

GAHC010007042011



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/3753/2011

SAUMAN TALUKDAR
S/O- PRABIN TALUKDAR, PERMANENT R/O- H/NO.- 69, P.P. ROAD,
REHABARI, GUWAHATI, KAMRUP, ASSAM. -781008. PRESENTLY SERVING
AS SENIOR PETROLEUM ENGINEER, FIELD DEVELOPMENT, KUWAIT OIL
COMPANY, P.O. BOX 9758, AHMADI- 61008, KUWAIT.

VERSUS

OIL INDIA LIMITED and ANR
REP. BY ITS CHAIRMAN-CUM-MANAGING DIRECTOR, DULIAJAN, P.O. and
P.S.- DULIAJAN, DIBRUGARH DIST., ASSAM- 786602.

2:THE BOARD OF DIRECTORS
OIL INDIA LTD. DULIAJAN- 786602

Advocate for the Petitioner : Mr. A. Deka, Advocate

Advocate for the Respondents : Mr. M. Z. Ahmed, Sr. Advocate
: Ms. B. Dutta, Advocate
: Mr. A. M. Dutta, Advocate

**BEFORE
HONOURABLE MR. JUSTICE DEVASHIS BARUAH**

JUDGMENT AND ORDER (ORAL)

Date : 18-07-2023

1. The instant writ petition has been filed challenging Clause-7 of the Circular bearing No.PERS/01/12-2699 dated 04.07.2007 whereby the benefits of the circular was not extended to the executives who had separated from Oil India Limited other than on account of superannuation/voluntary retirement/early retirement/death on or after 01.01.1997.

2. The case of the Petitioner herein is that the Petitioner joined the Respondent Oil India Limited as an Executive Trainee in the year 1988 and he was absorbed by the Oil India Limited as a Production Engineer after successful completion of his training in the year 1989. The Petitioner thereupon earned his first promotion in the year 1993 to the post of Senior Production Engineer and then in the year 1997, he was promoted to the post of Deputy Superintendent Engineer (OGPL). Subsequent thereto, the petitioner was again promoted in the year 2000 to the post of Superintendent Engineer and then in the year 2006, he was promoted to the post of Deputy Chief Engineer (Production). On 25.04.2007, the petitioner submitted his resignation and sought release from the services of the Oil India Limited w.e.f. 05.06.2007.

3. Subsequent thereto, the Petitioner joined another company by the name of "Kuwait Oil Company" and at the time of filing the writ petition, the petitioner was serving in the Kuwait Oil Company as a Senior Petroleum Engineer. After the resignation of the Petitioner which was made effective from 05.06.2007, on 04.07.2007, the Board of Directors of Oil India Limited took a

decision to compensate such affected executives in Grade "C" to "F" by payment of lump sum differential amount arrived at notionally fixing by Basic Pay (including Special Pay and Stagnation Pay) w.e.f. 01.01.1997 to 31.12.2006 in the manner stipulated in the circular dated 04.07.2007. In the said circular dated 04.07.2007, it was clearly mentioned that the benefits of the said circular would be available to those executives who were in service as well as those who separated from Oil India Limited on account of superannuation/voluntary retirement/early retirement/death on or after 01.01.1997. However, the benefit of the said circular was not extended in cases of separation on account of reasons other than those mentioned in Clause-7. The Petitioner on coming to learn about the said circular, submitted a representation on 21.03.2010 to the Chairman and Managing Director of Oil India Limited while working in Kuwait Oil Company so that the benefits of the said circular dated 04.07.2007 can also be extended to the Petitioner. It further reveals that the Petitioner thereupon filed a writ petition before this Court which was registered and numbered as WP(C) No.2815/2010 which was however withdrawn with a liberty to challenge the decision as reflected in the communication dated 04.07.2007 by filing a fresh writ petition. It is under such circumstances that the present writ petition has been filed.

