



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR.

WRIT PETITION No.7727 OF 2023

PETITIONER: : Shri Chandrabhan s/o Parnya Atulkar,
Aged about 60 years, Occ. Nil, r/o A-46,
Saroj Nagar, Hajari Pahad, Nagpur-
440013.

-Versus-

RESPONDENTS : 1. MOIL Limited, Through its Chairman-
cum-Managing Director, MOIL Bhavan
1A Katol Road, Nagpur 440013.

2. The Director (Prodn. & Plng.), MOIL
Limited MOIL Bhavan 1A Katol Road,
Nagpur 440013.

Mr. Akshay Sudame, Adv. for the petitioner.
Mr. S. S. Ghate, Adv. for the respondents.

**CORAM: AVINASH G. GHAROTE AND
ABHAY J. MANTRI, JJ.**

DATED : 20th DECEMBER, 2024

ORAL JUDGMENT (Per : AVINASH G. GHAROTE, J.)

1. Heard.

2. Rule. Rule made returnable forthwith with the consent of learned
counsel for the parties.

3. The petition questions the validity of Clause 7(b) of the MOIL Group Superannuation Cash Accumulation Scheme (Defined Contribution) Rules (Pg.26), which provides that no amount/benefit would be given to the member in case of resignation and the amount accumulated under the name of such member of the scheme shall be transferred and credited to the company's account or adjusted against annual contribution payable by the company to the Trust/LIC, on the ground that it is unreasonable and has no nexus with the object sought to be achieved by the Rules.

4. To appreciate the nature of challenge, it is necessary to record the factual position, which is as under :

4.1. The petitioner was appointed to the post of Manager (Mines) E-02, on 09/06/1988, and promoted to the post of Executive Director (Technical) E-09 by the office order dated 29/06/2019 (Pg.19). The petitioner who was to superannuate on 31/05/2023, tendered his resignation due to his health condition on 24/03/2023 (Pg.22), which came to be accepted w.e.f. 08/04/2023 by the respondent No.1 by the communication dated 06/04/2023 (Pg.24), subject to deduction/adjustment of amount/basic plus dearness allowance in lieu of shortfall of notice period of 53 days.

4.2. On 27/09/2023, the petitioner received his retiral benefits consisting of gratuity and leave encashment, however, the amount under

the pension scheme was not released to the petitioner, on account of which, the petitioner made a representation dated 27/09/2023 (Pg.34), which has not been addressed by the respondent No.1, as a result of which, the present petition has been filed.

5. Mr. Akshay Sudame, learned counsel for the petitioner submits, that in pursuance to the recommendations of the 2nd Pay Revision Commission, the Government of India by an office memorandum dated 26/11/2008, in the Ministry of Heavy Industries and Public Enterprises, issued an office memorandum for implementation of the recommendations of the 2nd Pay Commission, which was equally applicable to the respondent No.1, being a public sector undertaking. In terms of Clause 12 of office memorandum dated 26/11/2008, long term incentives, schemes, were introduced to the employees of respondent No.1 in terms of Annexure-IV, which were (i) long term incentives, (ii) the concept of cost to company in Central Public Sector Enterprises (CPSE), (iii) pay, etc. of executives of CPSE on deputation/transfer; (iv) pay etc. of Government Officers on deputation to CPSE's and (v) superannuation benefits. The Scheme framed in terms thereof termed as the MOIL Group Superannuation Cash Accumulation Scheme (Defined Contribution) Rules (Pg.26), which initially contained a requirement of putting at least 15 years of service by a person who was in service as on 01/01/2007 and superannuation, was

later on amended in pursuance of the directions of the Ministry, as a result of which, the above two requirements were done away with, on account of which, the manner in which severance of relationship of employer and employee, became immaterial and even a person, resigning would be entitled to the benefits of the Scheme and denial on that count would not be justified.

5.1. He, further contends by relying upon *Shayara Bano Vs. Union of India and others (Ministry of Women and Child Development Secretary and others) (2017) 9 SCC 1* and specifically paras 70, 95, 100 and 101, that Clause 7(b) of the MOIL Pension Scheme, is arbitrary, inasmuch as it creates a negative discrimination, viz-a-viz persons, who have superannuated from MOIL and those who have resigned. It is further contended that there is even *inter se* discrimination between persons who resign, in view of the language of Clause 7 (b) and such a negative discrimination, would be violative of the right to equality of the petitioner under Article 14 of the Constitution of India and therefore, cannot be sustained. It is also his contention that such discrimination would also not withstand the touchstone of Article 300-A of the Constitution of India.

5.2. He further contends that since out of the initial eligibility of (a) being in the employment of MOIL as on 01/01/2007; (b) superannuation; and (c) of having put up a minimum of 15 years of service, the eligibility requirements at Serial Nos. (b) and (c) were done away with, in view of

the office order dated 25/01/2018 vide clause 14 by which the MOIL Employees' Contributory Pension Scheme stood amended, the petitioner would be entitled to the pension in spite of the fact that he had resigned from his employment.

