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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 7354 OF 1999

All India Insurance Employees Association
Western Zone, A Trade Union having its
1. Western Zone Insurance Employees'
Association (Petitioner no.1 is deleted as
per Court's order on 2/4/2001).

2.R.S. Deshpande
(since deceased)
through his legal heirs :
2 (a) Smt. Usha Ramchandra Deshpande
16, Jyoti Kiran Hsg. Society,
Pumping Station, Gangapur Road,
Nasik – 5.

(Amendment is carried out as per the
Court's order dated 27/6/2001
passed in C.A.No.624/2001)

3.M.S. Rawat
residing at E-4/2, Jeevan Shanti
LIC Colony, S.V. Road,
Santacruz (W), Mumbai 400 054.

...Petitioners

versus

1. Union of India

2. Life Insurance Corporation of India
having his office at Yogakshema
Jeevan Bima Marg, Mumbai 400 021.

3. Divisional Manager
Life Insurance Corporation of India,
Nasik Divisional Office Jeevan

Prakash, Gold Club House,
Old Agra Road, Nasik 423 002.

4. Assistant Administrative Officer
Life Insurance Corporation of India,
Yogakshem, East Wing, Jeevan Bima
Marg, Mumbai 400 021.

...Respondents

.....
Mr. Ramesh Ramamurthy i/by Mr. Saikumar Ramamurthy, for the
Petitioners.

Ms. Sneha Paranjape a/w. Mr. J.P. Kapadia & Mr. O. Mohandas i/by
Little & Co. for Respondent no.2.

Mr. D.A. Dubey a/w. Mr. Upendra Lokegaonkar, Union of India.
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**CORAM : A.A.SAYED AND
M.S.KARNIK, JJ.**

RESERVED ON : 26th July, 2017.

PRONOUNCED ON : 1st August, 2017.

JUDGMENT (PER M.S. KARNIK, J.) :-

The petitioner no.2 (since deceased) resigned from the Nasik Divisional Office of the LIC after 30 years of service by tendering his resignation letter dated 16/1/1992. The petitioner no.3 resigned from Malad office of LIC after more than 30 years of service. The petitioners resigned prior to the coming into force of the Pension Regulations for the Staff of the LIC which came into force with effect

from 28/6/1995. All those employees who retired between 1/1/1986 and 28/6/1995 were covered by the Pension Regulations.

2. Life Insurance Corporation of India (Staff) Regulations, 1960 (hereinafter referred to as “the said Regulations”) which were in force had provision of voluntary retirement at any time after the employee has completed 55 years of age provided he gave three months notice to the appointing authority with his intention to retire. As there was no provision for voluntary retirement upon completion of 30 years of service the petitioner nos.2 and 3 had to tender their resignations on 16/1/1992 and 15/11/1994 respectively.

3. In so far as the petitioner no.3 is concerned, the learned Counsel for the petitioner contended that his resignation could be treated as voluntary retirement under the proviso to Regulation 19 of the said Regulations. In this regard we find that there are no averments in the Petition raising a plea that he is entitled to the benefit of proviso 19 (1) of the said Regulations. Faced with this difficulty the learned Counsel for the petitioner submitted that he may be permitted to withdraw the Petition in so far as petitioner no.3 is concerned with a liberty to him to approach the respondents by

submitting a detailed representation for getting the benefit in terms of the proviso to Regulation 19 (1). He further submits that he may also be permitted to make a request for some exgratia amount. Taking into consideration the long service the petitioner had put in with the respondents, in the interest of justice we allow the petitioner no.3 to withdraw from this Petition with a liberty to make a detailed representation to the respondents. If such a representation is made with a period of four weeks from today the respondents may sympathetically consider the same on its own merits. We may not be understood to have expressed any opinion on merits of the matters and all the contentions in this regard are kept open.

4. We now deal with the claim of the petitioner no.2. At the relevant time when the petitioner resigned on 16/1/1992 there was no provision for voluntary retirement on completion of 30 years of service. Under the said Regulations the petitioner no.2 who belongs to Class III category could have sought voluntary retirement upon completing 55 years of age by giving three months notice as per Regulations 19 (2A). As the petitioner had not completed 55 years of age he had no option but to resign from the service.

5. Prior to the petitioner no.2's resignation, on 19th December, 1989 the respondents addressed a letter to Dr. S.R. Kelkar, MD (Medicine) wherein it is stated that the petitioner was asked to appear before the Doctor for conducting a thorough medical examination. The respondents called upon the Doctor to send the report about the fitness or otherwise of the petitioner for resuming his duties as Assistant.

6. The respondents by a letter dated 20th December, 1989 addressed to the petitioner observed that the petitioner is absent from duties from 27/9/1988 i.e. since nearly 15 months. 127 days extraordinary leave for the petitioner's absence from 27/9/1988 till 31/1/1989 was sanctioned. Two letters were received from the petitioner dated 3/2/1989 and 7/6/1989 with a request for grant of leave from 1/2/1989 for two months. The petitioner was informed that he did not appear before Dr. S.R. Kelkar though he was called upon to do so. The petitioner was therefore requested to call upon Dr. Kelkar for conducting medical examination on 3/1/1990.

