

GAHC010114102015



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

Case No. : WP(C)/1107/2015

WELFARE ASSOCIATION OF RETIRED ONGCIANS and ANR
REP. BY ITS PRESIDENT SRI DURGA NATH BORTHAKUR, HAVING ITS
OFFICE AT C/O MRS. PREM LATA BORUAH, SEUJPUR, OLD AMOLAPATY,
W/NO.10, P.O. and P.S. and DIST- SIBASAGAR, PIN-785640, ASSAM

2: DURGA NATH BORTHAKUR
R/O PRAFULLA PHUKON PATH
P.O. PHUKON NAGAR
P.S. and DIST- SIBASAGAR
ASSA

VERSUS

THE UNION OF INDIA and 2 ORS
REP. BY THE SECY., MINISTRY OF PETROLEUM AND NATURAL GAS,
SHASTRI BHAWAN, NEW DELHI-1

2:THE OIL AND NATURAL GAS CORPORATION LTD
REP. BY THE CHAIRMAN CUM MANAGING DIRECTOR
TEL BHAVAN
DEHRADUN
UTTARAKHAND
PIN-248001

3:THE EXECUTIVE DIRECTOR
ONGC
NAZIRA
DIST- SIBASAGAR
PIN-785640
ASSA

Advocate for the Petitioner : MR.A BORGHAIN

Advocate for the Respondent : MR.N A SINGHR-2and3

BEFORE
HON'BLE MR. JUSTICE SANJAY KUMAR MEDHI

Advocate for the petitioners : Ms. P. Barman

Advocate for the respondents : Shri GN Sahewalla, Sr. Advocate
Shri N.A. Singh, R - 2 & 3, ONGC
Shri CKS Baruah, CGC

Date of hearing : **09.05.2024**
Date of Judgment : **09.05.2024**

JUDGMENT & ORDER

Heard Ms. P Barman, learned counsel for the petitioners and Shri G.N. Sahewalla, learned Senior Counsel assisted by Shri N.A. Singh, learned counsel for the respondent – ONGC. Shri CKS Baruah, learned CGC is also present.

2. The writ petition has been structured with the following relief:

“It is therefore prayed that Your Lordships may graciously be pleased to admit this petition and may further be pleased to admit this petition and may further be pleased to issue a Rule upon the respondents to show cause as to why a writ in the nature of Mandamus and/or any other appropriate writ, order or direction of like nature should not be issued directing the respondents to (i) implement a standard and liberalized “Pension” Scheme covering all the retired employees of Oil and Natural Gas Corporation Limited computed on the minimum of the pay scales given effect from 2007 made applicable to the post of 01/01/2007

employees (ii) issue of ONGCL's share of Rupees Four to Ten Lakhs (Face Value) free of cost to each retired employees in recognition of their service (iii) restore the Golden Jubilee award of Rs.50,000/- and 15 grams of gold to each retired employees of ONGC (iv) to implement the financial aid scheme of "Asha Kiran" by removing the quantum disparity as mentioned by the petitioners and giving retrospective effect from 2008-09 after fixing the distributable computed amount calculated on 1.5% profit basis less the actual expenses made by ONGCL on medical treatment of each employee including dependants (v) to remove discrimination by including and extending to the executive Category of ONGCians who retired between 1991 and 1995 as lawfully deserving beneficiaries of the "Agrani Samman" award as they equally fulfill the prescribed criteria as "Agranis" (Pioneers) and eligible beneficiaries (vi) to maintain equity by raising the quantum of gratuity of the retired employees with the employees of ONGCL by increasing the quantum to the retired employees to Rs.10 lacs to remove discrimination call for the records and on perusal thereof and after hearing the parties may be pleased to make the rule absolute and/or may be pleased to pass such further or other order/orders as to Your Lordships may deem fit and proper."

