

IN THE HIGH COURT OF JUDICATURE AT MADRAS

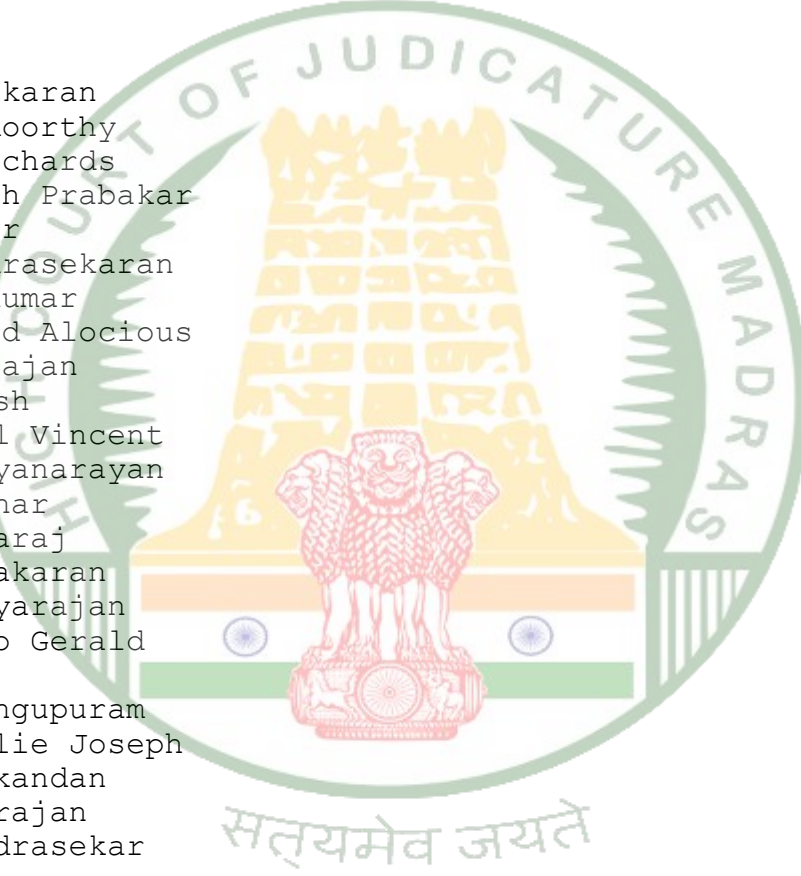
Date of Reserving Order : 07.01.2019	Date of Pronouncing Order : 06.02.2019
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The Hon'ble Mr.Justice M.M.Sundresh
and
The Hon'ble Justice Krishnan Ramasamy

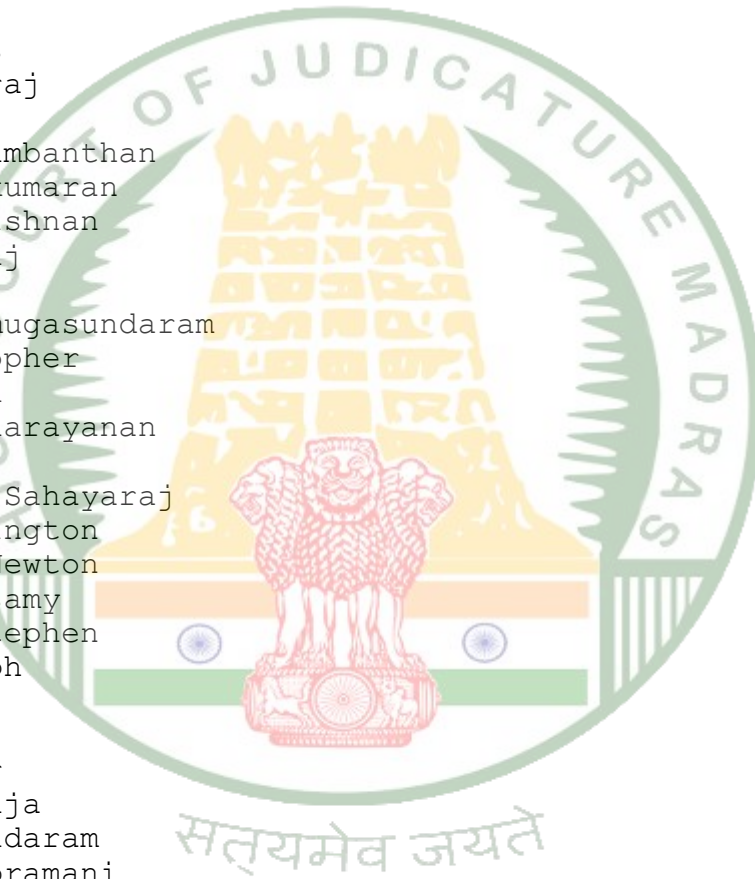
Writ Petition No.22342 of 2018

1. K. Shankaran
2. K.Sivamoorthy
3. John Richards
4. C.Joseph Prabakar
5. A.Xavier
6. L.Chandrasekaran
7. S.Premkumar
8. S.Edward Alocious
9. M.Nagarajan
- 10.M.Suresh
- 11.A.Karel Vincent
- 12.N.Sathyanarayan
- 13.K.Sridhar
- 14.S.Selvaraj
- 15.A.Dhinakaran
- 16.H.Sahayarajan
- 17.A.Inigo Gerald
- 18.V.Raja
- 19.K.Desingupuram
- 20.S.Charlie Joseph
- 21.K.Manikandan
- 22.V.Natarajan
- 23.P.Chandrasekar
- 24.P.Ganesan
- 25.P.Arokia Selvam
- 26.Y.Peter
- 27.A.Robert
- 28.K.P.Murugaiah
- 29.V.P.Murugesan
- 30.D.Ravichandran
- 31.K.V.Veerapandi
- 32.A.Nilopher Samuel
- 33.G.Balakrishnan
- 34.V.A.Victor Suresh
- 35.S.F.Harrington



