

IN THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment delivered on:24.05.2019

+ **W.P.(C) 506/2018 & CM No.2176/2018, 4573/2019 & 4574/2019**

PEC RETIRED EMPLOYEES WELFARE
ASSOCIATION

..... Petitioner

versus

UNION OF INDIA AND ANR.

..... Respondents

Advocates who appeared in this case:

For the Petitioner	:Mr Chetan Lokur with Mr Nitish : Chaudhary.
For the Respondent	:Ms Suparna Srivastava and Ms Nehul : Sharma, Advocates for R-1. : Mr Sunil Dalal and Mr KrishKalra, : Advocates for R-2.

**CORAM
HON'BLE MR JUSTICE VIBHU BAKHRU**

JUDGMENT

VIBHU BAKHRU, J

1. The petitioner – an association of retired employees of respondent no.2 company (hereafter PECL) – has filed the present petition impugning a circular dated 05.10.2017 issued by PECL (hereafter ‘the impugned circular’), whereby the medical reimbursement to its retired employees provided under a scheme has been discontinued.

2. PECL – an enterprise of the Central Government – introduced a scheme, “*PEC’s Medical Policy for Retired Employees*” (hereafter ‘the

Medical Scheme’), for the benefit of its retired employees. PECL has, in terms of the impugned circular, temporarily discontinued the Medical Scheme with immediate effect.

3. The petitioner contends that the impugned circular, essentially, is *ultra vires* of the Constitution of India inasmuch as it denies the members of the petitioner association the benefits of the Medical Scheme. PECL disputes the aforesaid contention and contends that the Medical Scheme is not a statutory scheme and, therefore, the petitioner cannot seek the continuation of the same as a matter of right. According to PECL, the Medical Scheme is in the nature of a beneficial scheme and, thus, it can be withdrawn by it at any time.

Factual Background

4. The petitioner is an association registered under the Societies Registration Act, 1860 and was constituted, *inter alia*, for the redressal of grievances and for the welfare of the retired employees of PECL.

5. PECL was incorporated in 1971 as a subsidiary of State Trading Corporation Limited (STCL). In the year 1976, STCL issued a letter dated 25.10.1976, *inter alia*, undertaking that the medical rules applicable to the employees of STCL would also be applicable to the employees of PECL.

6. Thereafter, PECL introduced the Medical Scheme (“PEC’s Medical Policy for Retired Employees”) for the benefit of its retired employees. The Medical Scheme was introduced purely on a voluntary

and contributory basis. It was applicable to only those employees who opted for the same by making a lifetime contribution.

7. The Medical Scheme also specifies the employees who are eligible to join the Medical Scheme as follows:

- “a) retire on superannuation or;
- b) seek voluntary retirement after putting at least 15 years of service or;
- c) joined PEC Limited (including Directors/Chairman) from other Public Sector Undertaking/Organizations and have served the corporation for a minimum of two years.”

8. As per the Scheme, the retired employees willing to join the Medical Scheme had to make a payment in form of a “*lifetime contribution*”. The Medical Scheme contemplated that on payment of the aforesaid contribution, the erstwhile employee would be issued a Medical Card for availing reimbursement of his/her medical bills. The amount of reimbursement available to an ex-employee is dependent on the designation held by the employee at the time of his/her retirement.

9. Thereafter, PECL issued a circular dated 14.06.2017 (being Circular No. 39/2017) mending the Medical Scheme. Subsequently, on 05.10.2017, PECL issued the impugned circular, whereby the Medical Scheme was temporarily discontinued with immediate effect.

10. Consequently, the petitioner filed representations for protesting against the said decision of PECL to discontinue the Medical Scheme and further requested it to reconsider the said decision. In response,

PECL sent a letter dated 01.11.2017 stating that the Medical Scheme was discontinued due to the losses suffered by it in the last three financial years. The said reply dated 01.11.2017, received by the petitioner, is set out below:

“You may be aware that PEC has suffered losses in the last three(03) financial years and that our net worth has also become negative. For survival of the company, a number of efforts are being made which also includes reduction in administrative expenses. Therefore, as an interim measure, the medical reimbursement to retired employees has been temporarily withdrawn w.e.f 05.10.2017. The temporary discontinuation of medical benefits to retired employees shall be reviewed after closing of FY 2017-18.