3. Ms. Barman, learned counsel for the petitioners has submitted that the petitioner no.1 is an Association of retired employee of the ONGC and is mainly concerned with proper / adequate scheme for post retirement benefits. It is submitted that though the members of the petitioner no. 1 are getting the CPF, a scheme should be directed to be framed so that they get regular pension. Reference to an Office Memorandum dated 13.01.2009 has been made whereby there was a recommendation for creation of a corpus by contributing 1% to

1.5% of the "Profit Before Tax" (PBT). The said recommendation, after consideration was accepted vide communication dated 20.07.2011 wherein an amount with the ceiling 1.5% PBT was directed to be contributed. The petitioner Association had thereafter submitted a representation dated 24.08.2011 on the three major aspects: (i) Pension Scheme, (ii) Issuance of Shares and (iii) Giving benefit pertaining to the Golden Jubilee. The said representation was responded to by the ONGC vide communication dated 30.04.2012 by stating that while the prayer nos. (ii) and (iii) were rejected, it was informed that a scheme was under consideration. The petitioners had thereafter instituted WP(C)/3329/2013 before this Court. However, in the meantime, the scheme of "Asha Kiran" was introduced on 15.10.2013 and on being apprised of the said development, the aforesaid WP(C)/ 3329/2013 was closed vide an order dated 04.11.2014.

4. The learned counsel for the petitioners has submitted that the said scheme of "Asha Kiran" was only for a particular year 2013-14 and the maximum amount was for Rs.2,00,000/- (Rupees two lacs) out of which effectively only Rs.1.1 lacs was made available at the time of emergency. It is submitted that the said scheme has not been continued thereafter and therefore the petitioners are suffering from immense hardships. She further contends that the aspect of their survival has also come into question in absence of a regular pension as the CPF benefit was not sufficient for their livelihood. It is also highlighted that even for availing the benefits of the existing schemes, the process is cumbersome and the members of the petitioner no. 1 being sufficiently aged, are not in a position to fulfill the formalities as a result of which the scheme have turned to be futile.

5. The learned counsel for the petitioners has also submitted that the

petitioners were not given the scope of option either for CPF or pension as a result of which they have been illegally deprived of the pensionary benefits.

6. *Per contra*, Shri Sahewalla, learned Senior Counsel for the respondent - ONGC has submitted that the prayer relating to framing of a scheme for pension, issuing of Shares and benefits of Golden Jubilee cannot be a matter of adjudication as those are within the prerogative and domain of the employer. As regards the aspect of the "Asha Kiran" scheme, the learned Senior Counsel submits that the said scheme is in continuation and the petitioners are getting the benefits of the same.

7. Referring to the affidavit-in-opposition filed on 27.11.2015, learned Senior Counsel has submitted that apart from the "Asha Kiran" scheme, there are several other schemes for the benefits of the retirement employees of the ONGC. By drawing the averments made in paragraph 6 of the affidavit-in-opposition, the learned Senior Counsel has submitted that details of the existing schemes are given which are presently available for the petitioners. It is submitted that the question of giving option would not be irrelevant as the existing mode was adopted at the time of retirement of the members of the petitioner no. 1.

8. On consideration of the rival submissions, this Court is of the considered view that the prayers pertaining to a direction for introducing a pension scheme, issue of shares and restoration of the Golden Jubilee benefits cannot be claimed as a matter of right as those are within the domain of the employer. However, having held, that this Court would certainly look into the aspect as to how the retired employees of the PSU in question are being treated.

9. The submission made on behalf of the petitioners that the "Asha Kiran"

scheme was only for a year has been refuted on behalf of the ONGC and the materials on record would show that the aforesaid scheme is in continuation. There is no dispute to the fact that a number of other schemes for the benefits of retired employees are also in existing and continued. The details of the schemes which have been stated in the affidavit-in-opposition are given briefly as hereunder-

(i) As regards the CPF scheme, the same was adjudicated before the Hon'ble Supreme Court in Committee for Protection of Rights of ONGC Employees & Ors -Vs- ONGC reported in AIR 1990 SC 1167 wherein it was observed that on the date of application of the PF scheme the personnel were not entitled to pension under the terms of their employment and further held that the employees are also not entitled to pension in addition to PF. It was further held that the scheme of CPF, by way of retiral benefit, is in the nature of a substitute for old age pension.

(ii) As per DPE OM dated 08.07.2009, a corpus not more than 1.5% of PBT was created by the ONGC in order to take care of Medical and any other emergency needs of those retired employees, who are not covered by the pension scheme and/or post superannuation medical benefit scheme. This scheme provides them full medical coverage equivalent to regular employees as per actual reimbursement of OPD expenditure and 100% Indoor expenditure through credit notes in various renowned hospitals across the country where ONGC operates.

