

Bharat Petroleum Corporation Ltd. Ex-Employees Association

Vs

Bharat Petroleum Corporation Ltd. and Another

Civil Appeal No. 5922 of 1990

(M.N. Venkatachaliah, R.M. Sahai JJ)

26.11.1990

ORDER

1. This petition for special leave arises out of the order dated August 23, 1990 of the High Court of Bombay made in C.A. No. 2635 of 1990 in Writ Petition No. 1568 of 1985. The matter before the High Court arose out of a request made by the appellants, who are about 235 former employees of the Bharat Petroleum Corporation Limited, (Corporation) for a clarification of the terms of the settlement dated February 14, 1989 entered into by them with the Corporation; in terms of which the W.P. No. 757 of 1984 before the High Court came to be disposed of.

2. Pursuant to the settlement, a lump sum of Rs 50,000 became payable by the Corporation to each of the appellants in lieu and final settlement of certain disputes which culminated in an award respecting their claims for HRA, gratuity, duty allowances, interest etc. In respect of these payments, the Corporation made certain deductions of income tax at source as enjoined by Section 192 of the Income Tax Act, 1961, on the premise that the payment constituted "Salary". In order to enable them to obtain appropriate and permissible refunds from the income tax department, the appellants sought certificates from the Corporation indicating the breakdown of this lump sum figure into its various components such as HRA, gratuity, duty allowance, interest, etc. The Corporation declined to do that on the ground that the sum so paid was, and intended to be, a lump sum payment and no break-up was either intended or was possible. It would appear that owing, presumably, to the absence of such certification of the breakdown of the lump sum into its components the appellants found it difficult to obtain refunds of the tax deducted at source or of the appropriate and permissible portions thereof.

3. Thereupon the appellants moved the High Court for a clarification of the High Court's order dated February 14, 1989. The High Court made an order in terms following :

"The Commissioner of Income Tax should proceed to finalise the assessments by accepting the mode of payment as prescribed in clause (e) of the minutes."

It would appear that even this clarification did not enure to the benefit of the appellants. They, therefore, sought further clarification from the High Court by which they wanted an indication of the basis for a breakdown of the lump sum which the High Court declined to do. Appellants have come up here.

4. We have heard Mrs Indira Jaising, learned senior counsel for the employees and Sri G.B. Pai, learned senior counsel for the Corporation. Special leave is granted.

5. On a consideration of the matter, it appears to us that it might be necessary to make a clarification of the basis and terms of the settlement which would not expose the appellants to any unjust tax burden having regard to the true intendment, content and terms of the settlement. It is here relevant to notice and refer to two clauses of the settlement. They are clauses (c) and (e). They provide :

"(c) The old clerical employees who have retired from the Corporation prior to January 1, 1989 will be paid as one time lump sum compensation in lieu of awarded amounts of HRA, gratuity and duty allowances (so far as Divisional Offices are concerned) amounting to Rs 50,000 within four weeks from today.

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(e) The aforementioned one time lump sum amounts of Rs 25,000 and Rs 50,000 respectively are in settlement of all outstanding due (including interest) in respect of items specified above covering a period of Assessment Years 1974-75 up to 1989-90."

A reading of these two clauses would indicate that the lump sum of Rs 50,000 payable to each of these employees was not in its entirety referable to "salary". Quite obviously some part of it was gratuity, some part HRA and some part "duty allowances", etc. though exact break-up of these components was not specified. The Corporation has, perhaps, its own difficulty in quantifying the 'gratuity' component as, according to it, such quantification might raise other similar claims and disputes. But the intendment of the settlement, even on its express terms, makes it clear that the assessing authorities must, on the basis of the appropriate criteria relevant to the matter, decide what part of the lump sum of Rs 50,000 was referable to 'gratuity'. The part apportionable to 'gratuity' would be exempt from tax up to the permissible statutory limits. The entire sum cannot be treated as arrears of salary alone. The difficulty of the exercise involved in the apportionment does not dispense with the need to do it in order that justice is done to the appellants who were not in the higher echelons of service and any unjust incidence of tax would work hardship. The rest of it would, in any event, have to be spread over the period between 1974-75 up to 1989-90 (or such earlier date on which the particular employee retired).

6. It is appropriate, therefore, that the income tax authorities do ascertain the component of gratuity as best as they can and give the benefit to the appellants so that their hardship is mitigated. The Corporation, even if, by itself, is unable to certify such break-up, should extend its cooperation otherwise to the appellants in working out a just arrangement in regard to the matter. It is not necessary in these proceedings to have the income tax authorities impleaded as we expect the authorities to act in aid of this order and do justice to the appellants. The appeal is disposed of accordingly.

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