

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **WP(C) No.14189/2005**

% **Date of decision : 11th .02.2008**

Sh.K.K.Kakkar PETITIONER
Through: Mr.Ashok Aggarwal, Advocate.

Versus

Oil & Natural Gas Corpn. Ltd & Anr RESPONDENTS
Through: Mr.Subhash Oberoi, Advocate.

CORAM :-

HON'BLE MR. JUSTICE ANIL KUMAR

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| 1. Whether reporters of Local papers may be allowed to see the judgment? | YES |
| 2. To be referred to the reporter or not? | NO |
| 3. Whether the judgment should be reported in the Digest? | NO |

ANIL KUMAR, J.

1. The petitioner, a prematurely retired employee of respondent No.1 has sought the benefit granted to the employees under the ex-gratia scheme of 2001 and ex-gratia scheme, 2003 also known as "Agrani Samman" and for quashing of letters dated 29th June, 2005, 4th May, 2005 and 10th June, 2005 and clarificatory circular dated 26th March, 2002 clarifying that benefit of ex-gratia is not to be given in cases of premature retirement even if all the requisite eligibility

conditions are otherwise fulfilled by the pre 15th October, 1959 employee.

2. Brief relevant facts for adjudication of this petition under Article 226 of the Constitution of India are that petitioner joined the services of respondent No.1 as Junior Surveyor on 25th September, 1957 and was subsequently promoted from time to time.

3. Earlier respondent No.1 was a Directorate under the Ministry of NRSR and later on it functioned under the Ministry of Steel and Mines and Fuel. Respondent No.1 became a statutory body under ONGC Act 43 of 1959 and it functioned as a statutory body till 1993 when it was transformed into a public limited company functioning under the Ministry of Petroleum and Natural Gas and owned by Government of India. In the circumstances it was contended that ONGC since its inception has been and continues to be an instrumentality and agency of Central Government and as such as “State” within the meaning of Article 12 of the Constitution of India. According to the petitioner before transfer to ONGC, the petitioner was holding a pensionary post under the Government of India.

4. The petitioner was promoted from time to time and became Assistant Director. Petitioner became medically unfit with no opportunity of gainfully employed in the alternative situation. The petitioner, therefore, was given premature retirement in recognition of his good services in the post. The terms and conditions of premature retirement were communicated to the petitioner by notice reference No.NZR/EBG/(P&A)/8(29)(Part File)/88/9224 dated 4th August, 1998 which are as under:-

“1. He will be entitled to a lump-sum one time benefit at 70% of the salary which he would be getting immediately preceding the date of his retirement. Salary for the purpose will be pay + Dearness Allowance, the terms pay being inclusive of pay, personal pay, or any other emoluments which may be specially classified as pay by the Commission, to any benefit of payments under work man Compensation Act, will be reduced by the amount of pay/payable from premature retirement benefit.

2. He will be entitled to all benefit that he would have otherwise enjoyed at the time of superannuation and in accordance with the rules and regulations regulating payments thereof.

3. Benefit entitled to him under statutory provision/acts/laws on the date of pre-mature retirement shall not be abridged save adjustment stated in Para (1) above.

4. He will not be eligible for re-employment in the Commission.”

5. Since the petitioner would have attained the age of superannuation with effect from 31st July, 1997, therefore, he was

extended the benefit of premature retirement with effect from the afternoon of 3rd November, 1988 till 31st July, 1997.

6. According to the petitioner, respondent No.1 formulated ex-gratia scheme 2001 for pre 15th October, 1959 employees. The said scheme was applicable to those employees who had joined ONGC prior to 15th October, 1959 and who had superannuated from the service of ONGC after rendering service of minimum 20 years. Under the scheme an amount of Rs.1,000/- per month from 1st November, 1997 together with dearness allowance at the rate admissible by ONGC from time to time was payable as ex-gratia.

7. Petitioner contended that he is an ex-employee who had joined ONGC prior to 15th October, 1959 and he rendered a continuous minimum service of 20 years without break on or before his superannuation (premature retirement) and he was not dismissed/removed/terminated or had not resigned from the service of ONGC, therefore, he is entitled for ex-gratia payment admissible at the rate of Rs.1000/- per month together with dearness allowance with effect from 1st November, 1997.

