BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 08 – 06 – 2016
CORAM:
**THE HONOURABLE SMT. JUSTICE PUSHPA SATHYANARAYANA**

Writ Petition (MD) Nos. 19431 to 19433 of 2015 and 21110 of 2015

N. Srinivasan .. Petitioner in W.P(MD)No.19431/2015
V. Selvaraj .. Petitioner in W.P(MD)No.19432/2015
D. Rajasekaran .. Petitioner in W.P(MD)No.19433/2015
S. Anandraj .. Petitioner in W.P(MD)No.21110/2015

**Vs.**

1. Union of India
Rep. by its Secretary
Ministry of Finance
Dept. of Economic Affairs, Banking and Insurance
IIIrd Floor, Jeevan Vikar
Sansad Marg
New Delhi – 110 001 .. R1 in all W.Ps. (MD)

2. United India Insurance Co. Ltd.
Rep. by its General Manager (P)
Whites Road
Royapettah
Chennai – 600 014 ..R 2 in W.P. (MD) 19431/2015

3. New India Assurance Co. Ltd.
Rep. by its General Manager
No. 87 Mahatma Gandhi Road
Fort, Mumbai
Maharashtra – 400 001 ..R 2 in W.P. (MD) 19432/2015

4. National Insurance Co. Ltd.
Rep. by its General Manager (P)
No. 3 Middleton Street
Kolkatta- 700 001,
West Bengal. ..R 2 in W.P. (MD) 19433/2015

5. Oriental Insurance Co. Ltd.
Rep. by its General Manager
A-25/27 Asaf Ali Road
New Delhi – 110 002 ..R 2 in W.P. (MD) 21110/2015

6. National Insurance Special Voluntary
Retired / Retired Employees' Association
7-A (Old No. 4-A)
South Gangai Amman Kovil 1st Street
Choolaimedu
Chennai - 600 094
Rep. by its General Secretary
Mr.V.A. Nagarajan ..R 3 in W.P. (MD)19431 to 19433 of 2015

[R3 impleaded vide Court order dated 08.01.2016 in MP (MD) No. 1 of 2015 by DHPJ]

Petitions filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus calling for the records connected to the issue of the impugned orders dated 23.9.2015 in Ref.HO:HR:2831, 14.9.2015, 14.9.2015 and 14.9.2015 passed by the respective second respondent Insurance Company and quash the same as illegal and void and consequently direct the second respondent for the grant of notional benefit of 5 years added service as stipulated in paragraph 30 of the General Insurance (Employees') Pension Scheme 1995 as confirmed by the Hon'ble Supreme Court of India in its decision dated 07.4.2015 in Transfer Case No. 7 of 2011, etc. and further direct the respondents to calculate pension, and disburse the same with arrears and interest thereon from the date of retirement.

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| For Petitioner in all W.Ps. | : Mr. V. Parthiban |
| For R1 in all W.Ps. | : Mr. N. Shanmughaselvam |
| For R2 in W.P. (MD) Nos. 19431 to 19433 of 2015 | : Mr. V. Perumal |
| For R3 in W.P. (MD) Nos. 19431 to 19433 of 2015 | : Mr. V. Vijayshankar |
| For R2 in W.P.No.21110 of 2015 | : No appearance |

**COMMON ORDER**

Since the issue involved in all these Writ Petitions is with regard to the entitlement of retiral benefits by the petitioners, who are ex-employees of the respective second respondent Insurance Companies, they are taken up together and disposed of by this common order.

2. Considering the common point to be decided, before going into the merits of the case, it would be better to brief the Schemes introduced in this regard.

3. With a view to enable the employees of the Insurance Companies to retire prematurely on certain conditions with some special benefits, the Government of India vide Notification dated 01.01.2004 introduced a Scheme called General Insurance Employees' Special Voluntary Retirement Scheme 2004 [for short referred to as "SVRS 2004"], which was made applicable to all 5 Public Sector Insurance Companies, viz., General Insurance Company, National Insurance Company, Oriental Insurance Company, United India Insurance Company and New India Assurance Company, as per which the employees and officers who had attained the age of 40 years and completed 10 years of qualifying service as on the date of Notification were eligible for voluntary retirement.

4. Earlier, in 1995, a pension scheme was introduced for General Insurance Employees called General Insurance (Employees) Pension Scheme 1995 which stipulated additional notional benefit of 5 years of added service for retiring employee voluntarily subject to the condition that the qualifying service rendered by such employee shall not in any case exceed 33 years and it does not take him beyond the date of retirement. For the sake of convenience, the said scheme is hereinafter referred to as the "Principal Pension Scheme".

