Bharat Petroleum Corporation Ltd. and Another

Vs

Balakrishnan Nambiar (Dead) by Lrs.

Civil Appeal No. 2462 of 1998

(Sujata V. Manohar, M. Jagannadha Rao JJ)

20.08.1999

JUDGMENT

SUJATA V. MANOHAR, J. –

1. The respondent retired from the Burmah Shell Oil Storage and Distribution Company Ltd. on superannuation with effect from 1-2-1975. At the date of his retirement he was in the managerial cadre of the Company.

2. On his retirement, the respondent became entitled to a pension of Rs. 1317 per month. He was entitled to commute 1/3rd of this pension amounting to Rs 439, which he did. As a result, the respondent received on his retirement a monthly pension of Rs. 878.

3. In January 1976 the Burmah Shell (Acquisition of Undertakings in India) Act, 1976 was passed pursuant to which the right, title and interest and liabilities of Burmah Shell in relation to its undertakings in India came to be vested in the appellant Company. Thereafter the appellant Company voluntarily increased the pension payable to the retired employees. As of 1-4-1993, the pension of the respondent had been voluntarily increased by the appellant Company from Rs 878 to Rs 1278 per month.

4. On 30-6-1993, the appellant Company decided voluntarily to give to its retired employees an increase of 56.03% on their existing pension. In the meanwhile, in 1989 the Bharat Petroleum Corporation Ex-Employees Association representing the pensioners in the clerical staff category, had filed a writ petition in this Court claiming that such of the pensioners who had commuted a portion of their pension and who had lived for more than 15 years after the commutation, should be given the benefit of restoration of commuted pension. This relief was granted by this Court by its order dated 17-8-1993. The decision is reported as Bharat Petroleum Corpn. Ltd. Ex-Employees Assn. v. Chairman and Managing Director, Bharat Petroleum Corpn. Ltd. (1993 Supp ()4) SCC 37 : 1994 SCC (L&S) 20 : (1994) 26 ATC 83) Although this judgment dealt with the clerical cadre, the appellant Corporation decided to extend the benefit of this judgment also to the managerial cadre. As a result, the respondent was given a monthly pension calculated as follows :

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As on 1-7-1993 Pension Rs 1278 + Rs 720 (56.03% of Rs 1278) + Rs 439 (commuted pension which was restored in view of the above decision of this Court). Total Rs 1717

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The pension was calculated in this manner for all the employees.

5. The respondent, however, contends that the increase of 56.03% which was given with effect from 1-7-1993, should be given on the pension of Rs 1278 + the commuted pension of Rs 439. As a result, the 56.03% increase would come to Rs 964 and the respondent should get a total pension of Rs 2681 per month.

6. The High Court has granted the relief claimed by the respondent. Hence the present appeal has been filed by the appellant.

7. The appellants have submitted that the decision to give a voluntary increase of 56.03% on the existing pension was taken on 30-6-1993, much prior to the decision of this Court in Bharat Petroleum Corpn. Ltd. Ex-Employees Assn. v. Chairman and Managing Director, Bharat Petroleum Corpn. Ltd. (1993 Supp (4) SCC 37 : 1994 SCC (L&S) 20 : (1994) 26 ATC 83) which was delivered only on 17-8-1993. When the appellants took the decision to give an increase of 56.03%, they had in mind only the existing pension which was being paid to its employees. The financial burden on the appellants was calculated on the basis of the increase of 56.03% being given on the then existing pension. The decision was purely voluntary and there was no legal obligation to give such an increase. Since the decision was to calculate the percentage of increase only on the then existing pension, they have correctly implemented this decision by calculating 56.03% increase on the existing pension. Thereafter, they have also added to this figure the commuted value of the pension as per the subsequent decision of this Court. Therefore, the respondent does not have any right to claim an increase of 56.03% on the existing pension plus the commuted value of pension, since this was not the decision taken by the appellant Company.

8. We find much force in this contention. Clearly, the increase which was given by the appellant Company was a purely voluntary increase. The percentage of increase was on the then existing pension on the date when the decision was taken. On the date of the decision, the existing pension was the pension as commuted. It is true that under the decision of this Court set out earlier, the benefit of restoration of the commuted portion of the pension has been given with effect from 1-4-1993. However, the decision which was taken prior to the judgment of this Court was to give the increase at the rate of 56.03% on the then existing pension. It was not contemplated at that time that the commuted portion of the pension would also be retrospectively added to the pension by virtue of a judgment which was to be delivered in future. Since the increase was purely voluntary, the decision is required to be implemented in the manner in which it was contemplated to be implemented.

9. In the writ petition, the respondent made a bare averment to the effect that not taking into account the commuted value of the pension for the purpose of calculating the increase would violate Article 14 of the Constitution. There is, however, no factual foundation laid either in the petition or thereafter which would support the plea under Article 14. The pension of all persons has been calculated in the manner in which it was contemplated under the decision of 30-6-1993. The appellants have pointed out that the entire clerical cadre as also the managerial cadre have accepted the calculation so made and it is only the respondent who is objecting to such a calculation. The appellants have also drawn our attention to an old decision of this Court in State of Bombay v. F. N. Balsara (AIR 1951 SC 318 : 1951 SCR 682, 708-09) (SCR at pp. 708-09) where this Court has observed, inter alia, that under Article 14 a reasonable classification is permissible. In the present

case, if at all any distinction is made between different categories of pensioners, the pensioners, who have commuted their pension and who have subsequently got the benefit of the judgment of this Court (supra) can be legitimately considered as a separate class. Reliance was also placed by the appellants on the decision in Ameerunnissa Begum v. Mahboob Begum (AIR 1953 SC 91 : 1953 SCR 404, 414) (SCR at p. 414). In the present case, in the absence of any factual basis for the plea, it is not possible to consider the application of Article 14 to the present case.

10. The appellants have also submitted that calculating the increase in pension in the manner in which the respondent claims, would impose a substantial additional financial burden on it, which was not contemplated when the decision to grant an increase was taken on 30-6-1993. Since the decision of the appellant Company was purely voluntary, it was legitimate for the appellants to take into consideration the financial implications of their proposed decision. Learned counsel for the respondent, however, has placed reliance on a judgment of this Court in Gopal Krishna Sharma v. State of Rajasthan (1993 Supp (2) SCC 375, 385 : 1993 SCC (L&S) 544 : (1993) 24 ATC 371) (SCC at p. 385) where this Court has observed that when the court grants to the employees what is due to them in law, financial considerations cannot be a ground for denying the benefit legally due to them. In the present case, since the increase was purely voluntary, the financial burden was an important factor which went into the decision-making process and it cannot, therefore, be ignored. Undoubtedly, as submitted by the respondent, pension is not a bounty. Nevertheless, any increase voluntarily given has to be calculated in the manner contemplated under the decision.

11. In the premises the appeal is allowed and the impugned judgment and order of the High Court is set aside. There will, however, be no order as to costs.