IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 02.03.2017

DELIVERED ON : 17.03.2017

CORAM

THE HONOURABLE Mr.JUSTICE T.S.SIVAGNANAM

WP.Nos.18566, 18788, 18608 to 18610, 18789 of 2015
Connected M.Ps.,

W.P.No.18566 of 2015

Hindustan Photo Film Workers'
Welfare Centre (CITU),
(Regn., No.31/NLG),
Rep., by its General Secretary,
Indu Nagar, Ootacammand,
The Nilgiris – 643 005.
Tamil Nadu. ... Petitioner

Vs.

1.The Government of India,
Rep., by its Secretary,
Department of Heavy Industry,
Ministry of Heavy Industries & Public Enterprises,
Udyog Bhavan, New Delhi – 110 011.

2.Hindustan Photo Film Manufacturing Co. Ltd.,
Indu Nagar, Ootacammand,
The Nilgiris – 643 005.
Tamil Nadu.

3.The Commissioner of Income Tax (TDS),
No.121, Uthamar Gandhi Salai,
Chennai – 34. ... Respondents

R-3 impleaded as per order dated 22.12.2015, in M.P.Nos.5to5/2015, in W.P.Nos.18566, 18609, 18610, 18788 & 18789 of 2015 and M.P.No.6 of 2015 in W.P.No.18608/2015.

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Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Declaration to declare that the letter bearing Ref. No.19(2)/2013-PE.III, dated 20.03.2014, issued by the first respondent read with Circular No.P1/14/59/VRS, dated 21.03.2014, issued by the second respondent as illegal and unconstitutional in so far as the quantum of payment and consequently direct the respondents to pay compensation to all the employees of the second respondent, who have retired/retire under the Voluntary Retirement Scheme announced by the letter dated 20.03.2014, issued by the first respondent read with the circular dated 21.03.2014, issued by the second respondent, on the following basis; a) 72 months salary on the 2007 pay scales to each employee; b) arrears of pay on 2007 pay scales to each employee; c) no deduction towards income tax on the severance package payable under the VRS Scheme; d) No deduction of the amount of Recoverable Monthly Advance, Special Performance Allowance and Adjustable Advance paid to the employees so far and e) Permitting the employees to occupy the staff quarters of the second respondent at Udagamandalam till 01.05.2016, at the same rate of rent charged until the Voluntary Retirement Scheme.

For Petitioner : M/s.R.Vaigai Sr. Counsel for
M/s.Anna Mathew in Wps.,

For Respondents : Mr.G.Rajagopalan
Addl., Solicitor General of India
Assisted by Mr.A.Murugan CGC for R1
M/s.Rita Chandrasekaran for
M/s.Aiyar and Dolia for R2

Mr.J.Narayana Swamy
Standing counsel for Income Tax Dept.,

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COMMON ORDER

The petitioners in Writ Petitions, except the petitioner in W.P.No.18608 of 2015, are the employees Union consisting of members, who were/are employees of the second respondent company, the Hindustan Photo Film Manufacturing Company Ltd., (in short HPF). The petitioner in W.P.No.18608 of 2015, is an association consisting of members who are officers, who were/are working in HPF.

2. With regard to the prayer sought for by the Writ Petitioners/Employees Union, W.P.No.18566 of 2015, is taken as the lead case. The petitioner therein is a registered trade union and a recognised Union of HPF, a public sector undertaking wholly owned by the Central Government. The petitioner represents 70 workmen out of the total 700 workmen and officers, who are regular employees of the HPF. It is submitted that more than 3800 of the total 4500 employees, have left employment under the Voluntary Retirement Scheme (VRS) announced by the Management periodically from 1991. The petitioner challenges the Voluntary Retirement Scheme announced by the respondents, dated 20.03.2014 and the circular dated 21.03.2014, as unfair and illegal and seek for consequential reliefs of payment of 72 months salary on the 2007 pay scales to each employee; arrears of pay on

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2007 pay scales to each employee; not to deduct income tax on the severance package payable under the Voluntary Retirement Scheme; not to deduct the recoverable monthly advance, Special Performance Allowance and adjustable advance paid to the employees and permit the employees to occupy the staff quarters till 01.05.2016, at the same rate of rent, charged until Voluntary Retirement Schemes. Out of the above consequential directions sought for by the petitioner, the prayer not to deduct the amount of recoverable monthly advance, special performance allowance and adjustable allowance is concerned, the petitioners have been granted the relief sought for by them in another Writ Petition filed by the petitioner herein and other workers Union in W.P.Nos.24460, 24355 & 25491 of 2013, dated 29.11.2016. By the said order, the circulars issued by the HPF, dated 10.07.2013 and 01.07.2013, whereby the monies paid in the form of allowances were sought to be adjusted against the terminal benefits were quashed. Thus, in these Writ Petitions, the petitioners seek to challenge the VRS and the consequential circular issued by the HPF and seek for payment of 72 months salary instead of 60 months salary, as proposed in the VRS scheme, not to deduct income tax on the amount payable to them and till the VRS is accepted and not to evict them from the quarters.