5. The petitioners before us joined in the various Insurance Companies as Assistant between 1972 and 1980 and opted for retirement under Special Voluntary Retirement Scheme 2004 [for short referred to as "SVRS 2004"] and accordingly retired in various capacities on different dates during March 2004. According to the petitioners, weightage of additional 5 years conferred by Clause 30(5) of the Principal Pension Scheme was not allowed to them. Challenging the same, the petitioners made representations to the employers / Insurance Companies seeking for the benefit of 5 years added service but the same went in vain. Therefore, they filed Writ Petitions in W.P. (MD) Nos. 6435 to 6438 of 2015 seeking for Mandamus directing the respective Insurance Companies to dispose of their representations claiming for the notional benefit of 5 years and this Court, by common order dated 27.4.2015, disposed of the same directing the respondents to consider the claim of the petitioners within a period of four months from the date of receipt of a copy of the order after affording opportunity of hearing to the petitioners. Since the claim of the petitioners was rejected by the respondents by impugned orders dated 23.9.2015, 14.9.2015, 14.9.2015 and 14.9.2015 respectively, the present Writ Petitions have been filed.

6. Relying on paragraph 30 of the Principal Pension Scheme, learned counsel appearing for the petitioners vehemently contended that as pension, which is a right of an employee for the services rendered in the past, depends upon the last drawn salary, he must be given the benefit of the revised pay and his pension must also be enhanced accordingly. It is the submission of the learned counsel that inasmuch as the pension is payable only under the Scheme, there cannot be differential treatment for the purpose of grant of additional notional benefit of 5 years added service to the retirees. According to him, despite the eligibility of the petitioners under the Pension Scheme, they were not granted the notional benefit of 5 years added service while calculating their pension.

7. In support of his contention, learned counsel for the petitioners seeks in aid the decision of the Nagpur Bench of the Bombay High Court in ***Shamsunder and others vs. New India Assurance Company Ltd. and others [W.P.No. 4131 of 2010]*** wherein the grant of benefit of additional 5 years of service in respect of Development Officers in the Insurance Sector was allowed and the same was also confirmed by the Hon'ble Supreme Court in SLP No. 32540 of 2013 dated 01.9.2014.

8. Learned counsel representing the Insurance Companies / second respondent submitted that the employees retiring under the Principal Pension Scheme and the SVRS 2004 are two separate classes of employees and cannot be treated on an equal footing. Pointing out Clause 8(xiv) of the SVRS 2004, learned counsel representing the Insurance Companies / second respondent submitted that the benefits payable under this Scheme will be in full and final settlement of all claims of whatsoever nature, whether arising under the regulation or otherwise to the employee. He further submitted that an employee who voluntarily retires under SVRS 2004 shall not have any claims against the Company or re-employment or compensation or employment of any of his or her relative on compassionate grounds in the service of the company or for any other like benefits.

9. Heard the learned counsel appearing for the parties and perused the records.

10. For better understanding of the Schemes, it would be relevant to refer to Clause 30(5) of the Pension Scheme which reads as follows:-

> "The qualifying service of an employee retiring voluntarily under this paragraph shall be increased by a period not exceeding five years, subject to the

condition that the total qualifying service rendered by such employee shall not in any case exceed thirty three years and it does not take him beyond the date of retirement."

11. As per SVRS 2004, 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 service as on the date of notification.

12. Clause 6 of SVRS 2004 states other benefits. Clause 6(1)(c) reads as follows:-

> "Pension (including commuted value of pension) as per General Insurance (Employees') Pension Scheme 1995, if eligible. However, the additional notional benefit of 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."

12(a).From the above facts, it is clear that till 1995, there was no pension scheme at all for insurance company employees. Only in 1995, it was introduced and it is valid till today. In order to weed out extra employees, it was thought fit to introduce the SVRS 2004. The said SVRS 2004 neither amended the 1995 Principal Pension Scheme nor varied the same.

12(b).According to the learned counsel for the second respondent that special VRS is distinct and different and is to be distinguished from normal VRS available under para 30 of the Principal Pension Scheme 1995. It was contended further that the petitioners having opted under special VRS are deemed to have waived any legal right or subsequent benefits and estopped from making any claim.

