



**THE HIGH COURT OF ORISSA AT CUTTACK**

**W.P.(C) No. 15124 of 2017**

(An application under Articles 226 and 227 of the Constitution of India)

***Bibhuti Bhusan Mohanty & Others*** ..... ***Petitioners***

***-Versus-***

***Union of India & Others*** ..... ***Opp. Parties***

For the Petitioners : Mr. Budhadev Routray, Senior Advocate being assisted by Mr. Jagdish Biswal, Advocate

For the Opp. Parties : Mr. M.K. Pradhan, Senior Panel Counsel for Opp. Party No.1,

Mr. Darshan Mishra, Advocate on behalf of Mr. S. Pattanaik, Advocate for Opp. Party Nos.2 and 3.

**CORAM:**

**THE HON'BLE MR. JUSTICE SIBO SANKAR MISHRA**

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Date of Hearing: 10.03.2026 : Date of Judgment: 30.04.2026

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***S.S. Mishra, J.*** The present Writ Petition has been filed by the Petitioners, assailing the legality and validity of the order dated



01.06.2017, whereby the Opposite Party Nos. 2 and 3 have rejected the claim of the Petitioners for inclusion in the Oil India Pension Fund Scheme and for grant of pensionary and other consequential retiral benefits.

2. Mr. Budhadev Routray, learned Senior Advocate being assisted by Mr. Jagdish Biswal, learned counsel appearing for the petitioners, Mr. M.K. Pradhan, learned Senior Panel Counsel appearing for Opp. Party No.1 and Mr. Darshan Mishra, Advocate on behalf of Mr. S. Pattanaik, learned counsel for Opp. Parties Nos 2 and 3 have been heard in extenso.

3. The facts giving rise to the present writ petition are that the petitioners were initially engaged in the Bay Exploration Project Office of Oil India Ltd. at Bhubaneswar during the period from 01.04.1979 to 15.09.1981 on temporary basis. Subsequently, the Government of India acquired the shares of Oil India Ltd. held by Burmah Oil Company Ltd. by virtue of the Burmah Oil Company (Acquisition of Shares of Oil India Limited and of the Undertakings in India of Assam Oil Company Limited) Act, 1981 and the said Act came into force on 28.09.1981 (hereinafter referred to as “the Act”).



4. Under Section 11(2) of the Act, all existing employees of the specified companies, including Oil India Ltd., who were in service immediately before the appointed date, stood transferred to and became employees of the Government company. Section 12 further protected the provident, superannuation and other welfare benefits of such employees and mandated that their rights and interests shall not be prejudiced or diminished.

5. After such acquisition, the petitioners were absorbed into regular service; however, a stipulation was incorporated in their appointment letters that they would not be entitled to pension.

6. The petitioners continued in service for long periods, in most cases exceeding two decades, and retired on attaining the age of superannuation between 2004 and 2015. Upon their retirement, when the petitioners claimed pensionary benefits, the same was rejected by the impugned order dated 01.06.2017 on the sole ground that they had accepted the condition in their appointment letters disentitling them from pension. Relevant paragraph of the said order is extracted herein for ready reference:-



*“The matter was considered by the Board of Directors of Oil India Ltd. The Board decided that since you were not a member of the Burmah Oil Company Ltd. Pension Fund prior to nationalization of Oil India Ltd. and your appointment to a regular position in Oil India Ltd. (which you unconditionally accepted) was after nationalization of the Company and specifically stated that you would not be entitled to pension benefit on retirement, you are not entitled to pension under the Oil India Pension Fund/Scheme. Your appeal is being disposed with approval of the Board.”*

7. Aggrieved by the aforementioned order dated 01.06.2017, the petitioners have approached this Court by invoking the writ jurisdiction, *inter alia*, making the following prayer:-

*“It is therefore, most humbly prayed that this Hon’ble Court graciously pleased to*

- i) *Admit the writ application*
- ii) *Call for the record*
- iii) *Issue Rule Nisi calling upon the opposite parties to show cause as to why the impugned rejection order passed by opposite party Nos.2 and 3 dated 01.06.2017 under Annexure-4 shall not be quashed.*
- iv) *If the opposite parties fail to show cause or show insufficient cause make the rule absolute and issue a writ in the nature of certiorari or any other writ/writs direction/directions quashing the impugned rejection order passed by opposite party*



