



IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE HARISANKAR V. MENON

FRIDAY, THE 6TH DAY OF FEBRUARY 2026 / 17TH MAGHA, 1947

WP(C) NO. 16360 OF 2023

PETITIONERS:

- 1 SANCHAR NIGAM PENSIONERS' WELFARE ASSOCIATION(SNPWA),
AGED 50 YEARS
ITS REGISTRATION NO. BEING SOCIETY/ WEST/ 2021/8902564
DATED 23.06.21 ISSUED BY THE REGISTRAR OF SOCIETIES,
GOVERNMENT OF NATIONAL CAPITAL TERRITORY (NCT) OF
DELHI, REGISTERED OFFICE AT B-11/1&2, DOUBLE STOREY,
RAMESH NAGAR, NEW DELHI-110015, REPRESENTED BY ITS
PRESIDENT, K.D SEBASTIAN, RESIDING AT 32/1788 B (MNRA
12), KODUVATHARA ROAD, NEAR NH BYPASS FLYOVER,
PALARIVATTOM, EDAPPALLY P.O., COCHIN, PIN - 682024
- 2 SABU A.N.,
AGED 58 YEARS
SUB DIVISIONAL ENGINEER (RETIRED), BHARAT SANCHAR NIGAM
LIMITED, CIRCLE TELECOM STORE DEPOT, GANDHINAGER,
ERNAKULAM, KOCHI PIN 682020, RESIDING AT SREE,
KATADINAGER, UDAYAMPEROOR, TRIPUNITHURA, ERNAKULAM, PIN
- 682307
- 3 KAMALASANAN P.K.,
AGED 60 YEARS
DIVISIONAL ENGINEER (RETIRED), BHARAT SANCHAR NIGAM
LIMITED, MALAPPURAM-676505, RESIDING AT PALAPARAMBIL,
ORIENT PARK. POPULAR ROAD, VADUTHALA P.O, ERNAKULAM,
PIN - 682023

BY ADVS.
SRI.H.VISHNUDAS
SRI.O.V.RADHAKRISHNAN (SR.)
SHRI.GEORGE VARGHESE
SMT.S.SOORYA GAYATHRY

RESPONDENTS:

- 1 UNION OF INDIA,
REPRESENTED BY ITS SECRETARY, MINISTRY OF HOME AFFAIRS,
NORTH BLOCK, CABINET SECRETARIAT, RAISINA HILL, NEW
DELHI -110001
- 2 SECRETARY, MINISTRY OF FINANCE,
JEEVAN DEEP BUILDING, SANSAD MARG, NEW DELHI, PIN -
110001
- 3 CHAIRMAN, CENTRAL BOARD OF DIRECT TAXES (CBDT),
NORTH BLOCK, SECRETARIAT BUILDING, NEW DELHI, PIN -
110001
- 4 PRINCIPAL CHIEF COMMISSIONER OF INCOME TAX,
INCOME TAX DEPARTMENT, GOVERNMENT OF INDIA, 356, C R
BUILDING - I P ESTATE, NEW DELHI, PIN - 110002
- 5 CHIEF COMMISSIONER OF INCOME TAX,
INCOME TAX DEPARTMENT, GOVERNMENT OF INDIA, CENTRAL
REVENUE BUILDING, I.S PRESS ROAD, COCHIN, PIN - 682018
- 6 BHARAT SANCHAR NIGAM LIMITED, REPRESENTED BY ITS
CHAIRMAN AND MANAGING DIRECTOR (CMD),
BSNL BHAVAN, NEW DELHI, PIN - 110001
- 7 CHIEF GENERAL MANAGER TELECOM, BHARAT SANCHAR NIGAM
LIMITED,
KERALA CIRCLE, DOOR SANCHAR BHAVAN, THIRUVANTHAPURAM,
PIN - 695033

BY ADVS.

