IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 1418 OF 2009

Parul Hemant Mehta, an adult,
Hindu Indian Inhabitant residing at
101, Shri Gokuleshji, 3, C.S. Link Road,
Dahisar (East). Mumbai 400068 .... Petitioner

vs

The Oriental Insurance Company Limited,
a company incorporated under the provisions
of Companies Act, 1956 which has been
acquired, transferred and vested in the
Central Government by; virtue of the
provisions of the General Insurance Business
(Nationalisation) Act, 1972 having its
registered and head office at Oriental House,
P. B. No. 7037, A-25/27, Asaf Ali Road,
New Delhi 110 002 and Mumbai City
Divisional Office No.3 at Empire House, 2nd
Floor, 214, D.N. Road, P.O. Box 1692,
Mumbai 400001 .... Respondent

ALONG WITH
WRIT PETITION No. 1644 OF 2009

Kashimira Shailesh Modi, an adult,
Hindu Indian Inhabitant residing at
Flat No.5, Sheel Marie, Khan Abdul
Gaffar Khan Road, Worli, Mumbai 400017 ...Petitioner

vs

The Oriental Insurance Company Limited,
a company incorporated under the provisions
of Companies Act, 1956 which has been
acquired, transferred and vested in the
Central Government by; virtue of the
provisions of the General Insurance Business
(Nationalisation) Act, 1972 having its
registered and head office at Oriental House,
P. B. No. 7037, A-25/27, Asaf Ali Road,
New Delhi 110 002 and Mumbai City
Divisional Office No.3 at Empire House, 2nd
Floor, 214, D.N. Road, P.O. Box 1692,
Mumbai 400001 .... Respondent

Mr. Astad Randeria I/by Mr. Nilesh Tated for the petitioners in both matters.
Mr. A.G. Kothari for respondent in both matters.

CORAM: ANOOP V. MOHTA AND
A. A. SAYED, JJ.

DATE : October 12, 2015

ORAL JUDGMENT (Per Anoop V. Mohta, J.):-

Rule, returnable forthwith. Heard finally by consent of parties. Since the issues involved in both these Petitions are common, the Petitions are therefore, disposed of by this common judgment.

2 As stated, the terms and conditions of services of the Petitioners, who were employees in the Respondent Company was governed by the General Insurance (Rationalisation of Pay Scales and other Conditions of Service of Development Staff) Scheme, 1976 ("the Rationalisation Scheme, 1976") made under General Insurance Business (Nationalisation) Act, 1972 (for short, "Act of 1972"). The Rationalisation Scheme, 1976 did not provide for payment of pension except for the transferred employees. The Central Government therefore introduced the General Insurance (Employees) Pension Scheme, 1995 (Pension Scheme of 1995) with effect from 1 November 1993. The Pension Scheme, 1995 was made applicable, inter alia, to those employees of the Respondent who were in service on 1 November 1993 and continued to do so provided they exercised the option to become member of the fund constituted under the Pension Scheme, 1995. The Petitioners have exercised the option to become the member of the Oriental Insurance Company (Employees) Pension Fund and is governed by the provisions of the Pension Scheme, 1995.

3 On 3 January 2003, the Central Government has notified the General Insurance (Rationalisation of Pay Scales and Other Conditions of Service of Development Staff) Amendment

Scheme, 2003 (the Rationalisation Amendment Scheme, 2003) by virtue of which the Development Officers of the Respondent had the option either to opt for Special Voluntary Retirement Package as per clause 15C or else render services as Development Officer (Administration) as per clause 21A thereof. If no option was exercised by the Development Officer their services would be regulated by the provisions of the Rationalisation Amendment Scheme, 2003. The Petitioners stated that the Respondent did not furnish to them a copy of the Rationalisation Amendment Scheme, 2003. It is only recently after the withdrawal of Writ Petition No.2291 of 2008 that the Petitioners have come across the Rationalisation Amendment Scheme, 2003.