*Nos.2 and 3 dated 01.06.2017 under Annexure-4.*

- v) *Issue a writ in the nature of mandamus or any other writ/writs direction/directions directing the opposite parties, particularly opposite party Nos.2 and 3 to give pension and other pensionary benefit from the date they retired from service after attaining the date of superannuation under Oil India Pension Fund Scheme and the petitioners be entitled to all financial and consequential service benefit as is admissible to them within a reasonable time to be stipulated by this Hon'ble Court.*
- vi) *And/or pass any other order/orders, direction/directions as this Hon'ble Court deems fit and proper for the ends of justice."*

8. Mr. Routray, learned senior counsel for the petitioners, submitted that the petitioners were admittedly in service prior to the appointed date and, therefore, their services stood protected under Section 11(2) read with Section 12 of the Act, 1981. He contended that Section 12(3) of the Act explicitly safeguards the rights and interests of employees in respect of provident fund, superannuation and other welfare benefits, and mandates that such rights shall not be prejudiced or diminished in any manner. He further argued that the condition incorporated in the appointment letters, disentitling the petitioners from pension, is arbitrary, unconscionable and opposed to



public policy, and, therefore, cannot be enforced in law. Mr. Routray emphasized that the petitioners, being in a position of economic compulsion, had no real bargaining power and were constrained to accept such terms in order to secure their livelihood. Hence, such acceptance cannot operate as a waiver of their statutory rights.

9. Mr. Routray contended that the alleged breaks in service are artificial in nature and cannot be used to deny the continuity of service, particularly when the petitioners had actually worked during such periods and were remunerated accordingly. Placing reliance on settled principles of service jurisprudence, he urged that such breaks are liable to be ignored. The learned counsel further submitted that pension is a deferred wage and a measure of social security, and cannot be denied on the basis of technicalities or contractual stipulations.

10. In support of the aforesaid contentions, he has placed reliance on the decisions of the Hon'ble Supreme Court in *Central Inland Water Transport Corporation Ltd. vs. Tarun Kanti Sengupta*,



reported in *AIR 1986 SC 1571* and *Rattan Lal vs. State of Haryana*, reported in *(1985) 4 SCC 43*.

**11.** Per contra, learned counsel appearing for the Opposite Parties submitted that prior to the nationalization of Oil India Ltd., only regular and permanent employees were entitled to pensionary benefits under the pension fund created by the Burmah Oil Company. It was contended that the petitioners, having been appointed on temporary basis prior to the appointed date, were not members of the pension fund and, therefore, had no vested right to claim pension.

**12.** It was further argued that after nationalization, the petitioners were offered regular employment subject to specific terms and conditions, one of which clearly stipulated that they would not be entitled to pension upon retirement. The petitioners, having accepted such terms without protest, are estopped from subsequently claiming pensionary benefits contrary to the conditions of their appointment.

**13.** The learned counsel also submitted that the legal opinion of a Senior Advocate, as relied upon by the petitioners, does not form part of the pleadings and, in any event, is not binding upon the Opposite



Parties. It was thus contended that the rejection of the petitioners' claims for pension by order dated 01.06.2017 is legal, justified and does not warrant interference by this Court.

**14.** From the pleadings and submissions made by the respective counsels, the following admitted facts are borne on record:-

- a) Oil India Company was registered as a private limited company in the year 1959, which was jointly owned by Govt. of India and Burmah Oil Company.
- b) Twenty-five employees along with the present petitioners were appointed on temporary basis in the Bay Exploration Project Office of Oil India Limited between 01.04.1979 and 15.09.1981.
- c) On 14.10.1981, Govt. of India acquired the shareholding of Burmah Oil Company under the Burmah Oil Company (Acquisition of Shares of Oil India Limited and of the undertakings of India of Assam Oil Company Limited) Act, 1981. The Govt. of India acquired the shares of Oil India, which was held by Burmah Oil Company Limited and acquired the right, title and interest of Assam Oil Company



Ltd. On the same day, Oil India was nationalized and was made a Public Sector Enterprises completely owned by Govt. of India.

