

THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 20.7.2015 & Delivered on : 29.7.2015

CORAM

THE HONBLE MR.JUSTICE V.RAMASUBRAMANIAN
and
THE HON'BLE MR.JUSTICE T.MATHIVANAN

Writ Petition No.5113 of 2015

1. P.Ganapathi Swamy
2. M.Rama Rao
3. Babu Verghese P

...Petitioners

Vs.

1. Employees State Insurance Corporation (ESIC)
rep. by its Director General
Employees State Insurance Corporation (ESIC)
Panchdeep Bhavan, CIG Road
New Delhi 110 002.
2. The Secretary to Government of India
Ministry of Labour and Employment
Shram Shakthi Bhavan
New Delhi 110 001.
3. The Registrar
Central Administrative Tribunal
Chennai 600 104.

...Respondents

Petition under Article 226 of the Constitution of India praying for a writ of Certiorarified Mandamus calling for the records of the third respondent dated 08.7.2014 in R.A.No.20 of 2014 in O.A.No.675 of 2012 together with the order dated 27.02.2014 in the proceedings in O.A.No.675 of 2012 and quash the same as arbitrary, malafide, whimsical, discriminatory, capricious, unreasonable, colourable exercise of power together with taint of transgression of the provisions under Section 17 of the Employees State Insurance Act, 1948 as well as in gross violation of Fundamental Rights guaranteed under Article 14 of the Constitution and resultantly direct the first respondent to extend the benefits of Group 'A' service benefits

applicable to the officers of the first respondent Corporation to the petitioners with effect from 01.01.2006, being a reasonable cut off date, in consonance with the letter/order of the first respondent's letter dated 01.6.2011.

For Petitioners : Mr.A.Irudayam
For Respondent-1 : Mr.S.P.Srinivasan
For Respondent-2 : Mr.Venkataswamy Babu, SPCGI

O R D E R

V.RAMASUBRAMANIAN, J

This writ petition arises out of the dismissal of a claim made by the petitioners before the Central Administrative Tribunal, seeking a direction to the respondents to grant the benefit of revision of their pay scales with effect from 01.01.2006.

2. We have heard Mr.A.Irudayam, learned counsel for the petitioners, Mr.S.P.Srinivasan, learned counsel appearing for the first respondent Corporation and Mr.Venkatasamy Babu, learned Senior Central Government Standing Counsel for the second respondent.

3. The first petitioner was appointed as Assistant Director/Manager Grade I in the Employees State Insurance Corporation way back on 17.01.1984. The second petitioner was appointed as a Deputy Director of 03.4.1987. The third petitioner was appointed as a Deputy Director on 29.01.1987. These appointments were pursuant to a selection made by the Union Public Service Commission.

4. All the three petitioners herein gained promotions to the next higher posts of Joint Director and Director and all of them retired on various dates. While the first petitioner retired on 31.7.2010, the second petitioner retired on 28.02.2006 and the third petitioner retired on 31.7.2007.

5. The Employees State Insurance Corporation is a statutory a Corporation established under Section 3(1) of the Employees State Insurance Act, 1948. The principal officers of the Corporation are the Director General and Financial Commissioner. The method of appointment, the tenure of office etc. of these principal officers

are stipulated by Section 16 of the Act.

6. Insofar as the other officers and servants of the Corporation are concerned, it is prescribed in Section 17(1) that the Corporation is free to employ such other staff of officers (other than Principal Officers) and servants as may be necessary for the efficient transaction of the business of the Corporation, provided the sanction of the Central Government is obtained for the creation of any post, the maximum salary of which exceeds such salary as prescribed by the Central Government.

7. The method of recruitment, the salary and allowances, discipline and other conditions of service of the members of the staff of the Corporation have to be specified, as per Section 17(2) (a) of the Act, in the Regulations made by the Corporation. But, such specification contained in the Regulations made by the Corporation, have to be in accordance with the Rules and Orders applicable to the officers and employees of the Central Government, drawing corresponding scales of pay. However, the discretion of the Employees State Insurance Corporation to make a departure from the Rules and to fix different pay scales is also recognised by the proviso to Clause (a) of Sub-section (2) of Section 17.

