

Bharat Petroleum Corpn. Ltd. Ex-Employees Association and others

Vs

Chairman & Managing Director, Bharat Petroleum Corpn. Ltd.

Writ Petn. (Civil) No. 1049 of 1989

(Kuldip Singh, S. C. Agrawal JJ)

17.08.1993

JUDGEMENT

S. C. AGRAWAL, J. :—

1. The petitioners in this writ petition filed under Art. 32 of the Constitution are retired employees of Bharat Petroleum Corporation Ltd., an undertaking of the Government of India. Originally they were in the employment of Burmah Shell Oil Storage & Distributing Company of India Ltd. (for short 'Burmah Shell'). In Burmah Shell there was a voluntary pension scheme wherein the employees on retirement were entitled to a prescribed percentage of their basic pay as pension: The pension was paid out of the non-contributory pension fund governed by a trust created in the year 1950. The said scheme was effective from January 1, 1947. Under the Regulations governing the payment of pension, provision was made for commutation of a part of the pension at the time of retirement by payment of a lump sum amount and making of a proportionate deduction from the monthly pension paid to the employee for repayment of the said amount. Burmah Shell was nationalised and taken over by the Government of India by the Burmah Shell (Acquisition of Undertakings in India) Act, 1976. Subsequently the shares of Burmah Shell Refineries (India) Ltd. were also acquired by the Government of India and the activities of Burmah Shell as well as Burmah Shell Refineries (India) Ltd. were merged to constitute the Bharat Petroleum Corporation Ltd. By a trust deed dated December 31, 1976, the original trust deed dated December 21, 1950, as modified from time to time, was supplemented and the said trust deed governs the payment of pension to the retired employees of the Burmah Shell. The petitioners are clerical employees of Burmah Shell who retired from service more than 10 years back. They are receiving pension and at the time of retirement they obtained payment of a lump sum amount by way of commutation of a part of the pension and a proportionate deduction is being made from pension amount payable to them for repayment of the said lump sum amount. In this writ petition the petitioners have prayed for restoration of the full pension after 10.1 / 2 years from the date of retirement to those employees who retired prior to April 1, 1985 and after 9.1 / 3 years from the date of retirement to those employees who retired after April 1, 1985 :

2. The matter of restoration of deduction in monthly pension of the employees of the Central Government who obtained lump sum payment by way of commutation of a part of the pension was considered by this Court in "Common Cause" A Registered Society v. Union of India, (1987)1 SCR 497 :(AIR 1987 SC 210), wherein this Court has taken note of the decision of the Government of India, contained in the communication dated March 20, 1976 sent to the Attorney General of India, that the recovery from pension payable every month towards commuted value of pension would stop on the completion of 15 years from the date of retirement on super annuation or on the pensioner completing the age of 70 years, whichever is later. Under the directions of this Court, the

said benefit was extended with effect from April 1, 1986 so far as civilian employees are concerned. After the said decision of this Court, Writ Petition No. 590 of 1987 was filed by the Bharat Petroleum (Erstwhile Burmah Shell) Management Staff Pensioners wherein a similar extension of the benefit of restoration of commuted value of pension after the expiry of the period of 15 years from the date of commutation was sought. Another relief that was sought in the said writ petition was regarding escalation in the amount of pension keeping in view the loss of purchasing power of the rupee and the general rise in the cost of living. The said writ petition was decided by the judgment dated May 11, 1988 reported as Bharat Petroleum (Erstwhile Burmah Shell) Management Staff Pensioners v. Bharat Petroleum Corporation Ltd., (1988) 3 SCC 32: (AIR 1988 SC 1407). During the course of hearing of the said writ petition, the petitioners requested that the question of restoration of the commuted value of the pension may not be adjudicated and the said matter was, therefore, not examined by the Court and the question about the escalation of pension amount alone was dealt with. Keeping in view the fact that in the sister concern owned by the Central Government, namely, Hindustan Petroleum Corporation, increase in pension had been granted to the employees, this Court directed that the petitioners in the said writ petition, viz., the management staff of the Burmah Shell, would be entitled to a hike in the pension admissible at the same rate as is being given by the Hindustan Petroleum Corporation: The said hike in pension was made effective from May 1, 1988. The contention urged on behalf of the Bharat Petroleum Corporation that if the escalation admitted by Hindustan Petroleum Corporation is accepted as the basis for escalation in Burmah Shell a burden would arise which the respondent-company cannot discharge was not accepted.

