* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

*Judgment reserved on October 19, 2015*
*Judgment delivered on November 17,2015*

\+ **W.P.(C) 6408/2014**

ARUN OSWAL ..... Petitioner
Through: Mr. Siddharth Dias, Adv.

versus

M/S. ORIENTAL INSURANCE COMPANY LIMITED ..... Respondent
Through: Mr. Rahul Ranjan Verma, Adv. with Mr. Jainendra, Adv.

**CORAM:**
**HON'BLE MR. JUSTICE V.KAMESWAR RAO**

**V.KAMESWAR RAO, J.**

1. The present petition has been filed by the petitioner seeking the following reliefs:

> *"a. Issue a writ of mandamus or any other appropriate writ, order or direction to the respondents to provide the arrears of pension since April 2003 as also the monthly pension; and*
> *b. Pass any such further or other order as it may deem fit and proper in the facts and circumstances hereof".*

2. The facts as noted from the petition, are, the petitioner joined the services of the respondent on October 3, 1983 as Development Officer. In the year 1995, the respondent introduced the pension scheme known as General Insurance (Employees) Pension Scheme, 1995. The petitioner gave his option for being covered under the scheme and as

such, was a pension optee. It is the case of the petitioner that in the year 2003, when he had put in 19 years and 6 months, the Ministry of Finance, Govt. of India issued a gazette notification on January 2, 2003 in exercise of powers conferred under Section 17A of the General Insurance Business (Nationalization) Act, framing a scheme by amending the General Insurance (Rationalization of Pay Scales and Other Conditions of Service of Development Staff) Scheme, 1976. In terms of the said notification, more specifically, para 15C, a special Voluntary Retirement package ('SVRS, 2003' in short) was introduced and the conditions thereof were laid down in Annexure I (Page 23 of the paper book). In terms of the said package, a Development Officer shall be eligible to opt for the special voluntary retirement package except who is under suspension, against whom disciplinary proceedings are pending or contemplated. Be that as it may, in terms of clauses 2 and 3 of the said package, the other benefits were as under:

> *"2. **AMOUNT OF EX-GRATIA**—A Development Officer seeking Special Voluntary Retirement Package shall be entitled to the lowest of the ex-gratia amount as follows:-*
>
> *(a) Sixty days salary for each completed year of service or*
>
> *(b) Salary for the number of months of service remaining*
>
> *Explanation—For the purpose of this clause, 'salary' means the aggregate of basic pay and dearness allowance.*
>
> *3. OTHER BENEFITS—(1) a Development Officer seeking Special Voluntary Retirement Package shall be*

*eligible for the following benefits in addition to the ex gratia amount mentioned in clause 2, namely:-*

*(i) gratuity as per the Payment of Gratuity Act, 1975 (39 of 1972) or gratuity payable under the principal Scheme, as the case may be;*

*(ii) Pension (including commuted value of pension) as per the General Insurance (Employees) Pension Scheme, 1995, if eligible;*

*(iii) Leave encashment as per the law applicable for the time being in force.*

*(2) The ex-gratia payable under clause 2 shall be computed as on the date of relieving".*

3. It may be noted here that on February 6, 2003, the respondent had issued administrative instructions for implementation of the provisions of General insurance (Rationalization of Pay Scale and Other Conditions of Service of Development Staff) Amendment Scheme, 2003. In the said instructions, under Clause 11B under the heading "Other Benefits", the following has been stated:

*"11.B) OTHER BENEFITS—(1) A Development Officer seeking Special Voluntary Retirement Package shall be eligible for the following benefits in addition to the ex gratia amount mentioned as above, namely:-*

*(i) Gratuity as per the Payment of Gratuity Act, 1975 (39 of 1972) or gratuity payable under the principal Scheme, as the case may be;*

*(ii) Pension (including commuted value of pension) as per the General Insurance (Employees) Pension Scheme, 1995, if eligible;*

*(Those who have not completed twenty years of minimum service for eligibility of pension shall not be entitled for any pension.*

*The Five years notional benefit under para 3(5) of the Pension Scheme will not be available for those*

