IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.09.2024

CORAM:

THE HONOURABLE Mr. JUSTICE G.K.ILANTHIRAIYAN

W.P.No.3872 of 2020
and W.M.P.No.4592 of 2020

1.Hindustan Photo Film Workers Welfare Centre (CITU),
(Regn.No.31/NLG),
Rep.by its General Secretary,
No.48/2, Shanmughasundaram Street,
Devaraj Nagar, Saligramam, Chennai-600 093.

2.M/s.Indu Films Officers Association(IFOA),
Rep.by its General Secretary,
Regn.No.65/NLG,
No.510 B, Bharathiyar Nagar Junction,
Indu Nagar Post, Ootacammand,
The Nilgiris-643 005.

3. M/s.Film Factory Workers Union(INTUC),
Rep.by its General Secretary,
Regn.No.49/NLG, No.18, Nataraj Colony,
Ettings Road, Ooty-643 001.

4. M/s.Anna Indu Employees Union (AIEU),
Rep.by its General Secretary,
Regn.No.99/NLG,
No.55/375, Golf Club Road,
Finger Post, Ootacammund-643 006.

5. HPF Staff Union(BMS)
Regn.No.165/NLG,
Rep.by its General Secretary,
No.62/78, Green Field,
Ootacammund-643 001. ... Petitioners

Vs.

1. Government of India,
Rep.by its Secretary,
Department of Heavy Industry,
Ministry of Heavy Industries and Public Enterprises,
Udyog Bhavan,
New Delhi-110 001.

2. The Chairman and Managing Director,
Hindustan Photo Film Manufacturing Co. Ltd.,
Indu Nagar, Ootacamund,
Nilgiris-643 005.

3. The Commissioner of Income Tax (TDS),
No.121, Uthamar Gandhi Salai,
Chennai-600 034.

4. The Regional Labour Commissioner (Central)
Office of the Regional Labour Commissioner(Central),
Kanaga Apartments,
Suite No.3, 1st Floor,
13-A, Lady Doak College Road,
Chinna Chokkikulam,
Madurai-625 002.

5. Deputy General Manager (Human Resource),
Hindustan Photo Film Manufacturing Co. Ltd.,
Indu Nagar, Ootacamund,
Nilgiris-643 005. ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus directing the 1st and 2nd respondents to pay the salary to the members of the Petitioner Union, whose names are given in the annexure to the writ petition, for the period from 01.07.2016 to 24.04.2018 (for 22 months) and further direct the Respondent No.1 and 2 to give effect to VRS to the 145 members of the Petitioner Unions, whose particulars are given in the Annexure to the Writ Petition from 24.04.2018 being the day relieved from service, rework the VRS compensation and pay arrears arising out of such reworking.

For Petitioners : Mr.Balan Haridas
For 1st Respondent : Mr.AR L.Sundaresan
Additional Solicitor General of India
Assisted by Mr.Venkatasamy Babu
For Official Liquidator : Mr.A.G.Sathyanarayana
For Respondents 2 to 5 : No Appearance

ORDER

This Writ Petition is filed seeking a direction to the respondents 1 and 2 to pay the salary to the members of the Petitioners-Union for the period from 01.07.2016 to 24.04.2018 (for 22 months) and further direct the Respondents 1 and 2 to give effect to Voluntary Retirement Scheme to 145 members of the Petitioners-Union with effect from 24.04.2018, whose particulars are given in the Annexure to the Writ Petition, rework the VRS compensation and pay arrears.

2. The second respondent is a public sector undertaking wholly owned by the first respondent. Initially, there were 4500 employees in the 2nd respondent-Company. From the year 1991, there was a voluntary retirement scheme (hereinafter referred to as "Scheme"). In the said scheme, more than 3800 employees had opted and left the employment. The first respondent announced the scheme on 20.03.2024 and accordingly, voluntary retirement scheme compensation was subject to recovery of recoverable / adjustable advance and special performance allowance. As per the scheme, the 2nd respondent issued a circular to the employees to apply under the scheme. Aggrieved by the same, the petitioners-Union and similarly placed Unions approached this Court by filing writ petitions in W.P.Nos.24460, 24355 and 25491 of 2013. Though initially stay was granted by this Court, it was subsequently modified by order dated 09.09.2014 to the effect that the said scheme is without prejudice to the rights of the employees. This Court by order dated 29.11.2016