4 The Petitioners have rendered the qualifying service. The following is the undisputed chart-

Sr.No.	**Dates**	**Particulars**	**Period**
1	17 January 1983 to 16 April 1983	Training program – General Insurance Marketing	Three months
2	1 July 1983 to 30 June 1984	Inspector on probation	One year

3	1 July 1984 to 1 April 2003	Inspector/ Development Officer	Eighteen years, nine months and one day
		Total	Twenty years and one day

5 The Respondent, however, opposed the claim of the Petitioners on the ground that the Petitioners have not completed 20 years of service which is qualifying service required for the pension in question, based upon the Pension Scheme of 1995. Another reason for opposition is the delay in filing the present Petitions by the Petitioners to claim such pension after six years.

6 The learned counsel appearing for the Petitioners has pointed out Chapter IV which deals with “Qualifying Service” and in particular clauses 14, 15 and 19 of the Pension Scheme, 1995, which read as under:-

> “14 Qualifying Service. - Subject to the other condition contained in this scheme, an employee who has rendered a minimum ten years of service in the Corporation or a Company, on the date of retirement shall qualify for pension.
>
> 15 Commencement of qualifying service . - Subject to the provisions contained in this scheme, qualifying service of an employee shall commence from the date he takes charge of the post to which he is first appointed on regular basis.

> 19 Counting of period spent on training. - Period spent by an employee on training in the Corporation or a Company, as the case may be immediately before his appointment shall count as qualifying service."

7 In view of above clear rules/clauses, we are not inclined to accept the submission made by the learned counsel appearing for the Respondent, based upon the Administrative Instructions for implementation of the provisions of the General Insurance (Rationalisation of Pay Scales and Other Conditions of Service of Development Staff) Amendment Scheme, 2003 dated 6.2.2003 (page 71). The Petitioners have completed 20 years qualifying service. Therefore, there was no question to deny them pension as claimed. The administrative instructions, as pointed out, was also not issued by the Competent Authority under Rule 54 of the Scheme of 1995. Even otherwise, the Petitioners case is covered by the judgment of Apex Court in *National Insurance Company Limited and anr v. Kirpal Singh*,[1], whereby Hon'ble Supreme Court dealing with the similar voluntary retirement scheme issued under the Act in question, though it was with regard to other Insurance Company, still the provisions and the reasons so referred, in our view, cover the case of Petitioners for the entitlement of the pension/retirement benefits based upon the same. The relevant observations of the

1 (2014) 5 SCC 189

Supreme Court, which covered the issues, are in paras 10 and 17 which read thus:-

> *"10. ....We are, therefore, inclined to hold that the expression "retirement" appearing in Para 14 of the Pension Scheme, 1995 should not only apply to cases which fall under Para 30 of the said Scheme but also to a case falling under the Special Voluntary Retirement Scheme of 2004. So interpreted, those opting for voluntary retirement under the said SVRS of 2004 would also qualify for payment of pension as they had put in the qualifying service of ten years stipulated under Para 14 of the Pension Scheme, 1995."*

> *"17. ....That apart, any provision for payment of pension is beneficial in nature which ought to receive a liberal interpretation so as to serve the object underlying not only of the Pension Scheme, 1995 but also any special scheme under which employees have been given the option to seek voluntary retirement upon completion of the prescribed number of years of service and age."*

8 Therefore, in view of above, we are inclined to observe that the Petitioners are entitled for the benefits as per the Scheme and also for the reason that they have completed qualifying 20 years of service as required. The Administrative instructions, even if any, in no way can prevail over the provisions of the Act and the Scheme so declared apart from the Supreme Court judgment referred above. Therefore, there was no question of denying the benefits to the Petitioners as done by the Respondent in the present

case. The legal right to claim pension and retirement benefits, if not granted inspite of request and representations, the cause of action is continuing one. There is no question of denying the claim on the ground of delay or laches.

9 Both the Petitions are therefore required to be allowed in terms of prayer (a) only. It is further directed that the Respondents to disburse the pension as early as possible preferably within a period of four months in accordance with the Pension Scheme, 1995.

10 Rule in both Petitions made absolute in the above terms. There shall be no order as to costs.

(A. A. SAYED, J.) **(ANOOP V. MOHTA, J.)**