SHRI.S.VAIDYANATHAN, CGC
SRI.MATHEWS K.PHILIP, SC, BSNL
SHRI.JOSE JOSEPH

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
06.02.2026, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

**“C.R.”****JUDGMENT**

The petitioners have filed the captioned writ petition seeking to challenge Ext.P11 “Corporate Office Letter” issued by the 6th respondent herein through its DGM (Taxation). The 1st petitioner is stated to be an association of retired employees of BSNL, and the 2nd and 3rd petitioners are stated to be the members of the 1st petitioner – association. The 2nd and 3rd petitioners originally were employed with the Department of Telecommunication (DoT), and upon the creation of the 6th respondent company, they opted for continuing with the company, and on the basis of the option so exercised, they were continuing with the 6th respondent herein. That being so, the 6th respondent came out with a Voluntary Retirement Scheme – 2019, as evidenced by Ext.P6, and attracted by the Scheme, the 2nd and 3rd petitioners decided to avail the benefits of the Scheme. It is subsequently that the petitioners came to notice that the 6th respondent, while calculating the retirement benefits of the 2nd and 3rd petitioners, deducted various amounts representing tax allegedly due on “leave encashment amounts”,



under the Income Tax Act, 1961 (hereinafter referred to as the 'Act'), essentially relying on the communication at Ext.P11. It is in such circumstances that petitioners have approached this Court seeking to challenge the communication at Ext.P11. The 2nd and 3rd petitioners have also sought for appropriate directions to the Income Tax Department to refund the amounts deducted by the BSNL and remitted with the department, since, according to them, the leave encashment amount referred to above is not assessable to tax under the Act, on account of which, there was no requirement for even carrying out the deduction of tax.

2. I have heard Sri. O.V. Radhakrishnan, the learned Senior Counsel for the petitioners, Sri. Mathews K. Philip, the learned Standing Counsel for BSNL, as well as Sri. Jose Joseph, the learned Standing Counsel for the Income Tax Department.

3. Sri. O.V. Radhakrishnan, the learned Senior Counsel for the petitioners, would contend that the communication at Ext.P11 has been issued, in total disregard to the statutory provisions. According to him, the BSNL did not have any authority to issue such an executive instruction, which



ultimately would modify the statutory provisions. He would further add that under the provisions of Section 10 (10AA) of the Act, the petitioners were not liable to tax with reference to the mandate under clause (i) thereunder. Therefore, according to him, the communication at Ext.P11 issued with reference to the mandate under clause (ii) was without any justification. He would further add that the provisions of Section 10 (10AA) of the Act requires to be read along with the relevant provisions of the Central Civil Services (Pension) Rules, 1972 (hereinafter referred to as 'CCS Rules'), on account of which ultimately, it is the provisions under clause (i) of Section 10 (10AA), that would apply as regards the petitioners.

4. Sri. Mathews K. Philip, the learned Standing Counsel for BSNL would seek to rely on the counter affidavit filed, to contend that insofar as the 2nd and 3rd petitioners have retired from the service of BSNL and not as Central Government employees, it is only the provisions of clause (ii) of Section 10 (10AA) of the Act, that would apply and therefore, the mandate under Ext.P11 was perfectly in order.

5. Sri. Jose Joseph, the learned Standing Counsel for the



Income Tax Department, would contend that the provisions of Section 10 (10AA) (i) of the Act has to be read as it is, in which event, it is only in a situation where an employee is retiring from the service of the State/Central, they can be roped in under the afore provision. Therefore, he would add that since admittedly, the 2nd and 3rd petitioners have been absorbed in the service of the 6th respondent – a company, it is the provisions of clause (ii) that would apply upon their retirement.

6. I have considered the rival submissions as well as the connected records.

7. The issue arising for consideration, as noticed earlier, is as to whether the respondents are justified in taking the stand that while disbursing the leave encashment amounts, they can deduct the tax at source with reference to the provisions of Section 192 of the Act. It is to be noticed that the provisions of Section 192 of the Act provide for the deduction of tax with reference to the payment of salaries. Pension, for the purpose of deduction of tax, is with reference to the mandate under Section 192 of the Act. The provisions of Section 192 of the Act would apply only in a situation where a particular amount paid



to an employee is chargeable under the head "salaries". Therefore, ultimately, it is only in a situation where the particular payment is chargeable under the provisions of the Act, the provisions of Section 192 of the Act will apply. It is with reference to the aforementioned position that the issue arising for consideration in this case requires to be analysed.