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3. HPF, a wholly owned company of the Central Government, which at one point of time enjoyed a monopoly market in the manufacture of x-ray film appears to have crumbled in its own weight and suffered continuous loss and was declared as a sick industry under Section 15 of the Sick Industrial Companies Special Provisions Act, 1985, pursuant to a reference filed before the BIFR during October 1995. Attempts to revive the company had failed and BIFR recommended for winding up of the company, as against such order, the second respondent as well as the workmen preferred appeals before the AAIFR and the appeals filed by the workmen were dismissed as a certified copy of the order passed by the BIFR was not annexed. Challenging the order of the BIFR, W.P.No.24417 of 2005 was filed, which was tagged along with W.P.No.19640 of 2005, filed by the Film Factories Workers Union. The order passed by the BIFR was stayed by order dated 29.07.2005. The said Writ Petitions were dismissed by common order dated 29.08.2016, accepting the recommendations of the BIFR to wind up the second respondent company. It was made clear that the dismissal of the Writ Petitions will not come in the way of the petitioners articulating their grievances in the remaining Writ Petitions (present batch of cases) and Contempt Petition.

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4. The background facts, which ultimately lead to the order passed by the BIFR recommending winding up of the company is as follows:-

The workmen of HPF were not granted revision of pay, since 1987 while their counter parts working in other public sector undertakings (PSUs), had received benefits of pay revision periodically upto 2007. The settlements which were entered into with the Management under Section 12(3) and 18(1) of the Industrial Disputes Act, (I.D., Act), with regard to payment of 20% of the salary as advances, which can be adjusted only against arrears payable upon revision of pay. However, on account of accumulation of repayable monthly advance, which had reached unbearable levels, a settlement was entered into between the workmen and the Management of HPF on 19.08.2009, agreeing to discontinue the repayable monthly advance from August 2009 and whatever was paid to them between September 2002 and July 2009, could be adjusted against the pending arrears of wage revision due and payable to the Workmen. Another settlement was arrived at on 19.08.2009, by virtue of which the workers were to be paid Special Performance Allowance equivalent to 20% of the salary and such payment to continue till the revival proposal submitted to the Government of India by HPF. The workmen as well as the Management of HPF were strongly and seriously

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pursuing the revival proposal and the Management of HPF had filed a separate Writ Petition in W.P.No.20017 of 2005, challenging the order passed by the AAIFR and in the said Writ Petition, the Management took a stand that if the Cabinet Committee on Economic Affairs (CCEA) sanctioned the revival proposal, the same will be beneficial not only to the company, its employees but also it would result in settlement of the dues to the banks and financial institutions and the company will be in the path of recovery.

5. HPF strongly relied on the recommendations of the Committee of Secretaries, who recommended for revival of the company. This stand was taken by HPF in an affidavit filed on 28.09.2012. However, well before the said date, the CCEA in its meeting held on 23.08.2012, considered the revival proposal and took a decision to withdraw the revival package for HPF. Thus, on the date when the said affidavit was filed by the company in W.P.No.20017 of 2005, the revival package had already been withdrawn. The significant development which happened later was as a result of a press information given by the Central Government, dated 28.02.2014, sanctioning a VRS package for the employees of HPF. It states that the Cabinet Committee on Economic Affairs has approved the proposal for providing non-plan budgetary support of Rs.181.54 crores for VRS at 2007 notional pay scale, as one time

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relaxation of DPE guidelines for all employees of HPF; the employees of HPF are in the 1987 pay scale and with the increased cost of living, it is very difficult for them to survive and meet their minimum financial obligation and with this decision, employees will come out of their current financial crisis and the enhanced VRS package will also help the HPF employees in their post retirement rehabilitation. Pursuant to the press release given by the Government of India, the first respondent by proceedings dated 20.03.2014, granted approval to the VRS package which is as follows:-

Government of India
Ministry of Heavy Industries Public Enterprises
Department of Heavy Industry

Udyog Bhavan
New Delhi -110011

Ref.No.19(2)/2013-PE.III *Dated 20.03.2014*

To
The Chairman & Managing Director,
Hindustan Photo Films Mfg., Company Limited,
Indunagar,
Udhagamandalam,
Tamil Nadu,

Subject: VRS package for the employees of Hindustan Photo Films Mfg., Co., Ltd., (HPF), Udhagamandalam, Tamil Nadu.

Sir,

The undersigned is directed to convey the approval of the competent authority to the following:

(i) Implementation of VRS at 2007 notional pay scales without any arrears as one time relaxation of DPE guidelines for all the employees of HPF and providing a sum of Rs.181.54 crore in the form of Non-Plan loan from the lump sum provision for implementation of Voluntary Retirement Scheme and Statutory Dues'.

(ii) Settlement of all outstanding recoveries of recoverable/adjustable advances/special performance allowance paid to employees in the past which are not covered under DPE guidelines, out of VRS dues as stated above subject to vacation of interim stay by Hon'ble High Court of Madras.

(iii) To waive recoveries of such

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recoverable/adjustable advances/special performance allowance in respect of employees who have superannuated/left the company prior to implementation of this enhanced VRS proposal.

(iv) To take further action for closure of the Company as per recommendations of BRPSE in their meeting dated 28.06.2013.

2. The financial sanctions for the above wherever required will be issued separately.

3. This issues in accordance with the approval of CCEA communicated by Cabinet Secretarial vide No.CCEA/11/2014(i), dated 03.03.2014. The compliance of Election Commission's directives as per their letter dated 14.03.2014, (copy enclosed) shall be ensured.