8. The scheme for grant of ex-gratia to pre 15th October, 1959 employees was stipulated in the notice reference No.103(92)/00-EP dated 20th November, 2001. As certain queries/issues had been raised by different offices/work centers regarding grant of ex-gratia to pre 15th October, 1959 employees/spouses of pre 15th October, 1959 employees, therefore, a clarificatory notice was issued bearing No.103(92)/00-EP dated 26th March, 2002. The said clarificatory circular/notice also dealt with the cases of those employees who had taken premature retirement but who fulfilled other requisite conditions for grant of ex-gratia scheme. The relevant Clause 2.12 of the clarificatory order is as under:-

S.No.	ISSUE	CLARIFICATION
2.12	Whether a pre 15.10.1959 employee who has separated from the service of ONGC on account of pre-mature retirement but fulfills the requisite conditions of ex-gratia scheme is eligible to the benefit of ex-gratia.	The benefit of ex-gratia cannot be given in pre-mature retirement cases even if all the requisite eligibility conditions of ex-gratia are otherwise fulfilled by the pre 15.10.1959 employee.

9. The respondent No.1 thereafter revised the scheme of ex-gratia for pre 15th October, 1959 employees and another scheme for post 14th October, 1959 employees was issued by a circular

No.103(92)/02-EP dated 7th January, 2003. Under the said scheme the petitioner claimed that he was entitled for an ex-gratia amount of Rs.3000/- plus dearness allowance admissible from time to time as he was E0-E3 level of employee. Under the revised scheme which is also known as “Agrani Samman”, those employees who had joined ONGC, respondent No.1 prior to 15th October, 1959 and superannuated/voluntarily retired from the service of ONGC or died after rendering a minimum of 10 years service before such a separation were eligible. It was also stipulated that eligible ex-employee would continue to get “Agrani Samman” so long as such an employee will be alive after 1st January, 2003. Clause 3.9 of the said Agrani Samman scheme, however, categorically and specifically stipulated that all those ex-employees who separated from the service of ONGC on account of premature retirement shall not be eligible for ex-gratia under this scheme. The relevant Clause 3.9 of “Agrani Samman” Scheme dated 7th January, 2003 is as under:-

“3.9. All those ex-employees who separated from the service of ONGC on account of premature retirement shall not be eligible for ex-gratia under this scheme.”

10. The petitioner's plea is that since he is eligible under both the schemes for grant of ex-gratia payment he made various representations. After making representations dated 10th March,

2005 and 16th May, 2005 he received a letter dated 10th June, 2005 intimating him that his request for grant of ex-gratia payment under the scheme has been rejected. Petitioner also received another letter dated 29th June, 2005 along with a letter dated 4th May, 2005 reiterating the rejection of grant of ex-gratia payment under the schemes to the petitioner.

11. On rejection of petitioner's representation for grant of ex-gratia payment under the schemes, the present petition was filed on 30th August, 2005 contending that keeping in view the financial deplorable conditions of pre 15th October, 1959 employees all the contributions made by them during the formative years of respondent No.1 the ex-gratia schemes of 2001 and 2003 were promulgated to provide monetary relief to those pre 15th October, 1959 employees who had retired prior to PRBS was formulated. The petitioner also relied on the fact that on the representation of many employees who had not been granted ex-gratia under the schemes, respondent No.1 by letter dated 12th April, 2004 had constituted one man commission of Sh. T.N.Sheshan to examine the issue of grant of option for Government pensionary benefits to pre 15th October, 1959 employees in totality. The one man commission was also requested later on to consider the cases of those employees who joined post 15th October, 1959 while it

was statutory body and who were not entitled to Central Government pension, whether can also be considered and to give recommendation given in respect thereof. One man commission gave his report and recommendations that ex-gratia scheme be extended to post 15th October, 1959 employees who retired prior to 1st June, 1990 or 1st April, 1991.

12. The respondents have contested the petition contending inter-alia that the scheme “Agrani Samman” ex-gratia benefit scheme had been introduced to provide for and in the beneficial interest of the employees by providing them with monetary relief with the stipulation that the employees who have rendered minimum 10 years service in ONGC and subject to their fulfilling other requisite eligibility conditions of the scheme and for those who had joined the service prior to 15th October, 1959. The learned counsel for the respondent emphasized that the scheme was purely on compassionate ground and not due to any right or entitlement and it was entirely in the nature of ex-gratia. Regarding the case of the petitioner, it was contended that his case was considered with the cases of other employees who had been prematurely retired and it was held and decided that the scheme for grant of ex-gratia was not applicable to those employees who were prematurely retired on medical grounds. It

was so decided because on their premature retirement they had been granted one time lump sum benefit of paying a percentage of their salary for the notional left over service up to their normal age of superannuation. Reliance for this was placed on letter dated 26th March, 2002 categorically stipulating that the benefit of ex-gratia cannot be given to the employees who had been prematurely retired on medical grounds even if all other requisite eligibility conditions of ex-gratia scheme were fulfilled by such persons who were employed prior to 15th October, 1959.