5.3. He therefore submits, that since reliance is being placed by the respondent No.1 upon clause 7(b) of the aforesaid scheme to deny the pension to the petitioner, though the petitioner was in employment of MOIL as on 01/01/2007 and had completed 15 years of service, which was the basic requirement, the denial could not be justified merely based upon clause 7(b) of the aforesaid Scheme.

6. Mr. S.S. Ghate, learned counsel for the respondents basically relies upon Clause 7(b) of the aforesaid Scheme, to justify the denial of pension to the petitioner. He further submits that superannuation and resignation, stand on a separate footing for which he places reliance upon *Senior Divisional Manager, Life Insurance Corporation of India Limited and others Vs. Shree Lal Meena, (2019) 4 SCC 479*, paras 5, 14 and 15, in view of which he contends that since the petitioner had resigned and not superannuated, the benefits of the Scheme, according to him, have been rightly denied to the petitioner.

7. There can be no doubt whatsoever, that the words 'superannuation'

and 'retirement' as against 'resignation', connote two different things. Whereas 'superannuation' and retirement', indicate the severance of the relationship of employer and employee, upon the employee, having completed the tenure of his appointment, whatever be its duration, however 'resignation', indicates the severance of the relationship of employer and employee, at the behest of the employee, even if its acceptance is based upon the will of the employer. This would further indicate that the benefit which would be available to an employee, who superannuates/retires, may not be made available to an employee who resigns. This, however, depends upon the language of the Rules/Policy and Scheme, governing such employee.

8. We are here concerned with the Scheme formulated under Clause -V of Annexure - IV of office memorandum dated 26/11/2008, which deals with superannuation benefits to the employees of the respondent no.1.

9. In terms of this Scheme, CPSEs were allowed 30% basic pay as superannuation benefits which may include Contributory Provident Fund (CPF), gratuity, pension and post – superannuation medical benefits. The CPSEs were authorized to make their own Scheme to manage these funds

or operate through Insurance Companies on fixed contribution basis. The amount of these benefits, was to be decided based upon the returns from the Scheme to be operated. The pension and medical benefits could be extended to those executives, who superannuate from CPSE and have put a minimum 15 years of service in CPSE prior to superannuation.

10. In terms of office memorandum dated 26/11/2008, the respondent No.1 framed a Scheme, as indicated above, termed as MOIL Group Superannuation Cash Accumulation Scheme (Defined Contribution) Rules (Pg.26), the effective date of which was 1st January, 2007, which further delineated the age of superannuation to be 60 years. The name of the Scheme was MOIL GSCA (Defined Contribution) (Group Superannuation Cash Accumulation). Regulation 3 of this Scheme being material is reproduced as under :

“3. ELIGIBILITY CRITERIA :

- a. Employees who are on roll of the Company on 1st January, 2007 and recruited thereafter and have put in a minimum of 15 years' service prior to superannuation shall be eligible to receive pension or annuity under the Scheme except otherwise provided in these Rules. Employees, who have retired prior to 1st January, 2007 shall not be covered under this Scheme.*
- b. Functional Directors may be members of the Scheme and given benefit of this Scheme provided their total period of service, including the period at Board level, in MOIL is not less than 15 years.*
- c. In case a member of the scheme dies or becomes permanently*

disabled or incapacitated leading to cessation of his/her service before putting in 15 years' service in MOIL, beneficiary shall be given the benefit as admissible under this Scheme.

- d. In case of an employee joining MOIL from other CPSE, where similar pension scheme was in existence, the benefit of this scheme would be allowed in superannuation provided such employee has completed 15 years of service (including period of service rendered in such other CPSE) and his accumulated fund is transferred from earlier CPSE to MOIL's Pension Fund.*
- e. Benefit of the Scheme will not be extended to employees coming on deputation to MOIL from Central / State Government, unless absorbed as a regular employee of the Company and fulfilling other eligibility conditions. Their period of service rendered in the Government before joining MOIL shall not be counted for this purpose."*

11. The eligibility criteria as prescribed in Clause-3 was that it would be applicable to :

- (a) all employees who were on roll of the company on 1st January, 2007 and recruited thereafter, and
- (b) superannuation, and
- (c) who have put in a minimum 15 years' service prior to superannuation,

for the purpose of receiving pension or annuity under the scheme.

