IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.09.2023

CORAM:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

W.P.Nos.26174, 27585 to 27589, 28508 to 28512,
28596 to 28600, 28605 to 28609, 28684 to 28689,
28692 to 29696, 28718 to 28722 of 2011

W.P.No.26174 of 2011 :-

N.Pichandi ...Petitioner

-Vs-

1. The Commissioner of Income Tax,
   Tamilnadu-I,
   No.121, Uthamar Gandhi Salai,
   Chennai – 600 034.

2. The Secretary to Government
   of Tamil Nadu,
   Industries Department,
   Secretariat,
   Chennai.

3. The Managing Director,
   Tamil Nadu Newsprint & Paper Limited,
   Corporate Office,
   67, Anna Salai,
   Guindy,
   Chennai – 600 032.

4. The Life Insurance Corporation of India,
153, Anna Salai,
Chennai – 600 002.
Rep by its Regional Manager. ... Respondents

Prayer: Writ Petitions filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus, to direct the third respondent to admit the petitioner as a member of the Tamil Nadu Newsprint & Papers Limited Superannuation Scheme framed by it on 25.10.1984 and approved by the first respondent, Commissioner of Income Tax, Tamil Nadu-I in its Proceedings No.C.No.208/4/84-85 dated 19.04.1985 and to pay the consequential benefits herein.

In W.P.No.26174 of 2011

For Petitioner : Mr.M.Purusothaman

For Respondents

For R1 : Mr.V.Chandrasekaran
Senior Panel Counsel

For R2 : Mr.L.S.M.Hasan Fizal
Additional Government Pleader

For R3 : Mr.Vijay Narayanan, Senior Counsel
For Mr.Shivakumar

For R4 : Mr.M.B.Rahavan
For Mr.M.B.Gopalan

In other W.Ps.

For Petitioner : Mr.M.Purusothaman

For Respondents

For R1 : Mr.V.Chandrasekaran
Senior Panel Counsel

For R2 : Mr.L.S.M.Hasan Fizal
Additional Government Pleader

For R3 & R5 : Mr.Vijay Narayanan, Senior Counsel
For Mr.Shivakumar

For R4 : Mr.M.B.Rahavan
For Mr.M.B.Gopalan

COMMON ORDER

All the writ petitioners have been filed for direction, directing the third respondent to admit the petitioners as members of the Tamil Nadu Newsprint & Papers Limited Superannuation Scheme framed by an order dated 25.10.1984 and approved by the first respondent by its proceedings dated 19.04.1985.

2. Since all the writ petitions filed for the similar relief against the same respondent, this Court is inclined to pass a common order.

3. The petitioners were the employees of the third respondent concerned viz., Tamil Nadu Newsprint & Papers Limited (hereinafter called as "TNPL") and they had joined in the third respondent concerned on various dates and thereafter they attained the age of superannuation in various posts. The case of the petitioners is that on a perusal of shareholding stock of government of Tamil Nadu, corporation owned or controlled by the Central Government and the corporations fully owned by the Government of Tamil Nadu. The third respondent company is the Government company and more than 51% of shares held by various government undertakings both Central and State. The government of Tamil Nadu itself qualifies it as a government company as per Section 617 of the Companies Act.

4. The petitioners further contended that the workers and employees suffered a lot in the beginning of the third respondent company and from time to time various Associations and Unions of the workers and staff have been constantly requested and demanded for a beneficial pension scheme by being enrolled to the TNPL Superannuation Scheme approved by the first respondent as per part B

approved Superannuation Funds in Schedule IV of the Income Tax Act, 1961. The salient features of the scheme are as follows :-

i. 100% Non Contributory scheme where only the employer contributes.

ii. Even though the normal retirement age is fixed at 60 years still a person retiring prematurely also eligible to the benefits thereof.

iii. Maximum contribution permitted by the Scheme Deed approved by the 1st Respondent Commissioner of Income Tax is 10% of the salary of the employee.

iv. Any permanent whole time employee of the company having crossed the Basic Pay of Rs.1600/- per mensum is eligible to become the member of the Scheme.

v. Even though a member becomes eligible to get admitted to the scheme on the day he crosses the minimum basic alary plus Dearness Allowance of Rs.1,600 per mensum the company contributes for the past service rendered by him till that day retrospectively.

vi. All permissible contributions made by the Company to the Scheme are exempted from Income Tax.

