

PETITIONER:
COMMITTEE FOR PROTECTION OF RIGHTS OF ONGCEMPLOYEES AND ORS.

Vs.

RESPONDENT:
OIL AND NATURAL GAS COMMISSION THROUGH ITS CHAIRMAN--TEL BHAV

DATE OF JUDGMENT 23/03/1990

BENCH:
AGRAWAL, S.C. (J)
BENCH:
AGRAWAL, S.C. (J)
MUKHARJI, SBYASACHI (CJ)
RAY, B.C. (J)
KANIA, M.H.
SAIKIA, K.N. (J)

CITATION:
1990 AIR 1167 1990 SCR (2) 156
1990 SCC (2) 472 JT 1990 (1) 560
1990 SCALE (1) 620

ACT:

Oil and Natural Gas Commission Act, 1959: Section 13(1) & 32 Oil and Natural Gas Commission (Terms and Conditions of Appointment and Service) Regulations, 1975.' Regulation 3(2).

Service Law--Pension--Temporary Government employees-Absorption in a statutory body. Oil and Natural Gas Commission--No right to receive pension as a part of conditions of service before absorption--After absorption opting Contributory Provident Fund and availing the benefit. Held not entitled to pension in addition to Provident Fund--Protection of Section 13(1) and Regulation 3(2) held inapplicable--Section 12 of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 not attracted.

Employees' Provident Fund and Miscellaneous Provisions Act 1952: Section 12/Employees' Provident Fund Scheme, 1952.

Contributory Provident Fund Scheme is in the nature of the substitute for old age pension--Object of the Act explains.

HEADNOTE:

The petitioners, employed in temporary capacity with the Oil and Natural Gas Commission when it was a Department of the Government of India, were subsequently absorbed in the said Commission when it was established as a statutory body under the Oil and Natural Gas Commission Act, 1959. The Employees' Provident Funds and Miscellaneous Provisions Act, 1952 was made applicable to the Commission. The petitioners opted for Contributory Provident Fund and availed the benefit.

The petitioners filed a writ petition in this Court claiming the benefit of pension in addition to the Provident Fund contending that (i) under the relevant Rules governing their service, they were entitled to pension on their being made permanent and that the right to pension,

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which was part of their service condition, was protected by Section 13(1) of the Oil and Natural Gas Commission Act read with Regulation 3(2) of the Oil and Natural Gas Commission

(Terms and Conditions of Appointment and Service) Regulations 1975; and (ii) In spite of the introduction of the Contributory Provident Fund Scheme 'their right to pension was preserved by Section 12 of the Provident Fund Act.

Dismissing the writ petition, this Court,

HELD: 1. The scheme of Contributory Provident Fund, by way of retiral benefit, envisaged by the Provident Fund Act, is in the nature of a substitute for old age pension because it was felt that in the prevailing conditions in India, the institution of a pension scheme could not be visualised in the near future. It was not the intention of Parliament that Provident Fund benefit envisaged by the said Act would be in addition to pensionary benefits. [165G-H; 166A]

2. Section 12 of the Provident Fund Act seeks to protect the wages of an employee to whom the scheme framed under the said act applies as well as the total quantum of certain specified benefits to which he is entitled under the terms of his employment. It prohibits an employer from reducing, whether directly or indirectly, the wages of an employee to whom the Scheme applies or the total quantum of benefits in the nature of old age pension, gratuity, Provident Fund or life insurance to which the employee is entitled under the terms of his employment express or implied. The said section proceeds on the basis that if an employee is entitled to any benefit in the nature of old age pension under the terms of his employment the said benefit would not be denied to him on the application of the Scheme. [166A-C]

2.1 In the instant case, on the date of application of the Provident Fund Scheme to the Oil and Natural Gas Commission, the benefit of pension was not a part of the terms of employment of the petitioners and they were not entitled to receive pension on that date. Consequently, the petitioners cannot invoke the provisions of Section 12 of the Provident Fund Act. [166D]

Som Prakash Rekhi v. Union of India & Anr., [1981] 2 S.C.R. 111, held inapplicable.