(iii) Besides this following medical/welfare schemes are already in operation to take care of retired employees:-

- a) Medical TA as per entitlement of ex employee. (at par with regular employee).
- b) Reimbursement of cost of hearing aid up to Rs.60,000/-
- c) Reimbursement of cost of Bi-PAP upto Rs.85,000/-
- d) Reimbursement of cost of Auto PAP upto Rs.70,000/-
- e) Reimbursement of cost of Oxygen Concentrator upto Rs.50,000/-
- f) Reimbursement of cost of Nebulizer upto Rs.3,000/-
- g) Reimbursement of cost of spectacles from Rs.5,000/- to Rs.12,500/- in every two years.
- h) Artificial Appliances up to Rs.4,80,000/-
- i) Wheel Chair upto Rs.1,80,000/-
- j) Reimbursement of cost of Nursing Care at home upto Rs.15,000/- per month.

(iv) In case of emergency like fire/flood/earthquake/theft etc, the

ex-employees are being supported by an amount ranging between Rs.5,00,000/- to Rs.10,00,000/- for different levels through Sahyog Trust of ONGC.

(v) Felicitation award of Rs.20,000/-, Rs.25,000/- and Rs.25,000/- on attaining the age of 70 years, 75 years and 80 years to all surviving Ex-employees.

(vi) ONGC is providing 'Agrani Samman' *Ex-gratia* to pre-15.10.1959 and post 14.10.1959 employees, who have rendered 10 or more years of service and are not receiving/eligible for PRBS and/or Govt. Pension and for those also who are receiving/eligible for PRBS and/or Government Pension by deducting the actual or notional PRBS amount from their eligible ex-gratia amount to mitigate their post- separation hardships.

(vii) All those eligible ex-employees who separated from the services after March 1991, are getting monthly benefit of Post Retirement Benefit Scheme (PRBS) which is a self-contributory. The scheme was made compulsory w.e.f. 16.11.1995 to all regular employees of ONGC. Subsequent to pay revision w.e.f. 1.1.1997, DPE guidelines on pay revision were issued on 26.11.2008 effective 01.01.2007. Under these DPE guidelines PRBS Scheme was converted from defined benefit to defined contribution and made effective from 01.01.2007.

(viii) All those ex-employees who separated from the services after

15.11.1995 are covered under Employees Pension Scheme (EPS-1995) formulated by the Govt. of India. EPS-95 Scheme.

(ix) Since the employees retired prior to 01.01.2007 are not covered under the revised pension scheme (PRBS), in order to extend financial assistance to such employees for taking care of their emergency needs, the "Asha Kiran" scheme was introduced by creating a corpus through contribution of not more than 1.5% of Profit Before Tax (PBT). Under this scheme, retired employees or their surviving spouse (in case of deceased employees) having monthly income of less than Rs.10,000/-(Rupees ten thousand only) shall only be considered as eligible for the benefits under the Scheme. During the financial year 2014-15 so far financial assistance of Rs.178 Crores has been extended to 14420 ex-employees retired prior to 01.01.2007. An eligible employee may get an amount upto Rs.2,00,000/- in a year under different heads, subject to fulfilling the eligibility conditions.

10. There is no specific denial of the existence of the aforesaid schemes and also the aspect of CPF in which there is adjudication by the Hon'ble Supreme Court.

11. This Court is therefore unable to concur with the submission made on behalf of the petitioners that they are left high and dry after their retirement. However, the aspect that most of the members of the petitioner no. 1 are sufficiently aged and are not in a position to fulfill the formalities for availing the aforesaid benefits is an issue which this Court has to ponder.

12. The ONGC being one of the largest PSUs is also under an obligation to

ensure that apart from floating the schemes for the benefits of the retired employees, the Corporation is also to ensure that such schemes are such that the same are actually and practically utilized by the beneficiaries and therefore such obligation has to be extended for facilitating the employees/beneficiaries to fulfill the required formalities. Towards an effective implementation, this Court accordingly directs the respondent - ONGC to have a dedicated Nodal Office headed by responsible personnel to facilitate any retired employee of the ONGC to fulfill the pre-requirement to avail the benefits of any existing schemes. Further, the approach towards grant of the benefits is to be done in a liberal manner so that mere technicalities do not deprive any retired employees/beneficiaries from the benefits if otherwise they are found to be entitled for the same.

13. The aforesaid direction for creating a Nodal Office be done expeditiously and preferably within a period of 2(two) months from the date of receipt of a certified copy of this order.

14. With the aforesaid directions, the writ petition stands disposed of.

15. No order as to cost.

JUDGE

Comparing Assistant