

J.Devaraj Vs Hindustan Photo films Manufacturing Co., Ltd.,

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SooperKanoon Citation : sooperkanoon.com/1860909

Court : Chennai

Decided On : Jan-31-2025

Judge : Honourable Mr Justice D.Bharatha Chakravarthy

Appeal No. : WP/12462/2023

Appellant : J.Devaraj

Respondent : Hindustan Photo films Manufacturing Co., Ltd.,

Judgement :

2025:MHC:368

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.01.2025

CORAM:

THE HONOURABLE MR. JUSTICE D.BHARATHA CHAKRAVARTHY

1. J.DEVARAJ

2. M. GOPALRAJ

3. C. DHARMAR

4. Y.K. DEVARAJ
5. S.L. RAJAMANI
6. K. ARAVINDAN
7. V. GANESAN
8. R. SEKAR
9. A.ALPHONSE
10. S. HANEEFA
11. S. GANGADHARAN
12. D. SEBASTIAN
13. N. CHANDRAN
14. V. RADHAKRISHNAN
15. V.SOUNDARARAJAN
16. C. JEGANNATHAN
17. V. SIVALINGAM
18. K.P. LAWRENCE
19. M. VISHNU
20. G. SEKAR
21. P.KALIAN
22. R. SHANMUGAM
23. T. MANAKKANNU

24. P.K.VIJAYAKUMARI
25. N. DELHIKUMAR
26. R. GANDHI
27. A.CHANDRASEKARAN
28. R. SRINIVASAN
29. MUTHUVEERAN
30. M. SUNDARAM
31. CHINNATHAMBI
32. RADHA
33. R. SHAJAHAN
34. I. PALANISAMY
35. A.K.ASHOK KUMAR
36. R. GOVINDARAJAN
37. A. RAMAN
38. A.K.RAMALINGAM
39. N. SHANMUGAN
40. R. DEVADOSS
41. N. RAJAMANI
42. B. VIKRAMAN
43. R.VASANTHA KUMARI

44. R.RADHAKRISHNAN

45. K.A.NANJAN

46. T.GAYATHRI

47. M. RAJU

48. M.RANGASWAMY

49. R. ALLIMUTHU

50. S. KALU

51. K.R.SAGADEVAN

52. C. ILANGO VAN

53. A.R.KOLLARI

54. J. STANLEY PETER

55. G. SHANTHA

56. A.ANTONY

57. S.B. MOHANKUMAR

58. R. VISWANATHAN

59. N. DEVARAJ

60. J. FRANCIS

61. M. PALANISWAMY

62. L. KRISHNAN

63. R. KRISHNARAJ

64. R. NAGARAJAN
65. J. MANIE
66. B. SRINIVASAN
67. S. NANJAN
68. S. PONMANI
69. T. JAYARAMAN
70. R. MAGENDRAN
71. A. GLADIS MARIA JOSEPH
72. K. MADHAVAN
73. R. PARAMASIVAM
74. SAVITHIRI
75. O.BALAN
76. J. STEPHENRAJ
77. T. BALAKRISHNAN
78. S. HALAN
79. S. VIJAYAKUMAR
80. M. JOHN DAVID
81. J. LEONARD
82. R. DHAMODHARAN
83. K. HALDORAI

84. B. SIVAPRAKASAM
85. G. RAGHUNATHAN
86. L. SEVANAN
87. N. YOGESHWARA RAO
88. C. PARAMASIVAM
89. M. PARAMESHWARAN
90. M. CHANDRAN
91. A. MOHAMED YAKUB
92. DOREEN D'SOUZA
93. LAKSHMI
94. A.M.APPUSWAMY
95. S. GANAPATHY
96. J. KANNAN
97. J. BENJAMIN JAYARAJ
98. I. TAJUDDIN
99. V. VEERAMANI
100. V. MOHAN
101. M. PALANISAMY
102. MAIALAGAN
103. C. ARJUNAN

