

## Bimla Devi Vs Chairman, Indian Oil Corporation Ltd. and Others

**Court:** Delhi High Court

**Date of Decision:** May 8, 2014

**Citation:** (2015) 1 AD 175 : (2015) 214 DLT 698

**Hon'ble Judges:** Rajiv Shakdher, J

**Bench:** Single Bench

**Advocate:** Biswajeet Bhattacharya, Sr. Advocate and Mr. Ravi Shankar Kumar, Advocate for the Appellant; V.N. Koura and Mr. Abhinav Tandon, Advocate for the Respondent

**Final Decision:** Allowed

### Judgement

Rajiv Shakdher, J.

The present writ petition has been filed by the wife of a deceased employee of Indian Oil Corporation Limited (IOCL),

which is sued through, respondent nos. 1 to 3. The sole relief pressed before me, is for issuance of a writ of mandamus or any other appropriate

direction to the Indian Oil Corporation Ltd. (IOCL) to process the claim for appointment of the petitioner's daughter under option R-3, as

contemplated in the Superannuation Benefit Fund Scheme (in short the Scheme).

1.1 The other two prayers made i.e., for provisioning of rehabilitation grant similar to that given to a male spouse, and for compensation for the

period for which the petitioner had to live a life of Impecuniosity. These prayers are not pressed by the counsel for the petitioner.

2. In order to adjudicate upon this writ petition, it may be relevant to advert to the following brief facts :-

2.1 It appears that in November 1987, the aforementioned scheme was formulated by IOCL in respect of its employees to accord certain benefits

to them. The preface of the scheme clearly suggests that it is a voluntary and contributory scheme constituted as a welfare measure for providing

social security.

2.2 The late husband of the petitioner, who was inducted into service way back in 1966, had since, the formulation of the scheme, contributed to

the scheme for the purposes of obtaining the necessary benefits contemplated therein. This aspect is not disputed before me by the counsel for the

respondents. The respondents have also appended a copy of the scheme which I am told by Mr. Koura, though amended, in large parts retains the

provisions of the scheme referred to by the petitioner. The provisions adverted to below, I am informed, were not amended. To the extent

necessary amended provisions have been referred to by me in the course of narration of facts.

2.3 Continuing with the narrative, a bare perusal of the scheme, would show that while the employer contributes a nominal amount of Rs. 100/-

p.a., the employees are required to contribute a percentage of their salary, which includes basic pay plus DA plus protected pay and NPA

depending upon the age group, in which they fall and perhaps the point in time they chose to participate in the scheme. The rate of contribution

involves a wide spectrum, which ranges from 2% to 5%.

2.4 There are other contributions also required to be made by the employees, who intend to or, are a part of the scheme. I need not delve into the

details of the scheme in this behalf. It would suffice, to note, as indicated above, it is a contributory scheme. It is in this context that the benefits

provided under the scheme have to be appreciated.

2.5 Only to be noted that one of the benefits of the scheme by the petitioner, which are contained in Annexure 1 appended to the scheme,

provides for rehabilitation of the family of a deceased employee or, an employee suffering from permanent total disablement while in service. Under

Annexure 1, the employee or its family have various options. These options are provided under the heading : R-1, R-2 and R-3. While, the first

two options i.e., R-1 and R-2 render monetary relief, the third option, which is, R-3, with which we are concerned in the present matter, enables

the family of the deceased employee to opt for the employment subject to eligibility, suitability and dependency. The option i.e., R-3 reads as

follows :-

..For employment of otherwise eligible, suitable and dependent son/daughter (which shall also include son/daughter legally adopted prior to the

death of the employee), the following provisions shall apply...

2.6 Pertinently, the amended R-3, option contains insertion by way of word ""unmarried"" as a prefix to the words ""son/daughter"".

2.7 Since, reliance was placed by Mr. Koura on clauses 6 and 7 of the Annexure 1 of the Scheme relied upon by IOCL. I must note that clause 6

of this Scheme is pari materia with clause 7 of the Scheme relied upon by the petitioner. Both clauses state that no provision in the schemes in issue

would constitute : ""a claim, right or entitlement or the part of anybody"".