4. It reveals from the records that the instant writ petition was filed on 22.07.2011 and vide an order dated 29.07.2011, notice was issued in the instant proceedings. The record further reveals that the Oil India Limited had filed a joint affidavit-in-opposition on 13.12.2011. In the said affidavit-in-opposition, it was mentioned that the Petitioner had tendered his resignation from the service of Oil India Limited citing personal reasons. The petitioner was released from service after the working hours on 05.06.2007 and the

Petitioner had never informed the Oil India Limited that he was working in Kuwait Oil Company. It was further mentioned that the pay scales of the Executives belonging to Grades C, C1, D, E and F in the upstream National Oil Companies, the Exploration Companies, etc. were one stage lower than that of the Executives of the equivalent Grades, serving in the downstream National Oil Companies, the Refineries, etc., and as such, there has been continuous demand made by the Executives of the aforesaid Grades of the upstream Oil Companies to upgrade their pay scales to make it at par with the downstream Oil Companies. A large numbers of Executives belonging to the aforesaid Grades, especially from the core discipline, left the Oil India Ltd. to join private Companies for getting higher salary and benefits, which had adversely affected the operations and smooth functioning of the upstream National Oil Companies like Oil India Ltd. It has been mentioned that during the period of 2006 and 2007, as many as 61 Executives of Oil India Limited had left the company. Further to that, it was also mentioned that the issue of difference in pay scales was considered to be one of the primary reasons for such large scale departure, and as such, the upstream National Oil Companies, including Oil India Limited decided to address the issue of difference of pay scale and compensate to the extent possible by making payment of lump sum differential amount. It is under such circumstances, that a circular dated 04.07.2007 was introduced regarding payment of compensation towards Pay Scale Anomaly in respect of Executives in Grades C to F whereby the Board of Directors of Oil India Limited had approved to compensate such affected eligible Executives in Grades C to F by making payment of lump sum differential amount arrived at notionally, fixing the Basic Pay (including Special Pay and Stagnation Pay) w.e.f. 01.01.1997 to 31.12.2006. It was also stated that the benefits of the said

circular would be extended to those Executives who had separated from the Company on account of superannuation, voluntary retirement and early retirement on or after 01.01.1997 whenever admissible, as employability of such separated Executives in lucrative jobs was very less. It was further mentioned that the similar benefits were extended to the Executives who expired during the period from 01.01.1997 to 31.12.2006 on compassionate ground. However, it was clearly stated that such benefits would not be admissible in cases of separation on account of reasons other than those mentioned above. Further to that, it has also been categorically mentioned in the said affidavit-in-opposition that the number of resignations in the Oil India Ltd. came down to 15 and 6 in 2008 and 2009 respectively in view of the said policy. It was further mentioned that the said decision so taken was not adopted on the basis of any Government guidelines/orders but it was an industry decision taken by Oil Exploration Companies not to pay differential lump sum amount to Executives who have separated from company by way of resignation. In that regard, the circular of Oil and Natural Gas Corporation Limited dated 27.06.2007 wherein by Clause-8 of the said circular, the benefit so given was restricted only to those executives who separated from ONGC on account of superannuation/voluntary retirement/pre-mature retirement/death/on or after 01.01.1997. To the said affidavit-in-opposition, an affidavit-in-reply has also been filed by the Petitioner on 14.08.2012.

5. From a perusal of the materials on record and upon hearing the learned counsels for the parties, the issue which arises for consideration is as to whether the policy decision of the Oil India Limited as contained in the circular dated 04.07.2007 whereby the benefits of the circular was not extended to those persons who separated on account of resignation is arbitrary and

unreasonable.

6. This Court at this stage finds it relevant to take note of the scope of judicial review in respect to a policy decision of an authority. This Court finds it relevant at this stage to make a reference to the opinion of Lord Justice Lawton in the case of ***Laker Airways Limited Vs. Department of Trade reported in (1977) 2 All ER 182*** wherein while considering the parameters of judicial review in matters involving policy decision of the Executive, it was observed as hereinunder:

“In the United Kingdom aviation policy is determined by ministers within the legal framework set out by Parliament. Judges have nothing to do with either policy-making or the carrying out of policy. Their function is to decide whether a minister has acted within the powers given to him by statute or the common law. If he is declared by a court, after due process of law, to have acted outside his powers, he must stop doing what he has done until such time as Parliament gives him the powers he wants. In a case such as this I regard myself as a referee. I can blow my judicial whistle when the ball goes out of play; but when the game restarts I must neither take part in it nor tell the players how to play.”