3. The petitioners were employed on temporary basis at the time when the Commission was established as a statutory body under the Oil and Natural Gas Commission Act "and on that date they were not

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entitled to claim pension because under the relevant Rules pension was not payable to a person employed on temporary basis. The petitioners, therefore, cannot claim that on the date of their becoming the employees of the Commission established under the Oil and Natural Gas Commission Act in 1959, they had a right to pension which has been protected under sub-section (1) of Section 13 and clause 12) of Regulation 3 of the Regulations. [164A-B]

3.1 Under the relevant service rules applicable to petitioners, they could either claim pension or the benefit of the Contributory Provident Fund and they could not avail both the benefits. Since the petitioners are entitled to the benefit of the Contributory Provident Fund under the Provident Fund Act and the Provident Fund Scheme and have availed the said benefit for the past 28 years, they should be taken to have opted for said benefit and they cannot invoke the service rules with regard to pension and claim the right to receive pension as part of their conditions of service. I 164C -D]

3.2 The persons who were employed in temporary capacity with the Oil and Natural Gas Commission when it was being run as a Department of the Government of India prior to the enactment of the Oil and Natural Gas Commission Act and who were subsequently absorbed in the Commission, as established

under the said Act, are not entitled to pension in addition to the Provident Fund benefit to which they are entitled under the provisions of the Provident Fund Act. [167B-C]

JUDGMENT:

ORIGINAL WRIT JURISDICTION: Writ Petition (Civil) No. 1152 of 1988.

(Under Article 32 of the Constitution of India).

M.K. Ramamurthi, R.C. Pathak, Naresh Mathut, Sudhir Kumar and Ms. Baby Lal for the petitioners.

B. Dutta, R.K. Joshi and S.K. Jain for the Respondents.

The Judgment of the Court was delivered by

S.C. AGRAWAL, J. The only question which arises for consideration in this writ petition, filed under Article 32 of the Constitution, is whether persons who were employed in temporary capacity with the Oil & Natural Gas Commission (hereinafter referred to as 'the Commission'), when it was being run as a Department of the

Government of India prior to the enactment of the Oil & Natural Gas Commission Act, 1959 (hereinafter referred to as 'the ONGC Act') and who were subsequently absorbed in the Commission, as established under the said Act, are entitled to pension, in addition to the Provident Fund benefits to which they are entitled under the provisions of the Employees' Provident Fund and Miscellaneous Provisions Act (hereinafter referred to as the Provident Fund Act').

The Commission was initially formed as a Department of the Government of India and it continued to be so till October 15, 1959, when the ONGC Act was enacted and the Commission was established as a statutory body under the said Act. Section 13 of the ONGC Act makes provision for transfer of service of the existing employees to the Commission on the same tenure, remuneration and terms and conditions as they would have held, if the Commission had not been established, until such tenure, remuneration and terms and conditions are duly altered by the Commission. In the proviso of Sub-Section (1) of Section 13 of the ONGC Act, it is further provided that the tenure, remuneration and terms and conditions of service of any such employee shall not be altered to his disadvantage without the previous approval of the Central Government. In exercise of the powers conferred by Section 32 of the ONGC Act the Commission, with the previous approval of the Central Government, has made the Oil & Natural Gas Commission (Terms and Conditions of Appointment and Service) Regulations, 1975 (hereinafter referred to as the Regulations'). In clause 2(b) of Regulation 3, it has been provided that nothing in the Regulation shall operate to deprive any employee of any right or privilege to which he is entitled by the terms or conditions of service, or any agreement, subsisting between such person and the Government.

By notification No. GSR 705, dated May 16, 1961, Schedule 1 to the Provident Fund Act was amended so as to make the provisions of the said Act applicable to any industry engaged in the manufacture of petroleum or natural gas exploration, prospecting, drilling or production with effect from June 30, 1961. By another Notification No. GSR 706, dated May 16, 1961, issued under Section 1(3)(b) of the Provident Fund Act the provisions of the said Act were made applicable to establishments engaged in the storage or transport or distribution of petroleum or natural gas or products of either petroleum or natural gas with effect from June 30, 1961. A corresponding amendment was made in the

Employees' Provident Fund Scheme, 1952 (hereinafter referred to as 'the Provident Fund Scheme'), by Notification dated 160

June 5, 1961, whereby Sub-Clause (xviii) was inserted in Clause (b) of sub-para (3) of para 1 of the said scheme and thereby the Provident Fund Scheme was made applicable, with effect from June 30, 1961, to factories relating to petroleum or natural gas exploration, prospecting, drilling or production and petroleum or natural gas refining and establishments engaged in the storage or transport or distribution of petroleum or natural gas or products of either petroleum or natural gas covered by the notifications of the Government of India in the Ministry of Labour and Employment, Nos. G.S.R. 705 and 706, dated May 16, 1961, respectively. As a result of the aforesaid amendments introduced in the Provident Fund Act and the Provident Fund Scheme, the provisions of the Provident Fund Act and the Provident Fund Scheme became applicable to the Commission with effect from June 30, 1961.