2.8 Clause 6 of the Scheme relied upon by the petitioner, however, states that in case of death or permanent total disablement, the Management

could consider extension of additional rehabilitation measures, depending on the merits of each case and circumstance of each family; apart from

those already provided in the scheme.

2.9 Clause 7 of Annexure 1 of the Scheme relied upon by IOCL provides that a dependent spouse whose son/daughter has been given

employment under option R-3, would not be entitled to claim benefit of Post Retirement Medical Attendance Facility. I have not been shown any

similar provision in the Scheme relied upon by the petitioner by Mr. Koura, learned counsel for IOCL.

3. Unfortunately, the petitioner's husband died on 22.11.2005, having suffered a brain haemorrhage. At that point in time, the petitioner's husband

late Sh. N.K. Sharma, was employed as a Foreman with IOCL. The IOCL, on 04.01.2006, sent intimation to the petitioner with regard to her

pensionary benefits and other claims. The said intimation, apparently, was accompanied by the relevant forms, to enable the petitioner, to exercise

her rights, which flowed to her upon the death of her husband.

3.1 The petitioner, consequently, on 16.02.2006, intimated to IOCL that she would like to exercise the third option i.e., R-3, under the applicable

scheme.

3.2 It is pertinent to note that, options had to be exercised by the family within six (6) months of the demise of an employee; therefore, as is

apparent, the above exercise carried out by the petitioner, was, within time. With this option, the petitioner filed all necessary papers, which were

required to process the matter further.

3.3 It appears, that on 27.02.2006, IOCL, informed the petitioner that her dependent children, as per the declaration given by her late husband,

were not eligible for employment, under option i.e., R-3, of the aforementioned scheme.

3.4 The petitioner, however, persisted with IOCL and, in that behalf, for grant of employment to her daughter, Ms. Arti Kumari. The fact that her

daughter, with her two small children, was living with her, and that, her son-in-law was unemployed, was also brought to fore in the said

communication.

3.5 The aforementioned request was reiterated by the petitioner vide communication dated 26.03.2006.

3.6 By yet another communication dated 10.04.2006, the petitioner requested IOCL, that the, death-cum-retiral benefits should also be released

to her, as the family had been reduced to penury, having no viable means of survival.

3.7 Finally, by communication dated 26.05.2006, IOCL responded to the petitioner's letter dated 16.05.2006 whereby, she had nominated her

daughter and/or son-in-law for employment. By this communication, IOCL indicated, in no uncertain terms, to the petitioner that, her married

daughter or, her son-in-law, was not eligible, for employment under the R-3 option. In so far as her sons were concerned, it was stated that both

of them being over age, they were also not eligible for employment under the scheme in vogue.

3.8 Accordingly, the petitioner was advised that she could take option R-1, and submit the necessary forms, as required under the Scheme. The

petitioner was warned, that in case of delay in the submission of forms, penal interest would be added on to the annuity amount.

3.9 IOCL, apparently, also directed its Finance Department to release provident fund and other dues, if any, to which, the petitioner, was entitled

to.

4. The petitioner, on her part made a representation against the communication dated 26.05.2006 vide her letter dated 22.07.2006. This state of

affairs continued for quite some time.

4.1 Evidently, on 04.06.2008, IOCL, according to the petitioner, unilaterally released monthly pension and demanded refund of excess payment.

In response to the same, the petitioner vide communication dated 21.06.2008 informed IOCL that it had unilaterally released the pension amount,

without her consent, and that, she was interested in the expedition of her option, which was to seek employment, for her daughter under the

provisions of the applicable scheme.

4.2 Once again vide communication dated 23.10.2008, IOCL rejected her demand and reiterated the stand taken by it in its earlier communication

dated 26.05.2006.