7. The Supreme Court had also in various judgments dealt with the power of judicial review in respect of the policy decision. This Court finds it relevant to take note of the judgment of the Supreme Court in the case of the ***Ugar Sugar Works Ltd. vs. Delhi Administration & Others reported in (2001) 3 SCC 635*** and more particularly, to paragraph No.18 which categorically mandates that it is only in the case of arbitrariness, irrationality, perversity and malafide that a policy can be rendered unconstitutional. The said paragraph being relevant is quoted herein below:-

“18. The challenge, thus, in effect, is to the executive policy regulating trade in liquor

in Delhi. It is well settled that the courts, in exercise of their power of judicial review, do not ordinarily interfere with the policy decisions of the executive unless the policy can be faulted on grounds of mala fide, unreasonableness, arbitrariness or unfairness etc. Indeed, arbitrariness, irrationality, perversity and mala fide will render the policy unconstitutional. However, if the policy cannot be faulted on any of these grounds, the mere fact that it would hurt business interests of a party, does not justify invalidating the policy. In tax and economic regulation cases, there are good reasons for judicial restraint, if not judicial deference, to judgment of the executive. The courts are not expected to express their opinion as to whether at a particular point of time or in a particular situation any such policy should have been adopted or not. It is best left to the discretion of the State."

8. In the backdrop of the above let this Court therefore take into account as to whether Clause-7 of the circular dated 04.07.2007 whereby the benefits of the circular have not been extended to those persons who have tendered resignation requires to be interfered with. At this stage, this Court also finds it relevant to take note of that the Petitioner submitted his resignation on 25.04.2007 and w.e.f. 05.06.2007. Upon the resignation being accepted w.e.f. 05.06.2007, the jural relationship between the Petitioner and Oil India Limited had ceased to exist. It is only pursuant thereto, on 04.07.2007, the policy decision was taken to give benefits to those executives who were working as well as those executives who separated from Oil India Limited on account of Superannuation/voluntary retirement/early retirement/ death on or after 01.01.1997. The said policy decision as contained in the circular dated 04.07.2007 clearly stipulates that the said benefits under the circular dated 04.07.2007 would not be admissible in cases of separation on account of reasons other than those mentioned in Clause-7.

9. A perusal of the affidavit-in-opposition, the details of which have already

been referred in the previous segments of the instant judgment states the reasons why the policy decision was taken i.e. in order to put a check on the Executives belonging to the different Grades especially from the core discipline of Oil India Limited from joining the private companies for getting higher salary which had adversely affected the operation and the smooth functioning of the upstream national oil company like Oil India Limited. It is the submission of Mr. M. Z. Ahmed, the learned Senior counsel appearing on behalf of the Oil India Limited that those persons who separated from Oil India Limited on account of superannuation/voluntary retirement/early retirement/death on or after 01.01.1997 is a separate class altogether and as such, the same cannot be equated with those persons like the Petitioner who has resigned for getting higher salary in other private companies inasmuch as in respect to those persons the employability of such separated executives in lucrative job is very less. This Court is also of the opinion that the executives who have separated from Oil India Limited on account of superannuation/voluntary retirement/early retirement/death on or after 01.01.1997 or had expired during the period from 01.01.1997 to 31.12.2006 forms a class on its own and cannot be equated with those persons like the Petitioner who have separated by way of resignation to join private companies for higher pay scale. Under such circumstances, Clause-7 by which the benefit has been excluded to those persons who have resigned from the Oil India Limited cannot be said to be arbitrary and unreasonable. The said policy to exclude those executives who have parted ways with Oil India Ltd. by way of resignation to gain better employment avenues is based on an intelligible differentia having reasonable nexus with object sought to be achieved. Further to that, the Petitioner completely failed to show how the said Policy Decision so taken on 04.07.2007 is unreasonable, arbitrary, perverse and

mala fide. Under such circumstances, this Court is of the opinion that Clause-7 of the Circular dated 04.07.2007 requires no interference from this Court.

10. In that view of the matter, as Clause-7 of the circular dated 04.07.2007 cannot be interfered with, the Petitioner therefore is not entitled to the benefits under the circular dated 04.07.2007 for the reason above mentioned.

11. In that view of the matter, there is no merit in the instant writ petition for which the instant writ petition stands dismissed. No costs.

JUDGE

Comparing Assistant