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36.V.Shankar
37.A.Kannan
38.V.Balasubramani
39.P.Subbian
40.D.Senthilmurugan
41.A.Chandru
42.R.Sivakumar
43.R.Vennila
44.G.Ravi
45.P. Voilet Lilly
46.S.Kanagarathinam
47.N.Chellapandian
48.P.Vanaraj
49.A.Andrews
50.I.Sahayaraj
51.P.Pandi
52.P.Gnanasambanthan
53.K.Vijayakumaran
54.P.Balakrishnan
55.K.Selvaraj
56.R.Antony
57.S.K.Shanmugasundaram
58.S.Christopher
59.R.Murugan
60.D.Sooryanarayanan
61.V.Suresh
62.M.L.S.B. Sahayaraj
63.S.D.Wellington
64.R.Issac Newton
65.A.Alagarsamy
66.A.John Stephen
67.V.X.Joseph
68.K.Kannan
69.J.Paulraj
70.T.D.Kumar
71.M.Yesu Raja
72.M.Balasundaram
73.T.Sivasubramani
74.S.Mohan
75.S.Haridoss
76.O.Poovalingam
77.S.Alagaraja
78.K.Jayakumar
79.M.C.Mohan
80.I.R.Antony
81.S.Shayaraj
82.K.Paulraj
83.S.Sahayaraj
84.R.Alagarsamy
85.P.Pandikmar



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86.M.V.Krishna
87.A.Vetha Pothagar Clarance
88.P.Jayakumar
89.A.Xavier
90.A.Murugesan
91.K.Elangovan
92.V.Subramani
93.S.Peer Sheriff
94.Y.Glaston Nehru
95.P.Sinnakalai
96.M.Ramiah
97.P.Anandan
98.S.Balasubramani
99.M.Jeyapal Thiyagarajan
100.R.Antonydoss
101.P.Velu
102.R.Rajah
103.T.Subramani Paulraj
104.S.Ramesh
105.S.R.Thomas
106.A.Gnanaprakasam
107.A.Rajan
108.K.Som Bhadur
109.A.Joseph
110.D.Eramani
111.Dal Bahadur
112.A.Raja
113.K.Ramar
114.R.Raj Mohan
115.M.Antonydoss
116.J.S.Saharaja

...Petitioners

1. Ponds Hindustan Lever Ltd., Ex.Mercury,
Employees Welfare Association
rep. by its President,
having Office at Thiraviam Complex,
Kamarajar Road Kodaikanal - 624 101.
2. Hindustan Unilever Ltd.,
rep. by its Managing Director,
Hindustan Lever House,
Back Bay Reclamation Mumbai.
3. Hindustan Unilever Limited,
rep. by Mr.Ganesh Parameswaran
Legal Manager, Mr.R.John George,
Local Manager, Santhome,
High Road, Chennai - 600 028.

4. The State of Tamil Nadu, rep. by its Secretary to Government, Department of Labour, Fort St. George, Chennai - 600 009.
5. The Chief Inspector of Factories, Sivakasi, Tamil Nadu.
6. The Commissioner of Police, Chennai.
7. The Tamil Nadu Pollution Control Board, rep. By its Chairperson, 100 Anna Salai, Chennai.
8. The Bank of India, Kodaikanal Branch.

...Respondents

Writ Petition filed under Article 226 of the Constitution of India, for issuance of Writ of Mandamus, to direct the respondents 1 to 3 to file all the records, receipts, vouchers, account books, challans, affidavits in their possession pertaining to the disbursement of the ex-gratia amount paid to the petitioners and to the remaining beneficiaries and enquire into the irregularities and misappropriation committed by the Office Bearers of the first respondent and the Officials of the third respondent in disbursing the ex-gratia amount to the petitioner. Consequently, to direct the respondents 1 to 3 to settle the balance ex-gratia amount payable to the petitioners in accordance to the number of years of their service and to direct the Office Bearers of the first respondent to refund the amount to the petitioners received towards Union Expenses, Legal Expenses by force and coercion from the petitioners within the stipulated time fixed by this Court.

For Petitioners : Mr. M.S.Kabeer, Senior Counsel
for Mr. S.Sridhar

For Respondent-1: M/s. R. Vaigai, Senior Counsel for
Mr. Balan Haridas

For Respondent-3 : Mr.Madhan Babu

For Respondents 4-6 : M/s.A. Srijoyanthi
Special Government Pleader

ORDER

Krishnan Ramasamy, J.,

The prayer in this Writ Petition is for issuance of a Writ, in the nature of mandamus directing the respondents 1 to 3 to file all records, receipts, vouchers, account books,

challans, affidavits in their possession pertaining to the disbursement of ex-gratia amount to the petitioners and remaining beneficiaries and to enquire into the irregularities and misappropriation committed by the office bearers of the first respondent and Officials of the third respondent in disbursing the ex-gratia amount to the petitioners. Consequently, to direct the respondents 1 to 3 to settle the balance ex-gratia amount payable to the petitioners in accordance to the number of years of their service and to direct the office bearers of the first respondent to refund the amount to the petitioners received towards Union Expenses, Legal Expenses by force and coercion from the petitioners.