5. However, the petitioners were denied the benefits of TNPL superannuation scheme. The third respondent had not informed the petitioners about the scheme and its benefits. While the workers and staff were given only benefits under the Employee Provident Fund, highly paid top management enjoys all the benefits like Employees Provident Fund, Gratuity with Maximum Sealing, Superannuation Fund etc., whatever one can name it. On perusal of the Trust Deed and the rules of the TNPL Superannuation Scheme cleared that the petitioners are eligible and have every right to be benefited by the objectives of the scheme. Therefore, they submitted representation to the third respondent to enroll by as a member of TNPL and superannuation scheme with contribution from the date when the petitioners attained eligibility and thus enable deserving employees like the petitioners to draw the fruits of their hard work. Since the same was not considered by the respondents, the petitioners filed the present writ petitions with the above said prayer.

6. The learned counsel appearing for the petitioner would submit that the third respondent company was started in Pugalur for the purpose of providing poor and deserving of the backward district of

Karur and the interest and protection of the right and benefits of employee in TNPL in which the government share is more than 55% is of paramount importance. The TNPL Superannuation scheme is approved by the first respondent in schedule IV of the Income Tax Act, 1961. The TNPL Superannuation scheme Trust Deed provides only 10% contribution by the employer whereas, the top management get 14% contribution for the scheme which is not only violation of Article 14 of the Constitution of India but also in violation of Trust deed approved by the first respondent.

6.1. He further submitted that the scheme is a non contributory scheme therefore, it is easy to enlist any member who has even retired because, there is nothing to be recovered or contributed by the employee other than the contribution by the employer. The TNPL was promoted and established and had grown owing to the effect of the government of Tamil Nadu using tax payers money. As more than 55% of the share are held by various government institutions and being statutorily audited by the Comptroller and Auditor General of India under Section 619(4) of the Companies Act, 1956. Therefore, unless and otherwise, the respondents restrain themselves from contributing and paying in excess of 10% of the monthly salary to any member of the TNPL Superannuation Scheme, which is the maximum contribution approved by the first respondent in the TNPL Superannuation Scheme trust deed, the third respondent would be put to irreparable loss.

7. The third and fifth respondent filed counter and the learned Senior counsel appearing for the third respondent submitted that the petitioners are all retired workmen of the third respondent concerned. They are not entitled to become member of the TNPL Superannuation Scheme, since they are not in the officer category. The scheme has been specifically implemented from 01.04.1982 only for officers and executives of the third respondent. It was implemented in order to attract talent from the paper industry and to make the officers and executives continue in the third respondent organization. Even in the nomenclature of the scheme would prove it was not applicable to the petitioners.

7.1. In fact, the petitioners raised industrial dispute for various demands including the prayer sought for in the present writ petitions, before the Joint Commissioner of Labour, Dindugal and the sand ended in failure. The Government of Tamil Nadu has interalia referred the disputes relating to standard promotion policy and superannuation scheme for workmen in staff category for adjudication vide G.O.(D).No.253 dated 11.06.2012. Therefore, the terms of reference in the said I.D.No.15 of 2012 on the file of the Industrial Tribunal, Chennai, relates to eligibility of coverage of all workmen in staff and sub-staff cadre of the TNPL Superannuation scheme. Therefore, the present writ petitions are not maintainable in law, when an efficacious alternate remedy is very much available to the petitioners.

7.2. Under the TNPL Superannuation scheme, the management of the third respondent alone contributing towards the superannuation fund. Ever since 01.04.1982, the said scheme is being implemented for officers and executives and the same would be evident from the fact that the workers, chargemen & staff in workmen category i.e., employees belonging to the non-officers cadre had been making demands to cover them and admit them in the said scheme.

