



E-CA NO : CA-2024-031970

E-FILING NO : EF-HCK-2023-034988

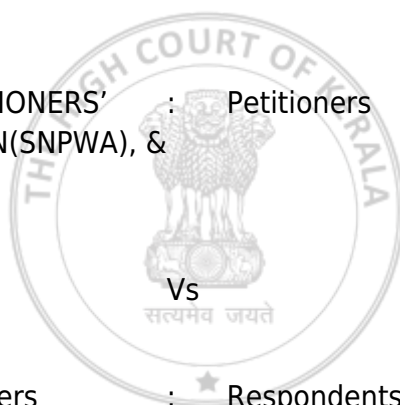
BEFORE THE HONOURABLE HIGH COURT OF KERALA AT ERNAKULAM

_____ Of Year 2024

In

WP(C) No.16360/2023

SANCHAR NIGAM PENSIONERS' : Petitioners
WELFARE ASSOCIATION(SNPWA), &
others



Vs

UNION OF INDIA, & others : ★ Respondents

COUNTER AFFIDAVIT FILED BY THE RESPONDENTS 6 AND 7 UNDER RULE 84 OF THE
HIGH COURT RULES AS DIRECTED BY THIS HONOURABLE COURT ON 07/08/2024 IN THE
ABOVE WRIT PETITION.

Sd/-
E-VERIFIED
MATHEWS K.PHILIP
K/000129/1986



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- Counter Affidavit : Counter Affidavit filed by the respondents 6 and 7 under Rule 84
1 off the High Court Rules as directed by this Honourable court on 07/08/2024 in the 1-4
above writ petition.

Sd/-

E-VERIFIED

MATHEWS K.PHILIP

K/000129/1986

**BEFORE THE HONOURABLE HIGH COURT OF KERALA AT
ERNAKULAM**

W.P.(C) No. 16360 / 2023

**Sanchar Nigam Pensioners Welfare
Association & others : Petitioner**

Vs.

Union of India & others : Respondents

**Counter Affidavit filed by the respondents 6 & 7 under Rule 84 of the
High Court Rules as directed by this Honourable court on 07/08/2024
in the above writ petition.**

I, V.Krishna Chandran, aged 48 years S/o Sri.K.S.Viswambhara Das (Late), residing at Flat No 13 F&G, Artech Deepam, Thoppil Lane, Anayara ,Thiruvananthapuram PIN-695029 now working as Chief Accounts Officer (Employee claims & Pay), Office of Chief General Manager, BSNL, PMG junction, Thiruvananthapuram-695033 do hereby solemnly affirm and state as follows :

1. I am duly authorized to swear this affidavit on behalf of the respondents 6 & 7 in the above case. I know the facts of the case as born out from the records.
2. The above writ petition is filed by the petitioners seeking the following reliefs.
 - i. To call for the records leading to Ext.P12 – BSNL Corporate office letter dated 4.5.2012 and to quash para 1, para 2 and para 4 of Ext.P12 to the extent they segregate the total service rendered by the


मुख्य लेखा अधिकारी (ई सी & पेय)
Chief Accounts Officer (EC & Pay)
केन्द्रीय निपटारा कक्ष (ई आर पी)
Central Settlement Cell (ERP)
यु.म.प्र.पू. ब्लाक, बी एस एम एल, केरल परिमंडल
O/o the CGMT, BSNL, Kerala Circle
तिरुवनंतपुरम / Trivandrum-695 033

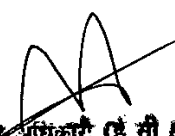
petitioners 2 & 3 and the members of the 1st petitioner association who are similarly placed as that of the petitioners 2 and 3 from the date of their absorption into BSNL in accordance with rule 37A of CCS pension rules and treating them as directly recruited by BSNL thereafter and bringing their service rendered after their absorption into BSNL for the payment received as the cash equivalent of the leave salary in respect of the period of earned leave at their credit under section 10 AA(ii) of the Income Tax Act by the issuance of a writ of certiorari or other appropriate writ direction or order,