*opting under Special Voluntary Retirement Package)*
*(iii) Leave encashment as per the law applicable for the time being in force.*
*(2) The ex gratia payable under clause 2 shall be computed as on the date of relieving".*

4. The petitioner opted for voluntary retirement on April 1, 2003. The option was accepted but, he was not granted pension. He wrote a letter dated June 4, 2003 to the respondent requesting them for granting pension and leave encashment benefits which was never responded to by the respondent. He wrote another letter dated September 7, 2003, with regard to non payment of Earned Leave as also the pension, despite being a pension optee. The respondent vide letter dated October 29, 2003, denied the pensionary benefits to the petitioner by stating that he is not eligible for pension as he could only complete 19 years and 6 months of service and not 20 years as stipulated in para 11B (ii) of the Circular dated February 6, 2003.

5. On January 10, 2014, the Supreme Court decided three civil appeals, the lead case being Civil Appeal No. 256/2014 titled as ***National Insurance Co. Ltd. & Anr. Vs. Kirpal Singh, (2014) 5 SCC 189*** wherein, the Supreme Court, interpreting the provisions of Special Voluntary Retirement Scheme of 2004 issued by National Insurance Co. Ltd. and United Insurance Co. Ltd. has held that an employee who has put in 10 years of service, shall be entitled to claim pension on retiring

pursuant to the Special Voluntary Retirement Scheme of 2004. It is the case of the petitioner that on January 15, 2014, the petitioner made a representation, apprising the respondent of the judgment and requesting it to release the pension. The said letter was followed by letters dated January 17, 2014 and May 26, 2014 and legal notice dated March 15, 2014, which were not responded to.

6. The respondent in its counter affidavit has raised the issue of delay and laches inasmuch as the cause of action, if any, has arisen 9-10 years ago and in the absence of any explanation, the petition is liable to be dismissed. The respondent has also stated that the petitioner is guilty of suppression of material facts. The respondent has also stated, the representation of the petitioner for grant of pension having been dismissed in October 2003, the petition is liable to be dismissed and also, in the absence of any challenge to clause 11B(ii), the petitioner is not entitled to any relief. On merit, the respondent relied upon the instructions dated February 6, 2003. The respondent has also distinguished the judgment as relied upon by the petitioner in the case of ***National Insurance Co. Ltd. and Anr. Vs. Kirpal Singh (supra)*** by stating that neither the petitioner, nor the respondent herein were parties to the appeals. That apart, the Supreme Court had decided the appeals in terms of the National Insurance (Rationalization of Pay Scales and Other

Conditions of Service of Development Staff) Amendment Scheme, 2004 of Govt. of India, whereas in the case in hand, the respondent company clarified the eligibility for disbursement of pension through administrative instructions dated February 6, 2003 for implementation of the provisions of the General Insurance (Rationalization of Pay Scales and Other Conditions of Service of Development Staff) Amendment Scheme, 2003, which was the basic criteria fixed by the Govt. of India for disbursement of pension.

7. Mr.Sidharth Dias, learned counsel for the petitioner would heavily rely upon the judgment of the Supreme Court in ***National Insurance Co. Ltd. and Anr. Vs. Kirpal Singh (supra)***. According to him, the case of the petitioner is covered by the said judgment as the provisions of Scheme of 2003 of the respondent company were para-materia with the provisions of SVRS Scheme of 2004, which was under consideration before the Supreme Court. On the issue of delay and laches, he would state that the judgment of the Supreme Court in ***National Insurance Co. Ltd. and Anr. Vs. Kirpal Singh (supra)*** decides the issue of grant of pension to an employee after 10 years, which position is similar in all the schemes issued by the Government of India and the judgment being a judgment in rem, the respondent was required to give benefit of the said judgment to all similarly placed persons without forcing them to

approach the Court, and under such scenario, the plea as urged on behalf of the respondent of delay and laches would not be attracted. In this regard, he would rely upon the judgment in ***State of Uttar Pradesh and Ors. Vs. Arvind Kumar Srivastava and Ors., Civil Appeal No. 9849/2014 decided on October 17, 2014.*** He would also state, that the reliance placed by the respondent on clause 11B(ii) of the Instructions issued on February 6, 2003 is untenable, as the same would not be applicable inasmuch as the same being at variance with the statutory nature of scheme of SVRS 2003, it is the scheme as issued on January 2, 2003 which would prevail and the provisions thereof must be read in the manner the Supreme Court has interpreted it. Meaning thereby, a Development Officer, having put in 10 years of service, would also be entitled to pension.

