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

\+ W.P.(C) 4933/2013

VIJENDER SINGH CHAUHAN ..... Petitioner

Through: Mr M.B. Singh, Advocate.

versus

UNION OF INDIA & ORS. ..... Respondents

Through: Mr A.P. Nagrath, Mr Anish Kumar and Mr Praveen Kumar Verma, Advocates.

CORAM:
HON'BLE MR. JUSTICE VIBHU BAKHRU

O R D E R

% 29.11.2017

1. The petitioner has filed the present petition, *inter alia*, impugning an order dated 05.03.2013 passed by respondent no.3, IRCON Medical Trust, whereby the petitioner's request for being considered for medical benefits as a beneficiary of the IRCON Medical Trust (hereafter 'the Trust') was rejected. The petitioner also prays that respondents be directed to induct the petitioner as a beneficiary under the Rules of the Trust and extend to the petitioner all medical and other benefits as available to other beneficiaries.

2. The petitioner was appointed as a Deputy Manager with respondent no.2, IRCON International Limited, on 17.06.1983. He resigned from respondent no.2 company on 22.08.2007 after completing nearly 24 years of service with respondent no.2.

3. The Trust was created by respondent no.2 by a trust deed dated 14.12.2000 (hereafter the 'Trust Deed'), with the object of providing medical

assistance to superannuated employees of respondent no.2 company.

4. The petitioner has been denied medical benefits on the ground that the petitioner had resigned from services of respondent no.2 company and, therefore, cannot be considered as a superannuated employee.

5. The petitioner contends that IRCON Medical Trust Rules (hereafter 'the Rules') which came into effect with the registration of the trust deed were amended by virtue of the resolution passed by the Board of Trustees of the Trust in their meeting held on 17.02.2011. According to the petitioner, Rule 2 of the Rules was substituted by rule 2A which reads as under:-

> ''**Rule - 2A Eligibility**
>
> The following employees/their spouses shall be eligible as member/beneficiary of the IMT scheme
>
> (i) Superannuated from IRCON after rendering 15 years of service
> (ii) Death in harness
> (iii) Premature retirement on medical grounds
> (iv) Premature retirement other than on medical grounds
> (v) Resignation from IRCON after rendering 15 years of service
> (vi) Separation arising out of Board level appointments in another CPSE/PSE
> (vii) On completion of tenure of a whole time Director
> (viii) All the existing members/beneficiaries of the IMT scheme.''

6. The learned counsel for the petitioner submitted that the amended Rule 2A, was not being implemented as the Managing Director (MD) of

respondent no.2 company had not approved of the same. He submitted that in terms of the Trust Deed the Board of Trustees were empowered to amend the Trust Deed and no further approval of the MD of respondent no.2 company was required. Thus notwithstanding that the MD of respondent no.2 has not approved the amended Rule 2A of the Rules, the same was binding and ought to be implemented.

7. The learned counsel appearing for the respondents countered the aforesaid submissions and submitted that the approval of the MD of respondent no.2 was necessary for carrying out any amendment in the Rules as by virtue of a resolution passed by the Board of Trustees of the Trust on 11.06.2002 the Trust Deed was amended.

8. I have heard the learned counsel for the parties.

9. Before proceeding further, it would be relevant to refer to Clause 3 and Clause 11 of the Trust Deed, which sets out the objectives and the power to amend the Trust Deed and the Rules. Clause 3 and 11 of the Trust Deed (as initially executed) are set out below:-

> ‘‘**3. <u>Object of Trust</u>**
> The object of the Trust is to provide medical assistance to superannuated employees of the company as enumerated in the Rules framed for this purpose and also to provide financial assistance in case of death while in service.
>
> xxxx xxxx xxxx
>
> **11. <u>Power To Amend</u>**
> The Trustees may at any time by a resolution in writing signed by not less than four of them amend any of the

> provisions of this Deed and the Rules provided that no such amendment shall be inconsistent with the main objects of the trust hereby created.''

10. It is apparent from the above that the trustees were duly empowered to amend the Trust and the Rules framed thereunder subject to the condition that the amendment is not inconsistent with the object of the Trust.

11. The learned counsel for the respondents had pointed out that Clause 11 of the trust deed itself was subsequently amended by the resolution of the trustees passed on 11.06.2002. The said resolution is set out below:-

> ''RESOLVED FURTHER THAT clause 11 of the Trust Deed pertaining to 'Power to Amend' be substituted as under:-
>
> The Trustees may at any time by a resolution in writing signed by not less than 2/3rd of the total strength of the trustees amend any of the provisions of the Trust Deed and the Trust Rules with the approval of the Managing Director subject to approval of the Income-tax authorities as required and formalities, if any, in law provided that no such amendment shall be inconsistent with the main object of the Trust hereby created.
> RESOLVED FURTHER THAT the trustees may, pursuant to their powers under the said Trust Deed/Rules, effect the above amendments and any other consequential amendment, if any, in the Trust Deed and the Rules within the amended object of the Trust Deed with the approval of the Managing Director subject to other approvals, if any.''

12. In view of the above, the resolution passed by the Board of Trustees on 17.02.2011 required the approval of the MD of respondent no.2 for becoming effective. The copy of the Minutes of the Meeting of the Board of

Trustees held on 17.02.2011 also indicates that the minutes were to be submitted to the MD of respondent no.2 for his approval. Concededly, the MD of respondent no.2 declined to approve the aforesaid resolution of the Board of Trustees for the reason that it ran contrary to the object of the Trust.

13. There is no ambiguity in the object of the Trust; it is to provide medical assistance to superannuated employees of respondent no.2 company and also to provide financial assistance in case of death while in service. Although, clause 11 of the Trust Deed provides for the power to amend the trust Deed, the said power does not extend to making amendment which is inconsistent with the main object of the trust. Thus, there is much merit in the contention that benefits of the Trust cannot be extended to persons other than the superannuated employees of respondent no.2 company except "in case of death of an employee while in service".

14. Rule 2 of the Rules - which continues to be applicable - reads as under:-

> "**2. Scope**
>
> The Fund shall be used for providing medical and financial assistance to the beneficiaries. Such assistance shall be provided to regular employees including full time functional Directors and his/her spouse after superannuation or death in harness.
> The following category of employees are not covered by the Fund -
> i. Ad-hoc/contract employees including those on casual or daily wages
> ii. Part-time and re-employed employees

iii. Consultants and advisors
iv. Employees on deputation to IRCON
v. Those whose services have been terminated."

15. Admittedly, the petitioner does not qualify as a superannuated employee, of respondent no. 2 company. Thus, in view of the above, the reliefs sought by the petitioner cannot be granted.

16. The petition is, accordingly, dismissed.

VIBHU BAKHRU, J

NOVEMBER 29, 2017
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