

Bharat Petroleum Corporation Limited (Determination of Conditions of Service of Employee) Act, 1988

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Act 44 of 1988

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Object and Reasons.- Prior to 1976, Burmah Shell had two companies in India, namely, the Burmah Shell Refineries Limited (Burmah Shell Refineries) and the Burmah Shell Oil Storage and Distributing Company of India Limited (Burmah Shell). While the former was exclusively concerned with the refining of crude as its only activity, the latter was concerned with the sale, supply and distribution of petroleum products in the country. These two companies had common shareholders.² In 1976, the undertakings of Burmah Shell were acquired by the Central Government by the provisions of the Burmah Shell (Acquisition of Undertakings in India) Act, 1976. Subsequently, by a process of share transfer, all the shares of Burmah Shell Refineries were transferred to the President of India thereby making it a Government company. The assets and liabilities of Burmah Shell which were acquired by the Act of 1976, were vested in the said Government company in accordance with the powers conferred under section 7 of the 1976 Act and the officers and employees of Burmah Shell were also transferred to the said Company by section 9 of that Act. Thus, from 1976, the Burmah Shell Refineries (which had then become a Government company) were not only engaged in refining activities but also in the sale, supply and distribution of petroleum products in the country. The name of the company was also changed to Bharat Refineries Limited and then to Bharat Petroleum Corporation Limited (Bharat Petroleum) from 1977.³ The Bharat Petroleum now consists, therefore, of three categories of employees. They are the employees of Burmah Shell Refineries who continued to serve in that company even after it became a Government company; the employee of Burmah Shell whose services were transferred to Burmah Shell Refineries under the provisions of the 1976 Act and the employees recruited by Bharat

Petroleum after it became a Government company.⁴ Out of the first two categories of employees mentioned above, a few have not agreed to abide by the public sector wage policy and therefore continue to enjoy the emoluments and other conditions of service to which they were entitled to under the aforesaid companies even after Burmah Shell Refineries became a Government company. or. as the case may be, after the nationalisation of Burmah Shell. The emoluments and other conditions of service of the third category of employees mentioned above and who were recruited by Bharat Petroleum were, however, sought to be regulated after taking into consideration the conditions of service applicable to employees in other public sector companies in accordance with the wage policy of the Government for public sector that there should as far as possible, be parity in the conditions of service of public sector companies. But as these conditions of service are less favourable, this category of employees claimed that their emoluments and other conditions of service should also be on the same lines as are applicable to the employees of Burmah Shell Refineries and Burmah Shell.⁵ On a dispute being taken to the Industrial Tribunal it was held that in view of the provisions of section 18(3) of the Industrial Disputes Act, 1947, these employees are also entitled to the same conditions of service as are applicable to the other two categories of employees. An appeal had been preferred to the Bombay High Court against the award of the Tribunal and the same is pending. The award of the Industrial Tribunal, if given effect to in Bharat Petroleum, will amount to giving a higher wage structure in this Corporation alone and other employees in similar undertakings may demand that they should also get the benefits of the higher scales of pay on the principle of "equal pay for equal work". This may eventually result in high wage islands and depart radically from the public sector wage policy. It is, therefore, necessary that the conditions of service of the employees of Bharat Petroleum should be made comparable with the conditions of service prevalent in other public sector companies in accordance with Government of India's wage policy. As the continuance of the conditions of service of the employees of the former companies is due to historical reasons and as the conditions of service of the employees of Bharat Refineries were arrived at as a result of settlements made by the company and its workmen, and the demand of the post-nationalisation employees for parity with the employees of the former companies may have to be conceded in view of the provisions of the Industrial Disputes Act and the award of the Industrial Tribunal, any attempt to make the conditions of service of the officers and employees of Bharat Petroleum comparable with conditions of service of other public sector companies can only be done by legislation. Such a legislation could provide for determination of comparable conditions of service for all the categories of employees of Bharat Petroleum, but at the same time, provide for protection to those pre-nationalisation employees of their conditions of service.⁶ The Bill accordingly seeks to achieve this object by empowering the Central Government to frame one or more schemes for determination of the conditions of service of the officers and employees of Bharat Petroleum. - Gaz. of Ind.. 10-5-1988. Pt. II. Section 2. Ext., p. 4 (No. 27). [3rd September, 1988.] An Act to empower the Central Government to determine the conditions of service of the officers and employees of Bharat Petroleum Corporation Limited and for matters connected therewith. WHEREAS for the purpose of making the conditions of service of this officers and employees of the Bharat Petroleum Corporation Limited comparable with the conditions of service of the officers and employees of other public sector companies, it is necessary to empower the Central Government to determine the conditions of service of the officers and employees of the said Corporation. BE it enacted by Parliament in the Thirty-ninth Year of the Republic of India as follows :-