8. On the other hand, learned counsel for the respondent, apart from reiterating the preliminary objections of delay and laches; absence of challenge to the letter dated October 29, 2003; absence of challenge to para 11B(ii) of instructions dated February 6, 2003, would submit, that the judgment of the Supreme Court has no applicability as the scheme which was under consideration before the Supreme Court is different from the scheme under which the request of the petitioner for voluntary retirement was considered. He would state, the instructions of February

6, 2003 were issued for implementation of the provisions of Amendment Scheme, 2003 issued vide gazette notification dated January 2, 2003 and there is no contradiction between the Amendment Scheme 2003 and the Administrative Instructions. The Instructions being supplementary in nature by which, it was clarified that a voluntary retirement optee would be entitled to pension only on completing 20 years of service, the pension was rightly denied to the petitioner. According to him, it appears, such a circular was not issued pursuant to the scheme of 2004 by the National Insurance Company Limited/United Insurance Co. Ltd., whose scheme was under consideration by the Supreme Court. In other words, the judgment of the Supreme Court is applicable only to those cases, where the term 'eligible' has not been explained by the employer.

9. Having considered the submissions made by the learned counsel for the parties, there is no dispute to the fact that the request of the petitioner for grant of pension stood rejected by the respondent vide its communication dated October 29, 2003 on the ground that in terms of paragraph 11B(ii), the petitioner was not eligible for pension as he had not completed 20 years of service. The petitioner did not challenge the same in any court of law. No doubt, it is a settled position of law, grant of pension, is a continuing wrong. ***(Ref: Tarsem Singh Vs. Union of India, 2008 (8) SCC 648*** and assuming that the petitioner could have

filed a petition seeking the relief as he has sought, the Court would be within its right to mould the relief keeping in view the delay and laches and grant benefit probably from the date of filing the petition.

10. In the case of ***State of Uttar Pradesh and Ors. Vs. Arvind Kumar Srivastava and Ors. (supra),*** the Supreme Court, has while relying upon the judgment of the Constitution Bench of the Supreme Court in the case of ***K.C.Sharma and Ors. Vs. Union of India, (1997) 6 SCC 721,*** wherein, the Supreme Court was considering the issue of grant of benefit of an earlier judgment, was dealing with the facts, where the government had passed notification dated December 5, 1988, which effected the pension of retired employees retrospectively. The petitioners had not challenged the said notification within the limitation period. However, in some other case, filed by similarly situated persons, a Full Bench of the Central Administrative Tribunal (CAT) declared the notification invalid vide its judgment dated December 6, 1993. After this notification was declared invalid, the petitioners also claimed the benefits of that judgment from Railways. On Railways refusal to extend the benefits, they filed the application before Tribunal. The application was dismissed by the Tribunal as time barred. The petitioners had approached the Supreme Court. The Supreme Court, condoning the delay, has in para 6 held as under:

> *"6. Having regard to the facts and circumstances of the case, we are of the view that this was a fit case in which the Tribunal should have condoned the delay in the filing of the application and the appellants should have been given relief in the same terms as was granted by the Full Bench of the Tribunal. The appeal is, therefore, allowed, the impugned judgment of the Tribunal is set aside, the delay in filing of OA No. 774 of 1994 is condoned and the said application is allowed. The appellants would be entitled to the same relief in the matter of pension as has been granted by the Full Bench of the Tribunal in its judgment dated 16-12-1993 in Oas No. 395-403 of 1993 and connected matters. No order as to costs."*