2. The case of the petitioners, as stated in the affidavit filed in support of this Writ Petition in short is as follows :-

i) The petitioners, numbering 116 were workers of the Ponds India Ltd., now known as Hindustan Unilever Limited (for short, HUL) and also members of the first respondent, which is an Employees' Welfare Association. Out of 116 workers, 81 workers remained in service till the closure of the Factory in the year 2001 and closure was due to some pollution issues. So far as remaining 35 workers are concerned, they worked in the Factories of the second and third respondents during various period.

ii) On behalf of the workers, a Public Interest Litigation was filed by the first respondent/Association, in W.P.No.8291 of 2006, seeking for a direction upon the second and seventh respondents to evolve a scheme of economic rehabilitation and health care for the ex-workers of HUL Clinical Thermometer Factory at Kodaikanal and for other victims, who have suffered exposure to the toxic mercury emitted from the HUL and to direct the respondents 4 to 7 therein to prosecute HUL for violation of provisions of the Factories Act, 1948 and the various Environment Laws, Regulations and Orders with regard to the operations of HUL Clinical Thermometer Factory at Kodaikanal, and to direct the seventh respondent, Union of India, to revise the occupational health and safety standards with reference to the mercury exposure as per the Factories Act and also to revise the compensation amounts as per the Workmen's Compensation Act, 1923.

iii) In the said Writ Petition, the Hon'ble First Bench of this Court put a suggestion to the parties to resolve the dispute amongst themselves amicably. In pursuance thereof, the Management of HUL and the first respondent/Association arrived at a settlement on 04.03.2016, and recording such settlement, the Writ Petition was disposed of, by order, dated 09.03.2016.

iv) The grievance of the petitioners is that the terms and conditions of the settlement were not informed to the petitioners or any of the members of the first respondent and they were kept in dark and ignorant as to on what basis, the settlement was arrived between the first respondent and the respondents 2 and 3. It is further stated that they were unaware of the fact that by virtue of such settlement, dated 04.03.2016, W.P.No.8291 of 2006 was disposed of, vide order dated 09.03.2016. They were also made to believe that the terms of settlement was asked to be kept in confidential by the Hon'ble First Bench of this Court and as such, the terms of settlement was not disclosed to them.

v) The petitioners were huddled in groups and asked to sign some papers without disclosing as to what was written in it. Further, the copies of the papers, in which, the petitioners signed were also not provided to them. The petitioners also stated that the first respondent obtained bogus medical certificates stating as if, the petitioners were hale and healthy and were not affected due to the emittance of mercury toxins from the Factory when the fact remains that they have suffered serious ill health due to the exposure to mercury toxins and the impact still lingers on.

vi) It is the further case of the petitioners that ex gratia amounts were paid to 60 workers, who never worked in the Factory at any point of time and among such 60 persons, some of them were close relatives of the first respondent. The Advocate Commissioner, who was appointed by the First Bench to verify the credentials of the beneficiaries under the settlement, has not acted in terms of the settlement, which resulted in disbursement of ex gratia amounts even to the outsiders and not to the workers, who suffered due to the mercury impact. The respondents 2 and 3 also joined hands with the members of the first respondent in making such payment merely to satisfy the office bearers of the first respondent, with a sole intention to misappropriate the ex gratia amount payable to the workers.

vii) The first respondent Association being a registered one, it is its bounden duty to convene a General Body Meeting and discuss the terms and conditions of the settlement. But no such meeting was convened and at no point of time, the petitioners and other members of the first respondent were taken into confidence by the first respondent and no discussion was held with regard to the terms of the settlement and the criteria adopted to arrive at a compensation payable to the workers were also not disclosed to the workers. This was purposely done only with an intention to misappropriate the ex gratia amounts payable to the workers. Accordingly, during disbursement of ex gratia amount, as per the settlement, dated 04.03.2016, local

Management of HUL and the first respondent Office Bearers colluded together and committed forgery by misappropriating the money, which was legally due to the petitioners.

viii) It is further stated that huge sum was deducted from the ex gratia payments made to the petitioners and other workers under the pretext of legal expenses, income tax, Union Expenses and other miscellaneous expenses. For instance, while effecting payment to 108 workers, a sum of Rs.22,50,000/- was deducted towards legal expenses. So far as the Union expenses and other miscellaneous expenses were concerned, Rs.1,54,10,000/- were collected and no receipt was given to such 108 workers for having made deductions from the ex gratia amounts. These amounts were obtained by the first respondent by exerting force and coercion. In this regard, the petitioners also filed a chart, narrating the incident, as to how, they were forced to pay huge amount to the first respondent Association towards legal expenses and other miscellaneous expenses.

ix) After making such deductions, 108 workers were paid only Rs.4,00,000/- to Rs.5,00,000/- and the total amount collected from 108 workers is approximately around Rs.1,76,600,00. The same can be verified from the bank statement of the workers, which is annexed in the typed set of papers filed in support of this Writ Petition. Further, the first respondent threatened the petitioners and other members and obtained signed blank cheques from them and after having encashed the same, transferred the amounts in their names with the help and connivance of the eighth respondent Bank. Hence, the Bank has been impleaded as a party respondent to this Writ Petition.

x) It is the grievance of the petitioners that none of the petitioners and other members of the first respondent received the ex gratia amount in accordance with the length of services rendered by them. The petitioners though toiled hard and worked for almost 18 years, they were paid meager ex gratia amount ranging from Rs.10,00,000/- to 12,00,000/-. Whereas, the workers, who had put in less number of service were paid more ex gratia, ranging from Rs.40,000,00 to Rs.60,000,00/- which is totally illegal.