12. The object of the MOIL GSCA (Defined Contribution) (Group Superannuation Cash Accumulation), was to ensure the benefits of 30% basic pay as superannuation benefits, which may include Contributory

Provident Fund (CPF), gratuity, pension and post – superannuation medical benefits, to an employee of MOIL. The provision regarding annuity/pension is contained in Rule 8 of these Rules and being germane for the decision of the matter is reproduced as under :

“8. ANNUITY / PENSION

- (a) *On a pension becoming payable under these Rules, the Trustees shall provide requisite details to the L.I.C. for payment of pension / annuity to the beneficiary. At the option of the member / beneficiary L.I.C. shall facilitate purchase of annuity from any of the designated annuity saving service providers, including L.I.C.*
- (b) *For the purpose of providing the annuity to the beneficiaries, the Trustees shall enter into a scheme with the L.I.C. (in terms of guidelines given by the Department of Public Enterprises), who shall accumulate the contributions in respect of each beneficiary and purchase or cause to be purchased by itself or, at the option of the member / beneficiary (if any), by any designated annuity saving service provider including the L.I.C., an annuity at the time of the retirement or death or incapacity in respect of member.*
- (c) *A member retiring from service of the Company on superannuation after putting in minimum service of 15 years shall be entitled to the pension or annuity as herein provided, which may be purchased from the L.I.C., or at the option (if any) of the member / beneficiary, from any designated annuity saving service provider including the L.I.C., with the amount standing at credit under his name in the L.I.C.*

Provided that if there is no beneficiary, the amount recorded under the name of the member shall be transferred and credited to the Company's account or adjusted against annual contributions payable by the Company to the Trust/L.I.C.”

13. The initial eligibility criteria for availing of this benefit was (a) for an employee to be in service as on 01/01/2007, (b) minimum 15 years of service and (c) superannuation. The purpose and object for this clearly appeared to ensure a minimum length of service of 15 years to be rendered

by an employee who was in service as on 01/01/2007, to the Company for the purpose of making him eligible for grant of the benefits of the Scheme.

14. By an office memorandum dated 03/08/2017 (Pg.51) issued by the Ministry of Heavy Industries and Public Enterprises, Department of Public Enterprises, Para 12.2 (Pg.55) the existing requirement of superannuation and of minimum of 15 years of service in the CPSE was dispensed with for an employee being granted annuity/pension.

15. In consonance with the office memorandum dated 03/08/2017, the respondent No.1 issued an office order on 25/01/2018 (Pg.72), by Clause 14 of which the existing criteria of (a) superannuation and (b) minimum 15 years of service in the MOIL Employees' Contributory Pension Scheme, was dispensed with and the Scheme stood modified to that extent. This is indicated by Clause 14 which reads as under :

"14. MOIL Employees' Contributory Pension Scheme : The existing criteria of (a) superannuation and (b) minimum 15 (fifteen) years of service have been dispensed with as per DPE guidelines. The scheme stands modified to this extent.

16. The effect of doing away with the eligibility criteria of (a) superannuation and (b) 15 years of service, was that this requirement in

the eligibility criteria in the Scheme prepared by MOIL, of the benefit of annuity/pension available to an employee, would become available even to an employee, who may not superannuate or for that matter who may not have put in a minimum of 15 years of service after 01/01/2007. This, in turn, indicates that the benefits under the Scheme would be applicable to any employee of MOIL whosoever, even if the severance of the relationship, was not on account of superannuation as the severance of relationship, could also be on account of death or resignation of an employee.

17. There is yet another way to look at this. Clause 7(b) & (d) of the original Scheme being material are reproduced as under :

“7. CASES OF PRE-MATURE RETIREMENT/ RESIGNATION / PENALTIES / DEATH.

(a) -----

*(b) Resignation including technical resignation:- No amount / benefit would be given to the member in the case of resignation and the amount accumulated under the name of the member shall be transferred and credited to the Company's account or adjusted against annual contributions payable by the Company to the Trust/L.I.C. However, in the case of **technical resignation** for joining other CPSE where similar scheme is operational, the accumulated balance would be transferred by the L.I.C., or such other designated annuity saving service provider (as opted by the member), as the case may be, to that CPSE. In the case of **technical resignation** after rendering more than 15 years of service for joining other CPSE where similar scheme is not operational, the benefits under the scheme would be accrued to the member/beneficiary.*

(c) ----

*(d) **Death Cases:-** On the death of an eligible member before retirement and/or before completion of 15 years services, the beneficiary shall get pension in accordance with the provisions contained in the Scheme/Rules. The Pension shall be payable to the beneficiary immediately on the death of the member and shall be paid to him for specified period as per provision under the annuity purchased at the time.*

No Pension shall be payable if the spouse was divorced or legally separated at the time of death of the member.

If the spouse getting pension dies or re-marries, the pension payable will be maintained to the dependent child or children till such time when the youngest of the children attains the age of 25 years.”

