

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.02.2021

CORAM :

THE HON'BLE MR.SANJIB BANERJEE, CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE SENTHILKUMAR RAMAMOORTHY

W.A.Nos.165 and 166 of 2014

T.A.Rajagopalan .. Appellant
in WA.165/2014/Petitioner

W.V.Govindaraghavan ... Appellant
in WA.166/2014

Vs.

1. Indian Potash Limited
having its office at
No.727, Anna Salai
Chennai - 600 006
rep. by its Managing Director.
2. Indian Potash Senior Executive
Staff Superannuation Fund
No.727, Anna Salai
Chennai - 600 006
rep. by its Managing Director... Respondents/Respondents

Prayer: Appeal under Clause 15 of the Letters Patent against the common judgment dated 10.7.2013 made in W.P.Nos.10207 and 10208 of 2000.

WA.No.165/2014 in WP.No.10207 of 2000
& WA.No.160/2014 in WP.No.10208 of 2020:

Writ Petition filed under Art 226 of the Constitution of India to issue a Writ of Mandamus directing the respondents to pay the pension and retirement benefits to the Petitioners based on the Contributions made on the consolidated Salary.

For Appellants : Mr.Niranjan Rajagopal
for M/s.G.R.Associates

For Respondents : Mr.Anand Gopalan
for M/s.T.S.Gopalan and Co.
for 1st respondent

Mr.P.Raghunathan
for 2nd respondent

JUDGMENT

(Delivered by the Hon'ble Chief Justice)

The writ petitioners, who are retired employees of the first respondent company, are in appeal upon the dismissal of their writ petitions.

2. For a start, the very maintainability of the writ petitions under Article 226 of the Constitution was questioned before the Single Bench. It was submitted on behalf of the first respondent company that such company did not answer to the description of State or other authority within the meaning of Article 12 of the Constitution. At any rate, the first respondent asserts that it is not within the all pervasive control of any government nor is it substantially or otherwise funded by the government. Towards such end, the first respondent company relies on a Delhi High Court judgment reported at 246 (2018) DLT 360 [Indian Potash Limited and others v. Union of India and others], wherein it was held that the company could not be regarded as a public authority as defined in Section 2(h) of the Right to Information Act, 2005.

3. The grievance of the appellants is that the contribution made towards their pensionary benefits by the first respondent company had not been made over to them upon their superannuation. The ancillary case that the appellants run is that the terms of appointment of the appellants provided that the first respondent company would contribute 15% equivalent of the appellants' salary throughout the period of the appellants' service for the ultimate pensionary benefits to be made available to the appellants upon their retirement. The appellants claim that by an amendment introduced to the service rules governing employees of the first respondent company, the definition of "pensionable salary" has been introduced and such definition restricts the pensionary benefits that would be made available to a retiring employee. The substance of the appellants' submission is that if the amount equivalent to 15% of an employee's salary has been contributed every month by the employer towards a superannuation fund, the money that has

accrued in such account, complete with the interest earned, is the property of the concerned employee and, by no figment of imagination or the quirk of a provision contained in the service rules, can a lesser amount be made available to an employee.

4. By the judgment and order impugned dated July 10, 2013, the writ petitions have been dismissed on merits and without conclusively addressing the issue as to the maintainability of the writ petitions.

5. The first respondent company submits that since the writ petitions have been dismissed, the first respondent could not prefer any appeal. The first respondent also makes out that since the Single Bench has held in favour of the first respondent on merits, even no cross-objection has been filed since no conclusive pronouncement has been made in the judgment and order impugned against the first respondent.

6. As to the issue of maintainability, the appellants say that there is some material which shows that the Ministry of Chemicals and Fertilisers considers the first respondent company to be administratively under the control of the government. However, apart from a document suggesting so, nothing firmer has been cited. Against this, it is the judgment of the Delhi High Court which stares the appellants in their face and records that only 12.6% of the shares of and in the first respondent company are controlled by the government or entities that may loosely be called the government and the balance shareholding of the first respondent company is not controlled by the government or government entity.

7. In the light of it having been held by the Delhi High Court as far back as in 2017 that the first respondent company was not a public authority within the meaning of relevant provision of the Act of 2005, it is difficult to hold, in the wake of the shareholding position of the company, that the first respondent company is anything but a private company not owned or controlled by the government. The mere administrative control exercised over the first respondent company may not be enough unless there is deep and pervasive control of its activities by the government, whether as a result of the government completely funding the activities of the concerned company or otherwise through statute or the like controlling the affairs of the company. On the flimsy material brought, it does not appear that the company is a State or other authority within the meaning of Article 12 of the Constitution for any writ to lie against the first respondent company.