8. As already noticed, the learned Senior Counsel for the petitioners seeks to rely on the provisions of Section 10(10AA) of the Act, which would read as under:

"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-

xxx xxx xxx

(10AA)(i) any payment received by an employee of the Central Government or a State Government as the cash equivalent of the leave salary in respect of the period of earned leave at his credit at the time of his retirement whether on superannuation or otherwise;

(ii) any payment of the nature referred to in sub-clause (i) received by an employee, other than an employee of the Central Government or a State Government, in respect of so much of the period of earned leave at his credit at the time of his retirement whether on superannuation or otherwise as does not



exceed ten months, calculated on the basis of the average salary drawn by the employee during the period of ten months immediately preceding his retirement whether on superannuation or otherwise, subject to such limit as the Central Government may, by notification in the Official Gazette, specify in this behalf having regard to the limit applicable in this behalf to the employees of that Government:

Provided that where any such payments are received by an employee from more than one employer in the same previous year, the aggregate amount exempt from income-tax under this sub-clause shall not exceed the limit so specified:

Provided further that where any such payment or payments was or were received in any one or more earlier previous years also and the whole or any part of the amount of such payment or payments was or were not included in the total income of the assessee of such previous year or years, the amount exempt from income-tax under this sub-clause shall not exceed the limit so specified, as reduced by the amount or, as the case may be, the aggregate amount not included in the total income of any such previous year or years:"

(underlining supplied)

9. Sub-clause (i) of Section 10(10AA) of the Act provides for the benefits with reference to the payments received by an



employee of the "Central Government or a State Government" as a cash equivalent of the leave salary. A reading of clause (i) would show that whatever amount received towards the leave salary is entitled to the benefits extended thereunder. As against this, clause (ii) provides for a maximum eligibility for the cash equivalent, which does not exceed ten months. Clause (ii) would apply with respect to cases which are not covered by clause (i). The case of the BSNL is to the effect that the retirement of the petitioner Nos.2 and 3 would fall under clause (ii). As against this, the petitioners contend that their case falls under clause (i).

10. The fact that the 2nd and 3rd petitioners were admittedly employed with the DoT originally is not in dispute. It is only subsequently, upon the formation of the 6th respondent company, that the 2nd and 3rd petitioners have opted to continue with the company. The circumstances, like the afore, are visualised with reference to the provisions of Rule 37A of CCS Rules. Rule 37A of the CCS Rules specifically provides for the conditions for payment of pension on absorption consequent upon conversion of a Government Department into a Public Sector Undertaking (PSU). In the case at hand, as noticed earlier, the DoT has been converted



as the 6th respondent herein, and therefore, there is no dispute that the provisions of Rule 37A of the CCS Rules would apply. With respect to afore, the provisions thereunder also requires to be noticed. For ease of reference, the relevant provisions of Rule 37A of the CCS Rules are extracted as under:

"37-A. Conditions for payment of pension on absorption consequent upon conversion of a Government Department into a Public Sector Undertaking

(1) On conversion of a department of the Central Government into a Public Sector Undertaking, all Government servants of that Department shall be transferred *en masse* to that Public Sector Undertaking, on terms of foreign service without any deputation allowance till such time as they get absorbed in the said undertaking, and such transferred Government servants shall be absorbed in the Public Sector Undertaking with effect from such date as may be notified by the Government.

xxx xxx xxx

(4) The permanent absorption of the Government servants as employees of the Public Sector Undertaking shall take effect from the date on which their options are accepted by the Government and on and from the date of such acceptance, such employees shall cease to be Government servants and



they shall be deemed to have retired from Government service.

xxx xxx xxx

(8) A permanent Government servant who has been absorbed as an employee of a Public Sector Undertaking and his family shall be eligible for pensionary benefits (including commutation of pension, gratuity, family pension or extraordinary pension), on the basis of combined service rendered by the employee in the Government and in the Public Sector Undertaking in accordance with the formula for calculation of such pensionary benefits as may be in force at the time of his retirement from the Public Sector Undertaking or his death or at his option, to receive benefits for the service rendered under the Central Government in accordance with the orders issued by the Central Government.