Encl: As above

Yours faithfully,
sd/-
(Ajay Kumar)
Under Secretary to the Government of India
Tele:23061531

Copy to:
1.Secretary, Board for Restructuring of Public Sector Enterprises (BRPSE), Department of Public Enterprises.
2.Sh.K.L.Sharma, Joint Secretary, Cabinet Secretary, New Delhi.
3.The Director of Audit Commerce, Works & Miscellaneous, IP Estate, New Delhi.
4.CCA, Department of Heavy Industry, Udyog Bhawan, New Delhi
5.IFW, DHI
6.B&A Section, DHI
7.Cash Section, DHI
8.P&AO, DHI
9.Coordination Section, DHI
10.Guard File

(Ajay Kumar)
Under Secretary to the Government of India,
Tele: 2306 1531

6. Pursuant to the above proceedings, a circular, dated 21.03.2014, was issued by the second respondent company. The proceedings of the first respondent and the circular of the second respondent are impugned in these Writ Petitions.

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7. Ms.R.Vaigai, learned Senior counsel for the petitioners elaborately referred to the factual matrix and submitted that the issue to be considered in these Writ Petitions is whether the compensation which is now ordered to be given, pursuant to an allocation made by the Central Government is a compensation for voluntary retirement or a compensation upon closure of the industry. It is submitted that the decision to close was taken on 28.06.2013 itself and a non-plan budgetary support of Rs.181.54 crores for the VRS was sanctioned and notified by the impugned circulars and the amount which have to be sanctioned is with a view to settle the dues of the workmen upon closure of the establishment.

8. During the pendency of these Writ Petitions, though initially an interim order was granted, the same was modified by order dated 09.09.2014, by which the impugned scheme was permitted to be implemented insofar as the employees, who may apply without prejudice to the rights of parties. Pursuant to the said modification, the second respondent issued a circular directing the employees to apply for VRS coupled with an undertaking to forgoe the notice pay. 334 employees applied for VRS and for want of funds, the applications were kept pending. In the mean

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time, 50 workmen were superannuated, 3 passed away without receiving compensation and were paid only the statutory dues after recovering all the allowances. During January 2015, nearly 340 employees were given VRS compensation after deducting all the advances and income tax and the maximum amount to those with 30 years or more service at the rate of 60 days wages multiplied by the number of completed years of service or salary for the remaining years, whichever is less. The scheme was extended by order dated 25.02.2015, and further extended on 13.03.2015 and 26.03.2015. In the mean time, the employees represented for exemption from income tax. The learned Senior counsel would submit that though the scheme is called as a VRS, it is only a closure compensation scheme as VRS can be implemented in respect of surplus staff or staff who are not required for the establishment and the establishment would continue to operate with the required number of staff. Therefore, the workmen have to be compensated by paying them compensation calculated in terms of the ID Act, when closure of an establishment is ordered. To buttress the said submission, reference was made to the letter of the Director of the Department of Heavy Industries, dated 23.03.2016, wherein the Managing Director of the second respondent was directed to work towards retrenchment of employees under the ID Act, primarily on the ground that decision

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has already been taken by the Government to take action for closure/winding up of the company, as there is no production in the company and the employees are not on salary/wages support from the Government. The employees have been given ample opportunities to take attractive VRS and it amounts to serving public interest by separating the employees and closure/winding up of the company at the earliest. Therefore, it is submitted that the Central Government clearly understood that it is a compensation given to the workmen pursuant to a decision taken by the Government to close the establishment.

9. It is further submitted that a close reading of the VRS published by the Government of India, during November 2015, would clearly show that the present scheme notified for the employees of HPF is a retrenchment compensation scheme. In terms of the said notification, arrears are to be paid with effect from 01.01.2007 and therefore, the severance package, which is granted to the employees should be computed by adopting the formula required to be followed in cases where the closure of the establishment is approved under the provision of the ID Act and if the same is done, the employees are entitled to get 72 months' salary on 2007 pay scales as well as arrears with effect from 01.01.2007, as November 2015, notification states that the arrears

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shall be paid to all employees with effect from 01.01.2007. After referring to the notification issued by the Government of India, dated 01.03.2016 pertaining to the closure of loss making CPSs (HPF included) and the Office Memorandum, dated 07.09.2016, it is submitted that what is attempted to be done by the respondent is to convert closure into a compulsory retrenchment. Further, the respondents have not placed before the Court, the various notifications issued by the Government of India pertaining to the loss making PSUs, which have a direct impact on the present proceedings. The learned counsel elaborately referred to the press release issued by Government of India, dated 28.09.2016 and the conditions stipulated therein.

