabilitation measures did not fructify and so also the various efforts taken to revive the said company. It is further averred that on account of financial crunch/difficulty faced by the said company, no revision of wages was given and employees of the company were paid wages on the basis of the salary revision which came into being in the year 1987 and the company had also extended the benefit of Special Performance Allowance and Adjustable Allowance during the year 2011 on the basis of the funds made available by controlling/administering Ministry, viz., Ministry of Heavy Industries of Union of India. It is also averred by the said respondent that on 31.07.2013, a Circular was issued ordering recovery of the amount paid to employees by way of Special Performance Allowance and Adjustable Allowance and challenging the legality of the same, WP.Nos.24335, 25491 and 24460/2013 came to be filed and it is brought to the knowledge of this Court that vide common order dated 29.11.2016, the learned Single Judge of this Court, has disposed of the said writ petitions with directions and in the process, the impugned Circulars dated 10.07.2013 and 31.07.2013 respectively, also came to be quashed. It is further brought to the knowledge of this Court that challenging the said common order, WA.Nos.1370 to 1372/2017 also came to be filed and the writ appeals were also dismissed vide common judgment dated 21.06.2018 with a direction, directing the appellant therein, viz., HPF, to pay the withheld amounts to the employees in question within a period of two months from the date of receipt of a copy of the said judgment. It was further observed that in respect of the legal heirs of the deceased employees, who were parties to the Settlement, they should be given benefit by making proportionate calculation. In sum and substance, it is the stand of the 2nd respondent that subsequently, the Voluntary Retirement Scheme came into being on the basis of the wage revision pertaining to the year 2007 [notional] and except six employees, all employees submitted their applications under VRS, which was formulated by the Ministry of Heavy Industries of Union of India and in the light of the same, no reliance can be placed on MOU dated 14.08.1995 for the reason that there was no revision of wages for the year 1987 and that was one of the reasons based on which, the Ministry of Heavy Industries had to wind up the operations of the company and to announce VRS scheme for the benefit of the employees whose wages/salaries have not been revised on and from the year 1987 and hence, prayed for dismissal of the writ petition.

7 The learned Single Judge, vide impugned final order dated 10.08.2016, observed that the writ petition pertains to a relief of the year 1995 and since the wage revision was given only to persons who had opted for VRS Scheme and were on roll

and since that has been withdrawn in the year 2013 and further that the members of the writ petitioner Association retired from service on attaining the age of superannuation, the prayer in the writ petition cannot be granted. Challenging the legality of the same, the present writ appeal came to be filed.

8 Mr.M.Santhanaraman, learned counsel appearing for the appellant/writ petitioner Association has invited the attention of this Court to MOU dated 14.08.1995, especially to clause [1] of the Terms of Settlement and would submit that as per the said clause, "the MOU will cover all categories of workmen including those in Ambattur Plant at Madras and all other Marketing Offices in India, who were on the rolls of the Company as on 31.12.1991 and also continue to be on the rolls of the Company as on date of signing of the Agreement and all those workmen who join later. All the benefits arising out of this agreement will be extended to those retired / voluntarily retired / resigned and deceased during the above period" and in the light of the said clause, it is obligatory on the part of the 2nd respondent to honour the said MOU and despite the said fact being repeatedly brought to their knowledge, for the reasons best known to them, they have not chosen to comply with the terms of the said MOU, which remain undisputed even as on date and therefore, prays for setting aside of the impugned order with a consequential direction, directing the 2nd respondent to honour the said MOU and prayed for appropriate directions in terms of the same.