EXPLANATION.- The amount of pension or family pension of the absorbed employee on retirement from Public Sector Undertaking or on death shall be calculated in the same way as calculated in the case of a Central Government servant, retiring or dying, on the same day.

xxx xxx xxx

(22) Nothing contained in sub-rules (13) to (21) shall apply in the case of conversion of the Departments of Telecom Services and Telecom Operations into Bharat Sanchar Nigam Limited and Mahanagar Telephone Nigam Limited in which case



the pensionary benefits including family pension shall be paid by the Government.

(23) For the purposes of payment of pensionary benefits including family pension referred to in sub-rule (22), the Government shall specify the arrangements and manner including the rate of pensionary contributions to be made by Bharat Sanchar Nigam Limited and Mahanagar Telephone Nigam Limited to the Government and the manner in which financial liabilities on this account shall be met.

(24) The arrangements under sub-rule (23) shall be applicable to the existing pensioners and to the employees who are deemed to have retired from the Government service for absorption in Bharat Sanchar Nigam Limited and Mahanagar Telephone Nigam Limited and shall not apply to the employees directly recruited by the Bharat Sanchar Nigam Limited for whom they shall devise their own pension schemes and make arrangements for funding and disbursing the pensionary benefits.”

11. The provisions of sub-rule (4) of Rule 37 A of the CCS Rules specifically states that upon absorption of the Government servants as the employees of the PSU, that shall take effect from the date on which their options are accepted by the Government, and from the date of such acceptance, those employees shall cease to be Government servants and they shall be deemed to have



retired from the Government service. Sri. Jose Joseph, the learned Standing Counsel for the Income Tax Department, seeks to rely on the aforementioned provisions to contend that on the date on which the 2nd and 3rd petitioners joined the service of the 6th respondent, they had already retired from the service of the Government.

12. At the first blush, the afore contention raised by Sri. Jose Joseph appears to be attractive. But in my opinion, the provisions of Rule 37A (4) of the CCS Rules is not to be read in isolation. It also requires to be noticed that the provisions of sub-rule (8) of Rule 37A of the CCS Rules, further provides that with respect to cases of the afore nature, when a Government servant, who joins or get absorbed in a PSU, ultimately, retires, the calculation of the pension /family pension under the Rules has to be carried out in the manner prescribed thereunder. It is also to be further noticed that the explanation makes the position clear that in the aforementioned circumstances, the pension requires to be calculated in the same way as would be applicable in the case of "Central Government Servant retiring or dying, on the same day". Therefore, when the provisions of sub-rule (4) and sub-rule (8) to Rule 37A of the CCS Rules are read together, there cannot be any



dispute about the fact that the 2nd and 3rd petitioners, upon their retirement, also requires to be extended pension that will be applicable for a Central Government Servant. It is also to be further seen that sub-rule (22) of Rule 37A of the CCS Rules provides that the pensionary benefits, including family pension in the aforementioned circumstances, requires to be paid by the Government. The provisions of sub-rule (23) of Rule 37A of the CCS Rules further make it clear that the cases of the employees of DoT who joined BSNL are to be seen as a specific class and they are to be extended pension in the manner prescribed under sub-rule (23). Furthermore, sub-rule (24) of Rule 37A of the CCS Rules makes the position more clear by providing that in the cases of employees who joined directly with BSNL, they will not be entitled for the afore benefits.

13. In view of the above position, I am of the opinion that the petitioners service and the retirement have to be taken as a case of retirement from the service of the Central Government.