10. With regard to the deduction of income tax, it is submitted that the contentions of the Department that taxes are liable to be deducted at source in accordance with Section 10(10C) of the Income Tax Act, 1961 (IT Act) is not tenable, as the employees are exempted from paying income tax in terms of Section 10(10B) of the IT Act, as the compensation is received by the Workmen, pursuant to a notification issued by the Central Government, which is in the nature of special protection to the Workmen and as such, the monetary limit provided under proviso clause 2(i) of Section 10(10B), of the IT Act would not apply. It is

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further submitted that it is a case of closure followed by winding up of the company and therefore, the package offered is a severance of employment and therefore, it is a severance package and not a retirement package, as there is termination of employment and there is no option left to the employee. The Central Government was also conscious of the decision to close down the establishment which was recorded by the Court in W.P.Nos.24417 & 19640 of 2005, dated 29.08.2016, wherein the Court has recorded that the Government of India on 20.03.2014, has taken a decision to close down the company. Therefore, it is submitted that since the industry has been closed down, the package given to the employees is a severance package and as it is pursuant to a decision taken by the Government of India considering the plight of the employees, no income tax can be deducted and by treating the package amount as a compensation for closure, the respondent should be directed to compute the compensation by applying the yardsticks under the ID Act in cases where closure is approved under the said Act. In support of the contentions, the learned Senior counsel placed reliance on the decision of the Hon'ble Supreme Court in the case of ***M.C.Mehta (Calcutta Tanneries' Matter)*** reported in ***(1997) 2 SCC 411; Air India vs. Nergesh Meerza & Ors.,*** reported in ***(1981) 4 SCC 335*** and ***Workmen of Meenakshi Mills Ltd., & Ors., vs. Meenakshi Mills Ltd.,*** reported

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in ***(1992) 3 SCC 336.***

11. Mr.G.Rajagopalan, learned Additional Solicitor General of India, appearing on behalf of the Union of India as well as for HPF for Mrs.Rita Chandrasekaran, Advocate, submitted that if the argument advanced by the petitioners are to be accepted and it has to be treated as a case of closure, all matters are to vest with the Official Liquidator and the present Writ Petitions are not maintainable. Further, it is submitted that from time to time, the petitioners are taking inconsistent stand and placing reliance on the notifications, which were issued by the Government of India during 2015 and 2016 is not tenable. It is submitted that the Sick Industrial Companies Act (SICA Act) is a Special statute and a recommendation was made to this Court, pursuant to which the company has been wound up. The VRS package, which has been sanctioned by the Government is in the nature of a grant and there is no compulsion on the employees to accept the same and in such circumstances, the employees cannot seek for direction to pay compensation at a particular rate, when the compensation itself is part of a package sanctioned by the Government of India, as a loan to the second respondent company. Further, it is submitted that the employees having accepted the scheme, cannot now state that it is not a VRS and having accepted the monies paid to them and

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cannot now content that it is a closure. It is further submitted that the company was not closed down, but it was wound up based on the recommendations made by the BIFR, which was accepted by this Court in C.P.No.114 of 2003.

12. With regard to the contention raised by the petitioners that they have accepted the benefit under the VRS without prejudice to their rights, the said expression "without prejudice" depends upon the context in which it is used and in the present circumstances, the use of expression 'without prejudice', cannot mean that the employees can seek for a totally different relief having accepted the VRS package. To support such contention, reliance was placed on the decision of the Hon'ble Supreme Court in the case of ***Tarapore & Company vs. Cochin Shipyard Ltd., Cochin & Anr.,*** reported in ***AIR 1984 SC 1072***. Further, it is submitted that whatever the statutory dues including income tax, which is payable on the acceptance of the package given under the VRS scheme has to be remitted and tax has to be deducted at source in terms of Section 10(10C) of the IT Act.

13. Mr.J.Narayana Swamy, learned Senior counsel appearing for the Income Tax Department referred to the decision of the Hon'ble Division Bench of this Court in case of ***CIT vs.*** **S.K.**

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Sundararamier & Sons. reported in ***1999-240-ITR-740 (Mad)***, and submitted that the persons, who are bound under the IT Act to deduct income tax at the time of making payment of any income, profits or gains are not concerned with the ultimate result of the assessment on the person to whom the payment is made. Therefore, tax has to be deducted at source and the TDS provision is a separate provision and distinct from the assessment procedure. It is further submitted that the HPF is to pay money to its employees and the question as to the nature of receipt is to be gone into by the Assessing Officer and it is not for the employer to decide the same. It is submitted that in the recent communication received from the CBDT, dated 28.02.2017, the Board has taken into consideration the scheme dated 20.03.2014, and as it states that further action for closure of company as per recommendations of the BRPSE is to be taken, it was opined that the retirement of the employees of HPF does not fall under Explanation(a) to the second proviso to Section 10(10B) of the IT Act and the payments so made to the workmen fall under Section 10(10C) of the IT Act and accordingly, taxable, if the receipts exceed the exemption limits. Therefore, if at all, the employees' claim that it is the case of a closure and not a Voluntary Retirement, it is a fact which has to be established by producing material before the Assessing Officer and not by way of a Writ Petition.

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14. Ms.R.Vaigai, learned Senior counsel in reply submitted submit that about 340, out of the total 700 workers applied under the scheme after the interim order, dated 09.09.2014, in W.P.Nos.24355, 24460 & 25491 of 2013, which Writ Petitions were allowed by final order dated 29.11.2016. The other employees applied under the scheme after the present Writ Petitions were filed. To further emphasis the submission, the learned Senior counsel referred to paragraphs 20 to 25 of the affidavit filed in support of the Writ Petitions and ground Nos.1(i)(ii). It is further submitted that the respondent being a welfare State is bound to compensate the employees, who have been put to great prejudice for several decades and therefore, they should be granted 72 months salary on the 2007 pay scale and arrears be paid on the 2007 pay scale without deduction of income tax. It is further submitted that the decision of the Hon'ble Division Bench relied on by the Income Tax Department in the case of ***S.K. Sundararamier & Sons.***(supra), is distinguishable on facts and it is not a case of an individual assessment, but a case where no tax is liable to be paid in terms of Section 10 of the IT Act.