The petitioners in this writ petition represent the employees who were employed on temporary basis with the Commission prior to the enactment of the ONGC Act and who have been absorbed in the Commission after the enactment of the ONGC Act and the establishment of the Commission is a statutory body. The case of the petitioners is that while they were employed in the Commission before the enactment of the ONGC Act, they were entitled under the relevant rules governing their service, to pension on their being made permanent and that the said right to pension, which was part of their conditions of service, is protected under Section 13(1) of the ONGC Act. The petitioners have submitted that persons who were employed on temporary basis with the Commission prior to the enactment of the ONGC Act and were absorbed in the Commission subsequent to the enactment of the ONGC Act are entitled to pension on their retirement irrespective of the fact that they are entitled to Provident fund benefits under the provisions of the Provident Fund Act and the Provident Fund Scheme.

The writ petition has been contested by the Commission and in the counter affidavit filed on behalf of the Commission it has been stated that after the introduction of Contributory Provident Fund, in accordance with the provisions of the Provident Fund Act and the Provident Fund Scheme, the petitioners have been availing the benefits of Contributory Provident Fund and since the petitioners have opted for Contributory Provident Fund under the Provident Fund Act and the Provident Fund Scheme they cannot claim pension in addition to Contributory Provident Fund. It has been submitted that, on the date of enactment of the ONGC Act, the petitioners were temporary

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employees and they were not entitled to pension under the relevant service rules applicable to them and, therefore, they are not entitled to pension on their retirement after being absorbed in the Commission subsequent to the enactment of the ONGC Act. It has been further submitted that the petitioners cannot claim a double benefit i.e., Contributory Provident Fund as well as pension, and that they could either claim Contributory Provident Fund or pension, and since they opted for Contributory Provident Fund on the introduction of the Provident Fund Scheme and have been availing the said benefit during the past 28 years, they cannot be permitted to claim pension in addition to Contributory Provident Fund.

Shri M.K. Ramamurthi, the learned counsel for the peti-

tioners, has placed reliance on Sub-Section (1) of Section 13 of the ONGC Act and Clause (2) of Regulation 3 of the Regulations which provide as under:

"Section 13(1): Subject to the provisions of this Act, every person employed by the existing organisation immediately before the date of establishment of the Commission shall, on and from such date, become an employee of the Commission with such designation as the Commission may determine and shall hold his office or service therein by the same tenure, at the same remuneration and upon the same terms and conditions as he would have held the same on such date if the Commission had not been established and shall continue to do so unless and until his employment in the Commission is terminated or until such tenure, remuneration and terms and conditions are duly altered by the Commission:

Provided that--

(a) the tenure, remuneration and terms and conditions of service of any such person shall not be altered to his disadvantage without the previous approval of the Central Government;

(b) any service rendered in the existing organisation by any such person shall be deemed to be service under the Commission; and

(c) all persons employed by the Commission on the date of

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its establishment, who, immediately before such date. hold, in a permanent or quasi-permanent capacity, posts in connection with the affairs of the Union or of any State, but not posts in the existing organisation, shall be treated as Government servants on foreign service with the Commission."

"Regulation 3(2): Nothing in these regulations shall operate to deprive any employee of any right or privilege to which he is entitled:--

(a) by or under any law for the time being in force; or

(b) by the terms or conditions of service, or any agreement. subsisting between such person and the Government, or

(c) by the terms of any agreement subsisting between him and the Commission at the commencement of these regulations."

The submission of Shri Ramamurthi is that in view of SubSection (1) of Section 13 of the Act, the employees who were employed in the Commission immediately before the establishment of the Commission under the ONGC Act became employees of the Commission and they are entitled to hold their office or service in the Commission upon the same terms and conditions as they were applicable to them on the date of such establishment of the Commission and they are entitled to continue to do so until such terms and conditions are duly altered by the Commission and that any such alteration in the terms and conditions of service which is to their disadvantage could be made only with the previous approval of the Central Government and the said right of the employees is also protected by Clause (2) of Regulation 3 of the Regulations which have been framed by the Commission with the previous approval of the Central Government. Shri Ramamurthi has urged that under the relevant Service Rules, which were applicable to the petitioners at the time when they were absorbed in the service of the Commission on the enactment of the ONGC Act, the petitioners, though temporary employees, were entitled to pension on their being made permanent and that the said right of the petitioners, being part of their conditions of service, has been protected by Sub-Section (1) of Section 13 of the ONGC Act, as well as Clause (2) of Regulation 3 of the Regulations and it has not been taken away