- d) On 13.01.1982, the petitioners while continuing on temporary basis, were brought into the regular establishment by terminating from their temporary status w.e.f. 13.01.1982 and they were freshly appointed in regular posts from 02.01.1982. In the said appointment letter under condition no.6, it has been mentioned as under:-

*“You shall not be entitled to any Pensionary benefit on retirement. Other retiral benefits, if any, will be determined by the Company rules as may be applicable from time to time.”*

- e) The petitioners made representation before the opposite party no.2 to include them under the Oil India Provident Fund Scheme, as they became regular employees of the company and the Provident Fund contributions were deducted from their wages from the date of their joining. Besides, they urged that similarly situated employees like the present petitioners were also given the Provident Fund from the date of their joining.



- f) The Chairman of the opposite party-Company on 28.02.2006, through a communication, opined that the appointment letter dated 13.01.1982 issued to the employees cannot be treated as termination letter as well as fresh appointment letter. He also opined that it is employee's legal entitlement to get the pensionary benefit and the company is obliged to admit the employees to the pension fund and discharge the obligation.
- g) Even the General Manager (HR & A) of the company addressed a letter dated 04.11.2008 to the Director (Personnel) recommending the case of the petitioners, who were appointed prior to 14.10.1981 and were continuing in service to admit them as members of Oil India Pension Fund.
- h) Surprisingly, opposite party no.3, vide communication dated 01.06.2017, rejected the representation given by the petitioners on the ground that the petitioners are not members of Burmah Oil India Company Ltd. prior to



nationalization of Oil India Ltd. This letter is impugned in this writ.

**15.** The petitioners are aggrieved by the impugned conduct of the opposite parties and invoked the writ jurisdiction of this Court by filing the present writ petition.

**16.** The opposite parties have filed counter affidavit and questioned the claim of the petitioners primarily on two grounds, firstly the petitioners were temporarily engaged in the previous establishment and were not the members of provident fund in the earlier company and secondly a specific term was imposed on the petitioners while they were regularly employed after the nationalization of Oil India that they are not entitled to any retiral benefit, which they have accepted. After having accepted the said conditions at the appointment, now they can't turn around and make such inadmissible claim. Hence, they are not entitled to the benefit, as claimed by them.

**17.** The provisions of law under the Act and the Rules governing the field are necessitated to be extracted herein below for the convenience of ready reference. Sections 6, 11 and 12 of the Act,



1981 are relevant for the purpose of deciding the present lis, hence are reproduced for the convenience of ready reference:-

*“6. General effect of vesting (1) Subject to the provisions of sub-section (2), the undertakings of each specified company shall be deemed to include all assets, rights, powers, authorities and privileges and all property, movable and immovable, including any designs, trademarks, trade names, styles of labeling, station décor or any distinctive colour schemes, cash balances, reserve funds, book debts, investments and all other rights and interests in, or arising out of, such property as were, immediately before the appointed day, in the ownership, possession, power or control of the specified company, in relation to its undertakings in India, and all books of account, registers, records and all other documents of whatever nature relating thereto and shall also be deemed to include all borrowings, liabilities (including the liability for the payment of taxes, if any, and for the payment of any pension and other pensionary benefits to the persons employed in relation to its undertakings in India) and obligations of whatever kind of the specified company in relation to its undertakings in India:*

*Provided that remittances outside India of any money for the payment of pension or other pensionary benefits shall be subject to the rules and regulations for the time being in force in relation to such remittances.*

*(2) The undertakings in India of “The Burmah Oil Company (India Trading) Limited” shall not include the shares held by the said company in the Tin Plate Company of India Limited, a company as defined in the Companies Act, 1956 (1 of 1956) and having its registered office at 4, Bankshall Street, Calcutta-700001.*



*(3) The profits earned, or the losses suffered, as the case may be, by each specified company in relation to its undertakings in India from the 1<sup>st</sup> day of January, 1977, shall be payable to, or, as the case may be, borne by, the Central Government.*