15. By way of reply, the learned Additional Solicitor

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General of India, submitted that the present argument of the petitioners cannot be tested in a Writ Petition and the question as to whether, it is a retrenchment or not, is a mixed questions of fact and law which has to be agitated before appropriate forum.

16. Mrs.Rita Chandrasekar, learned counsel appearing for HPF, submitted that till date even those employees, who have opted for VRS and received the payments continued to occupy the quarters and the Management is unable to pay the charges towards electricity and other amenities and as of now, there is no electricity supply for the quarters during the day time and only skeleton lighting facility is available at night and those employees who have opted for VRS have to vacate the quarters and cannot continue to reside there.

17. Heard the learned counsels appearing for the parties and carefully perused the materials placed on record.

18. The challenge in these Writ Petitions, is to an order passed by the first respondent, dated 20.03.2014, and the consequential circular issued by the HPF, dated 21.03.2014. The sum and substance of the impugned orders is a VRS package for the employees of HPF, Ootacammand. This package is an out come

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of a decision of the Cabinet Committee on Economic Affairs, which approved a proposal for providing non-plan budgetary support of Rs.181.54 crores for Voluntary Retirement of the employees of HPF at the 2007 notional pay scale. This has been done by granting a one time relaxation of the DPE guidelines for all the employees of HPF. The Cabinet Committee on Economic Affairs took such a decision being conscious of the fact that the employees of HPF were continuing in the 1987 pay scale, unable to survive and meet their immediate financial needs and by giving such a package, it will help the employees in their post retirement rehabilitation. Thus, essentially the funds earmarked by the Central Government is a fixed amount of money calculated taking into consideration various factors and it is a non-plan budgetary support. The package covers not only workers, but all employees of HPF to mean that the employees in the officer cadre would also be covered by the package. This Cabinet approval translated into an order/notification, dated 20.03.2014. The order dated 20.03.2014, has been made known to the employees by the HPF vide their circular, dated 21.03.2014. The sum and substance of the contention of the petitioners is that it is a misnomer to state that the package is a VRS. It is submitted that a VRS would mean that the surplus staff are given a "golden hand shake", so that the establishment will continue its operations with reduced work force.

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However, in the case of HPF, the Central Government even prior to announcing VRS package had taken a decision to close down the establishment. Therefore, it is the submission that if it is a case of a closure, then it has to be approved in accordance with the provisions of the ID Act. However, subsequently, the company having been wound up, pursuant to order in C.P.No.114 of 2003, dated 24.01.2017, the compensation payable to the workers, as in cases where closure is approved under the ID Act, should be adopted. Supplementing this stand, reference has been made to the scheme of the Central Government with regard to loss making CPSs, which was admittedly issued during September 2016. Therefore, in the considered view of this Court, the petitioner cannot seek to rely upon the subsequent press release of the Government of India much after the press release given by the Central Government on 28.02.2014, which is with particular reference to the HPF employees. Therefore, reliance placed on the office memorandum and press releases issued during September 2016, cannot be relied on to test the correctness of the impugned proceedings and therefore, the same stands eschewed and this Court proceeds to consider the validity of proceedings/circular on the given facts and circumstances of the case. The petitioners contend that they are entitled to better terms in the said package i.e., to be paid 72 months' salary in the 1997 scale, together with

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arrears without any deductions towards income tax or other allowances. So far as the deduction of other allowances are concerned, the petitioners have succeeded in a Writ Petition filed challenging the same in W.P.No.24460 of 2013, etc, dated 29.11.2016.

19. The argument advanced by the learned Senior counsel for the petitioner contending that the package is not a VRS, but a case of a closure, at the first blush was found to be impressive. However, on a careful and close scrutiny of the facts and circumstances of the case, the position which emerges is otherwise. It is true that the package is called "VRS". In the considered view of this Court, the nomenclature of the package would be irrelevant, but what would be relevant is purpose for which the package has been sanctioned. The undisputed fact is that HPF which in the initial years enjoyed a monopoly market in x-ray films became a "White Elephant", for the Central Government. It crashed in its own weight contributories being several factors not to be named. The net result was the entire capital of the company stood eroded, the rehabilitation schemes sanctioned by BIFR/AAIFR became unworkable, the rehabilitation proposal, which was recommended, was withdrawn and a decision was taken to close down the company on 28.06.2013. It may be true that the Central

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Government took a decision to close down the company. Nevertheless, the petitioner as well as the company were pursuing their Writ Petitions seeking for rehabilitation of the company.

20. In such circumstances, the Government of India, considering the plight of the employees of HPF, come forward with a proposal to offer succor to the employees, who were languishing in the same pay scales, since in the year 1987 with no or little work in the factory. This proposal was approved by the Cabinet Committee on Economic Affairs, as a non-plan budgetary support. To be noted is that while granting such approval, the amount which has been sanctioned as a budgetary support was specifically mentioned at Rs.181.54 crores. In most cases of VRS scheme, the establishment or the industry would continue with a skeleton staff and the VRS package is announced with a view to reduce the work force, thereby minimizing the loss or reducing the capacity of the industry etc. However, in the instant case, it is not in dispute that HPF has been a loss making industry for the past 20 years and not only the BIFR recommended for winding up but, the Central Government in its wisdom decided to close down. Thus, the Central Government has made a study and sanctioned a specified sum of money exclusively for the employees of HPF. The VRS package has taken into consideration the 2007 pay scale as a

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notional pay scale and has calculated its benefit. The employees were given the option to accept the terms of settlement and retire from service.

