

(1992) 07 BOM CK 0053

In the Bombay High Court

Case No : Writ Petition No. 3306 of 1991

Vasant Vithal Prabhu

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 01-07-1992

Acts Referred:

Constitution of India, 1950 — Article 14, 226

Citation : (1992) 3 BomCR 491

Hon'ble Judges : K. Sukumaran, J;B.P. Saraf, J

Bench : Division Bench

Advocate : C.U. Singh and Shobha Gopal, instructed by Ramesh Chandra and others, for the Appellant; J.D. Dwarkadas instructed by Mariani and Company for respondent Nos. 3 and 4, for the Respondent

Final Decision : Dismissed

Judgement

1. The petitioner served initially a commercial concern, the Indo Burma Petroleum Company. He retired from the service on 31-7-1988. Many developments had taken place in the intervening period. What was till then a private company was taken over by the Government in 1970. Indo Burma Petroleum Company Limited thus became a Government Company with the earlier employees continuing in its service. The take-over conditions, and the terms and conditions of services of the employees of the Indo Burma Petroleum Company were same as with the Balmer Lawrie Group of Companies. The services of the petitioner and the other employees of the Indo Burma Petroleum were thus transferable to another group of Companies known by name "Balmer Lawrie Group".

2. Retirement benefits due to an employee, in the evening of his life, given some solace and some saurcour to him. It is understandable that he has a great expectation, in having the greatest help by way of retiral benefits. In the present case, there was a yawning gap between the petitioner's expectation, and the second respondent's preparedness in the matter of the payment of retirement

benefits.

3. Employees who retire after 1-1-1989, are given the benefits of superannuation scheme, the details of which have been generally indicated, and clearly discernible from the Settlement of Trust and the Settlement Deed of Trust, Exhibit 4. Initially, it was visualised that the superannuation scheme would be effective from 1-1-1988. One of the requisites was a nominal contribution by the employees concerned. The petitioner indicated his desire to join the scheme and enclosed a cheque of Rs. 1,000/- towards part payment of his contribution, under Exhibit 1 dated 27-7-1988.

4. There were further negotiations between the second respondent and the employees represented by the Trade Union of workmen. The change of conditions required variation of Trust Fund; that was achieved by the execution of variation Trust Deed, Exhibit 4. One of the provisions of the agreement was that the superannuation scheme would be effective only from 1-1-1989. There was, however, a request to the management to consider whether it was possible to extend the superannuation benefits to officials who retired in the year 1988. The petitioner received back his deposit of Rs. 1000/- in the year 1989, apparently taking note of the altered position. He has now filed the writ petition, to compel the respondents to extend the benefits of superannuation scheme to him. The denial of benefits of such scheme, according to him, violates Article 14 of the Constitution on diverse grounds. If those who were in service as on 1-1-1989 could be beneficiaries of this scheme, why not those who were so in service, though only upto 1-1-1988? If many other Oil Companies have extended such superannuation scheme to their employees, why should Indo Burma Petroleum Company tread on a different course?

5. As in many such cases, the decision of the Supreme Court in Nakara's case and other decisions which have followed and applied the principles therein, were relied in.

6. Respondent No. 3 has filed a counter affidavit, detailing the circumstances in which the petitioner happened to be excluded from the benefits of the superannuation scheme. Among other things, it has been pointed out that the scheme was a voluntary self-contributory fund, and the fund was substantially made of contribution of the members. The third respondent was only to make a nominal contribution of Rs. 100/- per year and that was in connection with the recognition under the Income Tax Act.

7. The conditions of the service of the members of the staff, had been the subject matter of negotiations, long and recurring. The retirement benefits in the form of the superannuation scheme, also, figured in such negotiations and had been dealt with in an ultimate agreement, the details of which have been already indicated above. The retirement benefits of an employee, could not be viewed in isolation from other benefits. A casual fixation of a date, or an arbitrary drawing of a line as it were, or an indifferent drawing of a cut off line, could, in the

absence of reasons which have a nexus to the objective in the provision regarding retirement benefits, amount to infraction of Article 14 or principles underlying the same, in given circumstances. However, if reasons are available to explain the differential treatment, they have necessarily be adverted to. Of course, if the reasons themselves are whimsical or irrational, they may not justify the dividing line or discrimination effected thereunder. Such was the case decided by this Court in *Retired Employees of non-College association, Nagpur through President and others v. State of Maharashtra*, 1987 M.L.J. 326. No reason was indicated in the return filed on behalf of the respondents in that case. In the course of the arguments, a reason was indicated. It was an assurance given by the Minister for Education on the floor of Assembly. The Court held that the reasons had no nexus with the provisions for fixation of retirement benefits.

8. That, however, is not the situation in the present case. In the modern industrial setting, the functioning is integrally connected with collective bargaining. The bargaining process generates enduring settlement and stable industrial peace. The labour laws, rightly assign to such negotiated settlements enforceability and respectability. Parties to the settlement are bound thereby. Even those who are not parties would be bound in the contingencies indicated in that behalf, under the Industrial Disputes Act, 1947. The crucial role played by the Trade Union in projecting demands on behalf of the employees and the effect and impact of the ultimate agreement reached between the employers and the employees, could pose as an important and solid foundation for sustaining a provision relating to the terms and conditions of service. If on the basis of the express desire of the large number of employees, the Union sought and got a variation of the date of effective implementation of the benefits of the superannuation scheme, and the Management religiously adhered to that provision, the action of the Management could not be characterised as amounting to vicious discrimination.

9. The complaint about an absolute equality with other companies in the Oil Industries, cannot also be accepted. Different Companies had their differing origins, workings and developments. The pay scales were not all altogether similar in all cases. The conditions of service also varied substantially. Reported decisions, particularly those in specialised law journals, give information about the Awards passed or about settlements reached between the workmen and the oil companies in various States and settings. They would furnish telling facts about more advantageous terms and conditions enjoyed by the employees of the Oil Companies. They would also bring about the differentiation in relation to the conditions of service which had obtained during substantial periods of their existence. It may be that after a long period of time, many of those corporate undertakings may have a uniform working under the Union of India. That is, however, dependent upon very many imponderable factors. This is particularly so when activities and employees, mode of production, commercial organisation and service conditions operate differently in respect of such different companies. Some of the companies may have additional advantage due to historical origin.

Indo Burma had in early days advantages of oil fields. This had its impact even in relation to administration. A District Collector working in Burma had to attend to other duties including supervision of the oil fields, while his counter part elsewhere had no such problem. These circumstances are indicated only to hint at the vital variations in relation to very many factors affecting the working of various units including a company of the nature of the 3rd respondent. In that area, attainment of absolute equality could not be easily targeted under our constitutional policy. The mere fact that the schemes differ is no good ground to strike down a settlement or a scheme as arbitrary or violative of the Equality Clause. See T.P. George and Others Vs. State of Kerala and Others, .

10. In the light of the above discussions, we are of the view that the petitioner's complaint lacks substance and merit.

11. The writ petition is accordingly dismissed. Certified copy will be furnished expeditiously.