*(4) Unless otherwise expressly provided by this Act, all deeds, bonds, agreements, powers of attorney, grants of legal representation and other instruments of whatever nature in relation to the undertakings in India of a specified company subsisting or having effect immediately before the appointed day, and to which the specified company is a party to which are in favour of the specified company shall be of as full force and effect against or in favour of the Central Government and may be enforced or acted as fully and effectively as if in the place of the specified company, the Central Government had been a party thereto or as if they had been issued in favour of the Central Government.*

*(5) If, on the appointed day, any suit, appeal or other proceeding of whatever nature (including proceeding before any authority) in relation to the undertakings in India of a specified company which have been transferred to, and vested in, the Central Government under Section 5, is pending by or against that specified company, the same shall not abate, be discontinued or be, in any way, prejudicially affected by reason of the transfer of the undertakings in India of the specified company or of anything contained in this Act but the suit, appeal or other proceeding may be continued, prosecuted and enforced by or against the Central Government.*

*(6) The Promotion Agreement and Supplemental Agreement entered into on the 14<sup>th</sup> day of January, 1958 and the 16<sup>th</sup> day of February, 1959, respectively, to which the Central Government, the Burmah Oil Company and the Assam Oil Company Limited were parties, and the Adopting Agreement*



*and the second Supplemental Agreement entered into on the 14<sup>th</sup> day of March, 1959 and the 27<sup>th</sup> day of July, 1961, respectively, to which the Central Government the Burmah Oil Company, the Assam Oil Company Limited and Oil India Limited, were parties shall be deemed to have been terminated with effect from the 1<sup>st</sup> day of January, 1977, and accordingly the rights, liabilities and obligations arising out of such Agreements shall be deemed to have been extinguished on and from that date.*

*Provided that clause 12 of the said Second Supplemental Agreement shall, in so far as it relates to the rights, liabilities and obligations of Oil India Limited, continue in force up to and inclusive of the financial year of that company ending on the 31<sup>st</sup> day of March, 1982.*

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*11. Transfer of service of existing employees of the specified companies- (1) Every whole-time officer or other employee of a specified company who was, immediately before the appointed day, employed by that company in connection with its undertakings in India, and every whole-time officer or other employee of a specified company who was, immediately before the appointed day, temporarily holding any assignment outside India shall, on the appointed day, become an officer or other employee, as the case may be, of the Central Government or the concerned Government company (hereinafter referred to as the successor Government company) in which the right, title and interest of the specified company in relation to its undertakings in India have vested under this Act and shall hold office or service under the Central Government, or the successor Government company, as the case may be, on the same terms and conditions and with the same rights to pension, gratuity and other matters as would have been admissible to him if there had been no such vesting and shall continue to*



*do so unless and until his employment under the Central Government or the successor Government company is duly terminated or until his remuneration and conditions of service are duly altered by the Central Government or the successor Government company.*

***(2) Subject to rules made in this behalf under Section 22, every whole-time officer or other employee of Oil India who was, immediately before the appointed day employed by it in India, and every whole time officer or other employee of Oil India who was, immediately before the appointed day, temporarily holding any assignment outside India shall, on and from that day, continue to be an officer or other employee of Oil India on the same terms and conditions and with the same rights to pension, gratuity and other matters as are admissible to him immediately before that day and shall continue to hold such office unless and until his employment under Oil India is duly terminated or until his remuneration and conditions of service are duly altered by that company.***

*(3) If any question arises as to whether any person was a whole time officer or other employee of a specified company, or as to whether any officer or other employee was employed wholly or mainly in connection with the undertakings of that company in India immediately before the appointed day, or whether any whole time officer or other employee of a specified company was temporarily holding any assignment outside India, the question shall be referred, within a period of two years from the appointed day, to the Central Government which shall, after giving an opportunity of being heard to the person concerned in the matter, decide it in such manner as it thinks fit and such decision shall be final.*



*(4) Notwithstanding anything contained in the Industrial Dispute Act, 1947 (14 of 1947), the Payment of Gratuity Act, 1972 (39 of 1972), or in any other law for the time being in force, the transfer of the services of any officer or other employee, under sub-section (1), shall not entitle any such officer or other employee to any compensation or gratuity under those Acts or such other law, and no such claim shall be entertained by any court, tribunal or other authority.*

