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

Judgment Reserved on: 05.01.2016

% Judgment Pronounced on: 05.04.2016

\+ LPA 53/2015

PRADEEP CHHABRA ..... Appellant

Through Dr. K.P. Kylasanatha Pillay, Sr. Advocate with Mr. Ravi Pal and Mr. Nishant K., Advocates

Versus

INDIAN OIL CORPORATION THR ITS CHAIRMAN & ANR ..... Respondents

Through Mr. V.N. Koura and Mr. P.K. Benipal, Advocates for R-1

Mr. Vivek Goyal, CGSC with Mr. Abhishek Kumar Abhinav, Advocate for R-2

CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE JAYANT NATH

JAYANT NATH, J. (JUDGMENT)

1. By the present appeal, the appellant seeks to impugn the order of the learned Single Judge dated 27.11.2014 dismissing his writ petition. The petition was filed seeking the relief of quashing of the circular dated 23.07.2003 issued by respondent No.1 and for directions to respondent No.1 to provide benefit of Post Retirement Medical Attendance Facility to the appellant.

2. The brief facts which led to filing of the writ petition are that the appellant joined respondent No. 1 which is a Public Sector Enterprise as a graduate engineer on 14.03.1977 at the age of 22 years. It is urged that in 1985, a welfare Scheme was introduced by respondent No.1 for medical attendance facility for its officers as a post-retirement benefit w.e.f. 01.01.1985. The Scheme i.e., "Scheme for providing Post-Retirement Medical Attendance Facility for Officers" was aimed at providing medical attendance in their old age to eligible retired employees of the corporation. The Scheme was subsequently amended on 23.07.2003 excluding the application of the scheme to officers who resign from respondent No.1.

3. After having completed 31 years of service, the appellant resigned from the service of respondent No.1 on 14.03.2008. It is stated that the resignation of the appellant was with the consent of respondent No.1.

4. It is urged that on separation from respondent No.1, the appellant was given all benefits which were given by respondent No.1 to its officers and hence, the appellant was legitimately excepting the benefit to be given by respondent No.1 under Post-retirement Medical Attendance Scheme. It is urged that the appellant is in need of the benefit as the appellant is blessed with a male child aged 25 years who is bed ridden since birth and is suffering from incurable and irreversible micro cephaly and Spastic Cerebral Palsy. Since his resignation, it is urged, the appellant has been pursuing with respondent No.1 for this facility. However, the respondent pointed out that under the amended Scheme of 2003, an officer who had resigned from respondent No.1 Company would not get the benefit under the Scheme. The same was applicable only to employees who superannuate or voluntary retire or those who resigned prior to 23.07.2003. Hence, the appellant had

filed the present writ petition.

5. Before the learned Single Judge, it was the stand of respondent No. 1 in their counter-affidavit, that on account of anomalies in the scheme and also keeping in view the fact that the resigning officers were seeking better career opportunities i.e., jobs with higher emoluments, respondent No.1 decided to re-examine the provisions of the Scheme and hence, the necessary amendments were made by circular dated 17.07.2003 excluding officers who resign from the scheme. Subsequently instructions were issued on 23.07.2003. Between 01.04.2003 and 31.03.2013, it is urged that a total of 1129 officers have resigned and none of them have been granted any of the medical benefits available to superannuated officers. It is further stressed that from 17.07.2003 when the scheme was amended till 14.03.2008 when the appellant resigned, more than 449 officers had resigned and were not entitled to any post retirement medical benefits. Hence, it is urged that the appellant was fully aware of the position and yet, chose to resign. While resigning he clearly stated that he was leaving his job for other career options. It is further stated that the petition filed after a gap of five years from his resignation is obviously an afterthought and is barred by limitation and laches.

6. The learned Single Judge, in the impugned judgment, held that the appellant's challenge to the cutoff date as 23.7.2003 for officers who resigned is unacceptable. It was also held that the challenge to the question whether the cut-off date added in the amended scheme is arbitrary or unreasonable was misplaced. Reliance was placed on the judgment of the Supreme Court in case of ***Government of Andhra Pradesh & Ors. vs. N. Subbarayudu & Ors., (2008) 14 SCC 702*** on the issue of fixation of cutoff

date. It was however held that the benefit could not be withdrawn by the respondent corporation in respect of the employees who had already joined the scheme. The judgment further held that no vested right had accrued in favour of the appellant for grant of medical benefits since the same were not part of his conditions of service. Based on the above, the writ petition was dismissed.

