

(SUPREME COURT OF INDIA)

Pensioners' Assc., Ex-Assam Oil Officers and Others

Vs

Union of India and Others

HON'BLE JUSTICE BRIJESH KUMAR AND HON'BLE JUSTICE ARUN KUMAR

17/02/2004

Writ Petition (C) No. 42 of 2003

JUDGMENT

: BRIJESH KUMAR, J

Brijesh Kumar, J.:-This Petition has been filed under Article 32 of the Constitution of India by the pensioners all of whom are said to be over 75 years of age and had been serving the Assam Oil Company Limited, having retired on or before 13, 1981. These petitioners claim benefit of the revised pension scheme as made admissible to the retirees of Indian Oil Corporation without any distinction or cut-of date of retirement.

2. The Assam Oil Company Ltd. as well as the Burmah Oil Company Limited were nationalised and taken over by the Government of India by virtue of the Burmah Oil Company (Acquisition of Shares of Oil India Ltd. and of the undertakings in India of Assam Oil Company Limited and the Burmah Oil Co. (India Trading Ltd.) Act, 1981 (hereinafter to be referred to as 'the Act'). As per provisions of Section 5 of the Act, with effect from the appointed date, namely, 14.10.1981 the right, title and interest of the said companies in relation to their undertakings in India were to be transferred and vested in the Central Government. Under sub-section (1) of Section 6 of the Act, the undertakings of the companies would be deemed to include all assets, rights, powers, books of accounts, records etc. including the borrowings, liabilities including the liability for the payment of taxes, if any, and for the payment of any pension and other pensionary benefits to me persons employed in relation to its undertakings in India etc. By virtue of Section 9 of the Act the undertakings vested in the Central Government, instead of continuing to be so, could later be vested in one or more government companies. There is no dispute about the fact that the Assam Oil Company Limited after having been taken over the vesting in the Central Government, later vested

in the Indian Oil Corporation Limited (Assam Oil Division) vide Notification dated 13.10.1981, All the employees of the specified company employed immediately before the appointed date became officers and the employee? of the Central Government/successor government company. Sub-section (1) of Section 11 relevant for the purposes reads as under:

"11.(1) Every whole-time officer or other employee of a specified company who was, immediately before the appointed day, employed by that company in connection with its undertaking in India, and every whole-time officer or other employee of a specified company who was, immediately before the appointed day, temporarily holding any assignment outside India shall, on the appointed day, become an officer or other employee, as the case may be, of the Central Government or the concerned Government company (hereinafter referred to as the successor Government company) in which the right, title and interest of the specified company in relation to its undertakings in India have vested under this Act and shall hold office or service under the Central Government or the successor Government company, as the rights to pension, gratuity and other matters as would have been admissible to him if there had been no such vesting and all continue to do so unless and until his employment under the Central Government or the successor Government company is duly terminated or until his remuneration and conditions of service are duly altered by the Central Government or the successor Government company.

(2) xxx xxx

(3) xxx xxx

(4) xxx xxx" *

We find that in regard to those employees who were in receipt of pension or other pensionary benefits immediately before the appointed date, a provision has been made under Section 12 of the Act, which reads as under:

"12.(1) Where a provident, superannuation, welfare or other fund has been established by a specified company for the benefit of the persons employed by it in connection with its undertakings in India, or for the benefit of such persons and persons employed by Oil India, the money relatable to the employees-

a) whose services are transferred by or under this Act to the Central Government or the successor Government Company, or as the case may be, continued with Oil India, or

b)

c) who are in receipt of pension or other pensionary benefits immediately before the appointed day shall, out of the moneys standing, on that day, to the credit of such provident, superannuation, welfare or other fund, stand transferred to and vested in, the Central Government or the successor Government Company, or Oil India, as the case may be, free from any trust that may have been continued by the specified company in respect thereof.

(2) The moneys which stand transferred, under sub-section (1) to the Central Government or the successor government company or Oil India shall be dealt with by the Central Government or that

company, or Oil India, as the case may be, in such manner as may be prescribed.