4.3 The petitioner, apparently, approached various officers of the IOCL but did not achieve much. As a matter of fact, the petitioner took recourse

to the RTI route to get information with regard to the relevant agreement, rules and bye-laws governing the applicability of R-3 option, given under

the scheme relied upon by her.

4.4 Suffice it to say, when the petitioner failed to get redressal from IOCL, she approached this court by way of the captioned petition. The

captioned petition was filed in November 2012. Notice in the petition was issued on 17.12.2012. Since then, pleadings in the matter have been

completed.

5. The pleadings, inter alia, reveal that on 10.07.2007, in an inter-office memo of IOCL, a clarification was issued that a "married son/daughter",

was not dependent and hence not eligible under option R-3. Prior to issuance of the aforementioned inter-office memo dated 10.07.2007, there

was an earlier inter-office memo issued, which is dated 08.02.2007, which introduced, an alternate, R-3 option. The alternate, R-3 option,

provided that as a measure of rehabilitation, 60 months basic pay plus DA, would be paid to the male spouse of the deceased employee irrespective

of dependency criteria of the spouse.

6. It is based on the inter-office memo dated 10.07.2007, that IOCL, declined the request of the petitioner for grant of employment to her

daughter. This appears to be the main plank of defence of the respondents. I must, however, point out that there are certain inter related aspects

touched upon by Mr. Koura, counsel for IOCL: pertaining to determination of the financial status of the applicant; and that, employment not being

a right in law, is necessarily dependent on the circumstances which, visit the family, at the time of death of the employee, engaged by the employer

i.e., IOCL. These aspects I intend to deal with as I go along with my discussion.

7. Continuing further, in support of the petition, arguments have been advanced on behalf of the petitioner by Mr. Bhattacharya, the learned senior

counsel, assisted by Mr. Ravi Shankar Kumar, while on behalf of the respondent, arguments are advanced by Mr. Koura, assisted by Mr.

Abhinav Tandon.

8. Mr. Bhattacharya has submitted that the respondents could not have declined the request of the petitioner for considering her daughter for

employment as the petitioner had exercised her option in terms of the provisions of the Scheme in place at the relevant point in time.

8.1 Mr. Bhattacharya submitted that the scheme as it obtained on the date of death of the petitioner's husband clearly made the petitioner's

daughter eligible.

8.2 It was his submission that the introduction of the amendment, which was carried out post 22.11.2005, would have no effect on the claim made

by the petitioner for consideration of her request for employment of her daughter. It was also his submission that, the scheme, could not have been

unilaterally amended by IOCL by an inter-office memo.

8.3 Mr. Bhattacharya also adverted to the trust deed dated 24.12.1987, in which, the definition of family continued to include children of the

deceased employee whether or not they were married. It was Mr. Bhattacharya's contention that this trust deed, which is the edifice, on which the

scheme rests continues to remain unaltered.

8.4 In support of his submission, Mr. Bhattacharya relied upon a judgment of the Single Judge of this court dated 17.03.2010, passed in WP (C)

125/2010, titled Yudhvir Singh Vs. Indian Oil Corporation Ltd. and Ors. Based on this judgment, Mr. Bhattacharya contended that the petitioner

was entitled to relief, as a similar argument, which is now being advanced on behalf of IOCL, was rejected by the court.

8.5 It was Mr. Bhattacharya's contention that in fact the petitioner, in that case, had to return to court in a second round of litigation as IOCL,

thereafter, denied appointment to the petitioner on the ground that qualification that he had obtained were not equivalent to those, which were

required under the scheme. Mr. Bhattacharya brought to my notice both the judgments passed by the Single Judge and the Division Bench in the

second round. A perusal of the judgments would reveal that IOCL failed before both, the Single Judge and the Division Bench. As a matter of fact,

IOCL had carried the matter right up to the Supreme Court, wherein SLP filed by it, suffered the same fate.

8.6 In these circumstances, Mr. Bhattacharya says that the prayer made in the writ petition that the option exercised by the petitioner ought to be

considered, cannot be declined by IOCL, in law or otherwise.

