IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.199 OF 2014

Sadanand Puthran .. Petitioner
-*Versus*-
United India Insurance Co. Ltd. ..Respondents

Mr. N.M.Ganguli with Ms. Karuna Yadav for petitioner
Mr. V.Y.Sanglikar for respondents.

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

DATE : 7th April 2016.

ORAL JUDGEMENT (PER ANOOP V. MOHTA, J)

1] The petitioner who is aged 73 years has filed present petition on 19th December 2013, thereby praying to grant him benefit of pension under the General Insurance (Employees Pension) Scheme, 1995 (for short “1995 Scheme”) from the date of his retirement from service on 1st December 1993 with 12% interest. The respondent has filed reply and opposed the averments as well as prayers by making reference to the provisions then existing Scheme i.e. General Insurance (Termination, Superannuation and Retirement of Officers and Development Staff) Scheme, 1976 (for short “1976 Scheme”).

2] Parties have also filed written submissions and relied upon judgements referred to by them. Admittedly, the petitioner was appointed as a clerk with the respondent on 13th August 1960. He was ultimately promoted as Administrative Officer. He completed uninterruted service of 32 years. However, for the reasons so recorded, he tendered a resignation letter dated 1st October 2013, which reads as under:-

> "I would like to resign from the company due to family reasons. I would request you to treat this resignation as premature retirement to enable me to claim future benefits, if any. The notice period of three months starts from today. However, I would request you to relieve me at your earliest convenience."

3] Respondents have, on 30th November 1993, accepted the resignation, with effect from 30th November 1993. The contents of the letter show that resignation was accepted and not accepted the case of the petitioner and not treated the same as "premature retirement", since, as per the 1976 scheme, no officer is permitted to seek voluntary retirement unless he completes 55 years of age. Admittedly, the petitioner had not attained age of 55 years on that date.

4] There is no issue that 1995 Scheme came into force with effect from 1st November 1993 though notified on 28th June 1995. The petitioner, therefore, for the first time by communication dated 4th April

2013, made a representation to the respondents to grant him pension on the basis of the scheme and in view of the judgement of Supreme Court in Sheelkumar Jain Vs. New India Assurance Company Ltd., (2011) 12 S.C.C. 197. As there was no response, the petitioner on 19th December 2013 filed the present petition.

5] The Supreme Court in the judgement (Sheelkumar Jain) (supra) dealing with the pension scheme, on facts, recorded as under:-

> "30. The aforesaid authorities would show that the court will have to construe the statutory provisions in each case to find out whether the termination of service of an employee was a termination by way of resignation or a termination by way of voluntary retirement and while construing the statutory provisions, the court will have to keep in mind the purposes of the statutory provisions."

6] The Apex Court, therefore, based upon the facts granted benefit of the scheme to the party who moved and represented immediately after the 1995 scheme. In the present case, the petitioner had resigned. There was no case of voluntary retirement. The respondents accepted the resignation. The submission that the petitioner was not aware of the scheme and further the respondents never communicated and/or intimated to the petitioner about his entitlement based upon the 1995 scheme and, therefore, there was no occasion for the petitioner to apply within time and/or within reasonable time, is not acceptable.

7] We have also noted that the 1995 scheme itself provides that the same would be applicable to the employees who have retired on and after 1st day of November 1993 but before notified date. It is also necessary for the employees to exercise option in writing within 120 days from the notified date to become member of the fund and also require to refund the amount of provident fund (employer's contribution" and the interest accrued thereon within 60 days after the expiry of the period of 120 days, as per clause (B). These two elements are also missing in the present case as the petitioner never opted in writing within the requisite period and never refunded the amount so required.

8] Another factor in the matter is clause 22 of 1995 scheme, whereby it is recorded as under:-

> "22. Forfeiture of service:-
>
> Resignation or dismissal or removal or termination or compulsory retirement of an employee from the service of the corporation or a company shall entail forfeiture of his entire past service and consequently shall not qualify for pensionary benefits".

9] The petitioner has tendered resignation and the same was accepted. He is not entitled to the pension so claimed after more than 21 years. In our view, this ground is also sufficient to reject the case of the petitioner.

10] Therefore, taking a over all view of the matter, including the judgement referred by the learned Counsel for the petitioner, no case is made out for the reliefs so sought. In the result, petition is dismissed. No costs.

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