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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Reserved on: 14th February, 2022
Pronounced on: 17th February, 2022

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W.P.(C) 4168/2021

DR. SARAT KUMAR SAHOO

..... Petitioner

Through: Mr.Anukul Chandra Pradhan,
Sr.Advocate with Mr. Rahul Baid
and Mr.Ronak Baid, Advocates.

versus

CHAIRMAN & MANAGING DIRECTOR

GAIL INDIA LTD AND ORS

..... Respondents

Through: Ms.Purnima Maheshwari for
Respondent/ GAIL.

CORAM:**HON'BLE MR. JUSTICE YOGESH KHANNA****YOGESH KHANNA, J.** (Through Video Conferencing)

1. This petition is filed by petitioner for directions against the respondents to extend pension as promised in the letter of appointment, under the Scheme of "*Contributory Superannuation Benefit Fund*" of GAIL, although, terms and conditions as mentioned, in the Scheme have been satisfied by the petitioner.

2. One of the pre-condition of the Respondent's Pension Scheme was "the pension shall be payable on attaining the notional age of superannuation, provided, the minimum eligibility period is continuous 15 years of service in GAIL with a rider that in case anyone, who has served less than 15 years of service but prefers to get separated from office he/she can contribute remaining period in one go for being eligible for pension". The petitioner on completion of 14 years and one month of



service, was asked by respondent to pay Rs.45,604/- for the shortfall period for the purpose of availing pension under the old scheme and the said amount was also accepted on being deposited by the petitioner. However, the respondent company refused to process and pay pension to the petitioner by taking recourse of revised/amended scheme, namely, "*Defined Contribution Fund, 2007*" which was notified on 04.04.2014 which makes an employee entitled to pension only, if an employee has put in job of minimum 15 years of continuous service, with no relaxation, irrespective of the fact the said amended scheme was not applicable in the petitioner's case as he got separated from GAIL prior to effective date i.e. 01.01.2007. It is alleged, the old scheme of 2000 would govern the case of petitioner, as he got separated from GAIL when the old scheme was in force.

3. It was argued by the respondent since the Trustees had a power to revise the scheme, hence it was revised in the year 2007 and thereafter only those persons who had completed 15 years of service, could avail the benefit of pension. Regarding an employee Rajiv Khanna, it was argued he was also wrongly paid the pension and ought not to have been paid.

4. The learned counsel for the respondent also referred to *Vineeta Sharma vs. Rakesh Sharma and Ors.* MANU/SC/0582/2020 to say if there is a change in law during the pendency of the case, the later law be applied. The Court noted:

"95. In United Bank of India, Calcutta v. Abhijit Tea Co. Pvt. Ltd. and Ors. MANU/SC/0551/2000 : AIR 2000 SC 2957, with respect to change in law during the pendency of proceedings, it was observed:



20. Now, it is well settled that it is the duty of a court, whether it is trying original proceedings or hearing an appeal, to take notice of the change in law affecting pending actions and to give effect to the same. (See G.P. Singh: Interpretation of Statutes, 7th Edn., p. 406). If, while a suit is pending, a law like the 1993 Act that the Civil Court shall not decide the suit, is passed, the Civil Court is bound to take judicial notice of the statute and hold that the suit--even after its remand--cannot be disposed of by it."

5. Similarly the respondent referred to *B.T.Manglani vs. Delhi Development Authority and Anr.* in W.P.(C)2286/2015 decided on 02.06.2016 and to *P.Bandopadhyaya and Ors. vs. Union of India and Ors.* MANU/SC/0378/2019 on this issue.

6. She also referred to various annexures including an office memorandum dated 26.11.2008 viz. Annexure-R1, which read as under:

*"v) Superannuation Benefits: CPSEs would be allowed 30% of Basic Pay as Superannuation benefits, which may include Contributory Provident Fund (CPF), Gratuity, Pension and Post-Superannuation Medical Benefits. The CPSEs should make their own schemes to manage these funds or operate through Insurance companies on fixed contribution basis. The amount of Pension, Gratuity and Post Retirement Benefit will be decided based on the returns from the schemes to be operated. **The Pension and Medical benefits can be extended to those executives, who superannuate from the CPSE and have put in a minimum of 15 years of service in the CPSE, prior to superannuation.**"*

7. Further she referred to circular dated 04.04.2014 to say since the petitioner superannuated after 2014 i.e., in 2019, he shall not be entitled to any benefit of the old pensionary benefits scheme as had not completed 15 years of service.