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because the Central Government has not given its approval to the denial of the said right of the petitioners. In support of his aforesaid submissions, Shri Ramamurthi, has invited our attention to the provisions of Rule 13 of the Central Civil Services (Pension) Rules 1972 (hereinafter referred to as 'the Pension Rules'), which deals with commencement of qualifying service and prescribes that qualifying service of a government servant shall commence from the date he takes charge of the post to which he is appointed either substantively or in an officiating or temporary capacity, provided that officiating or temporary service is followed without interruption by substantive appointment in the same or another service or post.

The Pension Rules were issued in 1972 and were not applicable at the time when the petitioners were absorbed in the Commission on the enactment of the ONGC Act, 1959. It is, however, not disputed that the provisions with regard to pension, as contained in the Civil Service Regulations which were applicable at that time, were not different from those contained in the Pension Rules and pension was payable only if the employment was substantive and permanent (Regulations 352, 362 and 368). Under the Civil Service Regulations, an employee who was initially engaged on contract and was subsequently appointed to the same or different post in a substantive capacity on pensionable basis without interruption of duty was allowed the option of surrendering the Government contribution to his Contributory Provident Fund together with the interest thereon for the period of the contract and to count one half of the contract service towards pension (see: Choudhari's compilation of Civil Service Regulations, 5th Edition, Volume I, pages 216-217). Similarly, in cases where a permanent Government servant was transferred to an autonomous organisation consequent on the conversion of a Government Department into such a body, there was Government order dated 5th November, 1964 (Annexure III to the writ petition) which provided that the Government servant would be given an option to either retain the pensionary benefit available to him under the Government Rules or be governed by the Rules of the autonomous body. This option was also available to quasi permanent and temporary employees after they had been confirmed in the autonomous body. In other words, a Government servant could either avail pensionary benefits or the benefit of Contributory Provident Fund, but he could not avail both the benefits. In the Pension Rules, there is an express provision in Rule 2(d) which prescribes that the said Rules shall not apply to persons entitled to the benefit of a Contributory Provident Fund.

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In the present case, the petitioners were employed on temporary basis at the time when the Commission was established as a statutory body under the ONGC Act and on that date they were not entitled to claim pension because under the relevant Rules pension was not payable to a person employed on temporary basis. The petitioners, therefore, cannot claim that on the date of their becoming the employees of the Commission established under the ONGC Act in 1959, they had a right to pension which has been protected under Sub-Section (1) of Section 13 and Clause (2) of Regulation 3 of the Regulations. The petitioners cannot also claim protection of the aforesaid provisions on the basis that right to receive pension was part of their condition of service on the date of their becoming the employees of the Commission under Sub-Section (1) of Section 13 of the ONGC

Act, in as much as under the relevant service rules applicable to them, they could either claim pension or the benefit of the Contributory Provident Fund and they could not avail both the benefits. Since the petitioners are entitled to the benefit of the Contributory Provident Fund under the Provident Fund Act and the Provident Fund Scheme and have availed the said benefit for the past 28 years, they should be taken to have opted for said benefit and they cannot invoke the service rules with regard to pension and claim the right to receive pension as part of their conditions of service. We are, therefore, unable to accept the contention of Shri Ramamurthi, 'based on the provisions of Sub-Section (1) of Section 13 of the ONGC Act and Clause (2) of Regulation 3 of the Regulations, that the petitioners are entitled to claim pension in addition to the Provident Fund payable to them under the Provident Fund Act and the Provident Fund Scheme.

Shri Ramamurthi, has next contended that in view of Section 12 of Provident Fund Act, the right of the petitioners to pension has been preserved and the introduction of the Contributory Provident Fund under the provisions of the Provident Fund Act and the Provident Fund Scheme does not disentitle the petitioners from claiming pension to which they were entitled before the introduction of the Contributory Provident Fund in the Commission. In support of the aforesaid submission, Shri Ramamurthi has placed reliance on the decision of this Court in *Sorn Prakash Rekhi v. Union of India & Another*, [1981] 2 S.C.R. 111.