held that there cannot be any recovery of the amount paid towards the special performance allowance and adjustable amount. Aggrieved by the same, the first respondent filed an appeal and the same was also dismissed. Against which, the Government has filed a Special Leave Petition before the Hon'ble Supreme Court and the same is pending. Thereafter, the petitioners-union as well as similarly placed unions filed W.P.Nos.18566, 18788, 18608 to 18610 and 18789 of 2015 questioning the quantum of payment under the scheme before this Court. By order dated 02.03.2017, this Court held that the compensation received is exempted from the income tax and that the scheme calculating the compensation on the basis of 60 months is correct and that the employees should vacate the quarters on receipt of the severance package. The order was confirmed by the Division Bench of this Court and the Hon'ble Supreme Court. However, the Hon'ble Supreme Court clarified that the benefits should be given on par which were given to others. While pending these litigations, 167 employees of the petitioner's union were not opted for the voluntary retirement scheme. According to the petitioners-Union, they continued in their employment till 24.04.2018. Thereafter, they were retired from services under the scheme, and while paying the compensation under the scheme, the salary paid to them from 01.07.2016 to 31.12.2016 was deducted. All the employees had been relieved from service with effect from 30.06.2016. Therefore, the petitioners-Union sought for the salary during the period in which they worked from 01.01.2017 to 31.12.2016.

3. The learned counsel for the petitioners-Union would submit that the second respondent is under liquidation and as such, the first respondent provided a sum of Rs. 181.54 crores in order to settle the employees under the scheme. After settling the amounts under the scheme, there is still a surplus of Rs. 46.76 crores. Therefore, the members of the petitioners-Union may be paid salary from 01.07.2016 to 24.04.2018 from the surplus amount.

4. On perusal of the counter affidavit filed by the second

respondent and the submission made by the learned senior counsel appearing for the first respondent, it is revealed that the members of the petitioners Union had already been relieved under the scheme with effect from 30.06.2016 and they are not entitled to any salary from 01.07.2016. The second respondent Company had been sick as early as 1995 and its production and operations were totally stopped from the year 2013. Therefore, various creditors have filed for winding up and also claimed their dues. Both BIFR and AAIFR decided to wind up the second respondent. Subsequently, the second respondent reached the stage of liquidation, and an Official Liquidator was appointed. The first respondent decided to close the second respondent-Company and offered a scheme package in the year 2014. Most of the employees accepted the scheme package and they were paid their wage benefits. However, the members of the petitioners herein, numbering 145, had applied for Voluntary retirement scheme with future relieving dates extending upto the year 2027, thereby defeating the purpose of scheme. Therefore, they continued to be on the rolls of the second respondent and their salaries were stopped. Thereafter, the Hon'ble Supreme Court dismissed the Special Leave Petition filed by the first respondent and clarified that the benefits should be given on par with those given to others. Accordingly, those who were not accepted the scheme, including the members of the petitioners Union, were issued notices dated 24.04.2018 thereby decided to implement the scheme for the remaining employees of the second respondent. It revealed that all the employees of the second respondent were relieved on 30.06.2016 A.N. It is also made clear that no salary will be paid for the said period, i.e after 30.06.2016. Therefore, for the period after 30.06.2016, the salary advance already paid to them will be adjusted against the scheme dues.

5. Having accepted the same and received their dues after deducting the salary paid from 01.07.2016 to 31.12.2016 after receipt of the said amount, the petitioners now cannot claim arrears of salary from 01.07.2016 to 24.04.2018, nor can they claim benefits under the scheme till 24.04.2018. The concept of scheme itself is to

compensate the employees in lieu of the remaining years of services they are willing to forgo based on a specific formula.

6. In view of the above, the petitioners are not entitled to any salary for the period from 01.07.2016 to 24.04.2018 and they are also not entitled to any benefits under the scheme till 24.04.2018. Accordingly, the writ petition is dismissed. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

10.09.2024

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To

1. The Secretary,
   Government of India,
   Department of Heavy Industry,
   Ministry of Heavy Industries and Public Enterprises,
   Udyog Bhavan, New Delhi-110 001.

2. The Chairman and Managing Director,
   Hindustan Photo Film Manufacturing Co. Ltd.,
   Indu Nagar, Ootacamund, Nilgiris-643 005.

3. The Commissioner of Income Tax (TDS),
No.121, Uthamar Gandhi Salai, Chennai-600 034.

4. The Regional Labour Commissioner (Central)
Office of the Regional Labour Commissioner(Central),
Kanaga Apartments, Suite No.3, 1st Floor,
13-A, Lady Doak College Road,
Chinna Chokkikulam, Madurai-625 002.

5. Deputy General Manager (Human Resource),
Hindustan Photo Film Manufacturing Co. Ltd.,
Indu Nagar, Ootacamund,
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G.K.ILANTHIRAIYAN, J.,

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