3) The successor Government company or Oil India, as the case may be, shall, as soon as may be after the appointed day, constitute, in respect of the moneys and other assets which are transferred to, and vested in it under this section, one or more trusts have objects as similar to the objects of the existing trust as in the circumstances may be practicable; so, however, that the rights and interests of the beneficiaries of the trust referred to in sub-section (1) are not, in any way, prejudiced or diminished.

4) Where all the moneys and other assets belonging to an existing trust are transferred to, and vested in the Central Government, or the successor Government company or Oil India under this section, the trustees of such trust shall, as from the date of such vesting, stand discharged from the trust except as respects things done or omitted to be done before the date of such vesting." *

The case of the petitioners is that by virtue of provisions contained in Section 12 quoted above, the existing fund for the purposes of pension of the retired employees as it stood on 13.10.1981 out of which petitioners were paid pensionary benefits also stood transferred to the successor company, namely, the Indian Oil Corporation (Assam Oil Division) (Central Government). It is further the case of the petitioners that by virtue of the above said provision, they have been receiving their pensionary benefits from the Indian Oil Corporation (AOD). It was in 1995 that the Indian Oil Corporation promulgated a formula for revision of pension in respect of Indian Oil Corporation (AID). The said notification relating to staff pension fund is dated 10.3.1995. However, the said scheme was made applicable to those employees who had retired after 1.12.1994. The said cut-off date was however, challenged by some of the retired employees of the Indian Oil Corporation (AOD) objecting to the cut-off date. This Court in the said petition filed under Article 32 of the Constitution set aside the cut-off date deleting the words "retiring from December, 1994 onwards" from the Notification. The said decision is reported in 2001 LILR 392 : 2001 (8) SCC(p) 71, Subrata Sen & Ors. vs. Union of India & Ors. but the benefit of the revised pension scheme was not made admissible to the petitioners namely, the retirees prior to 14.10.1981 i.e. before the date of nationalisation of the Assam Oil Company Ltd. The case of the petitioners is that the petitioners were covered under the Assam Oil Staff Pension Fund which was reconstituted by virtue of Section 12(3) of the Nationalisation Act and after nationalisation they have been getting pension under the said scheme, therefore, they cannot be denied the benefit of revision of pension which took place in 1995. As pensioners of the erstwhile Assam Oil Company Ltd. their relationship continues as such with the successor company by virtue of clause (4) sub-section (1) of Section 12 of the Act like that of the existing staff of the Assam Oil Company Ltd. with the successor company after nationalisation.

3. The respondents have disputed the claim of the petitioners. Their case is that the retirees prior to 14.10.1981 were not the employees transferred to the successor company by virtue of Section 11 of the Nationalisation Act. It does not cover the employees who had already retired before the taking over of the Assam Oil Company Ltd. That being the position the Notification date 10.3.1995 modifying the scheme of 1983 revising the pensionary benefits does not apply to the petitioners. It is further averred in the counter affidavit that liability of pension and pensionary benefits of the retired employees, is taken care of, as provided under Section 6(1) of the Nationalisation Act. It is also denied that any fund was established by the Assam Oil Company Ltd. or was transferred under

Section 12(1) of the Nationalisation Act to the Central Government/Indian Oil Corporation for pensionary benefits of the employees retired prior to 14.10.1981. The Scheme of 1973 out of which petitioners had been deriving the pensionary benefits, was for purchase of annuities from the life insurance corporation for such employees before their retirement. Paragraph 19 of the counter affidavit is quoted below:

"19. That the contents of para 5(xiv) are wrong and denied. Under the Assam Oil Company Pension Fund Rules and Scheme 1973, the member of the scheme was being purchased annuities on or before, his retirement and it was from the said annuity purchased in his name that he continues to derive pension for his life. There is nothing to the credit of the person under the fund after annuities were purchased in his name. That being so no money is transferred under Section 12(1) of the Act in so far as the person who stood retired on or before the appointed date like the petitioners. The petitioners are getting pension from LIC by virtue of their being beneficiaries of the annuities purchased in their name and not from the funds which, stood transferred from Assam Oil Company to IOC. It is wrong to suggest that the petitioners are entitled to any additional benefits as have been granted to the retired employees who had retired on after 14.10.1981 as per the judgment of this Hon'ble Court." *

The respondents submit that the Indian Oil Corporation (AOD) Staff Pension Funds Scheme, 1983 was not meant for the retirees who had retired earlier as employees of the Assam Oil Company Ltd., viz. those who had never become the employees of the Indian Oil Corporation. Therefore, they were not the beneficiaries of the Scheme of 1963. The Annuity based benefit as in vogue prior to the taking over of the company, under the scheme of 1973, it continues and the petitioners are entitled to pensionary benefits based on annuity purchased on their behalf. It is further sought to be impressed that it was a kind of an arrangement between those employees in whose names annuities were purchased and the LIC. There was no pensionary fund or any other monies for the benefit of the retired employees covered under the Scheme of 1973. Thus the employees who had already retired before the appointed day could have no link with the successor company which had taken over after the retirement of the petitioners. In so far as the employees who were in service of the Assam Oil Company Ltd. on the appointed day of taking over, a new Scheme was promulgated for them in the year 1983 creating a trust for the pensionary benefit of such employees. The retirees of pre-appointed day are neither covered nor have any concern with the scheme of 1983 and that being the position there is no occasion for them to take any benefit of the revision of pension in 1995.

4. We feel that the above argument as advanced on behalf of the respondents needs to be closely examined and in connection therewith we may refer to sub-section (1) of Section 6 of the Act which reads as under:-

"6(1) Subject to the provisions of sub-section (2), the undertakings of each specified company shall be deemed to include all assets, rights, powers, authorities and privileges and all property, movable and immovable, including any designs, trade marks, trade names, style of labeling, station decor or any distinctive colour schemes, cash balances, reserve funds, book debts, investments and all other rights and interests in, or arising out of, such property as were, immediately before the appointed company, in relation to its undertakings in India, and all books of account, registers, records and all other documents of whatever nature relating thereto and shall also be deemed to include all borrowings, liabilities (including the liability for the payment of taxes, if any, and for the payment of any pension and other pensionary benefits to the persons employed in relation to its undertakings

in India) and obligations of whatever kind of the specified company in relation to its undertakings in India;" *

A reading of the above provision makes it clear that the Central Government or the successor company cannot claim to have totally snapped all its connections with the retired employees of the oil companies on the company being taken over, as it would be clear from the later part of Section 6(1) that the liabilities of the Central Government or the successor company would include all borrowings, liability of payment of taxes if any, and for the payment of any pension and other pensionary benefits to the persons employed in relation to its undertakings in India namely, the specified company i.e. the Assam Oil Company Limited. Thus, the liability of pension or pensionary benefits of the employees of the specified companies (Assam Oil Company Limited) cannot be shed off in the manner tried to be done and canvassed by the respondents before us. The liabilities in relation to pension and pensionary benefits of the employees of the specified companies (Assam Oil Company Limited) are also very much taken over by the Central Government, or the successor company. We have already quoted Section 12 of the Act. To lay emphasis on sub-section (3) of Section 12 we would like to highlight that the Central Government or successor company after the appointed day shall constitute one or more trusts in respect of the monies and other assets which are transferred or vested in government of the successor company having objects similar to the existing trust without prejudice to the existing rights of the beneficiaries of the trust.