14. The submission made by Sri. Jose Joseph to the effect that the provisions of Section 10 (10AA) (i) of the Act has to be read as they appear requires to be analysed now. True, as



suggested by Sri. Jose Joseph, on a literal reading of the provisions of clause (i), it is only in a situation where a person retires from the service of the Central Government, the benefits provided thereunder can be applied. But it is to be noticed that the framers of the statute did not visualise a situation like the present one, and that is why similar provisions as in CCS Rules, taking care of such aspects, have not been introduced in the provisions at that point of time. A Division Bench of this Court in ***State of Kerala v. Falcon Infrastructure Limited [2025 (4) KHC 375]*** has already found that provisions under different enactments should be read harmoniously so that provisions of one statute are not invoked to defeat the rights/privileges extended under another Statute. I have also followed the said decision in ***Manojkumar P.P v. Secretary, Thalassery Municipality [2025 (6) KHC 371]***.

15. Therefore, insofar as the provisions of the CCS Rules referred to above specifically treat the cases of the employees of the BSNL, who joined the service of the BSNL from the DoT in a particular manner, I am of the opinion that the interpretation provided in Ext.P11 cannot be accepted.

16. This Court also notices the judgment of the Apex Court



in **Senior Supdt. of Post Office and Others v. Izhar Hussain [AIR 1989 SC 2262]**, wherein it has been categorically laid down that executive instructions cannot modify or amend the statutory provisions.

Therefore, I am of the opinion that the petitioners are entitled to succeed. Hence, this writ petition would stand allowed, quashing Ext.P11. If any amounts have been deducted from the payments, the petitioners are free to claim the benefits of Section 10 (10AA) (i) of the Act with reference to the respective returns filed by them.

Sd/-

HARISANKAR V. MENON

JUDGE

AP

APPENDIX OF WP(C) NO. 16360 OF 2023

PETITIONER EXHIBITS

- Exhibit P 1 TRUE COPY OF THE MEMO NO.E-5/RECTT/TAS/119 AT ERNAKULUM DATED 20-04-1989 OF THE SENIOR SUPDT. TELEGRAPH TRAFFIC ERNAKULUM DIVISION, COCHIN.
- Exhibit P 2 TRUE COPY OF THE MEMO NO. STA/2-3M/99-00/POSTING DATED 21-07-2000
- Exhibit P 3 TRUE COPY OF THE RELEVANT PAGES OF MEMO NO. ST.III/3-25(R)/COMP/2008/VI DATED 29-11-2008 OF THE ASST. GENERAL MANAGER (ADMN), BSNL, THIRUVANANTHAPURAM.
- Exhibit P 4 TRUE COPY OF THE MEMO NO. E.210/WL/151 DATED 5-1-1987 OF THE DIVISIONAL ENGINEER TELEGRAPHS, ERNAKULAM.
- Exhibit P 5 TRUE EXTRACT COPY OF THE ORDER NO. 412-03/2017-PERS.I DATED JUNE 29, 2018 OF THE DEPUTY MANAGER-III (PERS.I) BSNL CORPORATE OFFICE, NEW DELHI.
- Exhibit P 6 TRUE COPY OF THE LETTER NO.1-15/2019-PAT(BSNL) DATED 04-11-2019 DEPUTY GENERAL MANAGER (ESTT.I) ALONG WITH ANNEXURE I - VOLUNTARY RETIREMENT SCHEME FOR BSNL EMPLOYEES.
- Exhibit P7 TRUE COPY OF THE RELIEVING ORDER NO. VRS2019/DIR/ 2301/R/ 0000002786 ACCEPTING THE OPTION FOR VOLUNTARY RETIREMENT OF THE 2ND PETITIONER.
- Exhibit P 8 TRUE COPY OF THE RELIEVING ORDER NO.MRX/ADMN/2019/VRS/3 DATED 27-01-2019 ACCEPTING THE OPTION FOR VOLUNTARY RETIREMENT OF THE 3RD PETITIONER.
- Exhibit P 9 TRUE COPY OF THE ORDER NO.27-1/KERALA/1175/2003 DATED 29/17-12-2003 ISSUED TO THE 2ND PETITIONER BY THE DIRECTOR (ESTT-KERALA), DEPARTMENT OF TELECOM
- Exhibit P 10 TRUE COPY OF THE ORDER NO.27-1/KERALA/1201/2003 DATED 30-12-2003 ISSUED TO THE 3RD PETITIONER BY THE DIRECTOR (ESTT-KERALA), DEPARTMENT OF TELECOM
- Exhibit P 11 TRUE COPY OF THE BSNL CORPORATE OFFICE LETTER NO.1001-04/2011-12/TAXATION/BSNL/LE/196 DATED 04.05.2012.
- Exhibit P 12 TRUE EXTRACT COPY OF THE PENSION PAYMENT ORDER DATED 10-03-2020 ISSUED BY THE DEPARTMENT OF TELECOMMUNICATIONS, GOVERNMENT OF INDIA,