21. It is not in dispute that more than 350 employees have availed the VRS package and received the benefit after deductions towards allowances and TDS. The TDS which had been deducted, has been kept in a separate Escrow account pursuant to interim directions issued in these Writ Petitions. The VRS package has been made known to the employees by the impugned circular, dated 21.03.2014.

22. It is the case of the petitioners that there is no option available to the employees as the company has been closed down and therefore, the quantum which is sought to be given to the employees should be construed as a compensation for closure and they should be paid higher sums of money. In the considered view of this Court, this interpretation is wholly impermissible in the facts and circumstances of the case. Though the petitioners would state that there is no option available, there is not a single case filed by a employee, who has refused to accept the VRS and requested to be treated differently. The petitioners do not dispute the fact that VRS has been announced by the HPF Management periodically from

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the year 1991. These schemes were typical as VRS scheme where the employees left the employment, yet the employer continued to do its operation. However, as of now, the establishment cannot continue, because by operation of law, it is deemed not to exist on and from the date when winding up was ordered i.e., on 24.01.2017. One more interpretation that could be given is the date of winding up shall be the date on which the petition for winding up was presented before this Court on the recommendations of BIFR, which was in 2003. If such is the legal position, the consequences which may emanate out of that would be disastrous for the workmen. This is due to the fact that by operation of law, there is a cessation of employment and the assets of HPF all inclusive would vest with the Official Liquidator, who then have to initiate proceedings for liquidation. Though the employees would have a priority, nevertheless the claims are required to be adjudicated by the Official Liquidator. Presumably bearing in mind all these consequences and taking note of the plight of the employees of HPF, the misery they have been put to for decades prevailed upon the Government of India to sanction a package which is a special package for a specific purpose with a specific reason.

23. As mentioned above, the notifications issued by the

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Government with regard to the six CPSs., in 2016 are general covering all loss making public sector enterprises. However, the package, dated 28.02.2014, sanctioned for employees of HPF, is a special package exclusively dedicated and designed for the employees of HPF. The earmarked money under the non-plan budgetary head cannot be diverted for any purpose, as the funds have been earmarked for a specific purpose. Owing to this reason, this Court granted an interim order dated 10.03.2016, to the effect the funds allotted shall not lapse. In such given circumstances, the employees can hardly take a stand that the package should be read as a closure compensation package and the employees should be paid higher sums of money. The stand taken by the Government of India is that there is no compulsion to accept the package. To test the correctness of such statement, there is no case before the Court of an employee who has refused to accept the VRS package, but these are all cases, where though they challenge the notification and circular, the net effect is all employees want to leave the organisation, but they seek for better terms. Therefore, the consequential reliefs sought for by the employees in these Writ Petitions do not flow from the main prayer in the Writ Petition, which is to quash the proceedings, dated 20.03.2014 and 21.03.2014.

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24. Assuming that the declaratory relief is granted, the consequential relief cannot be granted, as it is independent of the declaratory relief. Therefore, assuming for the sake of argument, if the impugned circular is held to be illegal and unconstitutional, then the Court cannot direct the respondent to pay 72 months salary together with arrears as such quantum is liable to be paid only after an industrial adjudication takes place to declare that it is a closure and the procedure under the ID Act has to be followed. Therefore, this Court can safely conclude that the employees of HPF are in a quandary, on one hand, they wanted to leave the organisation, receive compensation, but on the other are not agreeable to accept the quantum of compensation fixed by the Central Government. However, such relief cannot be acceded to on the grounds raised by the petitioners.

25. As mentioned above, the package is a special package and regardless of the nomenclature or other surrounding factors, this package, if agreeable to be accepted by the employees, it is open to them to accept the same. This Court cannot issue a mandamus or a direction to rework the scheme, which is specific and special. Adding to the reason assigned in the preceding paragraphs with regard to the question as to whether, it is a closure or not, it is not a case where, the word "closure" should be

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given a literal meaning, but what the petitioners seek to project is closure in the legal sense i.e., as per the provisions of the ID Act. If such a plea is raised, the moot question that would arise is, what is the effect of the order of winding up passed by this Court, which is based on the recommendations made by the BIFR. The Writ Petitions challenging the order of BIFR ordering winding up of HPF have been dismissed. That apart, the company has been wound up by orders passed in C.P.No.114 of 2003. Therefore, by adopting a literal meaning of the word "closure" and attempting to demonstrate that the industry is no longer in existence and it is not a case of a Voluntary Retirement, but a compulsory retirement on closure are attractive submissions, but cannot be tested in a Writ Petition.

26. An argument was advanced that if the regulations violates the fundamental rights enshrined in the Constitution, there can be no estoppel for the petitioners to challenge the same. Reliance was placed on the decision in the case of ***Nergesh Meerza & Ors.,*** (supra).