5. The Scheme of 1973 was framed by the Assam Oil Company Ltd. creating a trust and a deed thereof for the pensionary benefits of its employees. Such existing rights as on the appointed day could not be prejudiced or diminished in view of sub-section (3) of Section 12 of the Act. The Central Government or the successor company was supposed to frame a scheme having objects similar to those, which were already existing under a similar scheme. This makes us to examine the provisions of the two schemes namely, the one which was framed in the year 1973 for the employees of Assam Oil Company Ltd. and the other which has been framed by the successor company in the year 1983 which can well be referable to sub-sections (3) and (4) of Section 12 of the Act. A copy of the Scheme of 1973 has been placed on record as Annexure P-2. It is titled as the Assam Oil Staff Pension Fund. The Rules of the fund are known as the Rules of the Assam Oil Staff Pension Fund of Assam Oil Company and associated companies (approved by the Commissioner of Income Tax (Central), Calcutta, with effect from August 1, 1973. It prescribes as to who would be the members of the scheme and that pension would be payable on completion of certain given period of service. The calculation of the amount of pension as was payable had also been prescribed under the rules. There is a provision for pre-mature pension as well. A part of the pension is also commutable in discretion of the trustees subject to provisions of Rule 90 of the Income Tax Rules, 1962. At the time of retirement, if the employee has some dependents, the trustees, may, at their discretion, reduce his pension to pay the same to the dependents. There are detailed rules meeting different kinds of eventualities, e.g. in case of the death of the retiree or his widow and dependents so on and so forth. The trustees on the request of the employer have power to withhold or discontinue the pension or annuity or a part thereof or deprive him of the benefits if the member is dismissed for fraud or dishonesty or misconduct. It is further provided that no person shall be entitled to transfer or assign by way of security or otherwise his interest in the fund and such a transfer or assignment made will not be valid. As provided under Rule 9 in certain eventualities money payable to the member may be forfeited to the fund. The trustees are to deduct at source any tax payable or any pension granted pursuant to the rules. Rule 13 further provided that no member

shall have any right against trustees or any assets of the fund except the right to the payment of the pension in accordance with the rules. The "fund" has been defined as

"means Assam Oil Staff Pension Fund hereinbefore referred to and includes the moneys, policies of insurance or other property which may be received by the Trustees pursuant to these presents and the assets for the time being representing the same and the income thereof." *

6. It is, therefore, clear from the scheme of 1973 that it has been framed by the then employers for the pensionary benefits of its employees. All details about entitlement, dis-entitlement, mode and manner of payment and different claims in different circumstances are all provided for in the rules framed under the Scheme. Pension could be reduced or stopped in terms of the scheme. In certain eventualities the amount could even be forfeited to the fund. The manner in which the pension is to be calculated is also detailed in the rules. Therefore, to say that the pensionary benefit was an arrangement between the employee and the LIC, may not be correct. The erstwhile employer, namely the Assam Oil Company Ltd., did not act merely as a mediator in facilitating purchase of annuity for the employees. The scheme provided the manner in which the pensionary fund was to be raised and the manner in which it was to be disbursed and paid as pension. It provided all other details by which the objective to provide pensionary benefits to its employees was sought to be achieved. By no means it can be said that it was a matter exclusively between the employee and the LIC and nothing beyond it.

7 We may now examine the Scheme of 1983, which has been prepared and promulgated by the successor company for the employees who were working in the Assam Oil Company Ltd. and were taken over as employees of the successor company on the appointed day. It is titled as the Indian Oil Corporation Limited (Assam Oil Division) Staff Pension Fund Trust Deed. The deed in its preface avers as follows:

"Whereas under section 12(1) of the Burmah Oil Company (Acquisition of shares of Oil India and of the undertakings in India of Assam Oil Company Limited and the Burmah Oil Company (India Trading) Limited Act, 1981 (41 of 1981) (hereinafter referred to as the "Acquisition Act"), the monies standing to the credit of the Assam Oil Staff Pension Fund (hereinafter referred to as the "Existing Fund"), a fund established for the benefit of the employees of the Assam Oil Company Limited, in respect of such employees whose services were transferred to the Corporation (hereinafter referred to as the "Transferred Employees") and who were in receipt of pension or other pensionary benefits, stand transferred to and vested in the Corporation with effect from 14th October, 1981 (hereinafter referred to as "the Appointed Day"), free from any trust constituted by the Assam Oil Company Limited in respect thereof. AND WHEREAS the Existing Fund is an approved superannuation fund within the meaning of section 2(6) of the Income-tax Act, 1961; AND WHEREAS under section 12(3) of the Acquisition Act, the Company is required to establish a separate Pension Fund (hereinafter referred to as "the Fund", in respect of the monies transferred to and vested in the Corporation as above, having objects as similar to the objects of the Existing Fund, so as to provide pension benefits to those Transferred Employees and other employees of the Corporation who shall be admitted as members of the Fund (hereinafter referred to as the "Members")." *