We deeply regret the inconvenience caused to you on this account. We hope you will understand the tough situation being faced by the Company and appreciate the efforts taken by the Management to revive PEC.”

11. Thereafter, the petitioner made another representation by a letter dated 20.11.2017, *inter alia*, stating that several guidelines had been issued by the Department of Public Enterprises (DoPT) in the past in terms of which long term provisions were made each year to finance the post-retirement benefits, and as on 31.03.2017, the cumulative provision for the aforesaid purpose had swelled up to ₹17.99 crores. PECL replied to the aforesaid representation by a letter dated 06.12.2017 by citing the same reasons as cited in its letter dated 01.11.2017, for the discontinuation of the Medical Scheme.

12. Thereafter, the petitioner sent a letter dated 27.12.2017 to respondent no.1 (Ministry of Commerce and Industry), *inter alia*, requesting it to intervene in the matter and direct PECL to withdraw the impugned circular.

13. The petitioner didn't receive any reply to the aforesaid letter. Its members being aggrieved, the petitioner has approached this Court by way of the instant writ petition.

Discussion and Conclusion

14. At the outset, it is relevant to state that the Medical Scheme is a contributory Scheme. Clause 2.1 of the Medical Scheme makes it clear that it is a voluntary Scheme. As noticed above, the Medical Scheme is applicable only to employees who (a) retired on superannuation; (b) seek voluntary retirement after serving at least 15 years of service; and (c) or have joined PECL from other Public Sector Undertaking/Organisations and have served the corporation for a minimum period of two years.

15. The retired employee who intends to join the Medical Scheme is required to make a contribution as specified in Annexure - IV to the Medical Scheme. Clause (1) of Annexure - IV is relevant and is set out below:-

“1. The retired employee who intends to join the scheme will pay one time following contribution—

— upto DM — Rs.500/-

—Managers upto CMM —Rs. 1000/-

–GM & above

–Rs.2000/-

The contribution is made for whole life and will be payable in advance. No refund of contribution will be allowed if the retired employee desires to opt out of the scheme.”

16. It is not disputed that the members of the petitioner association have made a contribution as required under the Medical Scheme for availing the benefits as mentioned therein. It is at once clear that having accepted the contribution, PECL cannot unilaterally resile from extending the benefits under the Medical Scheme to the eligible members who had made the requisite contribution on the promise of the benefits as held out by PECL.

17. The contention that the Medical Scheme was framed by an administrative circular and, therefore, can be withdrawn by the Board of Directors of PECL, is unpersuasive. Whilst it may be accepted that PECL can discontinue the Scheme, which does not form a part of the service conditions of the employees, the same can be done only prospectively. PECL cannot deny the benefits, in terms of the Medical Scheme, to those members who had subscribed to the Medical Scheme by making necessary contributions as required by them. Having accepted the contribution from the members, it is certainly not open for PECL to now deny the benefits of the Scheme.

18. It was contended on behalf of PEC that it has been suffering from financial losses and, therefore, the Board of Directors had decided to reduce various administrative expenses of the company, including

expenses on account of medical reimbursement of retired employees. Plainly, the same is impermissible. The obligation of PECL to reimburse the medical expenses in terms of the Scheme to members from whom contribution has been accepted, is not secondary to the PECL's obligation to meet its other liabilities. It is not open for the PECL to select which of its liability to discharge and which to avoid.

