

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.10.2015

CORAM:

THE HONOURABLE MR. JUSTICE M.SATHYANARAYANAN

W.P.No.26795 of 2013

Mr.V.K.Nagarajan

...Petitioner

Vs.

1. Union of India
Represented by Secretary to Government,
Ministry of Finance,
Department of Economic Affairs,
Room No.166-D,
New Delhi-110 001.
2. The Chairman cum Managing Director,
M/s.United India Insurance Company Ltd.,
Head Office 24: Whites Road,
Chennai-600 014.
3. The Chief Executive,
M/s.General Insurance Public Sector,
Association (GIPSA),
III Floor, Jeevan Vinhar (rear portion)
New Delhi-110 011.
4. The Deputy General Manager,
CC-HO, Pension Department,
United India Insurance Company Ltd.,
Registered & Head Office: 24, Whites Road,
Chennai-600 014.

...Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus quashing the proceedings of the fourth respondent in HO HR LEG 2251 C-18/13 dated 19.08.2013 as illegal and unconstitutional and direct the respondents to grant pension under General Insurance (Employees) Pension Scheme, 1995.

For Petitioner : Ms. Annie Mampilly
for M/s. Surana and Surana

For Respondents : Mr. Su. Srinivasan,
Additional Solicitor General for R1

Mrs. Rita Chandrasekaran
for R2 and R4

O R D E R

By consent this writ petition is taken up for final disposal.

2. The petitioner is employed in "Hercules Insurance Company Limited" as Junior Assistant from 16.08.1966 and the said insurance company was merged with United India Insurance Co. Ltd., after the nationalization of all General Insurance Companies and the petitioner, on absorption, was categorized as Senior Assistant due to his performance in the erstwhile unit of the above said Insurance Company and got promotion to the post of Office Assistant and further promotions were also given based on his performance. The petitioner, due to family circumstances, got voluntary resignation on 19.10.1990 and it was duly accepted by the competent authority and the petitioner did not attain the age of 55 years at the time of voluntary resignation and consequently the terminology, namely "Voluntary Resignation" has not been used. The petitioner would further state that after his voluntary resignation, the General Insurance (Employees) Pension Scheme 1995 was introduced giving retrospective effect from 01.01.1986 and the said scheme enables the retired employees between the period 1986 to the date of publication of scheme, eligible for getting pensionary benefits. The petitioner made repeated representations for sanction of pension under Pension Scheme, 1995 and since it has failed to evoke any kind of response, the petitioner filed W.P.No.16002/2013 and this Court, vide order dated 14.06.2013, has directed the concerned respondents to pass orders on the petitioner's representation dated 04.10.2011, in the light of the judgment rendered by the Hon'ble Supreme Court of India in Civil Appeal No.6013/2011, within a period of twelve weeks. The respondents, in compliance of the said order, has passed the impugned order rejecting the petitioner's representation and challenging the vires of the same, the petitioner came forward with this writ petition.

3. The learned counsel appearing for the petitioner would submit that it is not open to the third respondent to interpret the above said judgment of the Hon'ble Supreme Court of India in Sheelkumar Jain v. The New India Assurance Company Ltd. and Ors. [AIR 2011 SC 2990 = (2011) 12 SCC 197] and invited the attention of this Court to para 10 of the judgment and would submit that the said judgment is squarely applicable to the facts of this case and prays for appropriate orders.

4. Heard the submissions of Mr.Su.Srinivasan, learned Additional Solicitor General, who accepts notice for the first respondent and Mrs.Rita Chandrasekaran, learned counsel who accepts notice for the respondents 2 and 4.

5. It is relevant to extract para 10 of the above cited judgment:

"10.The 1995 Pension Scheme was framed and notified only in 1995 and yet the 1995 Pension Scheme was made applicable also to employees who had left the services of Respondent 1 Company before 1995. Paras 22 and 30 of the 1995 Pension Scheme quoted above were not in existence when the appellant submitted his letter dated 16-9-1991 to the General Manager of Respondent 1 Company. Hence, when the appellant served his letter dated 16-9-1991 to the General Manager of Respondent 1 Company, he had no knowledge of the difference between "resignation" under Para 22 and "voluntary retirement" under Para 30 of the 1995 Pension Scheme. Similarly, Respondent 1 Company employer had no knowledge of the difference between "resignation" and "voluntary retirement" under Paras 22 and 30 of the 1995 Pension Scheme, respectively. Both the appellant and Respondent 1 have acted in accordance with the provisions of sub-para (1) of Para 5 of the 1976 Scheme at the time of termination of service of the appellant in the year 1991. It is in this background that we have now to decide whether the termination of service of the appellant under sub-para (1) of Para 5 of the 1976 Scheme amounts to resignation in terms of Para 22 of the 1995 Pension Scheme or amounts to voluntary retirement in terms of Para 30 of the 1995 Pension Scheme. Para 22 of the 1995 Pension Scheme states that the resignation of an employee from the service of the corporation or a company shall entail forfeiture of his entire past service and consequently he shall not qualify for

pensionary benefits, but does not define the term "resignation". Under sub-para (1) of Para 30 of the 1995 Pension Scheme, an employee, who has completed 20 years of qualifying service, may by giving notice of not less than 90 days in writing to the appointing authority retire from service and under sub-para (2) of Para 30 of the 1995 Pension Scheme, the notice of voluntary retirement shall require acceptance by the appointing authority. Since "voluntary retirement" unlike "resignation" does not entail forfeiture of past services and instead qualifies for pension, an employee to whom Para 30 of the 1995 Pension Scheme applies cannot be said to have "resigned" from service. In the facts of the present case, we find that the appellant had completed 20 years of qualifying service and had given notice of not less than 90 days in writing to the appointing authority of his intention to leave the service and the appointing authority had accepted notice of the appellant²⁰⁶ and relieved him from service. Hence, Para 30 of the 1995 Pension Scheme applied to the appellant even though in his letter dated 16-9-1991 to the General Manager of Respondent 1 Company he had used the word "resign".

The Hon'ble Supreme Court of India, in the above judgment, placed reliance upon the decision in Union of India and Ors. v. Lt. Col. P.S.Bhargava [(1997) 2 SCC 28], wherein it has been held as under:

"Once an officer has to his credit the minimum period of qualifying service, he earns a right to get pension and as the Regulations stands that right to get pension can be taken only if an order is placed under Regulations 3 or 16."

6. In the light of the factual position, this Court is of the view that the impugned order warrants interference.

7. In the result, this Writ Petition is allowed, setting aside the order of the fourth respondent in HO HR LEG 2251 C-18/13 dated 19.08.2013 and the third respondent is directed to consider the application/claim made by the petitioner in terms of General Insurance (Employees) Pension Scheme, 1995 and pass orders, conferring the said benefits to the petitioner, as expeditiously as possible and not later than eight weeks from

the date of receipt of a copy of this order and communicate the decision taken, to the petitioner. No costs.

Sd/-
Assistant Registrar (CS-II)

//True Copy//

Sub Assistant Registrar

jvm

To

1. The Secretary to Government,
Union of India
Ministry of Finance,
Department of Economic Affairs,
Room No.166-D, New Delhi-110 001.
2. The Chairman cum Managing Director,
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1 CC to M/s.Aiyar & Dolia, Advocate SR.No. 57093

1 CC to M/s.Surana and Surana, Advocate SR.No. 56796

W.P.No.26795 of 2013

RSK (CO)
PSI (30.10.2015)