xi) The first respondent also suppressed all the material facts before this Court and submitted that all the workers including the petitioners had received ex gratia amount by cheque from the second respondent and based on such false statement, and by virtue of the settlement, dated 04.03.2016, alleged to have been arrived at with the consent of the petitioners and other members of the first respondent, the Hon'ble First Bench disposed of W.P.No.8291 of 2006, vide order,

dated 09.03.2016, by recording such settlement dated 04.03.2016. Since there were several irregularities in disbursement of ex gratia amount and the petitioners were under threat by the first respondent, petitioners have lodged a complaint before the Commissioner of Police. However, the respondent/Police have not taken any further action and the case is still pending. Therefore, the respondent/Police have been impleaded as party to this Writ Petition.

xii) The petitioners also furnished list of 591 workers recommended by the first respondent to the respondents 2 and 3, the details of which, is mentioned below:-

i) Ex-workers (confirmed) who left before 2001	= 96
ii) Details of trainees/temporary/casual workers	= 212
iii) Contract Workers	= 134
iv) Deceased workers	= 45
v) Confirmed workers left in 2001	= 104

xiii) The petitioners have also mentioned the details of service put in by those 591 workers.

Out of 212 trainee/temporary workers, 53 workers have put in less than one year of service and 60 workers, less than 2 years of service.

Out of 134 contract workers, 66 workers were put in less than one year of service and 35 workers less than 2 years of service.

Out of 104 confirmed workers, 81 workers are the petitioners. The remaining workers have been denied the benefits of ex gratia.

xiv) When 115 workers came to know about the irrational disbursement of ex gratia and the misappropriation, they filed an appeal before the Management of the Company seeking necessary relief. The Management instead of safeguarding the interest of workers, joined hands with the first respondent and refused to grant any relief, however, admitted that they had paid compensation to around 60 persons, whose credentials were not verified. The petitioners also mentioned the names of certain persons, who were responsible for misappropriation of ex gratia amount payable to the workers, and they are i) R. John George, ii) S.A.Mahindran, iii) S.Raja Mohammed, iv) R.S.Raghunathan and v) The BOI, Branch Manager.

xv) Therefore, the petitioners insisted the Court to conduct a thorough investigation to unearth the truth as to the misappropriation committed by the first respondent with help of the aforesaid persons and also to find out the reason for payment of differential amount, which is not in accordance with the length of service rendered by them and other workers.

xvi) Seeking redressal of their grievance, they filed W.P.No.4815 of 2017. But the same was asked to be withdrawn to be prosecuted before the same Bench, which heard the matter, in the light of the dictum laid down by the Hon'ble Supreme Court, in the case of Shivdeo Singh Vs. State of Punjab, reported in AIR (1963) SC 1909. Hence, the present writ petition has been filed by the petitioners seeking for a direction as stated in the preamble portion of this order.

3. A detailed counter affidavit has been filed by the first respondent, denying not just one averment set out in the Writ Petition but all the averments as fallacious by way of giving brief reply to each of the averments, which is as follows:-

i) At the outset, it is stated that the Writ Petition lacks bona fide since the signatures of 58 petitioners found in the vakalathnama were not theirs but forged one. This is evident from the fact that the signatures of 58 petitioners when were compared with the signatures found in the affidavits filed by them individually towards acceptance of payment effected under the settlement, dated 04.03.2016, in connection with W.P.No.8291 of 2006 were not similar but differs.

ii) The relief sought by the petitioners is to grant ex gratia in accordance to the number of years of service rendered by them, as according to them, the workers, who have put in less number of service were given higher exgratia amount, whereas, the workers, including the petitioners who worked for considerable number of years were paid lesser amount. Such a prayer has been made on a deliberate suppression of fact that 78 of the petitioners had earlier entered into a settlement, dated 09.11.2001, for voluntary retirement under the Industrial Disputes Act, 1947 and received compensation based on years of service on the specific condition that they will not raise any claim in future. Therefore, the claim made by the petitioners based on the settlement, dated 04.03.2016 arrived at between the first respondent and the respondents 2 and 3 in W.P.No.8291 of 2006 by contending that there were several irregularities and misappropriation of funds committed by the first respondent is not sustainable. Even otherwise, the present Writ Petition is not maintainable as the said Writ Petition was filed by the first respondent for payment of compensation for harmful health effects caused to the workers in the second respondent's Factory at Kodaikanal, and not with regard to the issue of compensation by reckoning the number of years of service rendered by the workers. Hence, the Writ Petition is filed based on a wrong premise and suppressing the earlier settlement, dated 09.11.2001, so as to gain unjust monetary gains.

iii) Further, the averments of the petitioners that they were not informed of the terms of the settlement and unaware of the fact that by virtue of such settlement, dated 04.03.2016, W.P.No.8291 of 2006 was disposed of, vide order dated 09.03.2016 are utter false, in the light of the affidavit of undertaking dated 19.03.2016, filed by the first writ petitioner K.Sankaran, in W.P.No.8291 of 2006, wherein, the terms agreed upon by him reads as follows:-

a) In the said Writ Petition, the said Workmen's Association has with my consent and approval entered into a settlement dated 04.03.2016.

b) I have read and understood the contents of the said settlement, and I am fully satisfied with the same and undertake to abide by the terms of the said settlement.

c) I acknowledge the receipt of the ex gratia amount of Rs.15,00,000/- after deducting TDS.

d) I have no further claim, whatsoever, against HUL or its group Companies.

iv) The writ petitioners were fully informed of the details of the terms of settlement and they willingly accepted the payment given to them under the settlement. Similarly, the averment of the petitioners that they have been cheated to the tune of Rs.250 crores or Rs.110 crore is utterly false, and the amount is multifold and it is beyond the amount that was paid by the second respondent, under the settlement, dated 04.03.2016.