(Emphasis

supplied

by

us)

It is thus clear from what has been quoted above that the Pension Scheme 1983, has been framed and promulgated in pursuance of sub-section (3) of Section 12 of the Act and it is in respect of employees who were working and taken over as employees of the successor company with effect from the appointed day as well as those who were in receipt of pension or other pensionary benefits. It further mentions that the existing fund stood transferred and vested in Corporation with effect from 14th October, 1981 free from any trust constituted by the Assam Oil Company Limited in respect thereof. The fund as existed on the appointed day stood transferred and vested in the Central Government/successor company. We have already seen that the fund, which was existing on that date, as constituted under the Scheme of 1973 was for the pensionary benefits of employees in service or retired before 14.10.1981. As per requirement of law under Section 12(3) of the Act, the objects of the 1983 Scheme are similar to the objects of the existing fund namely, the fund o 1973. The pension fund 1983 has been made effective from 14.10.1981. The fund then existing as constituted by the Assam Oil Company Limited stood transferred and vested in the successor company on the own showing of the respondents. It is totally incorrect to say that there existed no fund for pensionary benefits of the petitioners viz. retired employees of the Assam Oil Company Limited or that it did not vest in the successor company. The Trust Deed of 1983 does not talk of any partial transfer and vesting of the existing fund. further examination of the scheme shows that the working of the staff pension Fund Rules of Indian Oil Corporation Limited (AOD) is similar to the scheme of 1973 and the rules framed there under. The term 'transferred employee' has been defined under rule 2(i) providing that the word 'transferred employee' means an employee of the Assam Oil Company Limited who was on or before the appointed day a member of the existing fund and in respect of whom the money is lying to the credit in existing fund stood transferred or vested in the Corporation under Section 12(1) of the Act. The petitioners were undoubtedly the members of the existing fund namely, the fund created under the Scheme of 1973 for pensionary benefits of the employees of the company and which fund was existing on the appointed day. Therefore, under the definition of transferred employee the pensioners receiving pensionary benefit from the existing fund as on 14.10.1981 shall also be treated as transferred employees for the purposes of the Scheme of 1983 and further in the definition of the term 'member' an employee of the Corporation includes a transferred employee. A perusal of the further details of the working of the Scheme of 1983 also shows that it functions in the same manner as did the 1973 Scheme i.e. by purchasing annuity from the LIC. Almost all the conditions are similar to that of the earlier scheme. The petitioners who have been the pensioner members of the 1973 Scheme on the appointed day cannot be deprived of the pensionary benefits of the corporation being very much the members of the scheme of 1983. That being the position the benefit of revised pension scheme of 1995 could not be denied to them.

8. In regard to the decision rendered by this Court in the case of Subrata Sen (supra) it has been vehemently urged on behalf of respondents that the said decision will have no bearing on the merits of the present case since in that case the controversy was raised by those who were working on the appointed day as employees of the Assam Oil Company Limited and were taken over as the employees of the Indian Oil Corporation but had retired thereafter before December, 1994. That is to say the benefit of the revised formula of computation of the pension under the 1995 scheme was available to only those who had retired after December 1994. It is submitted that no question relating to retirees prior to 14.10.1981 was involved in that decision. Therefore, deletion of the part of the scheme providing for those who were "retired from December, 1994 onwards" will cover only those employees who may have retired after the appointed day and before December 1994. In

