

(2014) 11 DEL CK 0149
In the Delhi High Court
Case No : Writ Petition (Civil) 2485/2013

Pradeep Chhabra

APPELLANT

Vs

Indian Oil Corporation

RESPONDENT

Date of Decision : 27-11-2014

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : (2014) 11 DEL CK 0149

Hon'ble Judges : Vibhu Bakhru, J

Bench : Single Bench

Advocate : Harish Pandey, Manish Kr. and Mayank Upadhayay, Advocate for the Appellant; V.K. Koura, Paramjeet Benipal and Prema Priyadarshini, Advocate for the Respondent

Judgement

Vibhu Bakhru, J.—The petitioner impugns a circular bearing No.2003/HR/46 dated 23.7.2003 inasmuch as it denies the benefit of medical facilities to employees resigning from the services of the respondent corporation after the said cut off date.

2. Prior to the impugned circular any person who had resigned from services with the consent of the respondent corporation, after attaining the age of 50 years and after rendering minimum 20 years service, was eligible for joining a contributory scheme floated by the respondent corporation for providing medical attendance to the employees and their family. By the impugned circular dated 23.7.2003, the Scheme for providing "Post Retirement Medical Attendance Facility" to officers (hereafter "the scheme") was amended and all employees who resigned from services after the cut off date 23.7.2003 were ineligible for medical attendance facility under the scheme.

3. According to the petitioner the cut off date of 23.7.2003 is arbitrary and unreasonable and violates of Article 14 of the Constitution of India; this is the gravamen of the petitioner's challenge to the scheme as amended by the impugned circular.

4. The learned counsel submits that the cut off date has no nexus with the object of the policy and thereby is liable to be quashed. In effect, the petitioner seeks an affirmative direction that the medical facilities available to the eligible employees, who have resigned prior to 23.07.2003 be also extended to all employees who have tendered their resignation after 23.07.2003.

5. The learned counsel for the petitioner referred to the decision of the Supreme Court in D.S. Nakara and Others Vs. Union of India (UOI), in support of his contention that the directions for grant of benefit could be issued where the fixing of cut off date was found to be unreasonable and bearing no nexus with the object of the scheme.

6. The learned counsel for the respondent corporation has referred clause 5.6 of the scheme as introduced in 1984 which reads as under:-

"5.6 The scheme and/or the benefits thereunder shall be liable to be withdrawn and made inoperative in toto or in respect of an officer, at any time, for misuse or abuse of the benefits under the scheme or for any other reason whatsoever. The scheme and/or the benefits thereunder shall not be deemed to be a matter of right, or contract or term/condition of employment."

The said clause has been re-numbered as 26.1.5.10 in the scheme as is currently applicable.

7. The learned counsel for the respondent corporation submits that in view of the above, no vested rights had accrued in favour of the petitioner for grant of medical benefits under the scheme and thus, no mandamus could be issued to the respondent for extending the said facilities to the petitioner.

8. I have heard the learned counsel for the parties. In my view the petitioner's challenge to the cut off date, cannot be accepted. It is indisputable that no vested rights had accrued in favour of the petitioner for grant for medical benefits since the same were not a part of his condition of service. Thus, the scope of challenge is limited to the question whether the cut off date placed in the amended scheme is arbitrary and unreasonable. In my view, the reference to the Supreme Court's decision in D.S.Nakara (supra) is misplaced.

9. In the case of D.S. Nakara (supra) , the Supreme Court was considering the validity of a cut off date in the context of revision of pension. There was no dispute that the retired Government servants were entitled to pension as a condition of their service; the controversy was limited to whether the benefit of revision in pension could be denied to persons retiring prior to the cut off date. The Supreme Court held that the pensioners receiving pension formed a homogenous class and there was no rational principle " in differentiating between pensioners retiring prior to a specified date and those retiring subsequent to that date " that could be co- related to the object underlying payment of pensions. In the present case, the medical facilities are not a condition of service and further the rationale for fixing the cut off date as 23.07.2003 has been explained. The

cut off date became necessary as the respondent corporation decided to do away with providing medical facilities to all employees who pre-maturely resigned from the service of the respondent corporation. Obviously, this decision can only be implemented prospectively and thus, employees who had earlier joined the scheme have not been affected.

10. In the present case the scheme is a contributory scheme for the eligible employees who are required to contribute a lump sum amount immediately on their severance from employment with the respondent corporation. This is clearly evident from clause 26.1.2.1 of the scheme, the relevant extract of which reads as under:-

"The facility of post-retirement medical attendance will operate on a contributory and voluntary basis. An officer, depending upon the category to which he belongs at the time of cessation of service, will be required to make a one-time non-refundable lump sum contribution, as indicated below, so as to become eligible for the benefits under this scheme:

11. In the circumstances, all the eligible employees who had resigned prior to the cut off date, had already joined the scheme by contributing the specified amount in terms of the scheme. The respondent corporation is not obliged to provide such medical benefit and its decision to not extend the same in cases of employees resigning from its service, cannot be faulted. However, this benefit could not be withdrawn by the respondent corporation with respect to employees who had already joined the scheme by making the requisite contribution, as a vested right accrued had accrued in their favour. The respondent corporation's decision to discontinue the benefit of the scheme to employees who had resigned from services could not be applied to those employees as it would result in withdrawing all benefits that it had already accrued to them. This is also the principal reason why the petitioner cannot be considered in the same class as those employees who had joined the scheme prior to 23.07.2003.

12. The Supreme Court in *Government of Andhra Pradesh and Others Vs. N. Subbarayudu and Others*, , while considering a challenge to the cut off date fixed for entitlement of pension to the teachers on the revised age of superannuation, observed as under:-

"5. In a catena of decisions of this Court it has been held that the cut-off date is fixed by the executive authority keeping in view the economic conditions, financial constraints and many other administrative and other attending circumstances. This Court is also of the view that fixing cut-off dates is within the domain of the executive authority and the court should not normally interfere with the fixation of cut-off date by the executive authority unless such order appears to be on the face of it blatantly discriminatory and arbitrary. (See *State of Punjab v. Amar Nath Goyal*.)

6. No doubt in *D.S. Nakara v. Union of India* this Court had struck down the cut-off date in connection with the demand of pension. However, in subsequent

decisions this Court has considerably watered down the rigid view taken in Nakara case as observed in para 29 of the decision of this Court in State of Punjab v. Amar Nath Goyal.

7. There may be various considerations in the mind of the executive authorities due to which a particular cut-off date has been fixed. These considerations can be financial, administrative or other considerations. The court must exercise judicial restraint and must ordinarily leave it to the executive authorities to fix the cut-off date. The Government must be left with some leeway and free play at the joints in this connection.

8. In fact several decisions of this Court have gone to the extent of saying that the choice of a cut-off date cannot be dubbed as arbitrary even if no particular reason is given for the same in the counter-affidavit filed by the Government (unless it is shown to be totally capricious or whimsical) , vide State of Bihar v. Ramjee Prasad, Union of India v. Sudhir Kumar Jaiswal, Ramrao v. All India Backward Class Bank Employees Welfare Assn., University Grants Commission v. Sadhana Chaudhary, etc. It follows, therefore, that even if no reason has been given in the counter-affidavit of the Government or the executive authority as to why a particular cut-off date has been chosen, the court must still not declare that date to be arbitrary and violative of Article 14 unless the said cut-off date leads to some blatantly capricious or outrageous result."

13. In view of the above, the present petition is dismissed. Parties are left to bear their own costs.