1. Short title and Commencement.-

(1) This Act may be called the Bharat Petroleum Corporation Limited (Determination of Conditions of Service of Employees) Act, 1988. (2) It shall be deemed to have come into force on the 2nd day of July, 1988.

2. Definitions.-

In this Act, unless the context otherwise requires, - (a) "Burmah Shell" means the Burmah Shell Oil Storage and Distributing Company of India Limited, a foreign company within the meaning of section 591 of the Companies Act, 1956 (1 of 1956) as it existed immediately before the appointed day under the Burmah Shell (Acquisition of Undertakings of India) Act, 1976 (2 of 1976.); (b) "Burmah Shell Refineries" means the Burmah Shell Refineries Limited, a company registered under the Indian Companies Act, 1913 (7 of 1913.), as it existed immediately before it became a Government company; (c) "Corporation" means the Bharat Petroleum Corporation Limited, a Government company, as defined in section 617 of the Companies Act, 1956 (1 of 1956.); (d) "officers and employee of the Corporation" includes, - (i) the officers and employees who were in the service of the Burmah Shell Refineries and who continued to be in the service of the said company after it became a Government company; and (ii) the officers and employees who were in the service of Burmah Shell and whose services were transferred to the Corporation by section 9 of the Burmah Shell (Acquisition of Undertakings in India) Act, 1976 (2 of 1976.); (e) "public sector company" means any corporation established by or under any Central Act or a Government company as defined in section 617 of the Companies Act, 1956 (1 of 1956.).

3. Power of Central Government to frame schemes to determine conditions of service of officers and employees.-

(1) Where the Central Government is satisfied that for the purpose of making the conditions of service of the officers and employees of the Corporation comparable with the conditions of service of the officer and employee of other public sector companies, it is necessary so to do, it may, notwithstanding anything contained in the Industrial Disputes Act, 1947 (34 of 1947.) or any other law or any agreement, settlement, award or other instrument for the time being in force, and notwithstanding any judgment, decree or order of any court, tribunal or other authority, frame one or more schemes for the purpose of determination of the conditions of service of the officers and employees of the Corporation. (2) While framing any scheme under sub-section (1), it shall be competent for the Central Government to provide for the continuance, after the commencement of any such scheme, of such of the emoluments or other benefits as were payable to, or, entitled to be received by, the officers and employees of the Corporation referred to in sub-clause (i) Burmah Shell Refineries became a Government company, or as the case may be, immediately before the appointed day under the Burmah Shell (Acquisition of Undertakings in India) Act, 1976 (2 of 1976.). (3) The Central Government may make a scheme to amend or vary any scheme made under sub-section (1). (4) The power to make any scheme under sub-section (1) or sub-section (3) shall include, - (a) the power to give retrospective effect to any such scheme or any provision thereof; and (b) the power to

amend, by way of addition, variation or repeal, any existing provisions determining the conditions of service of the officers and employees of the Corporation in force immediately before the commencement of this Act.(5)Every scheme made under sub-section (1) or sub-section (3) shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the scheme, or both Houses agree that the scheme shall not be made, the scheme shall thereafter have effect only in such modified form or be of effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previous done under that scheme.

4. Repeal and saving.-

(1)The Bharat Petroleum Corporation Limited (Determination of Conditions of Service of Employee) Ordinance, 1988 (6 of 1988.) is hereby repealed.(2)Notwithstanding such repeal, anything done or any action taken under the said Ordinance shall be deemed to have been done or taken under the corresponding provisions of this Act.