8. In the year 1996, the employees of the Central Government were granted a general revision of pay scales, with effect from 01.01.1996, based upon the recommendations made by the Central Pay Commission. Since the employees of the Employees State Insurance Corporation are not Central Government servants, they were not covered by the recommendations of the fifth Central Pay Commission.

9. Therefore, the Chairman of the Employees State Insurance Corporation ordered on 07.01.1998, the constitution of a Pay Committee. The terms of reference to the said Pay Committee were as follows:

"In the light of the Government's decisions on the V Central Pay Commission's recommendations applicable to Gr. A, B, C and D employees to recommend the corresponding benefits to similar categories of employees in the ESIC Organisation, having regard to the nature of duties and responsibilities of each category of employees corresponding to Gr. A, B, C and D. The Committee may make its recommendations for identifying the pay scale and removal of anomalies, and any other matters, keeping in view the entirety of

recommendations of the V Pay Commission on which Government's decisions have been announced."

10. The Pay Committee submitted a report on 18.7.2000, recommending the revision of Pay Scales of various posts. The Corporation accepted those recommendations, in a meeting held on 08.9.2000. Thereafter, the recommendations of the Pay Committee and the proceedings of the Corporation accepting those recommendations were forwarded to the Government of India. As usual, the file went back and forth from the Corporation to the Government and from the Government to the Corporation.

11. Eventually, the Government of India passed an order dated 01.6.2011, accepting the recommendations. By this order, the Grade Pay of the post of Director was enhanced from Rs.7,300/- in Pay Band-3 to Rs.8700/- in Pay Band-4, namely Rs.37400-67000. This order was directed to be given effect from 01.6.2011, namely the date of issue of the order.

12. By the time the aforesaid revision was approved by the Government of India, all the three petitioners herein had retired. Therefore, they made representations to the Corporation seeking the grant of the benefit of revision at least with effect from 01.01.2006, if not from 01.01.1996. Since these representations did not meet with any response, the petitioners filed an application in O.A.No.675 of 2012 on the file of the Central Administrative Tribunal, Madras Bench. But, the Tribunal dismissed the application by an order dated 27.02.2014. The petitioners filed an application for a review of the said order. But, by an order dated 08.7.2014, the review application R.A.No.20 of 2014 was also dismissed by the Tribunal, forcing the petitioners to come up with the above writ petition, challenging both the order in the original application and the order in the review application.

13. The main grievance of the petitioners is two fold, namely (a) that once the Pay Committee constituted by the Corporation way back in the year 1998, had made its recommendations in the year 2000, the respondents ought not to have prolonged the implementation of the recommendations for revision of pay scales for a period of about 11 years before accepting the same on 01.6.2011. The second part of the grievance of the petitioners is that the Corporation itself has the power to implement the revision of pay scales, without the approval of the Government and hence, the prolongation of the implementation of the recommendations of the Pay Committee by the Corporation, on the specious plea that the approval of the Government was awaited,

was wholly unjust and unfair. The petitioners contend that the Pay Committee was constituted way back in 1998, after it was found that the officers of the Central Government had been granted a revision of pay on the basis of the recommendations of the V Central Pay Commission with effect from 01.01.1996. If the removal of the anomaly between the pay structure of the Central Government employees and the employees of the Corporation takes such a long time as 15 years (from 1996 to 2011), the very object of constituting a Pay Committee for the removal of the anomaly would lose its significance and the hardship caused to employees who retired during this long period of 15 years, would be immeasurable.

14. We have carefully considered the above submissions.

15. It is true that the respondents have taken an unduly long period of 15 years, from 1996 to 2011, for implementing the recommendations of the Pay Committee, which were also accepted by the Corporation in its meeting held on 08.9.2000. The grievance of the petitioners cannot be belittled, especially since they have lost their love's labour, after getting a Pay Committee constituted, after getting the recommendations of the Pay Committee accepted by the Corporation and waiting for several years.

16. But, unfortunately these are circumstances, which cannot be remedied by a Court of Appeal. Today, what we are concerned in this case is as to whether the respondents were right in implementing the recommendations of the Pay Committee, only with effect from 01.6.2011 or not.

