



W.P.No.16357 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.09.2024

CORAM

THE HONOURABLE Ms.JUSTICE R.N.MANJULA

W.P.No.16357 of 2020

Indu Employees Progressive Union
Registered No.36 NLG and Affiliated to LPF,
rep. by its President,
N.Srinivasan
S/o. P.Nagarajan
No.69-B Perraichi Illam,
Alai Sait Compount,
Coonoor, Nilgiris District 643 102.
Petitioner

...

Vs.

1. HPF Employees Contributory Provident Fund Trust,
Hindustan Photo Film Manufacturing Co. Ltd.,
Indu Nagar, Ootacamund, Nilgiris – 643 005
Represented by the Chairman and Managing Director,
Hindustan Photo Film Manufacturing Co. Ltd.,
Indu Nagar, Ootacamund, Nilgiris – 643 005.
2. The Chairman and Managing Director and E.C.P.F.Trustee,
Hindustan Photo Film Manufacturing Co. Ltd.,
Indu Nagar, Ootacamund, Nilgiris – 643 005.
3. The General Technical Manager & Unit Chief (In Charge)
Hindustan Photo Film Manufacturing Co. Ltd.,
Indu Nagar, Ootacamund, Nilgiris – 643 005.

4. CA.M.Suresh Kumar ... Respondents
(R4 impleaded as as per order dated 28.11.2023 in W.M.P.No.31514/2023



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in W.P.No.16357/2020)

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India for issuance of Writ of Mandamus to direct the respondents to close and wind up the Employees Contributory Provident Fund and distribute the same among the members of the petitioner union on a pro rata basis as per the representation of the petitioner's union dated 25.03.2018.

For Petitioner : Mr.A.Saravanan

For Respondents : Mr.Aiyer & Dolia for R2 & R3

Mr.A.G.Sathiyanaarayana for R4

No appearance for R1

ORDER

This Writ Petition has been filed to direct the respondents to close and wind up the Employees Contributory Provident Fund and distribute the same among the members of the Union on a pro rata basis as per the representation of the petitioner dated 25.03.2018.

2. The members of the petitioner Union are the employees of the Hindustan Photo Film Manufacturing Company Limited. The Company is under liquidation and in the process of winding up. The proceedings in this regard is pending in TCP/1/2021, NCLT, Chennai. The first respondent is the



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Trust which is holding the employees contributory provident fund and during the liquidation process, the funds held by the first respondent is exempted under Section 36(4)(a)(iii) of the Insolvency and Bankruptcy Act, 2016. Hence the petitioner has filed this Writ Petition seeking the above direction.

3. Mr.A.Saravanan, the learned counsel for the petitioner, submitted that even during the pendency of these proceedings, the resolution professional has also been impleaded as the fourth respondent and despite representations are sent to the fourth respondent, the amount has not been disbursed so far. It is further submitted that even according to the fourth respondent, the amount lying with the first respondent towards Provident Fund should not be subjected to the process of liquidation. In this regard, the learned counsel referred a judgment of the NCLT Appellate Tribunal made in *Company Appeal No.29 of 2021, reported in 2023 SCC Online NCLAT 781*.

4. Mr.A.G.Sathiyanarayana, the learned counsel for the fourth respondent, submitted that the writ petition has been filed prior to the order of the liquidation passed by the NCLT in Transfer Petition No.1/2021. Hence, the issue raised by the petitioner did not surface the subject matter. It



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is further submitted that the members of the petitioner's Union are not workmen as on the date when these writ petitions were filed as they have been superannuated as early as in the year 2003. In the year 2003 there were only 5000 employees. Prior to the liquidation, the members of the petitioner's union have been given with settlement. As on today only 13 workmen are there. The Trust is created for all the 5000 workmen and hence the fund is meant to be released for all the 5000 workmen who were worked and eligible and not only for those 167 workmen.

5. The learned counsel for the petitioner submitted that so far as the fourth respondent is concerned his only concern is whether the members of the petitioner Trust are also the workmen who had retired from service following the similar other workmen for whose benefit also the Provident Fund is lying with the first respondent Trust.

6. There cannot be any disagreement on the point that the commitment towards the settlement of Provident Fund it will take priority over the other dues to be settled to the other creditors. As the Provident Fund is lying safely in the hands of the first respondent, the fourth respondent Resolution Professional, at any stage, needs to dissolve the Trust and liquidate the



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Provident Fund for enabling him to disburse it to all those employees who are eligible and entitled to get the same. So, there need not be any delay on the part of the fourth respondent to do that exercise. Even in the absence of any claim made by the petitioner and like others in case they are eligible and entitled to receive the provident fund, it is the duty of the fourth respondent Liquidator Resolution Professional to see that these funds reach the hands of the eligible beneficiaries after they are identified.

7. Since the members of the petitioners Union who claim themselves as the employees of the company which has been wound up and claim that their contributions is also lying with the first respondent Provident Fund, it is right time for the fourth respondent to start the process of dissolving first respondent Trust and gather the particulars by collecting and verifying the claim and settle it to the eligible beneficiaries. If the members of the petitioner's Union believe themselves that they are the eligible employees, there cannot be any problem for the fourth respondent to confirm the same and disburse the provident fund dues payable to the members of the petitioners as well.



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8. The fourth respondent can proceed to take further steps in pursuant to the above observation and do the needful by collecting the necessary particulars and the petitioner Union shall co-operate in that process by furnishing the relevant details and ensure that the process is going on smoothly without any glitch. The process shall be completed as expeditiously as possible preferably within a period of three months.

9. In view of the above observation, this Writ Petition is disposed. No costs.

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Index : Yes/No

Neutral citation : Yes/No

Speaking Order/Non-Speaking Order

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To:

1. CA.M.Suresh Kumar,
Liquidator of Hindustan Photo Films Mfg.Co.Ld.,
No.27/9, Nivesh Vikas, Pankaja Mill Road,
Puliyakulam,
Coimbatore – 641 045.



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R.N.MANJULA, J.

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