7. The petitioner by a letter dated 19/8/1991 submitted a medical certificate dated 24/7/1991 of the Civil Surgeon, Nasik. By a

letter dated 4th September, 1991, the respondent called upon the petitioner to have himself medically examined from the Civil Surgeon.

8. By a letter dated 4th September, 1991, addressed to the Civil Surgeon, the respondents requested the Civil Surgeon for medically examining the petitioner. It would be material to quote a letter dated 4th September, 1991, addressed by the respondents to the Civil Surgeon in extenso.

EXHIBIT "5"

Life Insurance Corpn. of India.

P&IR/VRD.

4.09.1991

BY REGD. POST

Shri Ramchandra Shankar Deshpande,
16, Jyotikiran Co-op. Hsg. Society,
Pumping Station Corner,
Gangapur Road,
Nasik – 422 005.

Dear Sir,

Re: Your continuous absence
from Duties.

We are in receipt of your letter dated 19.08.1991 alongwith medical certificate dated 24.07.1991 of Civil Surgeon, Nasik.

We observe from our records that your attendance record is far

from satisfactory. You are continuously away from duties since 27.09.1988 on medical grounds. We therefore need to get you medically examined by the Civil Surgeon, Nasik and have his detailed report about your capacity for further continuous service. You are, therefore, requested to appear before the Civil Surgeon, Nasik with prior appointment immediately on receipt hereof, for your medical examination in the light of the above point. The medical fees of your medical examination will be borne by us.

Thanking you,

Yours faithfully,
Sd/-
Sr. Divisional Manager.

9. It would also be material to quote the letter dated 4th September, 1991 addressed by the respondent to the Civil Surgeon in extension.

EXHIBIT "6"

Life Insurance Corpn. of India.

CONFIDENTIAL

P&IR/VRD.

September 4, 1991

The Civil Surgeon,
Civil Hospital,
Trimbak Road,
Nasik 422 002.

Dear Sir,

Re: Medical Examination of our employee –
Shri Ramchandra Shankar Deshpande
(S.R.No.412089), Assistant.

Our employee Shri Ramchandra Shankar Deshpande has been continuously absent from duties since 27.09.1988 on medical grounds, due to his sickness viz. Chronic Schizophrenis. It appears that he will not be in a position to resume his duties in future in view of the nature of his sickness. Under the circumstances, we are considering whether to retire the employee from our services as per provisions of our Staff Regulations. For this purpose, we require a certificate from you as to whether Shri R.S. Deshpande is 'incapacitated for further continuous services due to continued illness'.

We had, therefore, approached you vide our letter dated 12.4.1991 (copy enclosed) for getting the abovenamed employee medically examined by you thoroughly and have your certificate / report about his capacity for further continuous service, directly to us by post. We have, however, received your certificate (copy enclosed) from Shri Deshpande, advising treatment for further six months, along with his leave application.

We are, therefore, advising Shri Deshpande to call on you again for his medical examination in the light of the above stated point. Please send your certificate / report, after thoroughly examining Shri R.S. Deshpande, DIRECTLY by post in the name of Shri M.S. Kasture, Manager (P&IR), LIC of India, Nasik Divisional Office, Gold Club Ground, Nasik – 2, clearly stating whether Shri R.S. Deshpande is 'incapacitated for further continuous service' or otherwise. Necessary fees will be paid by us immediately on

receipt of your certificate / report as envisaged.

Thanking you,

Yours faithfully,
Sd/-
Sr. Divisional Manager.

10. It appears that the petitioner did not subject himself to medical examination as called for. He however tendered his resignation on 16/1/1992. The petitioner after coming into the force of the Life Insurance Corporation of India (Employees) Pension Rules, 1995 (for short 'the 1995 Rules') prays that he may be granted pension in accordance with the 1995 Rules as he was in service of the Corporation on the 1st day of January, 1986 and had retired having sought voluntary retirement before the 1st day of November, 1993.

11. Learned Counsel for the respondents submitted that there is no provision for voluntary retirement under the Regulations except in respect of those employees who have attained the age of 55 years. The learned Counsel submits that as the petitioner has resigned the question of benefit of the 1995 Pension Scheme does not arise. Learned Counsel invited our attention to the affidavit-in-reply filed on behalf of the respondents, in her submission, the petitioner

did not subject himself for medical examination and refused to appear initially before Dr. Kelkar and thereafter, before the Civil Surgeon. Looking at his conduct it is clear that the petitioner has tendered resignation. In her submission, the circumstances on record are not sufficient to hold that the resignation tendered by the petitioner is in essence voluntary retirement.

12. In the light of the correspondence made by the respondent with the petitioner and the Civil Surgeon let us now examine if resignation tendered by the petitioner is in essence seeking premature retirement. Having regard to the circumstances on record, it is not in dispute that the petitioner has served for more than 30 years. The letter dated 4th September, 1991 leaves no manner to doubt that the petitioner has been continuously absent from the duties since 27/9/1998 on medical grounds due to his sickness which is "Chronic Schizophrenia". It appears that even the respondents was of the opinion that the petitioner will not be in a position to resume his duties in future in view of the nature of his sickness. It is under these circumstances, the respondents were considering whether to retire the petitioner from services as per the provisions of the Staff Regulations. It is in this context that a certificate was required by the

respondent from the Civil Surgeon as to whether the petitioner is incapacitated for further continuous services due to continued illness.