7.3. In view of their demands, the third respondent has granted an additional sum of Rs.250/- on two occasions, totally a sum of Rs.500/- in the Employees Benefits Scheme introduced to extend financial assistance for the family of the deceased employee or to pay a lumpsum benefits to the employees on their retirement with effect from 01.11.2001, while entering into memorandum of settlement under Section 12(3) as well as Section 18(1) of the Industrial Dispute Act, with Unions/Association representing workmen, chargemen and staff in workman category i.e., employees belonging to non-officers cadre in settlement of their demands. In fact, the said settlement was unconditionally accepted by them. Therefore, the petitioners are estopped from raising any demand for inclusion or admission into the said scheme.

7.4. The learned Senior counsel further submitted that all the petitioners were retired long back and only in the year 2011, they filed the present writ petitions. Therefore, the reliefs sought for in these writ petitions are belated and barred by limitation and by laches. There is no explanation or justification is made by the petitioners for the inordinate delay in filing these writ petitions. He further pointed out that various unions representing the petitioners had mad a demand for superannuation benefits. Thereafter, a memorandum of settlement under Section 18(1) of the Industrial Dispute Act was signed on 08.11.2001, therein a clause has been provided to implement a scheme called Employees' Benefits Scheme with effect from 01.11.2001. The said scheme was introduced to extend financial assistance to the family of the deceased employee or to pay a lumpsum benefits to the retired employees with effect from 01.11.2001.

7.5. That apart, the demand under the wage settlement covering the period from 17.05.2002 to 16.05.2006 signed by the unions representing the workmen including the petitioners' union on 29.09.2004 under Section 12(3) of the Industrial Dispute Act and the additional benefits of Rs.250/- was subsequently enhanced to Rs.500/- per year of service vide wage settlement dated 25.04.2008, covering the 17.05.2006 to 16.05.2010, thereby dropping all other demands which included superannuation scheme raised by the petitioners in the present writ petitions. Similar wage settlements dated 12.10.2004, 04.01.2005, 02.09.2008 & 03.01.2009 were also signed with the unions/association representing workmen including the staff category under Section 12(3) and 18(1) of the Industrial Dispute Act.

7.6. The learned Senior Counsel also relied upon the clause No.4 of the settlement as follows :-

> *“Introduction of superannuation scheme:-*
>
> *The trade Unions had been demanding for introduction of Superannuation Scheme for the workmen for a very long period. Taking this demand into account, as per clause 21 of 12(3) / 20 of 18(1) Settlement dated 29.09.2004/04.01.2005, the company had paid an additional amount of Rs.250/- per year of service over and above Rs.1100/- per year of service that was being paid to the workmen at the time of retirement under EBS. Subsequently, the additional amount of Rs.250/- was enhanced to Rs.500/- for every completed year of service vide clause 23 of the 12(3)/20 of 18(1) Settlement dated 25.04.2008/2.9.2008.*
>
> *Since the Trade Unions insisted on their demand for introduction of Superannuation Scheme for workmen, it is agreed that the following percentage on Basic Pay, FDA and VDA will be contributed every month by the company towards the superannuation scheme contribution for the workmen/Chargemen from 16/17.05.2010 onwards:*

(a) Workmen who have joined the company on or before 31.12.1990 will be eligible for a contribution of 8% on Basic + FDA+ VDA from 16/17.05.2010 onwards.

(b) Workmen who have joined the company from 01.01.1991 onwards will be eligible for the following percentage towards Superannuation Scheme from 16/17.05.2010 onwards:

Period	*Percentage of superannuation on basic pay, FDA and VDA*
16/17.05.2010 to 15/16.05.2011	*5%*
16/17.05.2011 to 15/16.05.2012	*6%*
16/17.05.2012 to 15/16.05.2013	*7%*
From 16/17.05.2013 onwards	*8%*

The Superannuation benefits will be extended through an approved superannuation scheme of an Insurance Company.

