

A BHARAT PETROLEUM (ERSTWHILE BURMAH SHELL)
MANAGEMENT STAFF PENSIONERS.

v.

BHARAT PETROLEUM CORPORATION LTD. & ORS.

MAY 11, 1988

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[RANGANATH MISRA AND MURARI MOHON DUTT, JJ.]

Burmah Shell (Acquisition of Undertakings in India) Act, 1976: ss. 3, 4, 9 & 10(1)—Burmah Shell Management Staff Pensioners—Claim for escalation of pension—Admissibility of.

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Civil Services: Pension—No longer considered a bounty—Held to be property—Entitlement to escalation of pension—Judicial notice can be taken of the fact that the rupee has lost its value.

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Burmah Shell Oil Storage and Distributing Company of India Limited had a non-contributory pension fund. Consequent upon nationalisation of the petroleum industry, this fund was taken over by the Government company, respondent No. 1, under s. 10(1) of the *Burmah Shell (Acquisition of Undertakings in India) Act 2 of 1976*.

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In this writ petition under Art. 32 of the Constitution the erstwhile **Burmah Shell Management Staff Pensioners** claimed adequate escalation in their pension keeping in view the loss of purchasing power of the rupee and the general rise in the cost of living. In support of their claim they relied upon the steep escalation in the pension granted by the **Hindustan Petroleum Corporation**, a sister concern, to its employees. The latter has no such fund. It was contended for the respondent-

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Company that if the escalation admitted by the **Hindustan Petroleum Corporation** is accepted as the basis for escalation in the respondent company there would be injustice or a burden would arise which they cannot discharge.

Allowing the writ petition,

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HELD: 1. The petitioners being the management staff of the **Burmah Shell** are entitled to a hike in the pension. [316E-F]

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2. Judicial notice can be taken of the fact that the rupee has lost its value to a considerable extent. Pension is no longer considered as a bounty and it has been held to be property. In a welfare state, as ours,

rise in the pension of the retired personnel, who are otherwise entitled to it, is accepted by the State and the State has taken the liability. In the instant case, if the similarly situated sister concern like Hindustan Petroleum Corporation can admit appropriate rise in the pension, there is no justification as to why the respondent company should not do so. [316D-E]

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3. The respondent-company has an obligation to pay from its earnings into the fund and merely because the existing fund is not adequate to bear the additional liability the claim which is otherwise justified cannot be rejected. The company's current funds are available to supplement the pension fund. [316C]

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4. Respondent No. 1 to give to the petitioners hike in the pension effective from 1st May, 1988 at the same rate as is being given by Hindustan Petroleum Corporation. If the amount available from the pension fund is not adequate the Government-company would allocate appropriate funds to meet the demand. The additional pension to be disbursed latest by 31st of July, 1988. [316F-G]

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ORIGINAL JURISDICTION: Writ Petition (Civil) No. 590 of 1987.

(Under Article 32 of the Constitution of India)

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B.B. Sawhney for the Petitioners.

G.B. Pai, O.C. Mathur, Ms. Meera Mathur, Ms. Deepa Chhabra and D.N. Misra for the Respondents.

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The Judgment of the Court was delivered by

RANGANATH MISRA, J. Under the Burmah Shell (Acquisition of Undertakings in India) Act 2 of 1976, (hereinafter referred to as the 'Act'), the Union of India acquired the right, title and interest of Burmah Shell Oil Storage and Distributing Company of India Limited (hereinafter referred to as Burmah Shell) in relation to its undertakings in India. Sections 3, 4, and 9 of the Act are relevant. Under section 3 the right, title and interest of Burmah Shell in relation to its undertakings in India stood transferred and became vested in the Central Government. In terms of section 4, the assets and liabilities were taken over by the Government of India. Under section 9 persons employed under Burmah Shell came under the employment of the

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Government Company known as Bharat Petroleum Corporation A Limited (respondent No. 1 herein). Section 10(1) provides thus:

“Where a provident, superannuation, welfare or other fund has been established by Burmah Shell for the benefit of the persons employed by it in connection with its undertakings in India, the monies relatable to the employees—

B (i) whose services are transferred by or under this Act to the Central Government or the Government company; or

C (ii) who are in receipt of pension or other pensionary benefits immediately before the appointed day,

D shall, out of the monies standing on that day to the credit of such provident, superannuation, welfare or other fund stand transferred to and vested in, the Central Government or the Government company, as the case may be, free from any trust that may have been constituted by Burmah Shell in respect thereof.”