9. Mr. Koura, who appears on behalf of IOCL, submitted that there was no right vested in an applicant to seek employment on "compassionate

grounds". It was his contention that the appointment on compassionate grounds was based on the pecuniary circumstances of the family of the

deceased employee.

9.1 In support of his submissions, Mr. Koura relied upon the judgment of the Supreme Court in the case of Bhawani Prasad Sonkar Vs. Union of

India (UOI) and Others, .

9.2 Mr. Koura also drew my attention to the counter affidavit filed on behalf of the respondents. He laid particular emphasis on assertions made in

the counter affidavit in paragraph 3(g). Mr. Koura submitted that the petitioner had been paid towards provident fund a sum of Rs. 5,13,177/- and

a further sum of Rs. 3,50,000/- towards gratuity. It was also pointed out by Mr. Koura, that the petitioner, would be entitled to a pension in the

sum of Rs. 5690/- p.m.

9.3 Mr. Koura further contended that the petitioner's two sons were well placed, while one of them was a Professor of law in Amity School and a

practicing advocate, the other, was employed as a Scientific Officer in Ministry of Atomic Energy, Government of India.

9.4 I may also note that IOCL, under the very same paragraph, has also adverted to the fact that Ms. Arti Kumari, the daughter of the petitioner,

had not been declared as one of the dependents of the deceased employee i.e., late Sh. N.K. Sharma, in any of the returns, pertaining to

dependents filed by him.

10. I have heard the learned counsel for the parties and perused the record.

11. What emerges from the record, is as follows :-

11.1 The scheme in issue, as indicated above, is a voluntary and contributory scheme, evolved to provide a social security net to the employees

and their families in case of demise of the employee concerned.

11.2 There is no dispute that the husband of the petitioner i.e., late Sh. N.K. Sharma had contributed to the scheme.

11.3 There is also no dispute that on the date of the demise of Sh. N.K. Sharma i.e., on 22.11.2005, the scheme as it then obtained did not

exclude a married son/daughter from being considered for employment provided the concerned person was otherwise eligible, suitable and

dependent on the deceased.

11.4 The purported clarification, on which reliance has been placed by IOCL, to decline the request of the petitioner, was made by way of an

interoffice memo dated 10.07.2007.

11.5 There is also no dispute that in terms of the scheme, the petitioner filed her option within a period of six months. The option R-3, was

exercised on 16.02.2006, and that, she, nominated her daughter Ms. Arti Kumari for consideration for employment on 16.05.2006.

11.6. There is also no dispute that the scheme is backed by a trust deed dated 24.12.1987. A perusal of the definition of ""family"" in trust deed,

would reveal that it includes within its fold, both married and unmarried children. This court in Yudhvir Singh Vs. Indian Oil Corporation Ltd. case,

WP(C) 7523/2010, decided on 11.07.2013, has rejected this very contention of IOCL, and that, judgment, has not been disturbed to date.

Therefore, one would require to extract the relevant provision relating to R-3 option, to discern its true scope :-

..For employment of otherwise eligible, suitable and dependent son/daughter (which shall also include son/daughter legally adopted prior to the

death of the employee), the following provisions shall apply...

11.7 A bare perusal of the aforementioned provision would show that it did not exclude a dependent married son or daughter from the benefits of

option R-3 provided the concerned person was otherwise eligible and suitable. This provision was apparently amended and the prefix ""unmarried

was added to the words son/daughter. I have no hesitation in holding that the IOCL could not have amended the scheme unilaterally by way of an

inter-office memo, dated 10.07.2007. There is no assertion before me by Mr. Koura that the trustees were consulted. This is apart from the fact

that the abovesaid inter-office memo was not in place on the date of the death of Sh. N.K. Sharma, which occurred on 22.11.2005. The deceased

Sh. N.K. Sharma having contributed to the scheme, his family is entitled to the benefits of the scheme in terms of its provisions subsisting at that

point in time.

