IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE SMT. JUSTICE P.V.ASHA

THURSDAY, THE 20TH DAY OF AUGUST 2015/29TH SRAVANA, 1937

WP(C).No. 23001 of 2014 (A)

PETITIONER:

V.G.K. NAIDU
(FORMER MEMBER AND WORKMAN OF COCHIN
REFINERIES WORKERS ASSOCIATION)
COCHIN REFINERIES WORKERS ASSOCIATION, VPP/427
AMBALAMUGHAL, ERNAKULAM, COCHIN-682302.

BY ADV. SRI.C.S.AJITH PRAKASH

RESPONDENT(S):

1. BHARAT PETROLEUM CORPORATION LTD
KOCHI REFINERIES LTD., AMBALAMUGHAL, COCHIN-682302
REPRESENTED BY ITS MANAING DIRECTOR.

2. THE GENERAL MANAGER (HRM)
BHARAT PETROLEUM CORPORATION LTD.
KOCHI REFINERIES LTD., AMBALAMUGHAL, COCHIN-682302.

R1-R2 BY ADV. SRI.M.GOPIKRISHNAN NAMBIAR
R1-R2 BY ADV. SRI.P.GOPINATH
R1-R2 BY ADV. SRI.P.BENNY THOMAS
R1-R2 BY ADV. SRI.K.JOHN MATHAI
R1-R2 BY ADV. SRI.JOSON MANAVALAN
R1-R2 BY ADV. SRI.KURYAN THOMAS

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 20-08-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(C).No. 23001 of 2014 (A)

APPENDIX

PETITIONER(S)' EXHIBITS

EXHIBIT P1: A TRUE COPY OF THE RC NO.23A/98/SPE/KER DATED 31.12.1998 REGISTERED BY THE INSPECTOR OF POLICE SPE CBI, KOCHI.

EXHIBIT P2: A TRUE COPY OF THE FINAL REPORT FOR CLOSURE OF THE CASE DATED 3.4.2000.

EXHIBIT P3: A TRUE COPY OF THE SHOW CAUSE NOTICE DATED 25.1.2000 ISSUED TO THE PETITIONER.

EXHIBIT P4: A TRUE COPY OF THE CHARGE SHEET DATED 28.2.2000.

EXHIBIT P5: A TRUE COPY OF THE PUNISHMENT ORDER DATED 31.7.2001.

EXHIBIT P6: A TURE COPY OF THE AWARD DATED 16.11.2010 IN I.D.NO.327 OF 2006.

EXHIBIT P7: A TRUE COPY OF THE MONTHLY EX-GRATIA SCHEME ISSUED BY THE IST RESPONDENT COMPANY.

EXHIBIT P8: A TRUE COPY OF THE REQUEST TO SANCTION OF THE MONTHLY EX-GRATIA BENEFIT DATED 27.1.2009.

EXHIBIT P9: A TRUE COPY OF THE ORDER CMIR:COM:01 DATED 30.1.2009 ISSUED BY THE IST RESPONDENT.

EXHIBIT P10: A TRUE COPY OF THE REQUEST DATED 15.7.2014 SUBMITTED BY THE PETITIONER TO THE 2ND RESPONDENT.

EXHIBIT P11: A TRUE COPY OF THE SIGNED ACKNOWLEDGEMENT CARD.

EXHIBIT P12: A TRUE COPY OF THE INTIMATION REGARDING THE RETIREMENT FROM SERVICE DATED 28.11.2007.

EXHIBIT P13: A TRUE COPY OF THE ORDER DATED 6.1.2012 IN I.A.NO.18503 OF 2011 IN WPC NO.12887 OF 2010.

1ST RESPONDENT(S)' EXHIBITS

ANNEXURE-R1(a): TRUE COPY OF THE MONTHLY EX-GRATIA SCHEME OF THE RESPONDENTS.

ANNEXURE-R1(b): TRUE COPY OF THE APPLICATION SUBMITTED BY THE PETITIONER DATED 5.1.2015.

ANNEXURE-R1(c): TRUE COPY OF THE UNDERTAKING SUBMITTED BY THE PETITIONER DATED 5.1.2015.