The detailed provisions for administration of the fund are contained in that section.

E This petition under Article 32 of the Constitution is by the erstwhile Burmah Shell Management Staff Pensioners who claim two reliefs:

F (1) Extension of the benefit of restoration of commuted pension after the period of 15 years from the date of commutation as decided by this Court in the case of *Common Cause & Ors. v. Union of India & Ors.*, AIR 1987 SC 210 and

G (2) Adequate escalation in the pension keeping in view the loss of purchasing power of the rupee and the general rise in the cost of living.

H In answer to the *rule nisi*, the respondent made its return by contending that the pension scheme of the first respondent is a funded scheme. The decision of this Court in the case of Common Cause rendered in respect of Government servants, both of civil and defence services, cannot be extended to a public sector undertaking. The pen-

sion scheme of Burmah Shell was set up by Non-Contributory Pension Fund by a Trust Deed in December, 1950, but effective from 1st January, 1947, of which both the management staff as also the clerical staff were members. This Court on 13th of November, 1987, referred two questions arising for determination for the opinion of Mr. D.K. Lodaya, Chief Actuary of the Life Insurance Corporation of India at Bombay, with the consent of parties and the two questions referred to are:

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(1) Is the pension fund actuarially solvent to bear the liability flowing from restoration of commuted portions of pensions after 13 or 15 years from the respective dates of commutation ? If not, the extent of additional funds necessary for the purpose may be indicated, and the tax relief which will be available for such contribution of additional funds may also be indicated.

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(2) Is the pension fund actuarially solvent to bear (a) enhancement of pensions and (b) linking pensions with the cost of living index? If so, the extent by which the pensions can be enhanced by utilising the existing resources of the Fund may be indicated.

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The report has been received and kept on record. It indicates that the additional liability on account of restoration of the commuted value of the pension on the basis of 13 years would be more than Rs. 3 Crores and on the basis of 15 years would be more than Rs.2-1/2 Crores. Counsel for the petitioners has, however, told us in course of the hearing that the question of restoration of the commuted value of the pension may not be adjudicated at present. In view of such submission, we do not examine this issue.

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The writ petition is, therefore, confined to the only question as to the escalation of pension. Burmah Shell has a fund known as Burmah Shell India Pension Fund and it has its own rules. When Government nationalised the Petroleum industry, another company known as Caltex India Ltd. was also acquired and came to be known as Hindustan Petroleum Corporation. It is thus a sister concern owned by the Central Government. Petitioners relied upon the increase in the pension granted by the Hindustan Petroleum Corporation to its employees in support of their claim for the increase in the pension. While Burmah Shell had a pension fund which has been taken over by the Government company, Caltex did not have such a fund. The allegation made by the petitioners that the Hindustan Petroleum Corporation

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- A where there is no such fund has granted a steep escalation in the pension has not been disputed before us. Admittedly Burmah Shell is a bigger company than Hindustan Petroleum Corporation. We have been told that the total Burmah Shell management staff presently in the employment of the respondent No. 1 would be around a thousand.
- B Nothing acceptable has been placed before us from where support can be received for the argument of Mr. Pai, learned counsel for respondent No. 1, that if the escalation admitted by Messrs. Hindustan Petroleum Corporation is accepted as the basis for escalation in Burmah Shell there would be injustice or a burden would arise which the respondent-Company cannot discharge. The respondent-Company has an obligation to pay from its earnings into the Fund and merely
- C because the existing fund is not adequate to bear the additional liability the claim which is otherwise justified cannot be rejected. As we have already pointed out, the Company's current funds are available to supplement the pension fund.
- D Judicial notice can be taken of the fact that the rupee has lost its value to a considerable extent. Pension is no longer considered as a bounty and is has been hold to be property. In a welfare State as ours, rise in the pension of the retired personnel who are otherwise entitled to it is accepted by the State and the State has taken the liability. If the similarly situated sister concern like Hindustan Petroleum Corporation can admit appropriate rise in the pension, we see no justification as to why the respondent-Company should not do so.
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We, therefore, hold that the petitioners being the management staff of the Burmah Shell would be entitled to a hike in the pension admissible at the same rate as is being given by Hindustan Petroleum Corporation. We accordingly direct respondent No. 1 to give the necessary hike in the pension effective from 1st May, 1988. If the amount available from the pension fund is not adequate, it would obviously mean that the Government company would allocate appropriate funds to meet the demand. The additional pension should be disbursed latest by 31st of July, 1988. No costs.

G P.S.S.

Petition allowed.