8 Per contra, Mrs.Rita Chandrasekaran, learned Standing counsel appearing for the 2nd respondent has invited the attention of this Court to the common judgment dated 17.03.2017 made in WP.Nos.18566, 18788, 18608 to 18610 and 18789/2015 and would submit that HPF Workers' Welfare Centre has also filed writ petitions challenging the VRS Scheme and the consequential Circular issued by the 2nd respondent herein and sought for payment of 72 months salary in stead of 60 months salary as proposed under VRS Scheme and also not to deduct income tax on the severance package payable under the VRS Scheme as well as the amount of Recoverable Monthly Advance, Special Performance Allowance and Adjustable Advance paid to the employees and not to evict them from the staff quarters and the learned Single Judge, vide the above cited common order dated 17.03.2017, had rejected the said prayer by observing that the package having been received by the workmen as compensation pursuant to the decision taken by the Central Government and other special protection granted to the employees of HPF Limited and the income tax cannot be deducted from the severance package paid to the employees of HPF.

9 It is also brought to the knowledge of this Court by the learned Standing counsel appearing for the 2nd respondent that challenge was also made to the Circulars dated 10.07.2013 and 31.07.2013 as to the recovery of advances and allowances paid to the employees of HPF in the form of RMAs, SPAs and AAs against the terminal benefits payable under VRS in WP.Nos.24460 , 24355 & 25491/2013 and all the writ petitions were disposed of and the impugned Circulars were also quashed and in the light of the same, the members of the writ petitioner Association are not entitled to any relief.

10 It is also brought to the knowledge of this Court by the learned Standing counsel appearing for the 2nd respondent that the Company Court had also seized off the matters and vide order dated 08.09.2017 made in C.P.Nos.114/2003, 75/1993 and 21/1995 and the learned Single Judge has observed that the Official Liquidator has to take charge of the assets and examine the books of records and make necessary disbursements in accordance with the priority and therefore, a request was made to hand over the filing of entire papers be given to the Official Liquidator who may also examine the same and in the light of the said development also, the members of the petitioner Association are not entitled to any relief.

11 Learned counsel for the appellant, in response to the said submission, would submit that even the writ petitioner Association/appellant may be granted liberty to approach the Official Liquidator to make their claim and prays for appropriate direction.

12 This Court has considered the rival submissions and also perused the materials placed before it.

13 It is not in dispute that there was a MOU dated 14.08.1995 between the 2nd respondent and all the Trade Unions of HPF and as per clause No.1 of the terms of Settlement, the benefits of the said settlement would be extended to the retired / voluntarily retired / resigned and deceased during the above said period. The members of the Appellant/writ petitioner Association admittedly, went on VRS Scheme announced by the 2nd respondent between the years 1992 and 1997 and it is their claim that they are entitled for wage revision which were given to the existing employees as per the said MOU.

14 A perusal of Clause No.16.7 of MOU would reveal that "this Agreement is subject to the specific approval of the Department of Heavy Industry, Government of India and comes into effect only after signing a Memorandum of Settlement under the Industrial Disputes Act, 1947, before the State Labour Authorities".

15 The learned Single Judge [the Hon'ble Mr. Justice Rajiv Shakdher] vide common order dated 29.11.2016 in WP.Nos.24460, 24355 & 25491/2013, in paragraph No.19.5 had observed that "HPF is a judicial entity, notwithstanding the fact, that it is a company, which is evidently, wholly owned by Government of India. The Government of India, 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" . In paragraph No.20.1, the learned Judge had observed that "the workmen had executed settlements with the Management of HPF which had the ostensible authority in law to enter into such settlements and therefore, the interest of the employees cannot be compromised at this stage". Therefore, the learned Judge has given the said finding de hors the control of the Ministry over the authority that once the settlement came into being between the Management and workmen, it would bind both the parties.

16 This Court has also put a specific question to the learned counsel for the appellant as to whether any settlement came into being after MOU dated 14.08.1995 and it was answered in negative.

17 In the considered opinion of the Court, in the absence of any settlement under the Industrial Disputes Act, 1947, the relief of mandamus as prayed for by the appellant/writ petitioner Association by invoking the special original jurisdiction of this Court under Article 226 of the Constitution of India, is not maintainable.