7. We have heard the learned counsel for the parties.

8. Learned counsel appearing for the appellant has contended that the Scheme is illegal and arbitrary inasmuch as it seeks to discriminate among similarly situated officers. The officers who seek voluntary retirement on attaining the age of 45 years after having served the Company for 10 years are entitled to the benefits. Similarly, the Directors joining the Company are also entitled to the benefit of the scheme whereas the persons like the appellant who have worked for 31 years are being denied the benefits of the Scheme. Hence, the classification is arbitrary, artificial and treats equals differently. It is further urged that the appellant has received all post retirement benefits i.e. superannuation, benevolent fund etc. but has been wrongly denied the benefits under the Post-retirement Medical Attendance Scheme. The learned counsel has relied upon the judgment of the Supreme Court in the case of ***Asger Ibrahim Amin vs. Life Insurance Corporation of India, C.A. No. 10251/2014*** to support his contentions.

9. Learned counsel appearing for the respondent has reiterated that the Scheme had to be amended as on account of changing economic scenario in the country, large number of officers were leaving and joining private companies/multi-national companies for more lucrative careers. Reliance is placed on the resignation letter of the appellant wherein it is stated by the

appellant that “I wish to pursue other professional opportunities and am therefore, tendering my resignation”. It is contended that the appellant left for better career prospects and higher salary. In fact, he resigned on 14.03.2008 and requested for being relieved by 31.03.2008. It is also stressed that 1129 officers have been resigned since 01.04.2003 and none of them has been granted the benefit of the Scheme.

10. We may first look at the amended scheme. The introductory para of the said Scheme reads as follows.

> “The scheme of medical attendance facility during post-retirement period has been introduced with effect from 1.1.1985 for officers and 1.11.1988 for non-officers as amended from time to time. As a purely welfare measure, the scheme is aimed at providing medical attendance in their old age, to eligible separated employees of the Corporation (and/or their dependent spouse, dependent parents & dependent children who are mentally retarded/spastic/suffering from incurable congenital diseases) who superannuate/voluntarily retire or are retrenched subject to fulfilment of eligibility criteria prescribed under this scheme. The Scheme is contributory but voluntary. The details of the respective schemes are given below.”

Reference may also be had to the relevant clause of the amended scheme introducing the cut off date which reads as follows:-

> “iii) Those who resigned from the service prior to 23.07.03, with specific consent of the Corporation, after attaining the age of 50 years subject to rendering minimum service for 20 years.”

11. It is noteworthy that the above Scheme was in vogue when the appellant chose to resign on 14.03.2008. In fact, till that stage 449 officers had resigned from services of the respondent corporation and had been

denied benefit of the said Scheme. The appellant was aware of these facts and cannot claim ignorance.

12. A perusal of the Scheme itself shows that from 23.7.2003 it is only applicable to those who superannuated, voluntarily retire or are retrenched. It has no application to the officers who have resigned. Clause (iii) however, makes the Scheme applicable to those who have resigned prior to 23.07.2003 inasmuch as these officers had already been inducted into the Scheme on the payment of necessary voluntary contribution. The Scheme being voluntary and being contributory in nature, the appellant cannot claim any vested right to be eligible for the benefits of the Scheme.

13. As far as the classification is concerned, we do not feel that classifying the officers for the purposes of medical benefits to those who resigned as a separate category from those who superannuate or have taken voluntary retirement to be unjust or unreasonable. The Scheme was introduced with the object of providing certain benefits to the officers who have after long service retired. Keeping in view the fact that in the oil sector a large number of officers were leaving the respondent Company to seek better opportunities and higher salaries in private sector companies and multi-national companies, there can be nothing wrong in excluding such personnel from the applicability of the Scheme. The classification is based on reasonable and intelligible differentia.

14. Admittedly, in the present case, as is clear from the resignation letter of the appellant, he was leaving the company for career reasons presumably having got a better offer with some other employer. There is no merit in the contentions of the appellant.

15. Further in our opinion, the reliance of the learned counsel appearing

for the appellant on the judgment of the Supreme Court in ***Asger Ibrahim Amin vs. Life Insurance Corporation of India (supra)*** is misplaced**.** That was a case which was decided on the facts and statutory position as contained in Pension Rules of 1995 applicable to LIC of India. The court held that the essential component of said Rule 31 stood substantially fulfilled in that case and hence, the petitioner in that case who had resigned was held entitled to pension.

16. We see no error in the view taken by the learned Single Judge. There is no merit in the appeal and the same is dismissed.

(JAYANT NATH)
JUDGE

CHIEF JUSTICE

APRIL 05, 2016
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