

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

v.

BHARAT PETROLEUM CORPORATION LTD. AND ORS.

MARCH 13, 1990

B [RANGANATH MISRA, M.M. PUNCHHI AND
K. RAMASWAMY, JJ.]

Labour and Services: Pension—Restoration of commuted portion of pension—Retired staff of Bharat Petroleum (erstwhile Burmah Shell)—Whether and when entitled to.

C
D Some of the erstwhile employees of Burmah Shell, in an earlier writ petition, claimed restoration of the commuted portion of pension and enhancement of pension on par with the pensioners of Hindustan Petroleum Corporation Limited, (HPCL). At the time of hearing, the claim for restoration of the commuted portion of pension was given up. This Court accepted the claim of the petitioners as regards enhancement of pension and ordered a sizeable hike in the pension. The present writ petition claims the same relief which was given up at the time of hearing of the earlier writ petition, viz., restoration of commuted portion of pension. Admittedly, HPCL had deferred its decision till 1992 in this regard.

E On behalf of the petitioners it was contended that though, HPCL has deferred its decision till 1992, the petitioners were not precluded from approaching this Court and that the earlier decision did not operate as *res judicata*.

F On behalf of the respondents it was contended that as soon as HPCL revises its scheme the petitioners would also be entitled to the benefit thereof and that grant of the relief earlier would create disparity between the persons who receive pension from HPCL and those from the Respondent.

G Dismissing the writ petition, this Court,

H HELD: 1.1. It would be inappropriate to interfere and grant the relief as prayed for at this stage since that would create disparity between the personnel who receive pension from Hindustan Petroleum Corporation Ltd. and the respondent Corporation. [965B]

1.2. This Court has already held that the retired personnel of Burmah Shell would be entitled to a hike in pension at par with pensioners of HPCL. (W.P. No. 590/87 decided on 11.5.1988). HPCL has not accorded to its pensioners the relief of restoration of the commuted portion of pension after the expiry of 15 years. The order passed by this Court is as recent as May 11, 1988. After such a short time lag and in the absence of any substantial change in the position, it is not desirable to entertain the claim for restoration of commuted pension. The petitioners are governed by a special scheme, which is not at par with Government employees or the other Public Sector Undertakings. [964G-H; 965A]

Common Cause & Ors. v. Union of India, [1987] 1 SCC 142, referred to.

CIVIL ORIGINAL JURISDICTION: Writ Petition No. 215 of 1989.

(Under Article 32 of the Constitution of India.)

M.S. Gujral, Ms. Kirti Misra and B.B. Sawhney for the Petitioners.

G.B. Pari, O.C. Mathur, Ms. Meera and S. Sukumaran for the Respondents.

The Judgment of the Court was delivered by

K. RAMASWAMY, J. This writ petition under Art. 32 filed on behalf of about 450 erstwhile employees of M/s. Burmah Shell retired between May 1, 1979 and December 1984, is for a mandamus or direction to the respondents to restore full pension (which had been commuted) to the petitioner Nos. 2 to 5 and others similarly situated upon the expiry of 12-1/2 years from date of *retirement* in case of those retired prior to April 1985 and after 11-1/3 years to those retired prior to April 1, 1985 from their respective dates of retirement. They claim that though in their previous Writ Petition No. 590/87 disposed of by a Division Bench of this Court on May 11, 1988 of which one of us (Ranganath Misra, J.) was a member, a hike in the pension effective from May 1, 1988 was granted. Consideration of the present relief had been left over for a later period. Admittedly, the petitioners in Writ Petition No. 590/87 sought two reliefs, namely, (i) restoration of the commuted portion of the pension, and (ii) enhancement of pension on par with the pensioners of the Hindustan Petroleum Corporation Limited, for short 'HPCL'. During the course of hearing, claim for the

A first relief was given up and submission was confined to the second relief. This Court accepted the contentions of the petitioners and ordered a sizeable hike in the pension. The relief in this writ petition squarely covers relief No. 1 of Writ Petition No. 590/87. But the ground on which the petitioners have again come before the Court within a short spell is that their hope of the respondent's sister-concern, namely, HPCL, restoring commuted portion of pension to its pensioners has been smashed as it has deferred its decision on the issue till 1992. Their learned counsel contends that in *Common Cause & Ors. v. Union of India*, [1987] 1 SCC 142 this Court upheld the 15 years formula and directed that the commuted portion of the pension should be restored to all the civil servants as well as the armed forces personnel of the Central Government effective from April 1, 1985. It is maintained that as principle the same would be applicable to the petitioners as well. The respondents, it is claimed, have to bear an additional liability of only a sum of Rs.1,02,41,635 out of its huge profits without in any manner affecting its functioning. When the employees of the Central Govt. and other Public Sector Undertakings are receiving the same benefits, the denial thereof to the petitioners is arbitrary, unjust and unfair and offends Art. 14 of the Constitution. There is no scheme in vogue in other Public Sector Undertakings like commuted pension scheme except in HPCL. Though HPCL has postponed action in this regard till 1992, the petitioners are not precluded to approach this Court for redressal and the previous decision does not operate as *res judicata*. This Court having accorded in equity benefits of pension, which is a legal right of the petitioner, the relief also may be granted to the petitioners.

Shri Pai, learned counsel for the respondents, has resisted all these contentions. The short question is whether it is a fit case for interference and issue of a direction to the respondents to give the relief as prayed for. Admittedly, the petitioners claimed this relief in Writ Petition No. 590/87. This Court after appropriate consideration held that a sizeable hike in pension would meet the ends of justice. Admittedly, Burmah Shell has a unique scheme known as "Burmah Shell India Pension Fund" with its own rules. This Court held that the retired personnel would be entitled to a hike in pension at par with pensioners of HPCL. Admittedly, HPCL has not accorded to its pensioners the relief of restoration of the commuted portion of pension after the expiry of 15 years. The order passed by this Court is as recent as May 11, 1988. After such a short time lag and in the absence of any substantial change in the position, in our considered view, it is not desirable to entertain the claim for restoration of commuted pen-

sion. Admittedly, the petitioners are governed by a special scheme, which is not at par with Government employees or the other Public Sector Undertakings. In all fairness Shri Pai also has stated that as and when HPCL revises its scheme the petitioners would be entitled to the same benefits. Grant of the relief at this stage would create disparity between the personnel who receive pension from HPCL and the respondents. We find sufficient justification in the contention of Shri Pai. So we do not feel justified that it would be appropriate to interfere and grant the relief as prayed for. The writ petition is accordingly dismissed, but without costs.

A

B

G.N.

Petition dismissed.