*12. Provident, superannuation, welfare fund, etc.-(1) Where a provident, superannuation, welfare or other fund has been established by a specified company for the benefit of the persons employed by it in connection with its undertakings in India, or for the benefit of such persons and persons employed by Oil India, the moneys relatable to the employees-*

*(a) whose services are transferred by or under this Act to the Central Government or the successor Government company, or, as the case may be, continued with Oil India, or*

*(b) who are in receipt of pension or other pensionary benefits immediately before the appointed day, shall, out of the moneys 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 successor Government company, or Oil India, as the case may be, free from any trust that may have been constituted by the specified company in respect thereof.*

*(2) The moneys which stand transferred, under sub-section (1), to the Central Government or the successor Government company or Oil India shall be dealt with by the Central Government or that company, or Oil India, as the case may be, in such manner as may be prescribed.*



*(3) The successor Government company or Oil India, as the case may be, shall, as soon as may be after the appointed day, constitute, in respect of the moneys and other assets which are transferred to, and vested in, it under this section, one or more trusts having objects as similar to the objects of the existing trust, as in the circumstances may be practicable; so, however, that the rights and interests of the beneficiaries of the trust referred to in sub-section (1) are not, in any way, prejudiced or diminished.*

*(4) Where all the moneys and other assets belonging to an existing trust are transferred to, and vested in, the Central Government, or the successor Government company or Oil India under this section, the trustees of such trust shall, as from the date of such vesting, stand discharged from the trust except as respects things done or omitted to be done before the date of such vesting.”*

Similarly, Rule-4 of Burmah Oil India Pension Fund, which was enforced prior to the commencement of the Act entitling the employees to normal pension, is also relevant to reproduce:-

*“4. Except as is hereinbefore provided a former employee shall be entitled to a normal pension as hereinafter defined:-*

*(1) He has attained the pension age while still in the service of the Company and/or its Associated Companies.*

*(2) He has rendered twenty years of continuous service with the company and/or its Associated Companies. For the employees transferred to India from service with any of the Burmah Oil Company Subsidiary Companies in Burma the Company shall, in its sole*



*discretion, regard the period of those Companies absence from Burma as part of a period of continuous service for those employees who waited for the order to evacuate from Burma in 1942 and who were re-engaged on or before 30<sup>th</sup> September, 1947 by any of these companies provided such service is certified by the Companies concerned. In the case of employees who waited for the order to evacuate in 1942 and were re-engaged after 30<sup>th</sup> September, 1947 by any of these Companies, the period between 1<sup>st</sup> October, 1947 and the date of re-engagement will not be included in the period of continuous service.*

- (3) *He shall have at the date of his retirement been a member of The Provident and Insurance Fund (India) Recognized or of the Burmah Oil (India) Provident Fund or any other Provident Fund maintained by the Company and/or the Associated Company and his membership of such Fund or Funds shall have been continuous for not less than ten years and he has been in receipt of a salary of over Rupees two hundred per month at the date of his retirement from the service of the Company or an Associated Company by which he was at such date employed.*

*An employee who qualifies for a pension under the provisions of this Rule will be entitled to a normal pension representing a yearly sum equivalent to the basic figure less the authorized deduction.”*

**18.** Reading of the above provisions of the Act jointly or severally would show that the undertakings of each specified company shall be deemed to include all assets, rights, powers, authorities and privileges and all property, movable and immovable, including any designs, trademarks etc. and all other rights and interests in or arising out of



such property were immediately before the appointed day, in the ownership, possession, power or control of the specified company, in relation to its undertakings in India and all books of account, registers, records and all other documents of whatever nature relating thereto including all borrowings, liability and payment of any pension and other pensionary benefits to the persons employed in relation to its undertakings in India and the obligation of whatever kind of the specified company in relation to its undertakings in India, provided that remittances outside India of any money for the payment of pension or other pensionary benefits shall be subject to the Rules And Regulations for the time being in force in relation to such remittances. Further it reflects that every whole time officers or other employee of a specific company who are immediately before the appointed day become an officer or the other employee of the Central Government or the concerned Government company in which right, title and interest of the specified company in relation to its undertaking in India have been vested under the Act and shall hold office or service under the Central Government, or the successor Government company, on the **same terms and conditions and with the same**



**rights to pension, gratuity and other matters as would have been admissible to him if there had been no such vesting and shall continue to do so unless and until his employment under the Central Government or the successor Government company is duly terminated or until his remuneration and conditions of service are duly altered by the Central Government or the successor Government company.**

The above conditions as germinating from reading of Sections 6 and 11 of the Act shall subject to the rules made in his behalf under Section 22, every whole time officer or other employee of Oil India who was, immediately before the appointed day continued to be an officer or other employee of Oil India on the same terms and conditions and with the same rights to pension, gratuity and other matters as are admissible to him immediately before that day and shall continue to hold such office unless and until his employment under Oil India is duly terminated.