13. The learned counsel for the respondents, Mr.Oberoi categorically contended that premature retirement where 70% of the total amount payable for the left over service is paid in lump sum is different from the cases of the employees who had retired or who had taken voluntary retirement. The reliance was also placed on the recommendation of one man Committee appointed by the respondents who suggested that those ex-employees who had rendered 10 to 20 years of service may also be paid ex-gratia on pro-rata basis but those employees who had rendered less than 10 years of service in ONGC would not be eligible for grant of ex-gratia. It was pleaded that the one man Committee did not recommend the cases of those employees who had prematurely retired on medical grounds for grant of ex-gratia.

14. The learned counsel for the respondents, Mr.Oberoi also relied on Chairman, UP Jal Nigam & Anr Vs. Jaswant Singh & Anr, JT 2006(10) SC 500; Ceat Ltd Vs. Anand Abasaheb Hawaldar & Ors, 2006(2) Scale 352 and Union Bank of India Vs. Venkatesh Gopal Mahishi & Anr, JT 2007(2) SCC 359 to contend that the petitioner had been prematurely retired on medical grounds and he was paid a lump sum amount of 70% of his salary for the remaining period of his employment and such employees after taking such premature retirement were not entitled to avail other schemes which were to grant ex-gratia to other employees who had done long years of service.

15. This is not disputed that the petitioner has not challenged the schemes which is apparent from the prayers made by the petitioner in the writ petition seeking a declaration that he is entitled to the benefit of ex-gratia under the ex-gratia scheme, 2001 and “Agrani Samman” Ex-gratia Scheme, 2003. The petitioner has rather challenged the letters dated 29th June, 2005, 4th May, 2005 and 10th June, 2006 on the premise that he is also entitled for ex-gratia amount under the schemes which has been denied to him illegally. The petitioner has also challenged the clarificatory circular dated 26th March, 2002 whereby it was categorically held in Clause 2.12 that the benefit of ex-

gratia cannot be given in premature retirement cases even if all the requisite eligibility conditions of ex-gratia are otherwise fulfilled by the pre 15th October, 1959 employees.

16. This is not disputed that the petitioner was retired prematurely on 3rd November, 1988 on account of his permanent disability. While permanently retiring the petitioner he had been granted 70% of his total emoluments had he continued in the service till the age of superannuation on 31st July, 1997. 70% of the salary which was given to the petitioner at the time of premature retirement also included dearness allowances and all such pays which were specially classified as pay by the Commission. It was categorically stipulated at the time of his premature retirement that he would be entitled to all the benefits that he would have otherwise been eligible at the time of superannuation in accordance with the rules and regulations thereof.

17. This is not disputed by the petitioner that the premature retirement is not the same as voluntary retirement or the retirement. An employee who is prematurely retired is given a percentage of his pay till the date of his superannuation which is not the case in case of an employee who seeks voluntary retirement or an employee who retires after reaching the age of superannuation. In the circumstances

if the benefits of ex-gratia schemes of 2001 and 2003 have not been granted to those employees who have prematurely retired on medical grounds, it cannot be inferred that there is discrimination with them as they are a class in itself who are granted a lump sum amount without doing any work for the remaining period of their service as they are not in position to work on account of their medical disability.

18. The case of the petitioner is not that the prematurely retired employees cannot be distinguished but that prematurely retired employees are also included in the ex-gratia schemes. Regarding the scheme of the respondent for grant of ex-gratia to pre 15th October, 1959 employees dated 20th November, 2001 a clarification dated 26th March, 2002 was issued which in clause 2.12 categorically stipulated that after consideration it has been decided that the benefit of ex-gratia cannot be given to prematurely retired cases even if all other requisites and eligibility conditions are otherwise fulfilled by pre 15th October, 1959 employees.