8. Heard.

9. Let us first look at the letter of appointment of petitioner issued by the respondent on 06.07.1992 which interalia notes:



Besides being a member of the Employees Provident Fund and Gratuity Act/Scheme of the Company, you will also be governed by the Scheme of Contributory Superannuation Benefit Fund of GAIL, details of which can be had after you join us.

10. Admittedly the GAIL Employees Superannuation Benefit Fund Scheme was amended on 03.08.2001 and it notes:-

Existing Rules	Amended/Incorporated Rules
19. Computation of Benefit: 19.2: The minimum qualifying service to become entitled for the benefit except in the case of death/permanent disablement /superannuation of the employee, will be 15 years. The benefit shall be payable on the 'beneficiary attaining superannuation, age; in the event an employee with less than 15 years service resigns from the service, his/her contribution deducted from his/her salary, will be refunded, with simple interest @ 6% per, annum; However, in cases of separation (other than retirement), of employees who have rendered at least 10 years of service, they may also avail of the pension benefit provided they contribute for the period which falls short of the stipulated 15 years of service either in one lumpsum or on a monthly basis for the balance period of 15 years stating immediately after separation. Payment of pension in such cases will also start only on attaining the age of 58 years.	19. Computation of Benefit: 19.2 The minimum qualifying service to become entitled-for the benefit except in the case of death/permanent/total disablement/ superannuation of the-employee, will be 15 years. The benefit shall be payable on the beneficiary attaining superannuation age. In the event an employee with less than 15 years service resigns from the service, his / her contribution deducted from his/her salary will be refunded with simple interest @ 6% per- annum. However, in cases of separation(other than retirement) of employees who have rendered at least 10 years of service, they may also" avail of the pension benefit provided they contribute for the period which falls short of the stipulated 15 years of service either in one lumpsum or on a monthly basis for the balance period of 15 years starting immediately after separation. Payment of pension in such cases will also start only on attaining the age of 58/60 years.



11. The petitioner herein resigned after serving more than 14 years and for the balance period of 15 years of service he paid compensation of an amount of Rs.45,604/-, as calculated by the respondent company on 14.11.2007 vide a cheque drawn on State Bank of India, Bhikaji Cama Place, New Delhi, as nine months subscription which was duly accepted by respondent.

12. In the year 2014, a circular dated 04.04.2014 was issued by respondent company *revising* pension scheme and the salient features of new scheme are as under:-

In terms of the pay revision guidelines issued by DPE vide its OM' no. 12 (70)/08-DPE (WC) dt 26.11.2008. and O.M No.2(70)/08-DPE(WC)-GL-VII/09 dt. 01.04.2009, among others, CPSEs have been allowed to contribute 30% of Basic Pay plus Dearness Allowance of the employees as Superannuation benefits, which would include Contributory Provident Fund (CPF), Gratuity, pension and Post - Superannuation Medical Benefits for employees.-The pension as per these guidelines shall be under a "Defined Contribution Scheme" and not under a Defined Benefits-Scheme". The pension benefits can be extended to those who superannuate from the CPSE and have put in a minimum of 15 years of service in the CPSE, prior to superannuation.;

The trustees of GAIL Employees Superannuation Benefit Fund Trust in its' meeting held on 09.05.2013 approved the modalities for conversion of the Superannuation Benefit Fund Scheme from "Defined Benefit" to Defined Contribution" Scheme w.e.f 01.01.2007 and recommended the same to the Management.

Board of Directors in the 311th meeting held on 15.06.2013 has accorded approval to the proposal to implement the DPE guidelines on employee superannuation benefits. Board has also approved that the existing Superannuation Benefit Fund with "defined benefits" be superseded by a defined contribution scheme w.e.f.01.01.2007.



The Defined Contribution shall be known as GAIL Employees "Superannuation Benefit Fund and shall be governed by the following terms and conditions:

1. Applicability

The scheme shall apply to all Regular Employees of GAIL drawing pay in the regular scales of pay which includes employees who were on roll as on 01.01.2007 and new entrants joining on or after 01.01.2007. This shall Include Chairman & Managing Director and Director(s) who is / are a whole time bonafide employee of the Company. Employee will exclude deputationists till the date of absorption and Ad-hoc employees.

2. xxx

13. Admittedly, when the petitioner was appointed the Defined Benefit Scheme viz. the old scheme was applicable and whereas the new scheme which came later was made *applicable* only upon those who were either on the rolls of the company as on 01.01.2007 or had joined on or after 01.01.2007.