17. Contending that the choice of the date 01.6.2011 is an arbitrary exercise of power, Mr.A.Irudhayam, learned counsel for the petitioners invited our attention to the following decisions:

- (a) All India Reserve Bank Retired ... v. Union of India [AIR 1992 SC 767];
- (b) State of Rajasthan v. Amrit Lal Gandhi [(1997) 2 SCC 342];
- (c) Ramrao v. All India Backward Class Bank Employees Welfare Association [Appeal (Civil) No.4593-4594 of 2002 dated 05.01.2004];
- (d) U.P. Raghavendra Acharya v. State of Karnataka [Appeal (Civil) No.1389 of 2006 dated 12.5.2006];
- (e) Gopinatha Pillai v. Kerala State Electricity Board [WP (C) No.38437 of 2010 dated 23.12.2010 - Kerala High Court]; and
- (f) Kallakkurichi Taluk Retired Official Association v. State of Tamil Nadu [(2013) 2 SCC 772].

18. But, unfortunately, the decisions relied upon by the learned counsel for the petitioner, revolve around the arbitrary choice of a cut off date for granting certain benefits. In All India Reserve Bank Retired, the challenge was to the fixation of a cut off date, namely 01.01.1996, for the purpose of grant of the benefit under the revised pension scheme. Similarly, in Amrit Lal Gandhi, a cut off date was chosen for the exercise of option. The ratio laid down in the other decisions relied upon by the learned counsel for the petitioners was also only with respect to the fixation of a cut off date in an arbitrary manner. A careful look at the decisions relied upon by the learned counsel for the petitioner would show that in those cases, the Schemes that were introduced in 1990 or thereafter, chose a date of the past, as a cut off date.

19. But, in this case, the Government accepted the recommendations of the Pay Committee and the recommendations of the Corporation on 01.6.2011 and decided to implement the recommendations with effect from the date of the order itself. The grant of a benefit with effect from the date on which an order granting the benefit is passed, is not the same as the fixation of a cut off date. If an order is given retrospective effect from a particular date, the authorities who pass such orders, are obliged to explain as to why a particular date in the past was chosen for the implementation. But, no one can question the right of the Government to give effect to an order from the date on which the order was passed.

20. It is no doubt true as we have pointed out earlier that the grant of the benefit of revision of pay scales, with effect from 01.6.2011, deprived those who fought for it from 1996, but who retired before 01.6.2011, of the benefit. But, it is no more than an irony of fate that makes someone sow the seeds and plough the land, for someone else to reap the harvest in future. Therefore, the logic that the Supreme Court applied to cases of fixation of cut off dates, cannot be applied to cases where the Government passes an order granting a benefit with prospective effect from the date of issue of the order.

21. The next contention of the learned counsel for the petitioners that the Employees State Insurance Corporation need not seek or await the approval of the Government of India for refusing the salary of the members of its staff. Under Section 17(1) of the Employees State Insurance Act, 1948, the Corporation is entitled to employ such staff of officers and servants (other than the Principal Officers, namely the Director General and Financial Commissioner covered by Section 16) for the efficient transaction of its business.

Under Section 17(2), the method of recruitment, salary and allowances etc. can be fixed by the Corporation in the Regulations issued by the Corporation. Therefore, it is the contention of the learned counsel for the petitioners that the power of the Corporation under Section 17(2), to grant revision of pay scales to its own officers and servants, cannot be curtailed by the Government of India.

22. But, we do not think that the said contention is legally correct. It is no doubt true that the Corporation is granted autonomy, to a great extent, both in the matter of management and in respect of finance. But, Section 17 itself indicates certain restrictions. If we have a look at Section 17 of the Employees State Insurance Act, 1948, it can be seen that the Scheme of Section 17 goes as follows:

(i) Under Sub-section (1) of Section 17, the Corporation may employ such number of officers and servants as may be necessary for the efficient transaction of this business. However, this power is circumscribed by the proviso, which states that if the Corporation wants to create any post, the maximum monthly salary of which exceeds a particular limit prescribed by the Central Government, the sanction of the Central Government should be obtained;

(ii) Under Sub-section (3) of Section 17, the Corporation is obliged to make appointment to posts corresponding to Group A and Group B posts under the Central Government (other than medical post), only in consultation with the Union Public Service Commission; and

(iii) Under Sub-section (4), even the question as to whether a post in the Corporation corresponds to Group A or Group B post, should be referred only to the Government and the decision of the Government is final.