104. S. GEORGE
105. N.P.B. JAGANNATHAN
106. S.A.D.THIRUNAVUKKARASU
107. K. JEEVAN
108. R.MADAN MOHAN
109. C. CHITRAKALA
110. S. ILANGO VAN
111. K. SOORIYAN
112. G.L.NARASIMHAN
113. M. BOJAN
114. M. PRABHU
115. S. KAMALA
116. R. JANAKI
117. R. AZHWAR
118. CHINNADURAI
119. A. THANGAPPAN
120. K. SELVARAJ
121. A.DAVID MANOHARAN
122. D. GUNASEKARAN
123. R. BHEEMARAJ

124. K. PRABAKARAN

125. B. HALDORAI

126. B. BHEEMAN

127. K.SELVARANI

128. K.KALAISELVI (P127 & P128 - IMPEADED AS PER ORDER DATED 06.02.2025 IN W.M.P.NO. 696/2025 IN W.P.NO. 12462 of 2023 BY DBCJ) ...
Petitioners Vs.

1. Hindustan Photo Films Manufacturing Co., Limited., Indu Nagar, Ootacamund,
The Nilgiris, Tamilnadu 643 005.

2. The Government of India, Rep. by its Joint Secretary, Department of Heavy
Industries, Ministry of Heavy Industries and Public enterprises Udyog Bhavan,
New Delhi

3. The Official Liquidator,

Hindustan Photo Films Manufacturing Co., Limited, M/s.SPP and Co., Chartered
Accountants, No. 27/9, Nivedh Vikas, Pankaja Mill Road, Puliyakulam, Coimbatore
- 641 045. (R3-Impleaded as per order dated 31.01.2025 in W.M.P.No.
33686/2023 in W.P.No. 12462 of 2023 by DBCJ) ... Respondents Prayer: Writ
Petition filed under Article 226 of Constitution of India for the issuance of Writ of
Mandamus, directing the second respondent to refund the RMA
(Recoverable/Refundable Monthly Advance)/SPA (Specific Performance
Allowance) /AA (Adjustable Advance) deducted from the
petitioners/Workers/employees from their respective VRS benefits within the time
stipulated by this Court. For Petitioners : Mr.S.Mukunth, Senior Counsel Assisted
by Mr.V.Sivakumar For R1 & R3 : Mr.A.G.Sathyannarayana For R2 : Mr.Prasad
Vijayakumar

ORDER

This writ petition has been filed for a writ of Mandamus directing the second respondent to refund the RMA (Recoverable/Refundable Monthly Advance)/SPA (Specific Performance Allowance) /AA (Adjustable Advance) deducted from the petitioners/Workers/employees from their respective VRS benefits.

2. Mr.S.Mukunth, the learned Senior Counsel appearing on behalf of

the petitioners would submit that these 123 workmen voluntarily retired from service and are therefore directly covered by paragraph No.24.3 of the order in W.P.No. 24460 of 2013. The said order was also confirmed by the Honble Supreme Court of India and the SLP was dismissed by an order dated 05.05.2022. Subsequently, when the company went into liquidation and a resolution professional was appointed, the Government of India was still willing to settle the amount and sought clarification from the Supreme Court of India. The premises on which the clarification was sought is recorded by the Honble Supreme Court of India in its order dated 05.08.2022. The following are the clarification that were sought for:-

Miscellaneous Application Nos. 1273-1275/2022 have now been preferred by Union of India seeking following directions:

(i) pass an order/direction that the payment which is

required to be given as loan to the management of HPF in terms of judgment dated 29.11.2016 passed by Honble High Court of Judicature at Madras be deposited with the Registrar of Honble High Court of Judicature at Madras and the same be released to the persons entitled to receive the same.

(ii) Pass an order/direction to the Resolution

Professional who is presently in-charge of the company, to obtain claims from the 633 ex-employees and after due verification from the records of the company and independent verification by a Chartered Accountant, submit actual requirement of funds to GoI accordingly.

(iii) Pass an order/direction to the Resolution

Professional to admit claim of Gol to this effect and treat the amount as the first charge over the assets of the company to the Central Government since they step into the shoes of the workmen by taking over to discharge the burden of the company by way of the VRS Scheme.