27. As pointed out earlier, the petitioners though seek for a declaration of the impugned circular as illegal and unconstitutional the actual relief they seek for is better terms.

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This prayer flows out of the argument that the workmen are entitled to better privileges and in the given facts and circumstances, the ratio laid down by the Hon'ble Supreme Court in the case of ***Nergesh Meerza & Ors.,*** (supra), would have no application. Reliance was placed on the decision in the case of ***Meenakshi Mills Ltd.,*** (supra), with particular reference to the observations in paragraph 22 and 23. This Court may add that the Central Government took a decision to rehabilitate the workmen presumably bearing in mind that it is a welfare State and the workmen should not be retrenched suddenly and thrown to the streets without any relief. Therefore, this Court is of the considered view that the petitioners cannot maintain the challenge to the impugned proceedings/circular on the grounds raised and it is held that it is an option for the workmen to accept the package and such of those who do not wish to accept the package, consequences are bound to follow, which have to be met in accordance with law before the appropriate forum.

28. Having held so, the only other question that remains to be decided is with regard to deduction of tax at source. Section 10 of the IT Act falls in Chapter III and it deals with incomes not included in total income. Section 10 states that in computing the total income of a previous year of any person, any income falling

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within any of the clauses mentioned therein shall not be included. For the purpose of this case, sub-section (10B) & (10C) of Section 10 would be relevant, which are quoted herein below:-

> *Incomes which do not form part of Total Income*
> *Incomes not included in total income.*
> *10.In computing the total income of a previous year of any person, any income falling within any of the following clauses shall not be included.*
> *.....*
> *S.10(10B) any compensation received by a workman under the Industrial Disputes Act, 1947 (14 of 1947), or under any other Act or Rules, orders or notifications issued thereunder or under any standing orders or under any award, contract of service or otherwise, [at the time of his retrenchment:*
> *Provided that the amount exempt under this clause shall not exceed:-*
> *(i) an amount calculated in accordance with the provisions of clause (b) of Section 25F of the Industrial Disputes Act, 1947 (14 of 1947); or*
> *(ii) such amount, not being less than Rs.Five lakhs, as the Central Government may, by notification in the Official Gazette, specify in this behalf,*
> *Whichever is less:*
> *Provided further that the preceding proviso shall not apply in respect of any compensation received by a workman in accordance with any scheme which the Central Government may, having regard to the need for extending special protection to the workmen in the undertaking to which such scheme applies and other relevant circumstances, approve in this behalf.*
> *Explanation:- for the purposes of this clause:-*

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(a) compensation received by a workman at the time of the closing down of the undertaking in which he is employed shall be deemed to be compensation received at the time of his retrenchment;

(b) compensation received by a workman, at the time of the transfer (whether by agreement or by operation of law) of the ownership or management of the undertaking in which he is employed from the employer in relation to that undertaking to a new employer, shall be deemed to be compensation received at the time of his retrenchment if:-

(i) the service of the workman has been interrupted by such transfer;or

(ii) the terms and conditions of service applicable to the workman after such transfer are in any way less favourable to the workman than those applicable to him immediately before the transfer; or

(iii) the new employer is, under the terms of such transfer or otherwise, legally not liable to pay to the workman, in the event of his retrenchment, compensation on the basis that his service has been continuous and has not been interrupted by the transfer;

(c) the expressions "employer" and "workman," shall have the same meanings as in the Industrial Disputes Act, 1947 (14 of 1947);

.....

S.10(10C) any amount received (or receivable) by an employee of:-

(i) a public sector company; or

.....

.....

(viii) such institute of management as the Central Government may, by notification in the Official Gazette, specify in this behalf, [on his] [voluntary retirement or

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termination of his service, in accordance with any scheme or schemes or voluntary retirement or in the case of a public sector company referred to in sub-clause (i), a scheme or voluntary separation, to the extent such amount does not exceed five lakh rupees];

Provided that the schemes of the said companies or authorities [or societies or Universities or the Institutes referred to in sub-clauses (vii) and (viii), as the case may be, governing the payment of such amount are framed in accordance with such guidelines (including inter alia criteria of economic viability) as may be prescribed [***]:

provided further that where exemption has been allowed to an employee under this clause for any assessment year, no exemption thereunder shall be allowed to him in relation to any other assessment year:].

29. The case of the revenue is that the package given to the workmen is a VRS package and it would fall within Section 10(10C)(viii) and accordingly, taxable if the receipt exceeds the exempted limit. The case of the petitioner is that the severance package received by them would fall within Section 10(10B) and shall not be included as income in computing total income of the employees. The contention of the revenue that TDS proceeding is independent of the other provisions of the Act cannot be disputed, but however, what the revenue seeks to a state is that it is for the Assessing Officer to examine as to whether the receipts in the hands of the employee is a compensation for a closure or a package received as a Voluntary Retirement settlement.

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30. Admittedly, the instant case, is not a case of a single assessee, but a large section of employees of HPF Ltd., a Government of India company. If it is clear from the plain language adopted in the scheme as regards the nature of benefit which is extended to the employees, then the employees need not be driven to approach the Assessing Officers to establish that the receipts are not taxable in their hands. Therefore, the nature of the benefit which flows to the employees under the package has to be tested on its plain language without adding any interpretation.

