

O.N.G.C. Ltd.

Vs

G. S. Chugani and Another

Civil Appeal No. 3635 of 1998

(Sujata V. Manohar, G. B. Pattanaik JJ)

31.07.1998

ORDER

1. Special leave granted.

2. The respondent was a Legal Advisor with the appellant-Corporation. He retired from service on 30-6-1991. While the respondent was in service, a draft superannuity benefit scheme for the employees of the appellant was approved by the Executive Committee with some modifications and subject to the approval of the appropriate authorities including the Commissioner of Income Tax on 29-4-1990. The draft scheme was circulated under the title "Self-Contributory Post-Retirement & Death-in-Service Benefit Scheme, 1990". Thereafter, on account of representations received from certain associations of employees, the draft scheme underwent further modifications. The Scheme was submitted to the Government for approval on 14-6-1990. Thereafter, there was some further modification to the Scheme and the modified scheme was again submitted to the Government for approval on 15-11-1990. There were several subsequent modifications to the draft scheme. Ultimately, on 18-9-1991, the Central Government approved the Scheme as ultimately modified.

3. The respondent filed a writ petition in the High Court claiming benefit of the draft scheme as circulated on 29-4-1990. In the affidavit-in-reply which was filed by the appellants in the writ petition, it was pointed out that the draft scheme which was circulated on 29-4-1990 had undergone several modifications before finalisation and the Scheme became final only after the approval of the Government on 18-9-1991. The Scheme so approved was the only scheme in operation. The appellants were agreeable to give to the respondent benefits under the Scheme as approved by the Central Government. Thereupon minutes of the order were drawn up and an order was passed on 2-12-1991 in terms of the minutes. The order, however, referred to pension being granted to the respondent in terms of the Scheme of 29-4-1990.

4. Since the pensionary benefit granted to the respondent was in accordance with the Scheme as finally approved and not as per the draft scheme, the respondent filed a second writ petition which was granted. However, on review at the instance of the appellants the learned Single Judge who had decided the second writ petition came to the conclusion that a scheme which was never brought into force could not have been directed to be implemented and, therefore, directed the parties to obtain a review of the earlier order of 2-12-1991 in terms of the minutes which had been obtained from the Division Bench in the first writ petition. The Division Bench thereupon by its order dated 9-11-1995 directed the learned Single Judge hearing the review petition in the subsequent writ petition to decide this question. The learned Single Judge, therefore, in review in the second writ petition, by his order of 15-12-1995 modified his earlier order and directed that the respondent will be entitled to pensionary benefits as per the Scheme as modified and finally approved by the Central

Government by its order dated 18-9-199

5. The respondent by his letter of 15-12-1995 addressed to the appellants accepted the order of the Single Judge in the said review petition and requested the appellants to finalise his benefits accordingly, and after adjustment of amounts as mentioned in that letter. The respondent, however, thereafter preferred an appeal before the Division Bench of the High Court against the said judgment and order in review dated 15-12-1995.

6. The Division Bench has allowed the appeal only on the basis that the learned Judge could not have reviewed his decision in the way he did. In the review application in the first writ petition, the Division Bench had expressly allowed the question of identity of the Scheme to be implemented to be decided by the learned Judge who was hearing the review application in the second writ petition. The learned Judge rightly came to the conclusion that a scheme which was never in existence and was only a draft scheme, should not be and could not have been directed to be implemented for the benefit of a single individual. The Division Bench in appeal ought not to have interfered with the conclusion so arrived at.

7. The learned Single Judge has rightly held that the pensionary benefits of the respondent can only be governed by the final scheme as approved by the Central Government. Under Section 15 of the Oil & Natural Gas Commission Act, 1959, the Oil & Natural Gas Commission has been given all such powers as may be necessary or expedient for the purpose of carrying out its functions under the Act. Provided that it shall obtain the previous approval of the Government, inter alia, in the implementation of any scheme or proposal which will involve a capital expenditure exceeding 30 lakhs of rupees. Under Section 32 of the said Act the Commission may, with the previous approval of the Central Government, by notification in the Official Gazette, make regulations, not inconsistent with this Act and the Rules made thereunder, for enabling it to discharge its functions under this Act. Such regulations may, inter alia, provide for terms and conditions of appointment and service of its employees. The appellants have rightly pointed out that they required previous approval of the Central Government before implementing the Scheme. Their draft scheme which was circulated was also subject to approval by the appropriate authorities. The approval of the Central Government was granted only to the Scheme as subsequently modified. Therefore, the final scheme adopted and brought into force by the appellants was the Scheme so modified and approved by the Central Government.

8. In its letter of approval dated 18-9-1991, the Ministry of Petroleum and Natural Gas has directed that the Scheme as finally approved be made effective from 1-4-1990 subject to the condition that all employees who retired between 1-4-1990 and 1-4-1991 will be excluded from the Scheme. The respondent who retired on 30-6-1991 has, therefore, been given the benefit of that Scheme.

9. We, therefore, allow the appeal, set aside the impugned order of the High Court and restore the order of the learned Single Judge in Review Petition No. 19 of 1995 dated 15-12-1995. There will, however, be no order as to costs.