

THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment delivered on: 26.09.2014

+ **W.P.(C) 3053/2011**

ML KARIR

..... Petitioner

versus

**THE NATIONAL SMALL INDUSTRIES
CORPORATION LIMITED**

..... Respondent

Advocates who appeared in this case:

For the Petitioner : Mr B.R. Kaushik.

For the Respondents : Mr Digvijay Rai.

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HON'BLE MR. JUSTICE VIBHU BAKHRU

JUDGMENT

VIBHU BAKHRU, J

1. The petitioner has filed the present petition seeking reimbursement of medical bills amounting to ₹1,56,500/- which are stated to have been spent by the petitioner in treatment of his wife.

2. Briefly stated, the relevant facts are that the petitioner joined the services of the respondent in January 1961 and took a voluntary retirement on 12.06.1989. Prior to 1980, the employees of respondent were entitled to medical benefits under CGHS. After 1980, the employees of respondent were entitled to reimbursement of medical expenses, however, no medical benefits were available to employees after their superannuation.

3. The respondent introduced a scheme for providing medical facilities to the ex-employees by providing coverage under a medical insurance scheme administered by Oriental Insurance Co. Ltd. A circular, introducing the said medical benefit scheme, was issued by respondent on 15.02.1994. In terms of the said circular, the said scheme was available only to employees and their spouses who had retired from services of respondent on or after 01.04.1992.

4. The essential features of the aforementioned scheme were that an insurance cover would be provided to the ex-employees and their spouses which would be extended from year to year. At the material time, the premium was ₹1,300/- per person (i.e. ₹2,600/- for employee and his spouse). All retired employees who wish to avail the benefit of the said scheme, were required to contribute 15% of the premium.

5. The petitioner's wife underwent an open heart bypass surgery in February 2005. Thereafter, on 01.08.2005 the petitioner applied for being included in the medical insurance scheme. The petitioner was clearly not covered under the said scheme as the petitioner had taken voluntary retirement prior to 1992. However, the petitioner persuaded the management and was included under the medical insurance scheme from July 2007. The petitioner applied for reimbursement of the expenses incurred by the petitioner in 2004-05. Since the petitioner's claim was not accepted, the petitioner has filed this petition in 2011.

6. Essentially, the petitioner's contention is that the cut off date fixed by respondent for providing the medical cover to the superannuated

employees is arbitrary and unreasonable and excluding employees who had superannuated prior to 01.04.1992 is discriminatory and violates Article 14 of the Constitution of India.

7. The learned counsel for the respondent has stated that the writ petition has been filed after a considerable delay and, therefore, ought to be rejected. It is further contended that the scheme was a contributory scheme under which insurance cover was provided to the ex-employees. The respondent was not obliged to reimburse any expenses under the said scheme and, therefore, the petitioner's claim for reimbursement is without any basis. The respondent further contended that cut off date was a policy decision and, thus, cannot be challenged.

8. The present petition is without merit and is liable to be dismissed for the following reasons:-

8.1 Firstly, "*post retirement contributory medical scheme*" was a scheme which entailed medical insurance cover to the ex-employees. The respondent was not obliged to reimburse medical expenses of superannuated employees either under the said scheme or otherwise. Thus, the claim of the petitioner for reimbursement of medical expenses cannot be made.

8.2 Secondly, the post retirement contributory scheme was introduced for the first time in 1994. The said scheme was stated to be approved by the Board of Directors of the respondent on 30.03.1993 and was made available from 01.04.1992. The petitioner had made no grievance for not being included in the said scheme at the material time. Since the scheme is

in a nature of an insurance cover, the petitioner cannot be included after the expenses have been incurred. In order to avail the benefit of insurance cover, it was necessary for the petitioner to have been included prior to the medical emergency, as insurance cover cannot be issued retrospectively.

8.3 Thirdly, the introduction of the post retirement contributory medical scheme w.e.f. cut off date 01.04.1992 cannot be stated to be arbitrary or violative of Article 14 of the Constitution of India.

9. The Supreme Court in **Govt. of A.P. v. N. Subbarayudu: (2008) 14 SCC 702**, while considering a challenge to the cut off date fixed for entitlement of pension to the teachers on the revised age of superannuation, observed as under:-

“5. In a catena of decisions of this Court it has been held that the cut-off date is fixed by the executive authority keeping in view the economic conditions, financial constraints and many other administrative and other attending circumstances. This Court is also of the view that fixing cut-off dates is within the domain of the executive authority and the court should not normally interfere with the fixation of cut-off date by the executive authority unless such order appears to be on the face of it blatantly discriminatory and arbitrary. (See State of Punjab v. Amar Nath Goyal.)

6. No doubt in D.S. Nakara v. Union of India this Court had struck down the cut-off date in connection with the demand of pension. However, in subsequent decisions this Court has considerably watered down the rigid view taken in Nakara case as observed in para 29 of the decision of this Court in State of Punjab v. Amar Nath Goyal.

7. There may be various considerations in the mind of the executive authorities due to which a particular cut-off date has

been fixed. These considerations can be financial, administrative or other considerations. The court must exercise judicial restraint and must ordinarily leave it to the executive authorities to fix the cut-off date. The Government must be left with some leeway and free play at the joints in this connection.

8. In fact several decisions of this Court have gone to the extent of saying that the choice of a cut-off date cannot be dubbed as arbitrary even if no particular reason is given for the same in the counter-affidavit filed by the Government (unless it is shown to be totally capricious or whimsical), vide *State of Bihar v. Ramjee Prasad*, *Union of India v. Sudhir Kumar Jaiswal*, *Ramrao v. All India Backward Class Bank Employees Welfare Assn.*, *University Grants Commission v. Sadhana Chaudhary*, etc. It follows, therefore, that even if no reason has been given in the counter-affidavit of the Government or the executive authority as to why a particular cut-off date has been chosen, the court must still not declare that date to be arbitrary and violative of Article 14 unless the said cut-off date leads to some blatantly capricious or outrageous result.”

10. In view of the above, we find no infirmity with the respondent fixing a cut off date. Accordingly, the petition is dismissed.

VIBHU BAKHRU, J

SEPTEMBER 26, 2014
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