13. The petitioner did not however subject himself to medical examination in terms of the letter dated 4th September, 1991. It may be mentioned here that the petitioner had submitted a medical certificate dated 24th July, 1991 of the Civil Surgeon, Nasik, regarding his medical condition and for grant of leave on medical grounds.

14. It is in these circumstances, the petitioner tendered his resignation on 16/1/1992. It is obvious that the petitioner tendered his resignation on medical grounds (the letter of resignation is not on record). Having regard to the circumstances on record we are of the view that the resignation tendered by the petitioner is in essence seeking premature retirement. Even the respondents were aware of the medical condition of the petitioner and they too had proposed to retire the petitioner from his services and as such were insisting for getting the petitioner medically examined. The petitioner however chose to resign on 16/1/1992.

15. Having come to the conclusion that the letter of

resignation is in essence voluntary retirement, the petitioner's case is then squarely covered by the decision of the Apex Court in the case of Asger Ibrahim Amin v. Life Insurance Corporation of India [(2016) 13 SCC 797].

16. Learned Counsel for the respondents invited our attention to the decision of the Apex Court in the case of Senior Divisional Manager, Life Insurance Corporation of India Ltd. & Ors. v. Shree Lal Meena (AIR 2016 SC 1394). It is pointed out that the learned Judges did not concur with the view expressed in Asger Ibrahim Amin (supra). The matter was therefore directed to be placed before the Hon'ble Chief Justice of India for constitution of a larger Bench.

17. Learned Counsel submits that till the decision of the reference made by the Apex Court the petition may be kept pending or in alternative the law laid down in Senior Divisional Manager, Life Insurance Corporation of India Ltd. & Ors. (supra) may be followed and the Petition be dismissed.

18. Learned Counsel for the petitioner submitted that the

judgment in Asger Ibrahim Amin's case will have to be followed until it is overruled. He also relied upon the decision of the Apex Court in the case of State of Maharashtra and anr. v. Sarve Shramik Sangh, Sangli and ors. [(2013) 16 SCC 16]. Paras 24, 25 and 27 reads thus :-

“24. The appellants had submitted that the Irrigation Department is not an industry. In that behalf, it was pointed out on behalf of the workmen that it is too late to raise this submission in view of the judgment of this Court in Bangalore Water Supply and Sewerage Board v. A Rajappa. As against that, the counsel for the appellants pointed out that the judgment in Bangalore Water Supply is pending for reconsideration before a larger Bench of this Court in view of the order passed by the Constitution Bench in State of U.P. v. Jai Bir Singh.

25. The respondent's however, submitted that in the meanwhile the judgment in Bangalore Water Supply will have to be followed until it is overruled, since the proposition therein continues to hold good. Reliance is placed in that behalf, on the approach adopted by this Court in such a situation, in a matter concerning arbitration in State of Orissa v. Dandasi Sahu. In that matter this Court has held that in the exercise of this Court's discretion under Article 136, it would not be justified to allow a party to further prolong or upset adjudication of old and stale disputes till the decision of the larger Bench is received.

27. It is, however, contended on behalf of the appellant that the said undertaking was being run by the Irrigation Department of the first appellant, and the activities of the Irrigation Department could not be considered to be an “industry” within the definition of the concept under Section 2(j) of the ID Act. As noted earlier,

the reconsideration of the wide interpretation of the concept of “industry” in Bangalore Water Supply and Sewerage Board is pending before a larger Bench of this Court. However, as of now we will have to follow the interpretation of law presently holding the field as per the approach taken by this Court in State of Orissa v. Dandasi Sahu, referred to above. The determination of the present pending industrial dispute cannot be kept undecided until the judgment of the larger Bench is received.”

19. Having regard to what has been held in **Asger Ibrahim Amin's** (supra) which presently holds the field we are inclined to allow this Petition. We thus hold that the termination of the services of the petitioner, in essence, was voluntary retirement within the ambit of Rule 31 of the 1995 Pension Rules. The petitioner is entitled for pension, provided he fulfills the condition of refunding of the entire amount of the Corporation's contribution to the provident fund along with interest accrued thereon as provided in the 1995 Pension Rules.

20. In the result Petition succeeds. The petitioner No.2(a) is entitled for pension as provided in the 1995 Pension Rules. The arrears be paid to the petitioner No.2(a) within a period of four months from today. The petitioner No.2(a) will have to refund the Bank's contribution to Provident Fund together with accrued interest thereon paid on

retirement plus simple interest thereon at 6% p.a. from the date of receipt of the same till the date of refund. The said amount of refund may be adjusted as against the arrears of pension payable to the petitioner 2(a).

21. No order as to costs.

(M.S.KARNIK, J.)

(A.A.SAYED, J.)