/TRUE COPY/

P.S TO JUDGE

P.V.ASHA, J.

W.P(c) No.23001 of 2014-A

Dated this the 20th day of August, 2015

JUDGMENT

The petitioner, who retired from Cochin Refineries, Ambalamughal on 29.02.2008, is claiming ex-gratia payment without insisting an undertaking as prescribed in Annexure-V to Ext.P7 scheme (Ext.R1(a) Scheme), that he will not enter into any litigation with the respondents, as a condition for the payment.

2. Departmental action was initiated against the petitioner, which culminated in a punishment of demotion, which was taken up in I.D No.327 of 2006 and the punishment was upheld as per Ext.P6 award on 16.11.2010. The 1st respondent Company floated Ext.R1(a) Monthly Ex-Gratia Scheme (MEGS) (hereinafter referred to as the `scheme'), which was introduced as per letter No.MEGS/81572/01/09 dated 13.01.2009 w.e.f 1.4.2008 with a view to extend an ex-gratia payment on monthly basis to its ex-employees/surviving spouse who have completed minimum 15 years of continuous service with the Bharat Petroleum Corporation, on their retirement, death, permanent

total disablement or early retirement on medical grounds. The preamble of the Scheme itself provides as follows:

> "The Corporation has decided to introduce an Ex-Gratia Scheme effective from 1/4/2008, with a view to extend monthly benefit to its ex-employees who have completed minimum 15 years of continuous service with the Corporation, provided their separation is on account of either:
>
> i) Retirement
>
> ii) Death
>
> iii) Permanent Total Disablement
>
> iv) Early retirement on medical grounds.
>
> This payment will be available to ex-employees/their spouse, subject to their fulfilling the laid down criteria and complying with the terms and conditions of the scheme."

Clause 2 provides for the eligibility of the scheme. The conditions mentioned therein are the following:

> "2. ELIGIBILITY:
>
> xxx xxxx xxxxx xxxxx xxxxxx xxxxx
>
> A) Ex-employees are eligible for monthly Ex-Gratia payment from the month subsequent to their retirement/death, provided both the conditions mentioned below are fulfilled.:
>
> i) Ex-employees of Burmah Shell Group of Companies or Kochi Refineries Ltd. Should have completed 15 years of service jointly with Bharat Petroleum Corporation Ltd. Or solely with these individual companies. Similarly, ex-

employees of Bharat Petroleum Corporation Ltd. should have completed 15 years of service to become eligible.

ii) The separation of ex-employee should be on account of either retirement or early retirement on medical grounds or Permanent Total Disablement or Death.

B) Spouses of deceased ex-employees are also eligible for Ex-Gratia payment, provided ex-employee meets the eligibility criteria mentioned in para 2(A) above. Similarly, in the unfortunate event of death of ex-employee, his/her spouse will be eligible for Ex-Gratia payment. However, spouse of ex-employee who is employed with the Corporation will not be eligible for payment of Ex-Gratia, on account of deceased spouse. He/she will get Ex-Gratia payment on his/her own account only."

Similarly clause 3 provides for the conditions under which the scheme was not applicable to ex-employees. Clause (viii) thereof, which is relevant in this case, reads as follows:

3. NON-APPLICABILITY OF `MEGS'

A) The Scheme shall not apply to ex-employees who:

xxxx xxxx xxxx xxxxx xxxxxx

(viii) had/have entered into any litigation for Pension or Superannuation Scheme individually or collectively against the Company/Corporation before any Court of Law/Forum/authority and such case(s) is still pending. This clause is also applicable to spouse of such ex-employee.

xxxx xxxxx xxxxx"

Further clause 5 provides for the procedure for getting the benefit of the scheme. Under clause (a) thereof it is provided that the eligible ex-employee shall submit an application in the prescribed format Annexure-I along with all relevant documents as indicated in the application. Clause (d) provides that the ex-employees have to execute an undertaking as provided in Annexure V, which reads as follows:

> "5. **How to apply:**
>
> xxxx xxxxx xxxxxx xxxx xxxxxx
> xxxx xxxxx xxxxx xxxxxx xxxxxx xxxxx
>
> d. The Ex-employees/surviving spouse, who are eligible for Ex-Gratia shall be required to execute an **undertaking** as per **Annexure V** to the effect that (i) this benefit is being given not because of any right or entitlement, but entirely as an Ex-Gratia; (ii) he/she will not enter into any litigation individually/collectively in this regard and/or any other service related matters before any Court of Law/Forum/Authority; (iii) if any case pertaining to Burmah Shell pension Scheme and/or Superannuation Scheme/any service related matter is pending before any Court of Law/Forum/Authority, if he/she was a party to any such case shall withdraw the same forthwith. The eligibility of such applicant shall be verified and application will be processed only after withdrawal of such case/petition or litigation before any Court of Law/Forum/Authority where the applicant is a sole/joint petitioner.
>
> xxxxxx xxxxxx xxxxxx"

Sub clause (i) of Clause 6 is also relevant, which reads as follows:

> "6) GENERAL
>
> (i) Payment under the Scheme is subject to the Ex-employee's (including spouse) withdrawing all litigations pending before any Court of law/Forum/authority."

3. The petitioner submits that in view of the pendency of the I.D before the Labour Court he was not eligible to submit any application at the relevant time, even though departmental action was taken against him unnecessarily and the punishment awarded was illegal. At the same time, he submits that insistence of submission of an undertaking as provided in Clause 5(d) and Annexure-V is illegal and the respondents do not have any right to curtail the right of the employees to get the entire benefit of Ex-gratia Scheme which is introduced as a welfare measure, imposing such arbitrary conditions.

4. According to the petitioner, he satisfies all the eligibility conditions. As per clause 2 of the scheme, the only condition is that the ex-employees should have completed 15 years of service and that the separation of the ex-employee from the Corporation shall be on account of either retirement or early retirement on medical grounds or permanent disablement or both. Similarly the only condition stipulated in clause 3 under

which the ex-employees are excluded from the applicability of the scheme is under clause (viii) ie. when they have entered into any litigation for pension or superannuation scheme individually or collectively against the company/corporation before any court of law/forum/authority and such case is still pending. Therefore going by clause 2 as well as clause 3, which alone provide for the eligibility as well as non applicability of the scheme, the petitioner comes under the purview of the scheme. According to him, he has not entered into any litigation for pension or superannuation scheme individually or collectively against the company, as provided in clause 3. The only case in which he was involved was regarding his demotion, that too taken up by the employees' union in the I.D. The only condition stipulated for disqualifying the exgratia is as provided under clause 3(viii). Therefore according to him the provision contained in clause 5 (d) which insists an undertaking as per Annexure-V to the effect that he/she will not enter into any litigation individually/collectively in this regard and/or any other service related matters before any court of law/forum/authority and if any case pertaining to Scheme and/or Superannuation Scheme/any service related matter is pending before any Court of Law/Forum/Authority, if he/she was a party to any such case shall withdraw the same forthwith so as to submit an application and to avail the benefit of the scheme, is contrary to the eligibility condition provided in clause 2 as well as clause 3. The petitioner submits that when employers like the respondent Company have floated a scheme for payment of exgratia payment to the employees who have worked for more than 15 years, they cannot impose such arbitrary condition for its payment. It is the fundamental right of every employee/ex-employee to fight out his claims legally. On that ground, the benefits which are legally due to him cannot be withheld or denied. Therefore according to him, the provisions contained in Annexure-V read with clause 5 (d) are violative of his fundamental rights. It is his case that the Company is earning huge profits out of the services rendered by its employees and it is out of that profit that they have chosen to grant ex-gratia payment. While granting such payment, he submits that it cannot discriminate between the ex-employees and the classification on the basis of the pendency of cases or the likelihood of filing cases against the company does not have any nexus with the object sought to be achieved and hence the same should be declared illegal and cannot be invoked in his case.

5. Therefore according to the petitioner since he had already submitted his application and affidavit before the respondents for grant of exgratia payment, the respondents ought to have granted the same, at least when the I.D 327/2006 was disposed of by Ext.P6 award on 16.11.2010. The petitioner also relied on Ext.P13 judgment of this Court in support of his claim.