14. No doubt, the power to make rules by Trustees exists, but the question here is of applicability of the scheme to the petitioner herein. The petitioner made representations on 28.06.2019 and 17.02.2020, but the answer by the respondent company vide its reply dated 11.03.2020 was the *GAIL Employees Superannuation Benefit Fund Trust* had approved the modalities for conversion of the *Superannuation Benefit Scheme* from defined benefit scheme to *Defined Contribution Scheme* with effect from 01.0.2007 and the erstwhile scheme is no more in vogue as on date, hence it was not feasible to process for any pension under the old *defined benefit scheme*, as requested. Hence, the entire contribution made by petitioner was refunded to him with simple interest. The sending of cheque by the respondent company was objected to by the petitioner as also the applicability of the new pension scheme, hence he



returned the banker's cheque of Rs.6,05,146/- to the respondent company.

15. Admittedly, one Rajiv Khanna who had joined the GAIL on 01.01.1995 and had resigned / separated on 29.04.2006 was also accorded the benefit under the old scheme since the revised new scheme was not applicable to him, he being not on roll as on 01.01.2007. The same concession ought to have been granted to the petitioner herein. The request of the petitioner was however declined by the respondent stating *inter alia:-*

That parity being drawn by the Petitioner to Sh. Rajeev Khanna is wrong and incorrect whose service particulars are different. The particulars of Sh. Rajeev Khanna are as under:

- i) Date of birth - 02.10.1950*
- ii) Date of joining in GAIL - 01.09.1995*
- iii) Date of resignation - 28.04.2006*
- iv) Service rendered in GAIL - 10 years and 07 month*
- v) Age at the time of resignation - 56 years (approx.)*
- vi) Date of Superannuation - 31.10.2010*

In terms of initial GAIL SBF Scheme, Sh. Rajeev Khanna deposited a cheque dated 28.04.2006 for Rs.1,97,060.24/- in favour of GAIL (India) Superannuation Benefit Fund towards contribution for balance service left to complete 4.4 years of service in GAIL. The same had been credited in GAIL SBF account also. Vide letter dt. 06.09.2010, Sh. Rajeev Khanna had requested for pension benefits under SBF on attaining the age of superannuation we.f. 31.10.2010. As on 31.10.2010, the erstwhile scheme (i.e. Defined Benefit Scheme) was not superseded by the revised scheme (i.e. Defined Contribution Scheme; conversion was under process) which was subsequently notified vide Corporate HR Department's Circular dated 04.04.2014. Accordingly, Shri Rajeev Khanna was allowed pension in terms of the provisions of the erstwhile scheme. After notification of Circular dated 04.04.2021, GAIL has no provision to recover the said amount from a retired employee.



16. A bare perusal of the circular of 2014 would show it is not applicable upon the petitioner as was in the case of Rajeev Khanna. The said Rajeev Khanna superannuated in 2010 i.e., after 01.01.2007 and if the argument of respondent is to be accepted then Rajeev Khanna ought not to have been granted the pensionary benefits. The case of the petitioner herein is similar to Rajeev Khanna since the age of superannuation of both were after 01.01.2007. The arguments of learned counsel for the respondent thus is without merit. *The date of superannuation was never a condition of applicability of the new scheme but the presence on the pay roll as on 01.01.2007 was.* The judgments cited are of no help to the respondent as no doubt Court may consider the change in rules and law but where the change in law is made applicable to a certain category of person, the authority cannot on its own enforce such rules upon another category.

17. Clause No.19(2) was a condition of service at the time the petitioner joined respondent No.1 company. After his resignation being accepted and when he was no longer in service, any change in the policy would not affect his condition of service. Admittedly the petitioner herein complied with the provisions of clause 19(2) supra and the respondent having received the compensation for the balance period, now cannot refute its liability to pay pension under the Defined Benefit Scheme, saying the policy stands changed after the petitioner retired moreso when the new scheme *per* applicability clause (supra) was, even otherwise, not applicable in his case.

18. The petition is thus allowed and the respondent is directed to process and pay pension to the petitioner under Contributory



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Superannuation Benefit Funds Scheme, 2000, within 8 weeks from today. Consequential arrears be drawn and disbursed to the petitioner within two weeks thereafter lest it shall carry a simple interest @ 6% p.a. (on delayed payment). Pending application(s), if any, stands disposed of.

YOGESH KHANNA, J.

FEBRUARY 17, 2022

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