Workmen who were in the services of the company on 16/17.05.2010 and subsequently retired prior to the date of the signing of this settlement will be paid the Superannuation contribution as part of arrears.

The new recruits from the date of signing of this settlement will be eligible to become a member of the Superannuation Scheme after rendering a continuous service of five years including, training period if any.

In view of the introduction of Superannuation Scheme to the workmen, the monthly contribution by

Workmen to EBS will be stopped from 1.5.2010. The amount recovered towards EBS from May, 2010 to till date will be refunded to Workmen.

A sum of Rs.50/- will be recovered from the wages of workmen every month from May, 2010 onwards towards EBS in order to pay a sum of Rs.2.00 lakh to the nominee/ legal heir of the workmen, if a workman dies during service period.

At the time of retirement, workmen will be paid Rs.1600/- for every completed year of service from the date of their joining in service till 15/16.05.2010."

7.7. He further submitted that insofar as the workmen in staff category, the wage settlement for the period covering from 17.05.2010 to 16.05.2014 has been reached under Section 18(1) of the Industrial Dipute Act with 132 workmen in staff cadre out of 139 workmen in staff cadre as on that date. Thus ever since 01.04.1982, the TNPL Superannuation Scheme has been implemented for officers and executives only and this is evident from the fact that the Unions/ Associations representing workmen, chargemen and staff belonging to workmen cadre made demand for superannuation scheme for covering them also. Therefore, the writ petitions are not maintainable and liable to be dismissed.

8. Heard the learned counsel appearing on either side and perused the materials placed before this Court.

9. The petitioners are seeking direction to direct the third respondent to admit them as member of TNPL Superannuation Scheme framed by the third respondent which was approved by the first respondent. The petitioners are retired workmen of the third respondent. This scheme was framed on 25.10.1984. After the period of 27 years, these writ petitions have been filed to admit the petitioners under the TNPL Superannuation Scheme and therefore claims are not genuine and hopelessly barred by limitation and laches. In fact, all the petitioners were retired from their employment and they were retired without any protest or demur.

10. As per the circular issued by the finance department dated 22.10.2007, the third respondent is not a government company. The Industries Department had also issued a circular dated 28.06.2000, thereby confirming that in view of the stake sale by the government, the

third respondent is not a government company and also confirmed that the third respondent is not a State Public Sector Undertaking. Further, the TNPL Superannuation Scheme is meant for only officers and executives and it is not open to other employees, as per its Rules. Further the said scheme are governed by the first respondent viz., Income Tax Rules.

11. Further the petitioners had entered into various settlements with the third respondent under Section 12(3) and 18(1) of the Industrial Dispute Act, as follows:-

Sl.No.	Date	Nature of document
1	08.11.2001	Memorandum of Settlement (Workmen) under Sec.18(1) of the ID Act, 1947 covering Employees Benefits Scheme for workmen and staff.
2.	29.09.2004	Memorandum of settlement 12(3) (Workmen) reached before the Commissioner of Labour, Chennai.
3.	12.10.2004	Memorandum of settlement 12(3) (Staff Assn) reached before the Joint Commissioner of Labour, (Conciliation), Chennai.
4.	04.01.2005	Memorandum of Settlement 18(1) Chargeman
5.	25.04.2005	Memorandum of settlement 12(3) (Workmen) reached before the Commissioner of Labour, Chennai.
6.	02.09.2008	Memorandum of Settlement 18(1) Chargeman)
7.	03.01.2009	Memorandum of Settlement 18(1) (Staff Assn)
8.	30.06.2012	Memorandum of Settlement 18(1) (Workmen)
9.	23.08.2012	Memorandum of Settlement 18(1) (Chargeman)
10.	16.04.2014	Memorandum of Settlement 18(1) with a workman of staff