18. Clause 7(b) contemplates denial of amount/benefit (annuity/pension) to an employee, who is also member of the Scheme, on resignation. Surprisingly, Clause 7(b) itself creates a discrimination by dividing the resignation into two categories. The first is a resignation simplicitor and the second is a technical resignation. It further divides technical resignation in two categories, inasmuch as, whereas the amount/benefit is payable on account of technical resignation for the purposes of joining another CPSE, by transfer of such amount to the designated annuity saving service provider in the CPSE, where the member/employee upon his resignation is to join, however, where such a Scheme is not operational, it holds that in the case of a technical resignation for joining other CPSE, where the member/employee has completed 15 years of service, still the benefits under the Scheme would be available to such member/beneficiary. This would mean that even if an

employee resigns, but has completed 15 years of service, such an employee, would be entitled to the benefit of the scheme, if the resignation was for joining another CPSE. The distinction which is being sought to be made between a simplicitor resignation and a resignation for joining another CPSE, for the purpose of granting benefit under the Scheme to the employee, in our considered opinion, clearly does not have any nexus with the object and purpose for which the Scheme was framed, namely to make available to its members the benefit of annuity/pension, for having rendered to the employer services for 15 years and more, which service period, is no longer the criteria for grant of the benefit under the Scheme. Thus, Clause 7 (b) of the Scheme will have to be held to be discriminatory, even *inter se* too.

19. The case of the petitioner, itself is a case in point as he was to superannuate on 31/05/2023, however, on account of his health condition he tendered his resignation on 24/03/2023, which came to be accepted on 08/04/2023. Thus, had the resignation of the petitioner not been accepted on 08/04/2023, he would have superannuated on 31/05/2023. Thus, though the petitioner was in employment of MOIL on 01/01/2007, had put in more than 15 years of service on 08/04/2023, the date of acceptance of his resignation, merely because he had resigned, the benefit of the

annuity/pension is being denied to him. However, the benefit of such annuity/pension is available to an employee, who has resigned from MOIL, for the purposes of joining another CPSE. Such *inter se* discrimination between resignation simplicitor (on health grounds) and resignation for joining another CPSE, even though a similar Scheme is not available, in fact is clearly discriminatory, and has no nexus with the object sought to be achieved, as indicated above.

20. The matter is also required to be viewed in light of the Service Regulations governing the employees of the respondent No.1. The learned Counsel for the petitioner has placed on record an affidavit dated 07/12/2024 to which the Service Regulations of the employees of the respondent No.1 are annexed, based upon which the Service Regulations, it is contended that except for Regulation 8 (Clause -15) there is no other Regulation which governs the Regulation by an employee. Mr. Ghate, learned Counsel for the respondents does not dispute that what has been placed on record by the learned counsel for the petitioner are indeed the Service Regulations of the respondents governing the service conditions of the employees of the respondents.

21. A perusal of the Service Regulations would indicate that there is no

clause therein, which entails forfeiture of the past services of an employee upon his resignation. This is also an admitted position, in view of the statement of the respondents contained in paragraph No.2 of the Pursis dated 09/12/2024. This being so, when the Service Regulations governing an employee, do not take away the benefit of his past services, upon his resignation, there is no reason whatsoever, why the benefit of the Scheme, should be permitted to be taken away from, and particularly so when the petitioner satisfies the eligibility criteria for being administered the benefit of the Scheme.

22. Though Mr. Ghate, learned counsel for the respondents places reliance upon *Shree Lal Meena* (supra) what is material to note is that in that case the Pension Rules which governs the employees of the L.I.C, vide Rule 23, specifically provided forfeiture of entire past services of an employee, upon resignation, dismissal, removal, termination or compulsory retirement and consequent disqualification for pensionary benefits (see : paras 14 and 15). The Hon'ble Apex Court has specifically observed in para 17 that the employee took a conscious decision to disengage himself from the services of the employer, on the terms and conditions as prevalent on that date. This would indicate that the resignation of the employee therein was considered in light of the mandate of Rule 23 of the Pension Rules, as were applicable to the employee on the date of his resignation, which

provided for forfeiture of entire past services and consequently, pensionary benefits on resignation of an employee.

23. In the instant case, the Service Regulations, as indicated above, do not provide for forfeiture of the past services on account of resignation and therefore, on facts, ***Shree Lal Meena*** (supra) would not be attracted.

24. Since it is not disputed that the petitioner qualifies the eligibility criteria for grant of pensionary benefits, as contained in Clause 3(a) of the Scheme and neither the Scheme nor the Service Regulations applicable provide for forfeiture of the entire past services rendered and consequently pensionary benefits, and since Clause 7 (b) of the Scheme has been held to be discriminatory, we allow the petition by holding that the petitioner is entitled to the benefits of the MOIL GSCA (Defined Contribution) (Group Superannuation Cash Accumulation) Scheme. Claim for interest is rejected. The writ petition is allowed. Rule is made absolute in the aforesaid terms. No order as to costs.

(ABHAY J. MANTRI, J.)

(AVINASH G. GHAROTE, J.)