3. On the said prayer made by the Government of India, the following was the clarification issued by the Honourable Supreme Court of India:-

- a. The money in terms of the order passed by the High Court as confirmed by this Court, be deposited with the Labour Commissioner, Chennai.
- b. The Labour Commissioner shall thereafter issue notice to the concerned workmen and after being satisfied about the identity of the claimants, shall disburse the same to the concerned workmen.
- c. The Union of India shall, while making the deposit, give all the details in a Tabular Chart to assist the Labour Commissioner in disbursing the sums.
- d. Let the needful be done with six weeks from today
- e. All the other issues are kept open

4. In that view of the matter, the learned Senior Counsel for the petitioners prays that the Government should be directed to release the fund so that they can also approach the Labour Commissioner and receive their benefit.

5. Per contra, Mr.Prasad Vijayakumar, the learned counsel appearing

on behalf of the second respondent would submit that the workmen have to approach the liquidator and their claims can only be decided as per the mechanism provided under the Insolvency and Bankruptcy Code, 2016.

6. The learned liquidator would submit that as on date, there is no money that is readily available to be paid to the workman. Even if some money comes, that will go only as per Section 53 of IBC.

7. The learned counsel appearing on behalf of the second respondent and the learned liquidator requested time to file a counter affidavit in the matter.

8. I am of the view that though it can be rightly stated that if the money

belongs to the first respondent company, namely Hindustan Photo Films Manufacturing Co., Ltd., it has to be disbursed only as per the waterfall mechanism under the IBC and the workmen have to approach the liquidator and file their claims in the appropriate form. If their claims are rejected, they have to approach the Tribunal and they cannot come before this Court. However, in this case, the money doesn't belong to the first respondent company. Considering the extraordinary plight of the workmen, the Government of India on its own came forward to settle the matter for the workmen, which was not within the realm of availability of the funds or otherwise belonging to the first respondent company. It was an extraordinary gesture shown by the Union of India.

9. From the clarification order, it can be seen that merely because the

company went into liquidation, the Union of India did not change its stand. By paragraph (ii) which is extracted above, it is clear that after the appointment of the resolution professional, the Union of India was taking such a stand that the claims of 633 employees, pending as on that date should be verified by an Independent Chartered Accountant. The Honble Supreme Court has ordered that instead of Chartered Accountant, the workmen may approach before the Labour Commissioner. Therefore, since the claimants are similarly situated to the aforementioned workmen, nothing prevented these workmen from approaching the Labour Commissioner. They have not approached the Labour Commissioner.

10. When this Court made a suggestion to the learned counsel that these

workmen can also approach the Labour Commissioner, Mr. Prasad Vijayakumar, the learned counsel appearing for the second respondent raised two specific objections. Firstly, he pointed out that when the Government made its concession at that relevant time, the CIRP was not there. Secondly, he stated that even when the clarification was sought, it was specifically sought with reference to the 633 workmen only.

11. I am of the view that, while it may be true that the company

subsequently went into liquidation and the liquidator was there in picture, it was not an obligation on the part of the Government of India. However, considering the plight of the workmen, the Government of India voluntarily stepped in to settle the matter for the workmen. This was rightly done, because if the workmen had gone through the waterfall mechanism, they might have missed out entirely. The liquidator has to strictly go by Section 54 of the IBC. Therefore, it is for the Union of India to take such a stand before the Labour Commissioner. Suffice it to conclude that when the workmen are claiming rights under the order passed by the Court in W.P.No.24460 of 2013, as

confirmed by the Honble Supreme Court of India and clarified by the order

dated 05.08.2022, then they should have made their claim before the Labour Commissioner and should not have approached this Court. I do not see any record that is filed before this Court indicating that they have approached the Labour Commissioner. Therefore, it remains open for these 123 workmen to make such claims before the Labour Commissioner. The Labour Commissioner shall act strictly as directed by the Honble Supreme Court of India, issuing notice to all concerned, including the liquidator and the Union of India and decide the matter in accordance with law. The application shall be filed within a period of two weeks from the date of production of the website uploaded order copy of this Court without waiting for the certified copy. Upon the filing of such an application, the Labour Commissioner shall decide the matter in the manner known to law within 16 weeks from that date.

12. Accordingly, this writ petition is disposed of. No costs. 31.01.2025 Neutral Citation: Yes nsl

D.BHARATHA CHAKRAVARTHY, J.

nsl To The Joint Secretary, Department of Heavy Industries, Ministry of Heavy Industries and Public enterprises Udyog Bhavan, New Delhi 31.01.2025

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