23. Keeping the above restrictions found in Sub-sections (1), (3) and (4), let us have a look at Sub-section (2) which reads as follows:

"(2)(a) The method of recruitment, salary and allowances, discipline and other conditions of service of the members of the staff of the Corporation shall be such as may be specified in the regulations made by the Corporation in accordance with the rules and orders applicable to the officers and employees of the Central Government drawing corresponding scales of pay:

Provided that where the Corporation is of the opinion that it is necessary to make a departure from the said rules or orders in respect of any of the matters aforesaid, it shall obtain the prior approval

of the Central Government.

Provided further that this sub-section shall not apply to appointment of consultants and specialists in various fields appointed on contract basis.

(b) In determining the corresponding scales of pay of the members of the staff under clause (a), the Corporation shall have regard to the educational qualifications, method of recruitment, duties and responsibilities of such officers and employees under the Central Government and in case of any doubt, the Corporation shall refer the matter to the Central Government whose decision thereon shall be final."

24. Therefore, the Corporation is obliged to fix the salary and allowances of its staff, in the Regulations issued by the Corporation in accordance with the Rules and Orders applicable to officers and employees of the Central Government, drawing corresponding scales of pay. But, whenever the Corporation wants to make a departure from the Rules and Orders applicable to Central Government servants, it should take the prior approval of the Central Government.

25. The Corporation is vested with the power to make Regulations under Section 97(1) of the Act. The matters in respect of which the provisions can be made in the Regulations are listed in Sub-section (2) of Section 97. Clause (xxi) of Sub-section (2) of Section 97 relates to the method of recruitment, pay and allowances, discipline, superannuation benefits and other conditions of service of the officers and servants of the Corporation, other than the Director General and Financial Commissioner.

26. Sub-section (1) of Section 97 mandates that the power of the Corporation to make Regulations is subject to the condition of previous publication. However, Sub-section (2A) relaxes the condition of previous publication, in respect of Regulations that deal with any of the matters specified in Clause (xxi). In other words, every Regulation issued by the Corporation is subject to the condition of previous publication, but any Regulation dealing with the pay and allowances of the officers of the Corporation, need not necessarily be made after previous publication. Despite this relaxation, Sub-section (3) of Section 97 makes all the Regulations issued by the Corporation to have effect only upon publication in the Gazette of India. Therefore, if a Regulation is issued by the Corporation under Section 97(2)(xxi) revising the pay and allowances of the officers and servants of the Corporation with prospective effect from the date of issue of the order, that will also come into effect only upon its

publication under Sub-section (3) of Section 97, with effect from the date of publication. Therefore, it is not possible for us to accept the contention that the Corporation which has financial autonomy to a great extent, committed any illegality in seeking the approval of the Government of India for the revision of the pay scales of its officers. While we have our sympathies for the petitioners who were instrumental in fighting for a revision of pay scales, but who retired before their efforts fructified. But, as rightly pointed out by the Central Administrative Tribunal, we find no illegality in the order. Hence, the writ petition is dismissed. No costs. Consequently, M.P.No.1 of 2015 is also dismissed.

Sd/-
Assistant Registrar (CS-IV)

//True Copy//

Sub Assistant Registrar

kpl

To

1. The Director General
Employees State Insurance Corporation (ESIC)
Panchdeep Bhavan, CIG Road
New Delhi 110 002.
2. The Secretary to Government of India
Ministry of Labour and Employment
Shram Shakthi Bhavan
New Delhi 110 001.
3. The Registrar
Central Administrative Tribunal
Chennai 600 104.

2 CCs to Mr.S.P.Srinivasan, Advocate SR.No. 36901, 39002
1 CC to Mr.Venkataswamy Babu, Advocate SR.No. 38937
2 CCs to Mr.A.Irudayaraj, Advocate SR.No. 38686, 38701

W.P.No.5113 of 2015

LRS (CO)
PSI (31.08.2015)