11.8 I must note here, as indicated above, that one of the submission of Mr. Koura was that the scheme by itself does not constitute any claim,

right or entitlement. For this purpose, he relied upon clause 6 Annexure 1 of the Scheme relied upon by IOCL.

11.9 The short answer to this submission, in my opinion, lies in the fact that while employment by itself is not a right but a fair consideration, to gain

employment, in terms of the provisions of the Scheme, is certainly a right, which IOCL, cannot deny to the petitioner's daughter. Therefore, the

contention on behalf of the respondents that the scheme by itself does not give any right and/or entitlement to the petitioner, in my view, is

misconceived and hence rejected. The view, held by me is fortified by the decision of this court in Yudhvir Singh's case, whereby this very same

argument was rejected. This judgment of the court, evidently, has not been challenged by IOCL and hence remains intact.

12. The argument of the respondents that the petitioner's family had the necessary financial wherewithal, and therefore, did not qualify for

appointment, is also misconceived for two reasons.

12.1 Firstly, this is not an appointment as generally understood on compassionate grounds. This is an appointment which the petitioner's seeks for

her daughter in terms of a scheme, which has specific provisions incorporated in that behalf. The respondent corporation is governed by the

provisions of the scheme. The deceased has contributed, and thus, his family, is entitled to the rehabilitative measures contemplated under the

scheme.

12.2 Secondly, the financial wherewithal of the family would have to be seen in the light of circumstances, which obtained at the relevant time. The

counsel for the petitioner has drawn my attention to the averments made in the rejoinder and the documents appended thereto to demonstrate that

the daughter and the son-in-law were staying with the petitioner because of lack of financial wherewithal and Impecuniosity.

12.3 The learned counsel for the petitioner, in this behalf, specifically, drew my attention to a communication dated 03.04.2008, addressed to the

Government of India, whereby the petitioner's daughter, Ms. Arti Kumari, had made a request for considering her son for admission, in Kendriya

Vidyalaya, Salt Lake, Kolkata, on account of the fact that her family did not have the necessary financial wherewithal. As a matter of fact, as it

transpires, the Government of India acknowledged the genuineness of her case, and accordingly, issued an admission order dated 02.03.2009.

12.4 Mr. Koura made it a point to bring to the notice of the court that these are circumstances which had occurred much after the event i.e., after

the death of Sh. N.K. Sharma. While this may be correct, this event only emphasises the point that even years after the death of Sh. N.K. Sharma,

Ms. Arti Kumari was forced, perhaps by circumstances, to seek admission for her child in a Kendriya Vidyalaya School, as she could not afford



to get her ward admitted in a private school.

12.5 But what is important in this case is that the respondents have taken recourse to a factor which pertains to the marital status of the daughter; a

criteria which was not provided for, in the scheme, as it obtained at the time of the death of Sh. N.K. Sharma. In my view, therefore, the IOCL

applied its mind to factors which were not germane to the decision taken qua the petitioner's request for grant of employment to her daughter

under option R-3. IOCL's decision taken in this behalf, is clearly flawed.

13. Before I conclude, I must emphasize that the judgment of the Supreme Court in the case of Bhawani Prasad Sonkar, cited by Mr. Koura,

though clearly distinguishable as it dealt with appointment on compassionate grounds, also highlights the fact that the appointments have to be made

in terms of the scheme and the policy framed in that behalf. In my opinion, this judgment instead of helping the cause of the respondents, would

further the submission made by the petitioner. The petitioner clearly bases her right on the provisions of the scheme obtaining on the date of the

death of her husband.

14. Accordingly, the writ petition is allowed qua Prayer Clause "I". The respondents are directed to consider the request of the petitioner for

employment of her daughter, Ms. Arti Kumari, in terms of the option R-3, obtaining under the scheme, which was in force, on the date when Sh.

N. K. Sharma expired i.e., 22.11.2005.

15. The writ petition is disposed of accordingly with cost of Rs. 25,000/-. The cost will be paid to the petitioner within two weeks from today.

16. Needless to say, the respondents will process the petitioner's request with expedition though not later than four weeks from today.