11. The Supreme Court in ***State of Uttar Pradesh and Ors. Vs. Arvind Kumar Srivastava and Ors. (supra),*** observed that reading of the judgment of the Supreme Court in ***K.C. Sharma and Ors. (supra),*** it is clear that the earlier judgment of the Tribunal striking down the notification dated December 5, 1998 was treated as judgment in rem. According to the Supreme Court, [in ***Arvind Kumar Srivastava and Ors. (supra)]*** when the notification itself was struck down and it was a matter of pension, benefit thereof was to be given to the others also. The Supreme Court was of the view, for the said reason, the Constitution Bench held that the delay should have been condoned giving relief to the petitioners also in the same terms as was granted by the Full Bench of the Tribunal. In ***State of Uttar Pradesh and Ors. Vs. Arvind Kumar Srivastava and Ors. (supra),*** the Supreme Court after analysing the law,

has culled out the following legal principles:

> *"(1) Normal rule is that when a particular set of employees is given relief by the Court, all other identically situated persons need to be treated alike by extending that benefit. Not doing so would amount to discrimination and would be violative of Article 14 of the Constitution of India. This principle needs to be applied in service matters more emphatically as the service jurisprudence evolved by this Court from time to time postulates that all similarly situated persons should be treated similarly. Therefore, the normal rule would be that merely because other similarly situated persons did not approach the Court earlier, they are not to be treated differently.*
>
> *(2) However, this principle is subject to well recognized exceptions in the form of laches and delays as well as acquiescence. Those persons who did not challenge the wrongful action in their cases and acquiesced into the same and woke up after long delay only because of the reason that their counterparts who had approached the Court earlier in time succeeded in their efforts, then such employees cannot claim that the benefit of the judgment rendered in the case of similarly situated persons be extended to them. They would be treated as fence-sitters and laches and delays, and/or the acquiescence, would be a valid ground to dismiss their claim.*
>
> *(3) However, this exception may not apply in those cases where the judgment pronounced by the Court was judgment in rem with intention to give benefit to all similarly situated persons, whether they approached the Court or not. With such a pronouncement the obligation is cast upon the authorities to itself extend the benefit thereof to all similarly situated person. Such a situation can occur when the subject matter of the decision touches upon the policy matters, like scheme of regularisation and the like (see K.C. Sharma & Ors. v. Union of India (supra). On the other hand, if the judgment of the Court was in personam holding that benefit of the said judgment shall accrue to the parties before the Court and such an intention is stated expressly in the judgment or it can be impliedly found out from the tenor*

> *and language of the judgment, those who want to get the benefit of the said judgment extended to them shall have to satisfy that their petition does not suffer from either laches and delays or acquiescence".*

12. To apply the aforesaid principles, it has to be seen whether the judgment of the Supreme Court in ***National Insurance Co. Ltd. & Anr. Vs. Kirpal Singh (supra)*** is a judgment in rem and as such the petitioner is also entitled to the benefits thereof. In that regard, I note that the Supreme Court in ***National Insurance Co. Vs. Kirpal Singh (supra)*** had noted the following provisions of the SVRS, 2004:

> *"Eligibility.--(1) All permanent full time employees will be eligible to seek special voluntary retirement under this Scheme provided they have attained the age of 40 years and completed 10 years of qualifying services as on the date of notification.*
> *(2) An employee who is under suspension or against whom disciplinary proceedings are pending or contemplated shall not be eligible to opt for the scheme;*
> *Provided that the case of an employee who is under suspension or against whom disciplinary proceeding is pending or contemplated made be considered by the Board of the Company concerned having regard to the facts and circumstances of each case and the decision taken by the Board shall be final.*
> *3. In para 5 of the scheme those seeking voluntary retirement were held entitled to ex-gratia amount to be determined according to the said provision. In Para 6 of the scheme were stipulated other benefits to which the employees opting for voluntary retirement under the scheme would be entitled. It reads as under:*
> *"6. Other benefits.- (1) An employee opting for the scheme shall also be eligible for the following benefits in addition to the ex-gratia amount mentioned in para 5 namely:-*