18 This Court has taken into consideration the order dated 08.09.2017 made in CP.No.114/2003, 75/1993 and 21/1995 and is of the view that if it is open to the appellant/writ petitioner Association under law, they are always at liberty to approach the Official Liquidator to make their claim. This Court, on an independent application of mind to the entire materials available on record, is of the considered view that there is no error apparent on the face of the record or infirmity in the impugned order passed by the learned Single Judge.

19 In the result, the writ appeal is dismissed confirming the order passed by the learned Single Judge dated 10.08.2016 in WP.No.25485/2012, subject to the above observations. No costs.

Sd/-
Assistant Registrar(CO)

//True Copy//
Sub Assistant Registrar

To

1 The Secretary
Union of India
[Ministry of Heavy Industries
and Public Enterprises],
[Department of Public Enterprises]
Block No.14, CGO Complex
Lodhi Road, New Delhi.

2 The Chairman-cum-Managing Director
Hindustan Photo Films, Indu Nagar
Ootacaumund-643 006.

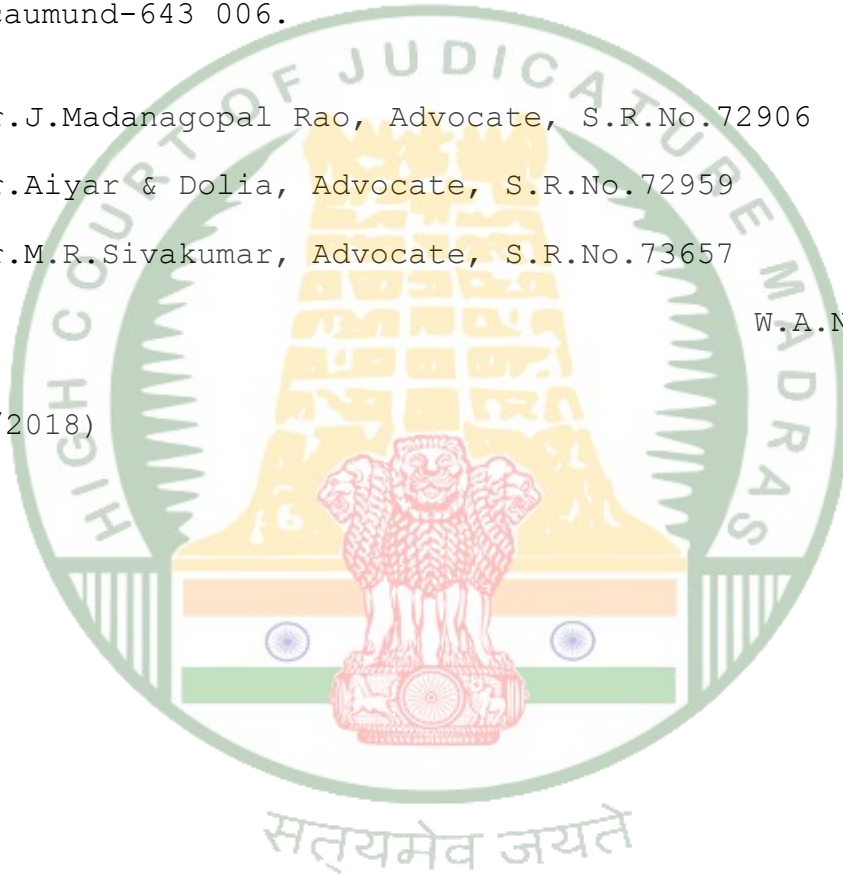
+1cc to Mr.J.Madanagopal Rao, Advocate, S.R.No.72906

+1cc to Mr.Aiyar & Dolia, Advocate, S.R.No.72959

+1cc to Mr.M.R.Sivakumar, Advocate, S.R.No.73657

W.A.No.1475/2016

SPD(CO)
GSP(16/11/2018)



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