v) It is also stated that the Writ Petition deserves to be dismissed in limine for the following five grounds;

a) No writ petition can lie against a settlement, which has been accepted by the Division Bench of this Court and enforced as per its direction.

b) All the petitioners have filed individual affidavits of undertaking before this Court, stating that after receiving the payments as per the Settlement, dated 04.03.2016, they are bound by the terms of the settlement and will not make any future claims.

c) Having received benefits under a settlement, the petitioners are bound by the terms of the settlement and they cannot challenge the same.

d) Eight of the petitioners, in Sl.Nos.104 to 111 have not been our members and were not parties to W.P.No.8291 of 2006, hence, they cannot make any grievance about the settlement in that case or claim any payment.

e) No writ petition can be filed against private persons.

vi) It is to be noted that 78 petitioners have entered into a settlement, dated 09.11.2001 with the second respondent. Such settlement offered them a voluntary separation package in view of cessation of employment and 78 of the petitioners herein have accepted such settlement and left the service in the year 2001 itself after receiving the compensation towards their service. Therefore, they are estopped from raising any new claim in this Writ Petition.

vii) In fact, on perusal of clause 6.7 of the settlement, dated 09.11.2001, it is seen that the concerned employees and the Union understood that the above package is in full and final settlement of all claims arising out of employment/cessation of employment. In fact, it was only as per the said terms, the settlement dated 09.11.2001 was signed by the Kodaikanal Hindustan Lever Thermometer Employees Union, which represented all the employees on the rolls of the Company on 08.03.2001, which includes 78 petitioners herein, when the Factory was closed. The first respondent had no say in such settlement, which was entered into between the Management and workers based on number of years of service put in by the petitioners. In fact, this Court also held that no employee can make any claim towards past service after receiving the benefits on a VRS scheme.

viii) However, the Association took all efforts on behalf of 78 petitioners also to get relief in W.P.No.8291 of 2006. In fact, at the time of present settlement, dated 04.03.2016, the respondent/Company was insisting for deduction of the amounts received by the workers, who left the Company in the year 2001. However, the office bearers of the first respondent stiffly resisted any such deduction. It is recorded that, it is agreed between the parties that the aggregate amount paid as part of the voluntary scheme earlier to ex-workers in November, 2001 has at the request of the Employees' Welfare Association not been adjusted while arriving at the settlement agreement, dated 04.03.2016. The 78 petitioners, being the members of such settlement, dated 09.11.2001, they cannot again seek for compensation by way of another settlement dated 04.03.2016, and they are estopped from making any claim based on the former settlement, dated 09.11.2001.

ix) The criminal complaint given by some of the petitioners and other workers against the respondents 1 to 3 regarding the alleged misappropriation of ex gratia amount was closed by the Superintendent of Police, Dindigul vide report dated 24.07.2017,

based on which report, the CrI.O.P.Nos.8633 and 6047 of 2017 were also dismissed and suppressing the same, it is averred by the petitioners that the complaint lodged by the petitioners regarding the irregularities and misappropriation of funds committed by the first respondent is pending. Therefore, it is stated that respondent/Police has been unnecessarily impleaded as party respondent to this Writ Petition.

x) The allegation that Advocate Commissioner has not acted in terms of the settlement, as he failed to verify the credentials of the beneficiaries under the settlement, is false. It is only in his presence, disbursement of cheques to 538 workers and their legal heirs took place between 21st March to 23rd March, 2016. The disbursements started from early morning and ended till the evening and it spread over for three days, which was due to the fact that time was spent by the Advocate Commissioner in verifying the identify of each workers and his/her signing the affidavit after understanding the same. In such affidavits, the amount paid to the petitioners and other workers were mentioned and the cheques were handed over simultaneously to each workers in the presence of the Advocate Commissioner, and the petitioners herein also signed for having received such payments. In fact, the second respondent has taken photographs of every disbursement and the petitioners accepted the same without any protest. Insofar as the workers, who were not able to appear on those three days and some of the legal heirs of the deceased workers, who were not in possession of the legal heir certificates, the cheques were handed over to them at a later date, i.e. on 25.03.2017, which is permissible as per the order of this Court. On which date, totally 38 cheques were handed over to the concerned beneficiaries.

xi) The allegation of the petitioners that huge sum was deducted from the ex gratia amounts payable to the petitioners under the guise of legal expenses, income tax, Union Expenses and other miscellaneous expenses are also false. Insofar as TDS deduction is concerned, it is the first respondent who raised objection when the Company made TDS deductions towards income tax from the ex gratia payments and also obtained an order by filing W.P.No.13860 of 2016, whereby, the respondent Company was directed to remit the TDS to the Income Tax Department, pursuant to which, the first respondent took steps to enable members to get refund of the amount by filing appropriate applications and totally, 345 members were benefited.

xii) The allegation that the petitioners were made to believe that the terms of settlement was asked to be kept in confidential by the respondents and as such, they were kept in dark regarding the terms of settlement are false, for the reason that, under the settlement, both the parties agreed to keep the

terms of settlement confidential and were prohibited from disclosing the same.

xiii) The averment of the petitioners the first respondent obtained bogus medical certificates stating as if, the petitioners were hale and healthy and were not affected due to the emittance of mercury toxins from the Factory when they actually suffered ill-health due to the exposure to mercury toxins is also false on account of the fact that W.P.No.8291 of 2006 was pending for a decade and during such pendency, the first respondent submitted medical records of several members before the Court. Out of 116 petitioners herein, petitioners less than 10 in numbers participated in the medical examination conducted by the Expert Committee appointed by this Court, despited being informed of such examination and only few submitted their medical records. Hence, the petitioners cannot say that the first respondent submitted bogus medical certificates. Finally, it is stated that the Writ Petition is liable to be dismissed as the same has been filed on frivolous ground and baseless allegations and also by suppressing all the materials facts.