the first place it may be indicated that the argument as advanced makes no difference on the merits as the embargo placed on availability of pensionary benefits according to the revised formula on the basis of the date of retirement has been removed. That is to say broadly the benefit of the revised formula would be available to those who had retired even prior to December 1994. In absence of any such provision providing for application of the revised formula to those who "retired from December, 1994 onwards", the 1995 formula would be applicable to all members of the Scheme of 1983 irrespective of date of their retirement. It is the case of the respondents also that the revised formula of 1995 would be applicable to those who are members of the Scheme of 1983. We have already found that pensioners under the 1973 scheme would also become members of the 1983 scheme as per the provisions of the scheme of 1983 itself. We also notice that the submissions have been advanced on behalf of the respondents against the facts averred and narration made in the pension scheme of 1983. The entitlement of the petitioners for pensionary benefits according to the revised formula is in consonance with the facts and the provisions of Section 6 (1) and Section 12 (3) and (4) of the Act and the Pension Scheme of 1983. Any other interpretation would be against the facts and the meaning and the spirit of these provisions.

9. Respondents have placed reliance upon a decision reported in 1998 (8) SCC(p) 30, V.Kasturi vs. M.D. State Bank of India & Anr., to contend that an amendment enhancing the pension or providing for a new formula of computation of pension would not be applicable to the earlier retirees unless such provision is expressly made applicable to them. We, however, find that the above noted decision would be of no help to the respondents' case since what has been held is that if a person is already getting pensionary benefits and an amendment is effected for upward increase in pension, such a retiree would be entitled for the enhanced benefit and the same could not be denied for the reason that he had already retired before the change came into effect. Certainly those who were not entitled for pension at all, could not be included in the fold of the pensioners to whom enhancement of pensionary benefit would be applicable. That is to say such benefit would be available to existing pensioners and not to those who were not entitled to pension at all nor they were getting the same. Besides the above, we have already found that the petitioners have been members of the scheme of pension of 1973 framed by their erstwhile employer Assam Oil Company Ltd. under which they had been getting their pension according to the rules framed to administer the pension fund. That is to say they were the members of the existing pension fund at the time of taking over of the undertaking by the central government. Pension fund also stood transferred and vested in the central government/successor company as would be evident from the averments made in the scheme framed in the year 1983. We have already discussed in detail how the pensioners of the specified company also became members of the scheme of 1983, which was made effective from 14.10.1981. There is no denial of the fact that the petitioners were still being paid their pensionary benefits. In such facts and circumstances the petitioners would be entitled for the benefit of the new formula introduced in 1995, rather that benefit could not be denied to the petitioners in the light of the decision in the case of Kasturi (supra). Even according to the respondents the benefit of the new formula was available to those who were members of the 1983 scheme. Reliance placed on another decision of this Court reported in 6 SCC(p) 328, Hariram Gupta Vs. State of U.P. would also not be applicable to the facts of the case in hand. It is not the case of the respondents that the petitioners are to be deprived of the benefit of the new formula in view of any cut-off date excluding them or due to financial constraints of the like reasons. On the other hand, the case of the respondents is that the petitioners had no concern whatsoever with the successor company since they had retired prior to the appointed date; there was no pension fund for them nor the successor company had to do anything with their pensionary benefits since it was a case where annuities were purchased in their name from the LIC, therefore, it was a matter between the petitioners and the LIC. In view of the provisions of law,

which have been discussed in the earlier part of the judgment as well as factual position, the stand taken by the respondents is not sustainable. The petitioners were beneficiaries of the 1973 pension scheme and had also become the members of the 1983 scheme, which made them entitled for the benefit of formula for revision of pension made effective from 1995.

10. In the result, we allow the writ petition and direct the respondents to make available the pensionary benefits to the petitioners in accordance with the formula of 1995 for revised pension. The arrears as may be found due shall be cleared within a period of four months from today.

Writ

Petition

allowed.