31. As mentioned above, the Government of India had recommended a scheme to give relief to the employees of HPF. This proposal was approved by the Cabinet Committee on Economic Affairs and such approval was a non-plan budgetary support. The Government of India did not authorise the HPF to bring out a VRS package, but what was approved was a non-plan budgetary support, which is in the nature of a grant given by the Central Government to the second respondent for a specific purpose and a specific reason. The purpose is to rehabilitate the employees of HPF and the reason being that the employees have been receiving the pay scales as of 1987, the increase in the cost of living has made it very difficult for them to survive and meet their financial obligations and the Government thought fit to offer this package to

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enable the employees to come out of the financial crises. If such was the sanction made by the Central Government, it undoubtedly would qualify the parameters laid down under sub-section (10B) of Section 10 of the Income Tax Act. This is so because the monetary benefit which will accrue to the employees is in the nature of a compensation, which is pursuant to a decision taken by the Government of India specifically for the employees of HPF. Therefore, the amount would be exempted from income tax in terms of the first proviso under Section 10(10B) of the IT Act. In terms of clause (2) of first proviso, the ceiling limit is Rs.5,00,000/-. The second proviso states that the first proviso shall not apply in respect of any compensation received by a workmen in accordance with any scheme, which the Government may, having regard to the need for extending the special protection to the workmen in the undertaking to which such scheme applies and other relevant circumstances, approve in its behalf. The compensation which is received by the workmen would fall within the definition of compensation found in explanation to Section 10(10B).

32. In such circumstances, this Court has no hesitation to hold that the package having been received by the workmen as compensation pursuant to the decision taken by the Central Government to offer special protection to the employees of HPF,

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the same stands exempted from deduction to income tax.

33. W.P.No.18608 of 2015; the petitioner in this Writ Petition is an association of officers working in HPF and the relief sought for by them is also identical. The yardstick applicable to workmen as defined under the Industrial Disputes Act, cannot be made applicable to the officers. Therefore, under normal circumstances whatever reasoning assigned by this Court in the preceding paragraphs would apply to the employees in the workmen category. Nevertheless, the Central Government does not make any distinction in its press information, dated 28.02.2014, nor do the impugned proceedings/circular, as it has extended the special benefit to all the employees of HPF. Therefore, in the given facts and circumstances, whatever is the interpretation given by this Court while testing the prayer made in the Writ Petitions filed by the workers would equally apply to this Writ Petition filed by the officers association.

34. In the result, the Writ Petitions are partly allowed on the following lines:-

(i) The declaratory relief sought for to declare the proceedings dated 20.03.2014, and the circular dated 21.03.2014, as illegal, is rejected and the relief sought for to pay 72 months, salary stands rejected.

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(ii) It is held that the receipts in the hands of the employees of the HPF, pursuant to the severance package announced by the Central Government and intimated vide proceedings/circular is held to be a special privilege/protection granted to the employees of the HPF Ltd and therefore, the provisions of the Section 10(10B) of the Income Tax Act, 1961 are attracted and accordingly, the same shall not fall within the definition of income, while computing the total income of concerned employee and income tax cannot be deducted from the severance package paid to the employees of HPF.

(iii) Pursuant to interim orders dated 22.12.2015, the amounts deducted towards income tax was directed to be kept in deposit to the credit of the Writ Petition in Indian Bank, High Court Branch. In the light of the finding rendered supra holding that no income tax is recoverable from the severance package, the amount deducted as income tax shall be disbursed to the respective employees by the respondents.

(iv) It is reiterated that in these writ petitions, the Court has considered the VRS package and the consequential circular issued by the HBF relief sought

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for, for payment of 72 months salary instead of 60 months salary as proposed in the VRS Scheme and not to deduct income tax on the amount payable to them as in respect of recovery which were sought to be made pursuant to the circular dated 10.07.2013 and 01.07.2013 were already been quashed by this Court in W.P.Nos.24460, 24355 and 25491 of 2013 dated 29.11.2016.

(v) The respondents shall comply with the above directions within a period of one month from the date of receipt of a copy of this order as during the pendency of these writ petitions, all the employees have exercised their right to accept the severance package though without prejudice to their rights in the writ petition. Now the writ petition has been finally disposed of, it is only the implementation of the severance package which shall be done within one month from the date of receipt of a copy of this order.

(vi) As agreed to by the employees of the HBF, all the employees on receipt of the severance packages in terms of the above direction shall vacate and hand over vacant possession of the quarters within a period of one month from the date on which they received the

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monetary benefits. No costs. Consequently, connected Miscellaneous Petitions are closed.

17.03.2017

pbn
Index :Yes/No
Internet:Yes/No

Note:- issue order copy on 21.03.2017

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T.S.SIVAGNANAM,J.
pbn

To

1.The Government of India,
Rep., by its Secretary,
Department of Heavy Industry,
Ministry of Heavy Industries & Public Enterprises,
Udyog Bhavan, New Delhi – 110 011.

2.Hindustan Photo Film Manufacturing Co. Ltd.,
Indu Nagar, Ootacammand,
The Nilgiris – 643 005.
Tamil Nadu.

3.The Commissioner of Income Tax (TDS),
No.121, Uthamar Gandhi Salai,
Chennai – 34.

Pre-Delivery Order in
WP.Nos.18566, 18788, 18608 to 18610, 18789 of 2015
Connected M.Ps.,

17.03.2017

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