**19.** The overall reading of the provisions of the Act makes it abundantly clear that the Central Government or the successor



company cannot claim to have totally severed all connection with the erstwhile company. Sub-section (2) and (3) of Section 12 of the Act on which much emphasis was supplied by Mr. Routray, learned Senior Counsel appearing for the petitioners provides that Central Government or the successor company after the appointed day shall constitute one or more trusts in respect of the moneys and other assets which are transferred or vested with the Government or the successor company having objects similar to the existing trust without prejudice to the existing right of the beneficiary of the trust.

**20.** Worthwhile to refer to Rule-4 of the Burmah Oil India Pension Fund, as reproduced above, which was enforced prior to the commencement of the Act, laid down the condition for entitlement of an employee to get the normal pension. The conditions are:

1. *He must have attained the age of superannuation while in service;*
2. *He must have rendered twenty years of continuous service in the company;*
3. *He should have at least at the date of his retirement been a member of the provident fund and insurance fund of India recognized or of the Burmah Oil India provident fund or any other provident fund maintained by the company;*



4. *His membership of such fund should have been continuous for not less than ten years; and*
5. *He should have been in receipt of a salary of over rupees two hundred per month at the date of his retirement from the service of the company.*

**21.** It is an admitted fact on record that all five conditions as required under Rule-4 of the Pension Rules to be fulfilled for attaining the entitlement of normal pension have been duly satisfied by the petitioners. Therefore, on true and appropriate construction of the applicable provisions of the Act and the pension rules as discussed above, it is apparent that the petitioners, those who have been working for more than twenty years of continuous service notwithstanding certain technical gaps, are to be treated as continuous employees. The petitioners have also satisfied the conditions of being a member of the provident fund for the requisite period. It is also admitted that all the petitioners were confirmed employees prior to their respective dates of attaining the age of superannuation and were drawing salary of rupees two hundred per month. Therefore, they satisfied all requirements pre-existing the rules and their right to receive pension on satisfying the conditions stipulated in sub-rule 4 is



indeed guaranteed by Section 11 (2) read with Section 12 (3) of the Act, as discussed above.

The objection raised by the opposite party that once the petitioners accepted the condition at the time of their employment that they would not be entitled or claim regular pension would bar them to avail the benefit of the provisions of the Act is not sustainable under law, because the employees, who are working under the mercy of the employer, were not having any bargaining power and therefore usually the employer which set out any service condition at the time of appointment is bound to be accepted by the employee in order to save their employment. If any such condition is imposed contrary to the legal entitlement of the employees and was made to agree at the time of appointment, the same shall not be acted as an estoppel from their entitlement. This principle of law is settled by the Hon'ble Supreme Court in the matter of *Central Inland Water Transport Corporation Ltd.* (supra).

**22.** On the basis of analysis of the provision of vesting, provisions relating to transfer of service of existing employees, provisions



relating to superannuation and provident welfare fund envisioned under the Act, 1981 besides the governing erstwhile Rules regarding the entitlement of pension and on the basis the admitted facts borne on record, the inescapable conclusion that could only be drawn is that the petitioners are entitled to pensionary benefit from their date of superannuation under the Oil India Pension Scheme, besides all other consequential service benefits. Hence, the impugned order dated 01.06.2017 (Annexure-4) is set aside, declaring the petitioners to be entitled to pension benefit on retirement under the Indian Oil Pension Fund/Scheme.

**23.** Accordingly, the Writ succeeds.

***(S.S. Mishra)***  
***Judge***

The High Court of Orissa, Cuttack.  
Dated the 30<sup>th</sup> of April, 2026/Ashok