*(a) Provident Fund,*
*(b) Gratuity as per Payment of Gratuity Act, 1972 (39 of 1972) or gratuity payable under the Rationalisation Scheme, as the case may be; (c) Pension (including commuted value of pension) as per General Insurance (Employee's) Pension Scheme 1995, if eligible. However, the additional notional benefit of the five years of added service as stipulated in para 30 of the said pension Scheme shall not be admissible for the purpose of determining the quantum of pension and commutation of pension.*
*(d) Leave encashment.*
*(2) An employee who is opting for the scheme shall not be entitled to avail Leave Travel Subsidy and also encashment of leave while in service during the period of sixty days from the date of notification of this scheme.*

*(emphasis supplied)*

*XXX XXX XXX*

*"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.*

*XXX XXX XXX*

*"2 Definition:- In this Scheme, unless the context otherwise requires:-*
*xxx xxx xxx*

*(t) "retirement" means –*
*(i) the retirement in accordance with the provisions contained in paragraph 12 of General Insurance (Rationalisation and Revision of Pay Scales and Other Conditions of Service of Supervisory, Clerical and Subordinate Staff) Scheme,1974 notified under the notification of Government of India, in the Ministry of Finance(Department of Revenue and Insurance) number S.O.326(E) dated the 27th May, 1974;*
*(ii) the retirement in accordance with the provisions*

*contained in paragraph 4 of the General Insurance (Termination, Superannuation and Retirement of Officers and Development Staff) Scheme, 1976notified under notification of Government of India, in the Ministry of Finance (Department of Economic Affairs) number S.O.627(E) dated 21st September,1976;*
*(iii) voluntary retirement in accordance with the provisions contained in paragraph 30 of this Scheme".*

13. The Supreme Court in para 9 was of the view that the SVRS 2004 does not obviously rest the claim for payment of pension on para 29 and 30 of the Pension Scheme of 1995. The reasoning given by the Supreme Court is that the respondents in that case had not made a claim for superannuation pension (para 29) or pension on voluntary retirement within the meaning of para 30. The Supreme Court also based its opinion by noting para 6(1)(C) of SVRS 2004 which specifically provided that the notional benefit of additional 5 years to be added to the service of the retiring employee as stipulated in para 30 of the Pension Scheme shall not be admissible for the purpose of determining the quantum of pension and commutation of pension. In other words, SVRS of 2004 did not for the purpose of grant of pension, adopted the scheme underlying para 30 of the Pension Scheme, 1995. The Supreme Court also on the interpretation of the word 'retirement' in para 14 of the Pension Scheme, 1995 was of the view that, there is nothing in the context of the 1995 scheme which would exclude its beneficial provisions from application

to employees who have opted for voluntary retirement under the Special Scheme of 2004 or vice versa. In other words, the term 'retirement' must be in the context of two schemes, includes retirement not only under para 30 of the Pension Scheme 1995 but also those retiring under Special Scheme of 2004.

14. But, in the case in hand, pursuant to SVRS 2003 dated January 2, 2003, by way of instructions dated February 6, 2003, vide para 11B (ii), it has been clarified that those who have not completed 20 years of minimum years for eligibility of pension, shall not be entitled to the pension. No doubt, such a stipulation was not there in the SVRS 2003 issued vide gazette notification dated January 2, 2003, but, the instructions dated February 6, 2003 were issued to implement the SVRS 2003, which instructions are not contradictory/at variance with the SVRS 2003 (rather the SVRS 2003 is silent) and being supplementary, would also determine the eligibility for pension at least insofar as SVRS 2003. The authorities were within their power to determine/fix the terms/benefits of Special Voluntary Retirement Package to include 20 years of service for pension.

15. It has not been pointed out that such instructions were issued pursuant to SVRS 2004, which was considered by the Supreme Court in ***National Insurance Company Ltd vs. Kirpal Singh (supra).*** The

instructions being the distinguishing feature, the judgment of the Supreme Court being peculiar to the SVRS 2004, cannot be construed as a judgment in rem. The petitioner having not challenged the communication dated October 29, 2003 and has acquiesced into the said order, that apart, the legality of para 11 (B) (ii) of the instructions dated February 6, 2003, has not been challenged, the petitioner is not entitled to any relief. The petition is dismissed.

**(V.KAMESWAR RAO)**
**JUDGE**

**NOVMBER 17, 2015**
akb