OFFICE OF THE COMPTROLLER OF COMMUNICATIONS
ACCOUNTS, KERALA, THIRUVANANTHAPURAM ISSUED
TO THE 2ND PETITIONER

Exhibit P 13 TRUE EXTRACT COPY OF THE PENSION PAYMENT ORDER
DATED 04-06-2020 ISSUED BY THE DEPARTMENT OF
TELECOMMUNICATIONS, GOVERNMENT OF INDIA,
OFFICE OF THE COMPTROLLER OF COMMUNICATIONS
ACCOUNTS, KERALA, THIRUVANANTHAPURAM. TO THE
3RD PETITIONER.

Exhibit P 14 TRUE COPY OF THE PAY SLIP FOR THE MONTH OF
MARCH, 2020 ISSUED TO THE 2ND PETITIONER

Exhibit P 14(a) TRUE COPY OF THE PAY SLIP FOR THE MONTH OF
JUNE 2020 ISSUED TO THE 2ND PETITIONER

Exhibit P 14(b) TRUE COPY OF THE PAY SLIP FOR THE MONTH OF
JULY, 2020 ISSUED TO THE 2ND PETITIONER

Exhibit P 14(c) TRUE COPY OF THE PAY SLIP FOR THE MONTH OF
MARCH 2021 ISSUED TO THE 2ND PETITIONER

Exhibit P 15(a) TRUE COPY OF THE INCOME TAX RETURN FOR THE
ASSESSMENT YEAR 2021-22 FILED BY THE 2ND
PETITIONER

AS PER THE ORDER DATED 29.01.2025 IN IA
NO.2/2026 EXT.P16 (PAYSLIP FOR MONTH OF MARCH
2021) IS SUBSTITUTED WITH PAYSLIP FOR THE
MONTH OF MARCH2020, WHICH IS PLACED AT PAGE
96a

Exhibit P 16 TRUE COPY OF THE PAY SLIP FOR THE MONTH OF
MARCH, 2020 ISSUED TO THE 3RD PETITIONER

Exhibit P 16(a) TRUE COPY OF THE PAY SLIP FOR THE MONTH OF
JUNE, 2020 ISSUED TO THE 3RD PETITIONER

Exhibit P 16(b) TRUE COPY OF THE PAY SLIP FOR THE MONTH OF
JULY, 2020 ISSUED TO THE 3RD PETITIONER

Exhibit P 16(c) TRUE COPY OF THE PAY SLIP FOR THE MONTH OF
MARCH, 2021 ISSUED TO THE 3RD PETITIONER

Exhibit 17 TRUE COPY OF THE INCOME TAX RETURN FOR THE
ASSESSMENT YEAR 2020-21 FILED BY THE 3RD
PETITIONER

Exhibit P 17(a) TRUE COPY OF THE INCOME TAX RETURN FOR THE
ASSESSMENT YEAR 2021-22 FILED BY THE 3RD
PETITIONER