4. The respondent No. 3 also filed an elaborate counter affidavit sworn to by Factory Manager of the respondent/Company resisting all the averments set out in the affidavit filed in support of the Writ Petition, (as did by the first respondent in their counter affidavit) inter alia contending that the averments of the petitioners are absolutely false, lacks bona fide and the manner, in which, the petitioners have vetted the affidavit, it could be inferred that their claim is baseless, vexatious. It is stated that the case of the petitioners is frivolous, false and the Writ Petition is not maintainable and the same is substantiated by way of explanation under the following headings : i) Jurisdiction, ii) Estoppel, iii) Gross abuse of judicial process, iv) Supression/misrepresentation of material facts. It is an admitted fact that it is only in the interests of the petitioners, the first respondent/Association filed W.P.No.8291 of 2006, and obtained an order in favour of the workers and the present Writ Petition filed by the petitioners is nothing but an attempt to gain unjust monetary benefits and to suit their requirement, the affidavit was couched by making fallacious averment. Therefore, it is stated that such baseless and frivolous allegation made by the petitioners deserves to be summarily rejected and the Writ Petition is liable to be dismissed with exemplary costs.

5. Mr. M.S.Kabeer, the learned Senior Counsel appearing for the petitioners while reiterating the averments set out in the supporting affidavit of the Writ Petition submitted that the ex gratia amount paid to the petitioners were not based on the

service rendered by them. The persons, who put in less number of service, i.e., less than two years were paid more ex gratia amount, ranging from Rs.30,00,000/- to Rs.40,00,000/- whereas, the petitioners though toiled and worked for 15 years and above were paid meager amount of less than Rs.8,00,000/- and under the pretext of deduction towards TDS, Legal expenses and Union Expenses, huge sum were deducted from the ex gratia amounts payable to the petitioners. In this regard, the first respondent obtained blank cheques from each of the petitioners stating that each petitioner are required to pay amount towards advocate fees, Union expenses and other expenses of the first respondent. The respondents 2 and 3 also joined hands with the first respondent merely to satisfy the office bearers of the first respondent, with a sole intention to misappropriate the ex gratia amount payable to the other workers, who are legally entitled to. Further, the first respondent threatened the petitioners and other members and obtained signed blank cheques from them and after having encashed the same, transferred the amounts in their names with the help and connivance of the eighth respondent Bank. Though the third respondent fixed substantial amount towards disbursement of ex gratia amount to the petitioners, due to the fraud committed by the first respondent, they have been paid only meager amount, which is totally illegal.

6. Further, the learned Senior Counsel submitted that the petitioners never knew that a settlement is arrived at between the third respondent and the first respondent, as per the direction of this Court. The terms of the settlement were not known to the petitioners and they were kept in dark. The first respondent, being a registered Association, consisting of 591 members, should have convened a General Body Meeting and should have placed the terms and conditions of the settlement for consideration of the members and take an informed decision in consultation with its members. The first respondent failed to do so only with an intention to misappropriate the money. Therefore, he contended that though it is stated that the settlement was arrived at between the first respondent and the third respondent, based on which, the W.P.No.8291 of 2006 was disposed of, the so called settlement was arrived at behind the back of the petitioners.

7. It is the further contention of the learned Senior Counsel that though it is stated that the parties to such settlement agreed to keep the terms of settlement in confidential and were prohibited from disclosing the same, before arriving at a settlement, no Meeting, or discussion was held by the first respondent with the members intimating as to what were the terms and conditions of such settlement. Therefore, the settlement arrived between the first and second

respondent is totally illegal and the same is liable to be set aside. Further, he contended that out of 591 members, who were recommended by the first respondent for receipt of ex gratia amounts, 60 members were not all workers of the third respondent and only 531 members were workers. Therefore, it is clear that ex gratia amounts were disbursed even to the outsiders, who are not even a member of the first respondent/Association or worker of the third respondent /Company, and the petitioners came to understand that amongst such outsiders, many were happened to be relatives of the first respondent, which per se shows that certain mal practices were played by the first respondent in disbursement of exgratia amount, and the respondents 2 and 3 also joined hands with the first respondent for such illegal disbursement of ex gratia amounts to the outsiders only with an intention to misappropriate the fund.

8. Therefore, the learned Senior Counsel appearing for the petitioners restricted his extent of prayer, and submitted that all the mal practice and fraudulent activities played by the respondents will come to light, if this Court appoints an Advocate Commissioner, more particularly, Justice K.Chandru, who will act legally for inspecting the fraudulent activities that took place regarding disbursement of ex gratia amount. Therefore, he insisted for appointment of an independent person, like Justice K.Chandru, to enquire into the entire affairs of the disbursement of the ex gratia amount to the workers and prays for an appropriate direction in this regard.

9. Per contra, M/s. R.Vaigai, learned Senior Counsel for the respondent No.1 submitted that ex gratia amount have been paid as per the terms of the settlement arrived at between the first respondent and the third respondent, which was within the knowledge of the petitioners. Settlement for payment of ex gratia amount was arrived at only on the basis of a suggestion put by this Court and it was not at the instance of the first respondent. This Court also appointed Advocate Commissioner to monitor the payment of ex gratia compensation. Therefore, the Advocate Commissioner has also filed a report before this Court, which was taken on record. Further, the terms and conditions of the settlement arrived at between the respondents 1 and 3 have also filed in a sealed cover before the Hon'ble First Bench and the same is in the custody of the Registrar General.