- ii. To issue a writ of mandamus or other appropriate writ ,direction or order directing the respondents to refund the amount of Rs.8964/- deducted from the leave encashment and Rs. 12,17,013 from the Ex-Gratia amount payable to the 2nd petitioner with interest @12% per annum expeditiously at any rate within a time frame that may be fixed by this Hon'ble court ,
 - iii. To issue a writ of mandamus or other appropriate writ ,direction or order directing the respondents to refund the amount of Rs.1,40,279/- deducted from the leave encashment and Rs. 9,02,881/- from the Ex-Gratia amount payable to the 3rd petitioner with interest @12% per annum expeditiously at any rate within a time frame that may be fixed by this Hon'ble court , and also certain other reliefs (iv) , (v) (vi) and (vii) .
3. With regard the facts of the case it is submitted that, the various allegations raised in the writ petition are baseless and hence denied.


मुख्य लेखा अधिकारी (ई सी & पेय)
Chief Accounts Officer (EC & Pay)
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Central Settlement Cell (ERP)
यु.न.ई.यू. कक्ष, बी एस एन एल, केरल सर्किल
O/o the CGMT, BSNL, Kerala Circle
त्रिवन्तपुरम् / Trivandrum-695 033

Once the VRS optees agree to the terms and conditions stipulated therein, they cannot deviate from them .

4. As per clause 6.1(f) and 8(VI) of Annexure to the BSNL Corporate office Letter No:1-15/2019(BSNL) dated 04.11.2019 vide which BSNL VRS-2019 notification published, all payments made under the scheme are subject to deduction of TAX at source as per the provisions of income tax act 1961.
5. TDS on Leave encashment for all employees including those who retired under VRS-2019 is calculated as per exhibit P12(in WPC) only, which the petitioner interpret that the corporate office guidelines vide this letter itself is ultra vires and void.
6. Regarding Exemption of leave encashment that *it may be noted that as per the notification of Ministry of Finance dated 24 May 2023, income tax limit for Leave Encashment is 25,00,000/-and it is clear from the notification that order has no retrospective effect.*
7. The issue about the refund of Income tax deduction effected from leave encashment and Ex Gratia, raised in this writ petition, according to the petitioners, the amount of Rs.5,00,000/- ceiling has been allowed to remain static without effecting any revision for over a period of 30 years ...etc. In this regard petitioners had sent representation to the Ministry of Finance requesting to enhance the tax exemption limit on ex gratia received by them on their VRS. These representations are at Ext. P21 & P 22. In these representations, their request is to revise the tax exemption limit


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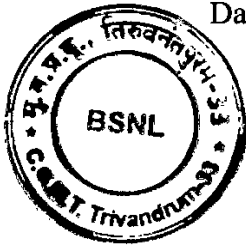
under sec 10(10)C of income tax Act 1961 by enhancing the limit to Rs.50,00,000/- w.e.f 1.1.2017 , the date on which the 3rd PRC of PSUs came into effect ...etc.

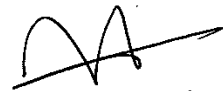
With respect to this, it is submitted that it is not in the domain of BSNL. More significantly, in the VRS scheme, it is categorically mentioned that the employees retired under the scheme shall be entitled to encashment of enhancement of EL/HPL as per existing rules of BSNL. Existing rules of that time (2019-20) in respect of leave encashment is the Ext.P12 guidelines of BSNL Corporate office. Once the petitioners had accepted the terms and conditions of the VRS scheme, they cannot challenge it now, that too after a lapse of 3 and a half years.

In view of the above facts the writ petition has to be dismissed with cost.

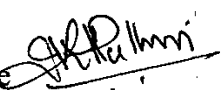
8. What is stated above in paragraphs 1 to 7 are true to my knowledge, stated on information and belief derived from records and I believe the same to be true.

Dated this the 20th day of August, 2024.




Deponent

Solemnly affirmed and signed before me by the deponent who is personally known to me on this the 20th day of August, 2024 in my office at Ernakulam.


Advocate