Sl.No.	Date	Nature of document
		cadre
11.	07.01.2016	Memorandum of Settlement 18(1) with a workman of staff cadre
12.	14.07.2016	Memorandum of Settlement 18(1) (Chargeman)
13.	25.06.2016	Memorandum of Settlement 18(1) (workmen)
14.	29.07.2016	Memorandum of Settlement 18(1) (Staff Assn)
15.	26.12.2020	Memorandum of Settlement 18(1) (chargeman)
16.	06.11.2020	Memorandum of Settlement 18(1) (Workmen)
17.	22.02.2021	Memorandum of Settlement 18(1) (Staff Assn)

12. The workmen have also confirmed that all the above settlements were related to payment of bonus, special incentives, productivity linked investment scheme, employment benefit scheme etc., which would be treated as fully settled. Therefore, no further issues to be raised by the workmen. In fact, as requested by the workmen, the third respondent had created a trust deed for Employee Benefit Scheme, for all permanent employees including company trainees. Under the said scheme the workmen and staff contributed Rs.100/- per month and thereafter it was amended on 19.01.2005. Therefore, all the petitioners and other workmen of various associations had signed the settlement and as such they have no locus standi to raise fresh demands contrary to the settlement.

13. The settlement between the third respondent and the union

become binding in nature on all persons of same class of employees. Further the workmen in staff category had raised industrial dispute in I.D.No.15 of 2012 on the file of the Industrial Tribunal and as per G.O.(D)No.253 dated 11.06.2012, the same was dismissed on 16.02.2016. The Industrial Tribunal also held that the demand of the union with the third respondent that the proceeds on the TNPL superannuation scheme shall be made applicable to all the employees of the third respondent is not justified. Therefore, already the issue raised in these writ petitions held against the petitioners as the superannuation scheme is not eligible for the staff and sub-staff. Against the said order no appeal has been preferred as such the order has become final.

14. It is also seen that in the year 2014, the third respondent had entered into individual settlements with the staff in workmen cadre and the superannuation benefits were extended with effect from 17.05.2010 as per TNPL Superannuation Scheme (Workmen) Trust Deed and the Rules thereof to all such employees in the cadre of workmen, chargemen and staff in workmen cadre. After the end of the terms of earlier settlements, settlement under Section 18(1) of the Industrial Dispute Act

had been entered into with the management by (1) TNPL Staff Association on 29.07.2016 and 22.02.2021 (2) Recognized Trade Unions of Workmen on 25.06.2016 and 06.11.2020 and (3) Recognized Tract Unions of Chargemen on 14.07.2016 and 26.12.2020.

15. Further the workmen, who were retired after 17.05.2010, have been given the benefits of superannuation scheme for workmen and the details are as follows :-

S. No	Writ petition No	Name	Employee No	Date of retirement
1	28509 of 2011	M.Murugaiah	491	31.05.2010
2	28597 of 2011	P.Rengasamy	654	30.09.2010
3	28685 of 2011	K.Krishnamoorthy	644	31.03.2011
4	28695 of 2011	Sivagurunathan	928	31.05.2010
5	28718 of 2011	P.Murugesan	943	30.10.2010
6	28719 of 2011	K.Srinivasan	818	30.06.2010
7	28721 of 2011	M.Murugesan	814	30.09.2010

Recording the above fact, the writ petitions in W.P.Nos.28509, 28597, 28685, 28695, 28718, 28719 & 28721 of 2011 are closed.

16. In view of the above discussions, the other writ petitioners,

who have retired in the year 1996, 2002, 2007, have no right to seek admission in the TNPL Superannuation Scheme. Hence the other Writ Petitions in W.P.Nos.26714, 27585 to 27589, 27508, 27510 to 27512, 28596, 28598 to 28600, 28684, 28686 to 28689, 28692 to 28694, 28696, 28720 and 28722 of 2011 are dismissed. There shall be no order as to cost.

05.09.2023

Internet: Yes
Index : Yes/No
Speaking/Non Speaking order

rts

To

1. The Commissioner of Income Tax,
   Tamilnadu-I,
   No.121, Uthamar Gandhi Salai,
   Chennai – 600 034.

2. The Secretary to Government
   of Tamil Nadu,
   Industries Department,
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