19. It was contended on behalf of the PECL that the Medical Scheme was not a statutory scheme and the petitioner has no right to insist that the Scheme be continued. It is further stated that the Medical Scheme is a beneficial scheme and, therefore, the PECL could withdraw the Scheme on its discretion. PECL also relied on an Office Memorandum dated 21.05.2014 issued by the Department of Public Enterprises, which stipulates that the contributory scheme may be reviewed every year based on profitability/affordability of the company and contribution by CPSE should not be guaranteed. It is contended that in terms of the said Office Memorandum, the Medical Scheme is required to be 'defined contribution scheme' and not a 'defined benefit scheme' and the benefit available to an independent executive would be determined based on the accumulated amount. It is also pointed out that in terms of the said Office Memorandum, the contribution of PECL towards the Medical Scheme and other superannuation benefits (including provident fund and gratuity) was limited to 30% of the basic pay plus DA.

20. The said Office Memorandum relied upon by PECL relates to framing of a scheme. However, in the instant case, the Medical Scheme framed by PEC did not stipulate that the same would be extended from

year to year. On the contrary, the Medical Scheme expressly stipulated that it was a voluntary scheme and the contributions made would not be refunded even if the retired employee desired to opt out of the scheme. Having bound down the employees to the terms of the said Medical Scheme, it is not open for PECL to resile from its part of the bargain and deny the benefits to those ex-employees who had subscribed to the scheme by paying the requisite contribution.

21. It is also pointed out that PECL had made due provisions in their accounts based on actuarial estimates for deferring the payments towards benefits to be provided to its superannuated employees. Admittedly, the payments required to be made by PECL towards reimbursement of medical bills are well within the scope of the provisions made. It is pointed out by the petitioner that as on 31.03.2017, the provisions made for post-retirement medical benefits total is ₹17,99,91,432/-. The fact that the said provision has been made is not denied. However, PECL contends that it has not earmarked any investment towards or created any corpus to such post-retirement benefits. Plainly, not earmarking any investments or creating a separate corpus would not absolve PEC from meeting its obligations/liabilities. The provisions of such nature recognize a liability/potential liability. The fact that PECL had not earmarked any of its assets towards meeting the said liability would not, in any manner, alter the nature of the provision/liability or PEC's obligations to discharge the same.

22. Having stated above, there is merit in PEC's contention that it could discontinue the Medical Scheme if it is found that the same was

not viable. Admittedly, the Medical Scheme is not a statutory scheme and, therefore, it would be open for PEC to review its decision to extend such scheme to employees who had not joined the scheme. However, it cannot deny the benefits to those superannuated employees who had subscribed to the Medical Scheme. If the Medical Scheme is closed, other employees who are retiring would have to make alternative arrangements for meeting their medical expenses.

23. The decision of PECL not to reimburse medical bills after 05.10.2017 is plainly unsustainable. While, it may be open for PEC not to admit any members to the Medical Scheme having decided to discontinue the same, the medical benefits to members who had already admitted would be required to be reimbursed, in terms of Medical Scheme.

24. In **HMR Rao v. Union of India & Ors: ILR 1996 Delhi 599**, a Coordinate Bench of this Court had considered a challenge to denial of medical benefits to employees of Indian Airlines Corporation who had joined other services after superannuation. Although, the said case was considered in the context of a statutory scheme, the Court, in reference to the concerned scheme, held that “*these terms and conditions were communicated to them at the time of that superannuation as quoted above and hence formed part of the contract which could be altered to their detriment*”. Similarly, in the case of **Sunita Devi v. Life Corporation of India & Anr.: 170 (2010) DLT 48**, this Court had held that the Life Insurance Policy could not be denied to the nominees of the members of the concerned scheme who had joined the same prior to the

amendment.

25. In view of the above, the impugned circular is set aside to the extent it seeks to deny the reimbursement of medical expenses under the Medical Scheme to the members who have already been admitted to the Medical Scheme. Accordingly, PECL is directed to ensure that the medical benefits are available to the existing members of the Medical Scheme in terms, thereof. It is clarified that the impugned circular continues to be operative to exclude those ex-employees of PECL from joining Medical Scheme who had not done so prior to the issuance of the impugned circular.

26. All pending applications are disposed of.

MAY 24, 2019
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VIBHU BAKHRU, J