3. It appears that another writ petition (W.P. No. 215 of 1989) was filed by the Bharat Petroleum Management Staff Pensioners wherein the restoration of full pension was sought upon the expiry of 12.1/2 years from date of retirement in case of those who retired prior to April 1985 and after 11.1 / 3 years to those who retired after April 1, 1985. The said writ petition was dismissed by this Court by judgment dated March 13, 1990 reported as Bharat Petroleum Management Staff Pensioners v. Bharat Petroleum Corporation Ltd., (1990) 2 SCC 356 : (AIR 1990 SC 1228). This Court was of the view that the matter has been considered in the earlier writ petition (Writ Petition No. 590/ 87) wherein similar relief was prayed and that the order passed by this Court in that case was as recent as May 11, 1988 and after such a short time lag and in the absence of any substantial change in the position, it was not desirable to entertain the claim for restoration of commuted pension.

4. Shri Pai, learned counsel appearing for the respondent-Corporation, has submitted that the matter stands concluded by the aforementioned decisions of this Court and in view of the said decisions, the petitioners are not entitled to any relief in the matter of restoration of commuted pension. Ms. Indira Jaising, learned counsel appearing for the petitioners, has, on the other hand, submitted that the petitioners in this writ petition belong to the clerical wing whereas the earlier Writ Petition No. 590/87 and Writ Petition No. 215/ 89 had been filed on behalf of the management staff and moreover the matter of restoration of commuted portion of the pension has not been dealt with on merits in these cases. Ms. Jaising has also urged that there is no reason why retired employees of Burmah Shell should not be given the benefit of restoration of the commuted portion of their pension on the same principle on which restoration of the commuted portion of pension has been allowed to Central Government employees.

We have examined the two judgments of this Court referred to above in the writ petitions filed by the management staff. The subsequent judgement in W.P. No. 215/89 is based on the earlier decision in W.P. No. 590/87. As indicated earlier, although the relief of restoration of commuted portion of the pension was sought in W.P. No. 590/ 87 the said matter was not examined by the

Court in view of the statement made by the learned counsel during the course of hearing of the said writ petition that the question of restoration of commuted value of the pension may not be adjudicated by that Bench. This Court has, however, taken note of the statement made by Shri Pai on behalf of the respondent that as and when Hindustan Petroleum Corporation revised its scheme and gives the relief of restoration of the commuted portion of the pension, the petitioners would be entitled to the same benefit. This would indicate that this Court has not rejected the claim of the petitioners for restoration of the commuted portion of the pension.

5. In *Common Cause v. Union of India* (AIR 1987 SC 210) (supra), this Court has observed that 15 years is a reasonable period after which the commuted portion of the pension could, be restored. In arriving at this conclusion, this Court adopted the principle of 'years of purchase' and observed that an addition of two years to the period necessary for the recovery on the basis of years of purchase justifies the adoption of the 15 years rule and that appeared to be equitable. We find no reason why the same principle should not apply to the petitioners who were originally employed with *Burmah Shell* and subsequently became the employees of the respondent-Corporation which is an undertaking of the Government of India and "State" within the meaning of Article 12 of the Constitution (See: *Som Prakash Rekhi v. Union of India*, (1981)2 SCR 111: (AIR 1981 SC 212)). The equitable principle underlying the rule for restoration of the commuted portion of the pension after the expiry of the 15 years from the date of retirement which is applicable to the Central Government can equally be applied to the employees of the respondent-Corporation.

6. Shri Pai has urged that since pension is paid out of a special pension fund governed by a trust and in view of the limited resources in the said fund, it would not be possible for the respondent-Corporation to bear the additional burden on account of the restoration of the commuted portion of the pension. Similar contention was urged on behalf of the respondent-Corporation in Writ Petition No. 590/ 87 with regard to escalation of pension. Rejecting the said contention, this Court has observed (1988 (3) SCC 32: AIR 1988 SC 1407):

"Nothing acceptable has been placed before us from where support can be received for the argument of Mr. Pai, learned counsel for respondent No.1, that if the escalation admitted by Messrs Hindustan Petroleum Corporation is accepted as the basis for escalation in *Burmah Shell* there would be injustice or a burden would arise which the respondent-Corporation cannot discharge. The respondent-Company has an obligation to pay from its earnings into the fund and merely because the existing fund is not adequate to bear the additional liability the claim which is otherwise justified cannot be rejected. As we have already pointed out, the Company's current funds are available to supplement the pension fund." (p. 35) (of SCC) : (at pp. 1408-09 of AIR)

These observations would also apply in the matter of restoration of the commuted portion of the pension.

7. The writ petition is, therefore, allowed and it is directed that the benefit of the restoration of the commuted portion of the pension after the expiry of a period of 15 years from the date of commutation be extended to the petitioners who were on the clerical staff of the *Burmah Shell* prior to its acquisition by the State and who were taken over by the respondent-Corporation. The benefit of this restoration would be effective from April 1, 1993. No orders as to costs. Petition allowed.

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