19. The scheme of 7th January, 2003, 'Agrani Samman' categorically stipulated in the scheme itself in para 3.9 that all those ex-employees who separated from the service of ONGC on account of premature retirement shall not be eligible for ex-gratia under the scheme. When

the petitioner was prematurely retired on 3rd November, 1988 granting him 70% of his pay for the period 3rd November, 1988 up to 31st July, 1997, the date on which he had superannuated which included dearness allowance and any emoluments classified as pay and if the petitioner was not satisfied with the amount given to him while prematurely retiring him, as his allegation is that permanent disability was sustained by him arising out of and during the course of his employment, he should have challenged the same. The petitioner opted to avail the benefit of getting the 70% pay for almost about eight years in lump sum and have enjoyed the benefit of the lump sum money which was granted to him, later on if the ex-gratia schemes have been formulated to grant ex-gratia to other employees excluding the employees who had been prematurely retired on medical grounds, the class of such prematurely retired employees can not insist that they ought to have been also granted ex-gratia payments under different schemes.

20. In *Chairman, U.P Jal Nigam (Supra)* the Supreme Court had held that those employees who acquiesced in accepting the retirement and did not challenge the same in time, the Court should be slow in granting relief to such employees. It was also held that while granting the relief to such employees the prejudice which may be caused to

other parties is also to be considered. In this case some of the employees of the U.P Jal Nigam had challenged their superannuation on attaining the age of 58 years contending that they are to be allowed to continue up to the age of 60 years. In one of the case the Supreme Court had allowed the employees to continue up to 60 years and on the basis of such decision, the employees who had retired long back also filed writ petitions seeking advantage of the said decision. The Apex Court had held that those employees who had not challenged their retirement will not be entitled for the relief in the light of subsequent decision of the Supreme Court and the benefit was confined only to those persons who had filed their writ petitions before their retirement or had obtained interim orders before their retirement. The petitioner in the present case has been prematurely retired in 1988 under a scheme and 70% of his pay for the remaining period of his service without taking any type of work from him was given to him. If the petitioner was aggrieved by it on the ground that the alleged medical disability on account of which he had been prematurely retired was on account of his work with the respondent and he his entitled for more than what had been given to him, he should have challenged the same. After accepting the said scheme, he cannot be allowed to contend that he is entitled for ex-gratia payments under other schemes meant for other types of employees.

21. In Ceat Ltd (Supra), the company had promulgated a voluntary retirement scheme for its employees which was accepted by some of the employees. Thereafter the company entered into another agreement with the employees union containing other voluntary retirement scheme which was accepted by different employees. Subsequent scheme offered a different package. One of the benefits which was given to the employees who had accepted voluntary retirement Scheme II, was payment of a sum of Rs.90,000/- ex-gratia which was not extended to the employees who had accepted VRS I. This led to the litigation by the employees who had accepted first voluntary retirement scheme alleging discrimination and favoritism and that the company had committed unfair labor practices. The Apex Court had held that in such circumstances there was no discrimination, favoritism or partiality as those who are covered under voluntary retirement scheme II stood on a different footing from those who accepted voluntary retirement scheme I and, therefore, the grievance of those who had accepted voluntary retirement scheme I is not tenable. In the present case the petitioner had availed the scheme of premature retirement whereby he was prematurely retired on medical grounds and a substantial lump sum amount, 70% of the pay with dearness allowance till the date of his superannuation was paid

to him without any work being taken from him. The petitioner cannot equate himself in the facts and circumstances with those employees who have worked till the age of their superannuation or those employees who had taken voluntary retirement as they were not granted any ex-gratia till the age of their superannuation.

22. The Learned counsel for the respondents have also challenged the right of the petitioner to claim any benefit under the schemes of 2001 and 2003 on account of delay. Perusal of the counter affidavit shows that no such ground has been taken on behalf of the respondents. The representations of the petitioner claiming ex-gratia amounts under the schemes of 2001 and 2003 was declined by communications dated 4.5.2005; 16.6.2005 and 29.6.2005. The writ petition was filed by the petitioner on 30th August, 2005. In the circumstances there is no such delay on the part of the petitioner which would disentitle him for the relief on the ground of delay, had he entitled for the relief. This has already been held that the petitioner is not entitled for any ex-gratia payment under the schemes of 2001 and 2003.

23. In the totality of the facts and circumstance, the petitioner is not entitled for any of the relief claimed in the writ petition. The writ petition is therefore, dismissed. Parties are however, left to bear their own costs.

February 11, 2008
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ANIL KUMAR J.