Section 12 of the Provident Fund Act, provides as under:

"No employer in relation to an establishment to which any
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Scheme or the Insurance Scheme applies shall, by reason only of his liability for the payment of any contribution to the Fund or the Insurance Fund or any charges under this Act or the Scheme or the Insurance Scheme reduce, whether directly or indirectly, the wages of any employee to whom the Scheme or the Insurance Scheme applies or the total quantum of benefits in the nature of old age pension, gratuity, Provident Fund or life insurance to which the employee is entitled under the terms of his employment, express or implied." The said provision in our view is not applicable in the present case. The Provident Fund Act has been enacted with the object of providing social security to the employees in factories and other establishments covered by the said Act, after their retirement. In the Statement of Objects and Reasons for the said enactment it was mentioned as under:

"The question of making some provision for the future of the industrial worker after he retires, or for his dependents in case of his early death, has been under consideration for some years. The ideal way would have been provisions through old age and survivors' pensions as has been done in the industrially advanced countries. But in the prevailing conditions in India, the institution of a pension scheme cannot be visualised in the near future. Another alternative may be for provision of gratuities after a prescribed period of service. The main defect of a gratuity scheme, however, is that amount paid to a worker or his dependents would be small, as the worker would not himself be making any contribution to the fund. Taking into account the various difficulties, financial and administrative, the most appropriate course appears to be the institution, compulsorily, of Contributory Provident Fund in which both the worker and the employer would contribute. Apart from other advantages, there is the obvious one of cultivating among the workers a spirit of saving something regularly."

This indicates that the scheme of Contributory Provident

Fund, by way of retiral benefit, envisaged by the Provident Fund Act, is in the nature of a substitute for old age pension because it was felt that in the prevailing conditions in India, the institution of a pension scheme could not be visualised in the near future. It was not the intention of

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Parliament that Provident Fund benefit envisaged by the said Act would be in addition to pensionary benefits. Section 12 of the Provident Fund Act seeks to protect the wages of an employee to whom the scheme framed under the said Act applies as well as the total quantum of certain specified benefits to which he is entitled under the terms of his employment. With that end in view, Section 12 prohibits an employer from reducing, whether directly or indirectly, the wages of an employee to whom the Scheme applies or the total quantum of benefits in the nature of old age pension, gratuity, Provident Fund or life insurance to which the employee is entitled under the terms of his employment express or implied. The said Section proceeds on the basis that if an employee is entitled to any benefit in the nature of old age pension under the terms of his employment the said benefit would not be denied to him on the application of the Scheme. It is not the case of the petitioners that on June 30, 1961, when the Provident Fund Scheme was made applicable to the Commission, the petitioners had become permanent and were entitled to pension. It cannot, therefore, be said that on the date of the application of the Provident Fund Scheme to the Commission, the petitioners were entitled to pension under the terms of their employment. They cannot, therefore, invoke the provisions of Section 12 of the Provident Fund Act.

In *Sorn Prakash Rekhi v. Union of India & Another*, (supra) on which reliance has been placed by Shri Ramamurthi, the petitioner before this Court was employed as a clerk in Burmah Shell Oil Storage Ltd. The undertaking of that company was statutorily acquired by the Government of India under the Burmah Shell (Acquisition of Undertakings in India) Act, 1976, and subsequently the said undertaking was vested by the Central Government in the Bharat Petroleum Corporation Limited, a Government Company. In the Burmah Shell, there was a voluntary retirement scheme in force which was governed by the terms of a trust deed of 1950. The said petitioner was receiving pension under the said scheme. Certain deductions were made from the pension paid to the petitioner on account of Employees' Provident Fund and Gratuity paid to him. This Court held that in view of Section 12 of the Provident Fund Act, such deductions were not permissible and that the entire amount of pension should be paid to the petitioner without deduction. This decision has no application to the instant case because in that case the petitioner before this Court was entitled to receive pension under the voluntary retirement scheme at the time when the provisions of the Provident Fund Act became applicable to Burmah Shell and the right to receive pension was part of the terms of employment of the said petitioner. In the present case it cannot be said

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that on the date of the application of the Provident Fund Scheme to the Commission on June 30, 1961, the petitioners were entitled to receive pension and the benefit of pension was a part of the terms of employment of the petitioners on that date.

For the reasons mentioned above, it must be held that the persons who were employed in temporary capacity with the

Commission when it was being run as a Department of the Government of India prior to the enactment of the ONGC Act and who were subsequently absorbed in the Commission, as established under the said Act, are not entitled to pension in addition to the Provident Fund benefits to which they are entitled under the provisions of the Provident Fund Act. The writ petition, therefore, fails and it is accordingly dismissed. There will be no order as to costs.

T.N.A.

Petition dismissed.

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JUDIS