8. At any rate, the substantial issue dealt with by the Single Bench must be alluded to at this stage. The Single Bench

found that no prejudice had been occasioned to the appellants at the time of their superannuation. The Single Bench reasoned that it was the provision as to entitlement which was the most important, notwithstanding the contribution that may have been promised to be made into the superannuation fund at the time of the appellants' appointment. Ordinarily, when an employer represents to an employee that it would make a certain quantum of contribution to the superannuation fund, it implies that the amount contributed would belong to the employee and the accrual thereto would also accrue to the account of the employee for it to be available at the disposal of the employee at the time of superannuation. However, when a specific condition as to the quantum of entitlement is incorporated in the service rules, the quantum of monthly or periodic contribution to the superannuation fund pales into insignificance. It is possible that the quantum of entitlement on account of pension may have been fixed by the amendment to the service rules introduced in 1995 by incorporating the definition of "pensionable salary". However, it does not appear that the appellants were not contemporaneously aware of such alteration brought about in the service rules. Though the appellants claim that a letter issued in the year 1996 by some other employee canvassed the ground on behalf of all the retired employees of the concerned employer, it does not appear that upon the representation of the concerned employee being disregarded, such concerned employee or the appellants or any other challenged the same in any court of law. The appellants attained superannuation in the year 1996 and the present writ petitions came to be instituted in the year 2000. It was too late in the day, at such a stage, to question the alteration in the rules.

9. The appellants seek to rely on the general principle that the terms pertaining to the employment of a person may not be altered to the prejudice of the employee after the appointment has been made. In the present case, the contribution to the superannuation fund, even though held out a promise that it would be such amount which would be made over to the appellants upon the appellants' superannuation, the subsequent change incorporated by way of the definition to "pensionable salary" being introduced in the service rules remained unchanged for the remaining duration of the appellants' service life. It was sought to be challenged several years after the appellants retired from service. It is difficult to accept that the appellants may not have been contemporaneously aware of the change when it was introduced. Further, the appellants' action in the present case has to be seen as the action of only two employees against the first respondent company. It is quite immaterial that other petitions may be pending, particularly since the appellants have not instituted the petitions in any representative capacity nor attempted to implead others

similarly situated as the appellants.

10. Ordinarily, when a question as to the maintainability of a writ petition is raised, the Court should be slow in addressing the merits without answering the challenge to the jurisdiction of the Court to receive the action. If the Court had dealt with such aspect of the matter in totality, there is no doubt that the Court may not have found it necessary to proceed on merits. However, the course of action chosen by the Court in this case was to dismiss the writ petitions on merits without addressing the issue as to the maintainability of the petitions. The Single Bench has given cogent reasons for not finding in favour of the appellants on merits. Such reasons appear to be just and proper and the view taken is possible to have been taken on the set of facts that presented themselves. Considering that the mere payment of a certain amount in the superannuation fund may not imply that the employee would be entitled to such amount without there being some other corresponding provision, when there is corresponding provision which limits the quantum that can be obtained by an employee, the quantum of deposit may not be the guiding factor.

11. For the reasons aforesaid, the judgment and order impugned dated July 10, 2013 does not call for any interference, inasmuch as it has dwelt on the merits of the appellants' case without going into the objection as to the maintainability. In addition, it has already been observed that there were serious doubts pertaining to the maintainability of the petitions and even if the appellants were found to be justified on merits, the objection as to the maintainability was so overwhelming that the merits of the matter need not have been addressed in its wake. The appellants are left free to challenge the award of what the appellants perceive to be a meagre quantum of pension in a properly constituted suit. In the event such suit is instituted, the observations in the order impugned and those contained herein may not unduly prejudice the appropriate civil forum.

W.A.Nos.165 and 166 of 2014 are dismissed. There will be no order as to costs.

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sd/-

Asst.Registrar (CS V I)

/true copy/

Sub Asst. Registrar

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To:

1. The Managing Director
Indian Potash Limited
No.727, Anna Salai
Chennai - 600 006
2. The Managing Director
Indian Potash Senior Executive
Staff Superannuation Fund
No.727, Anna Salai
Chennai - 600 006

+1 cc to M/s.T.S.Gopalan & Co Advocate sr8707
+2 ccs to M/s.G.R.Associates sr9043

W.A.Nos.165 and 166 of 2014

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aa25/02/2021



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