10. The learned Senior Counsel for the first respondent further advanced her arguments stating that the petitioners are also party to the settlement and also received the ex gratia amount as per the terms and conditions of the settlement in the presence of the Advocate Commissioner. In this regard, they have also executed necessary document in the presence of the Advocate Commissioner. In fact, the second respondent has taken

photographs of every disbursement and the petitioners accepted the same without any protest or objection. Now they have come forward to file this Writ Petition only for the purpose of reverse the entire process of settlement with an intention to gain unjust monetary benefits.

11. Therefore, the learned Senior Counsel strongly contended that only as per the order of this Court, both the parties in W.P.No.8291 of 2006 settlement was arrived at and it is no doubt true that the petitioners herein were also beneficiaries of such settlement, and in this connection, the learned Senior Counsel refers to the terms agreed upon by the first petitioner, as extracted in sub-para iii) of para No.3 of this order and the payment of the ex gratia amount was made in the presence of the Advocate Commissioner appointed by this Court and the Advocate Commissioner has also filed a brief report stating the details of the ex gratia amount paid to the workers, which includes the petitioners. Only based on such report, which remained as proof towards disbursement of ex gratia to the workers, and which records the statements of acceptance by each of the beneficiaries under the settlement, the W.P.No.8291 of 2006 was disposed of.

12. Further, the learned Senior Counsel contended that retiral benefits due to the petitioners were paid by the third respondent long back since they have retired during the year 2001 itself. Even the documents annexed in the typed set of papers would clearly show that all the retiral benefits, including the ex gratia is paid based on the number of service rendered by the petitioners. At the time of receipt of retiral benefits along with ex gratia, they have not raised any objection. When things stood as thus, the Writ Petition filed by the petitioners contending that certain irregularities and misappropriation has been committed by the Office Bearers of the first respondent and the Officials of the third respondent in disbursing the ex- gratia amount to the petitioners and seeking for a direction to settle the balance ex-gratia amount is totally devoid of merits. The petitioners do not have any right to question about the settlement arrived at, dated 09.03.2016, as illegal, as they were parties to such settlement and filed individual affidavits. In each of such affidavits, the amount paid to the petitioners and other workers were mentioned and the cheques were handed over simultaneously to each workers in the presence of the Advocate Commissioner, and the petitioners herein also signed for having received such payments and having not raised any objection at the time of receiving such payments, it is not open to the petitioners to say they were not aware of the terms of settlement and they were kept in dark.

13. Further, it is contended by the learned Senior Counsel that the petitioners have no legal right to seek for payment of enhanced ex gratia amount on the basis of service rendered by them as the ex gratia amount paid to them was not on the basis of service rendered by them but due to the sufferings undergone by them due to exposure to the mercury toxin emitted from the HUL. For this purpose, the third respondent Company arranged for a medical examination to be conducted by Doctors, in which, only few out of 116 petitioners participated. In such circumstances, the contention of the petitioners that they should have been paid more ex gratia amount, that too, as a matter of right, is not sustainable. In support of his contentions, the learned Senior Counsel placed reliance of the decisions mentioned infra:-

- i) Ghaziabad Zila Sahkari Bank Ltd., Vs. Addl. Labour Commissioner and others, reported in (2007) 11 SCC 756.
- ii) State of Rajasthan and others Vs. Sanyam Lodha, reported in (2011) 13 SCC 262.
- ii) Sudesh Dogra Vs. Union of India and others reported in (2014) 6 SCC 486.

14. Further, learned Senior Counsel contended that it is only in the interests of the petitioners, the first respondent/Association filed W.P.No.8291 of 2006 and since the said Writ Petition was pending for long time and during such pendency several workers died, the first respondent/Association with the approval of the General Body took efforts to file claim on behalf of the members in the High Court of Justice, Queen's Bench Division, UK against the respondent Company and Unilever Plc, which was holding the Company. The said claim was filed after making enormous efforts and expenditure. In this regard, the first respondent also took steps to get signatures from each of the members in individual claim forms to be filed in the London Court as per the Court procedure there. The petitioners also signed the said claim forms. At the time of filing the said claim, Association had called for a General Body Meeting on 12.10.2014 and took the approval of the members to file case in London. Later, as per the terms of settlement, the case in London was withdrawn as per the order dated 07.03.2016 passed by the High Court of Justice, Queen's Bench Division, U.K. Thus, the petitioners had full knowledge of all the steps taken by the first respondent for the welfare of the workers.

15. The learned counsel appearing for the third respondent also adopted the submission of M/s.R.Vaigai, learned Senior Counsel for the first respondent and submitted that the Writ Petition is liable to be dismissed.

16. We have heard the learned counsel appearing for the parties concerned and perused the materials on record, including the detailed counter affidavits filed by the first respondent and third respondents respectively.

17. As rightly pointed out by the learned Senior Counsel for the first respondent, the Writ Petition deserves to be dismissed for the reasons that, no writ petition can lie against a settlement, which has been accepted by the Division Bench of this Court and enforced as per its direction. Admittedly, the petitioners herein are parties to such settlement, dated 04.03.2016. In fact, all the petitioners have filed individual affidavits of undertaking before this Court, stating that after receiving the payments as per the Settlement, dated 04.03.2016, they would be bound by the terms of the settlement and will not make any future claims. Thus, the petitioners being parties to such settlement and having relished the benefits under the settlement by receiving ex gratia amounts granted to them, the petitioners are bound by the terms of the settlement and are estopped from challenging the same.