13. In the instant petitions, since the Principal Pension Scheme vide its Clause 30(5) confers advantage of adding five years or then maximum qualifying service of 33 years, the petitioners urge that they could not be denied the weightage of five years. From a mere reading of the Schemes, it is clear that a person who had put in 20 years of service automatically becomes eligible under the Pension Scheme. If an employee opting SVRS 2004, is eligible for the other benefits of Pension Scheme, he will get the notional benefit of addition of five years. Nowhere in Clause 6(1)(c) it is stated that they are not eligible. Therefore, in the absence of any specific clause, it is to be presumed that a person seeking voluntary retirement is eligible to

get pension under para 30(5) of the Pension Scheme with due weightage. Even according to the second respondent, the SVRS 2004 did not supercede the 1995 Principal Pension Scheme. Therefore, pension become payable only under the Principal Pension Scheme regardless of retirement whether under Special Scheme or Pension Scheme. In as much as the pension is payable under 1995 Scheme, there cannot be a differential treatment for the purpose of grant of additional notional benefit of five years added service for the retirees.

14. Significantly, in ***Shamsunder case*** *(cited supra)* relied on by the learned counsel, like SVRS 2004, Special Voluntary Retirement Scheme was notified in 2003 for development Officers with identical conditional and clauses. It is also relevant to point out that they were also governed by the same Pension Scheme 1995 as applicable to the present petitioners.

15. Earlier, when several retired employees and the third respondent in W.P. (MD) Nos. 19431 to 19433 of 2015, viz., National Insurance Special Voluntary Retired / Retired Employees' Association approached various High Courts seeking consequential benefits of retrospective revision of pay made applicable to all General Insurance Public Sector Companies, which came into effect from 01.8.2002, they were all transferred to the Hon'ble Supreme Court. Thus, the controversy raised in the instant Writ Petitions that whether the employees who had opted for voluntary retirement under the Scheme, are entitled to get the benefit of additional pension on the basis of revised salary in pursuance of the Notification was already decided by the Hon'ble Supreme Court in ***Transfer Application No. 7 of 2011 [National Insurance Special Voluntary Retired / Retired Employees' Association vs. Union of India and others]*** reported in ***(2015) 4 SCC 482*** by its decision dated 07.01.2015 wherein the Hon'ble Apex Court, while dismissing the claim of the employees and the Association of the benefit of retrospective revision of pay, however, observed that the employees are entitled to get the benefit of additional 5 years of service while calculation as stipulated in paragraph 30 of the Pension Scheme notwithstanding the bar in the SVRS 2004. It is pertinent to note that as against the said observation, the Management has not chosen to file a review or appeal. As such, the Management is bound to implement the observations of the Hon'ble Supreme Court.

16. In view of the foregoing discussion and in the light of the decision of the Hon'ble Supreme Court cited supra, by which the right of the petitioners to get the benefit of 5 years added service for the purpose of calculation of pension has been crystalized, this Court is of the considered opinion that the impugned orders are liable to be set aside.

17. **The Writ Petitions are accordingly allowed setting aside the impugned orders.** The respondents are directed to provide necessary weightage and resulting hike in the VRS amount to the petitioners by completing necessary exercise within a period of six months from the date of receipt of a copy of this order. However, in the circumstances of the case, there shall be no order as to cost.

Sd/-
Assistant Registrar(AS)

/TRUE COPY/

Sub Assistant Registrar

To
1. The Secretary
Union of India
Ministry of Finance, Dept. of Economic Affairs, Banking and Insurance, IIIrd Floor, Jeevan Vikar
Sansad Marg, New Delhi – 110 001.
2. The General Manager (P)
United India Insurance Co. Ltd.
Whites Road, Royapettah,Chennai – 600 014.
3. The General Manager, New India Assurance Co. Ltd.
No. 87, Mahatma Gandhi Road
Fort, Mumbai, Maharashtra – 400 001.
4. The General Manager
National Insurance Co. Ltd.
No. 3 Middleton Street, Kolkatta, West Bengal – 700 001.
5. The General Manager, Oriental Insurance Co. Ltd.
A-25/27 Asaf Ali Road, New Delhi – 110 002.
6. The General Secretary
National Insurance Special Voluntary
Retired / Retired Employees' Association
7-A (Old No. 4-A), South Gangai Amman Kovil 1st Street
Choolaimedu, Chennai – 600 094.

+4cc to M/S.K.K.Senthil, Advocate in SR.No.28846/16
+5cc's to M/s.V.Perumal Advocate in SR.No.28808&29289/16

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08 – 06 – 2016