6. At the same time, the learned counsel for the respondents submitted that the scheme is introduced purely as a welfare measure without contribution from the part of the employees and the scheme itself provides that it should be subject to the conditions mentioned therein. Therefore when all the provisions under the scheme are read together, it can be seen that it is not clause 2 or clause 3 alone that governs the scheme. When the entire provisions in the scheme are read together, it is evident that any ex-employee has to submit an undertaking as provided therein in Annexure-V, in which case alone he will be entitled to the benefit of the scheme. It is also pointed out that unlike any other claim of pension, the Company has introduced the scheme with a view to see that the ex-

employees are not spending the amount which they are getting as ex-gratia, towards litigation expenditure against the company.

7. It is also pertinent to note that clause 6 (i) provides that payment under the Scheme is subject to the ex-employees' withdrawing all litigations pending before any Court of law/Forum/authority. Sub clause (v) provides that payment under the scheme is purely and entirely an exgratia payment from the Corporation and not because of any right or entitlement of the employees. Clause (xii) of the general condition provides that ex-employees/spouse who is getting exgratia payment, if subsequently enters into litigation, individually/collectively the exgratia will be paid only from the subsequent month in which the litigation is withdrawn.

8. Therefore on an overall reading of the entire scheme, it can be seen that the ex-employees do not have any absolute or unqualified right to get exgratia payment. Their eligibility is dependent on fulfilment of the conditions specified in the scheme. The scheme has to be read and interpreted in its entirety. Therefore the contentions of the petitioner that clause 2 and 3 alone govern the eligibility of an ex-employee and therefore there is no reason for denying him the ex-gratia

payment cannot be accepted. It is also incorrect to say that the classification is without any nexus with the object sought to be achieved, between those who have entered into litigation and others. As long as there is no statutory right to claim the ex-gratia payment, and the payment of the same is governed by Ext.R1(a) scheme alone, it cannot be said that the petitioner is entitled to the said payment unless he submits his application along with all the requisite documents including Annexure-V in the prescribed form or that he is not required to comply with the conditions stipulated in the scheme.

9. Though the petitioner submitted Ext.P8 application, the affidavit he furnished along with it, did not contain all the particulars as prescribed in Annexure-V i.e the affidavit did not contain the undertaking regarding the litigation/withdrawal of the litigation. It was, in these circumstances, that the 2nd respondent issued Ext.P9. It is admitted that the petitioner has not filed any application in the prescribed form along with the affidavit as prescribed in Annexure-V. There cannot be any objection on the part of the respondents to grant him the benefit of the scheme in case the petitioner submits an application in the prescribed form, with a proper affidavit.

10. In the light of the above findings, the contention of the petitioner that clause 5(d) and 6(i) of Monthly Ex-Gratia Sceme (MEGS) are unenforceable, cannot be accepted. In order to avail the benefit of the scheme, he has to comply with all the conditions stipulated in the scheme and he will not be entitled to ex-gratia payment, without submitting an application along with the undertaking as prescribed in Annexure-V of the Scheme. Ext.P13 judgment relied on by the counsel for the petitioner is rendered on entirely different circumstances. It was held therein that medical assistance cannot be denied to the former employees on the ground that he has instituted legal proceedings against the employer, finding that the medical assistance was availed through a mediclaim policy and retired employees have to pay premium at rates prescribed. It was found that only those employees who subscribe to the scheme and pay the premium alone are enlisted to the benefit of the scheme. It was under these circumstances that this Court held that the denial of payment was illegal. In this case no such contribution is required from ex-employees. Therefore Ext.P13 judgment will not help the petitioner.

11. At any rate, the petitioner will be entitled to payment

under the scheme, in case he submits an application in the prescribed form along with the affidavit in terms of Annexure-V of the scheme. There will be a direction to the respondents to consider the case of the petitioner for payment of ex-gratia under the scheme, in the event of submission of such an application by him, along with an affidavit in the prescribed form within a period of one month from the date of receipt of a copy of the judgment, and to effect the payment due to him for the period from 1.4.2008.

With the above observations, the Writ Petition is disposed of.

Sd/-
(P.V.ASHA, JUDGE)

rtr/