18) Insofar as the petitioners, in Sl.Nos.104 to 111 are concerned, they were not the members of the first respondent/Association and were not parties to W.P.No.8291 of 2006, hence, they cannot make any grievance about the settlement in that case or claim any payment.

19. Further, we hold that the petitioners cannot claim ex gratia payment as a matter of right and writ of mandamus cannot be issued in this regard, because, the payment of ex gratia is not a statutory right. When there is no statutory right, the Court need not exercise its power for granting such relief sought for, in this Writ Petition.

20. Further, this Court also called for the report submitted by the Advocate Commissioner, which was kept in a sealed cover and in the custody of the Registrar General and perused the terms of settlement arrived at between the first and third respondents. On perusal of the same, we do not find any illegalities or irregularities in arriving at such a settlement. Further, it has come to light that the ex gratia was paid depending upon the nature of sufferings sustained by the workers and not on the basis of the years of service. In fact, the disbursement of ex gratia was made in the presence of the

Advocate Commissioner appointed by this Court. The said Advocate Commissioner also filed a report with regard to the disbursement of the ex gratia in a fair manner and the same was taken into record. After taking into consideration of the said report, the Writ Petition No.8291 of 2006 was closed. Hence, there is no need for appointment of any independent persons to investigate into the entire activities once again, even assuming the Writ Petition is maintainable and have to be considered on merits. Therefore, we do not find any merit in the Writ Petition.

21. Further, it is also seen that the first respondent took all possible steps to safeguard the interest of the workers, who suffered ill-health due to the mercury toxin emitted from the HUL. The same is evident from the fact the first respondent/Association filed W.P.No.8291 of 2006, seeking compensation and during the pendency of the Writ Petition, since several workers died, the first respondent/Association with the approval of the General Body took efforts to file claim on behalf of the members in the High Court of Justice, Queen's Bench Division, UK against the respondent Company and Unilever Plc, which was holding the Company of the third respondent. The said claim was filed after making enormous efforts and expenditure by the first respondent, and the said claim was later withdrawn due to the terms of settlement arrived at in W.P.No.8291 of 2006. Even the petitioners had full knowledge of all the steps taken by the first respondent on their behalf. Therefore, we are of the view that it is not fair on the part of the petitioners to raise false allegations that the first respondent indulged in all sorts of fraudulent activities so as to misappropriate the ex gratia amounts payable to the workers.

22. For the reasons stated hereinabove, we do not find any merit in the Writ Petition. Accordingly, the Writ Petition stands dismissed. No costs. In the result, the Writ Petition stands dismissed. No costs.

सत्यमेव जयते

Sd/-

Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

To

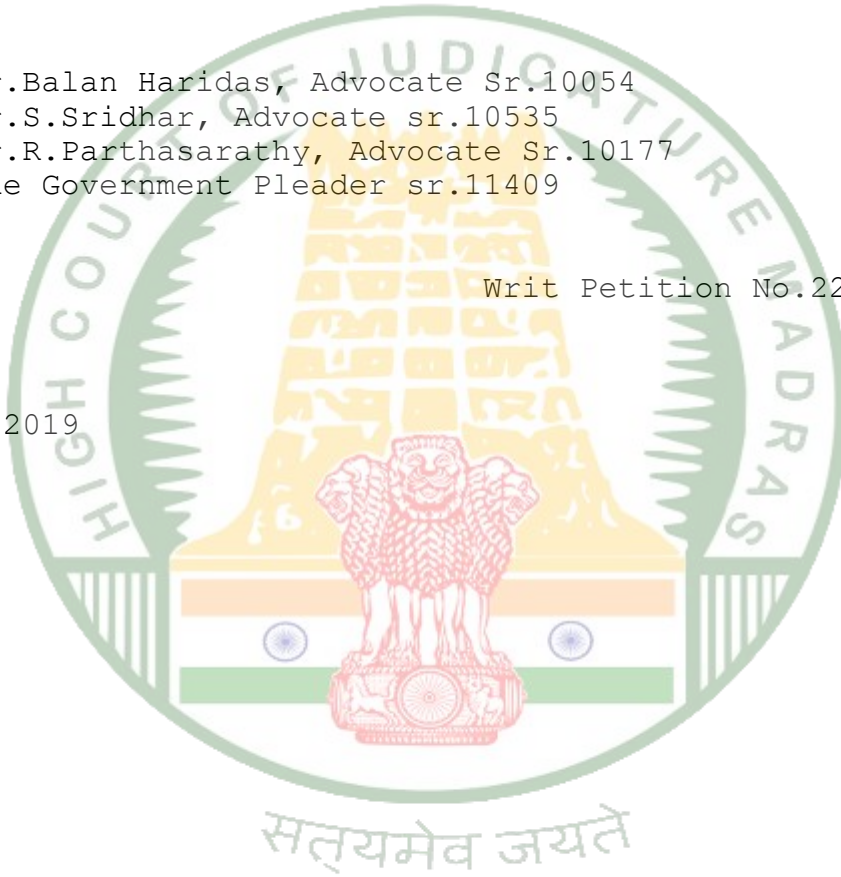
1. Secretary to Government,
The State of Tamil Nadu,
Department of Labour, Fort St. George,
Chennai - 600 009.

2. The Chief Inspector of Factories,
Sivakasi, Tamil Nadu.
3. The Commissioner of Police,
Chennai.
4. The Chairperson,
Tamil Nadu Pollution Control Board,
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5. The Bank of India, Kodaikanal Branch.

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+1cc to Mr.R.Parthasarathy, Advocate Sr.10177
+1cc to the Government Pleader sr.11409

Writ Petition No.22342 of 2018

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srg 21/02/2019



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