

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 19.06.2017

DATE OF DECISION : 14.07.2017

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

W.P.No.7383 of 2017

in

W.M.P. Nos 8038 & 10009 of 2017

1. K.Arivalagan
 2. S.Prasanna
 3. C.G.Gangadharan
 4. P.R.Krishnakumar
 5. Chhaya Dilip Kuthe
 6. Dilip Mahadev Ghag
 7. Ratnakar Damodar Kawaji
 8. Popat Daji Khamkar
 9. Chandrakant Nilkanth Ghag
- .. Petitioners

-vs-

1. General Insurance Corporation of India
(A Wholly Owned Govt. of India Company)
Rep by Chairman cum Managing Director
176 J, Tata Road, Churchgate
Mumbai 400 020
 2. United India Insurance Company Limited
Rep by its Chairman cum Managing Director
Regd and Head Office
24, Whites Road
Chennai 600 014
 3. General Insurers' (Public Sector)
Association of India
Rep by its Chairman - GIPSA
Ground Floor, Gate No.2
Jeevan Tara Building
Parliament Street
New Delhi 110 001
- .. Respondents

Petition under Article 226 of the Constitution of India,
praying for the issue of a Writ of Mandamus, directing the
respondents to continue the petitioners in service till they
reach the age of 60 years, pay salary and other benefits

including pensionary on par with the other employees working in the respondent Corporation/Companies.

For Petitioners:: Mr.N.G.R.Prasad for
M/s Row & Reddy

For Respondents:: Mrs.Chitra Sampath
Senior Counsel for
Mr.T.S.Baskaran for R1
Mr.A.L.Somayaji
Senior Counsel for
Mr.V.Perumal for R2
No appearance for R3

ORDER

The writ petitioners have sought for a direction or order in the nature of a writ of mandamus, directing the respondents to continue the petitioners in service till they reach the age of 60 years, pay salary and other benefits including pensionary benefits on par with the other employees working in the respondent Corporation/Companies.

2. Mr.N.G.R.Prasad, learned counsel for the petitioners submitted that when the Fire Salvage Association of Bombay Limited was incorporated on 27.4.1925 under the Indian Companies Act, 1913, it was renamed as Loss Prevention Association of India, briefly called as "LPA". This company was initially owned by seven private insurance companies. However, after nationalisation of the General Insurance Companies in India by the General Insurance Business (Nationalisation) Act, 1972, the LPA, which was formally known as FSA, was merged with the General Insurance Corporation and its four subsidiaries, namely, (i) United India Insurance Company Limited (UIIC), (ii) National Insurance Company Limited (NIC), (iii) New India Assurance Company Limited (NAC), (iv) Oriental Insurance Company Limited (OIC). Therefore, after 1972, these five insurance companies were owning LPA, in which all the petitioners joined between 1984 and 1999.

3. Explaining further, Mr.N.G.R.Prasad submitted that before nationalisation, the FSA was owned by private general insurance companies and after nationalisation in 1972, the FSA became the company of GIC and four national general insurance companies. Again on 10.1.78, the name of FSA changed to LPA has been looking after only the work relating to general insurance. Resultantly, the FSA alias LPA was administratively and financially depending on the general insurance company and four other public sector insurance companies, as mentioned above. Although in the year 1984, the age of retirement of the employees in GIC and the four general insurance companies was 58

years, after the Central Government revised the age of superannuation from 58 to 60 years, on 28.5.98, the first respondent Corporation at its 252nd board meeting resolved to raise the age of superannuation from 58 to 60 years, which also continues to be the age of retirement in the case of four other companies even today. While so, when the employees of LPA on 1.4.2006 were deputed to GIC and four general insurance companies, after a merger scheme was approved by the Bombay High Court in its order dated 27.4.2007 in Company Petition No.93 of 2007, all the petitioners were permanently transferred to the second respondent United India Insurance Company Limited and they were absorbed on 20.7.2007 with effect from 1.4.2006. In the merger order, it was stated that the employees who were transferred will continue to enjoy the service conditions applicable to them, even though it was with variance with the conditions in the transferred organisation, namely, GIC, UIIC, NIC, NAC and OIC. When the retirement age of all the employees in all the five companies was 60 years, unfortunately no specific order with regard to the petitioners was issued. Therefore, on 18.7.2008, all the petitioners made a representation to the second respondent, as their services were transferred to them, to bring about uniformity in the matter of age of retirement, pension, etc., as was prevalent in UIIC, which is their employer. The Divisional Manager of the second respondent company, on 5.6.2009, forwarded the said representation to the Chief Regional Manager, Madurai. Again on 28.2.2011, at the board meeting of the first respondent Corporation, they resolved to increase the age of superannuation of the ex-employees of LPA who joined GIC and the said resolution also authorised the Chairman and Managing Director to issue appropriate orders in this regard. Again based on the said resolution, the petitioners made another representation on 26.4.2013 to the second respondent through proper channel to do the needful. But there was no response.

4. Mr.N.G.R.Prasad proceeding further argued that when the retirement age of the employees working in all these four companies has been uniformly increased from 58 to 60 years by a notification dated 27.5.98 and the General Insurance Corporation also passed a resolution dated 28.5.98 revising the retirement age from 58 to 60 years to all its employees, the same has been followed by all the four insurance companies including UIIC. While so, for the simple reason that the Chairman cum Managing Director of the GIC and the four public sector general insurance companies who are the Directors of LPA, failed to pass a resolution in this regard in LPA, they cannot deny the benefit of 60 years to be the age of retirement to the petitioners even after they were absorbed permanently in GIC. Again he has argued that when the LPA got merged with the GIC with effect from 1.4.2006 and consequently all the employees were absorbed in the GIC by any one of the four public sector insurance

companies, all the petitioners/employees are entitled to the benefit of retirement age as 60 years. This is the age of retirement statutorily determined under Paragraph 12 of the General Insurance (Rationalisation and Revision of Pay Scales and other conditions of service of Supervisory, Clerical and Subordinate Staff) Scheme, 1974, briefly called as "GIC Scheme, 1974, which came into force on 27.5.74. If the retirement age of the employees are not made as 60 years, this would amount to clear discrimination, which will not pass the test of Article 14 of the Constitution of India. The reason is that when they are all treated as employees of GIC from the public sector general insurance companies in which they were absorbed, the petitioners alone cannot be directed to retire at the age of 58 years when other employees working prior to their absorption are entitled to enjoy the benefit upto 60 years of age.

5. Arguing further, the learned counsel for the petitioners submitted that at the time of merger of LPA with GIC, the employer cannot put any contractual terms contrary to the statutory scheme with regard to the age of retirement, which is opposed to Paragraph 12 of the GIC Scheme, 1974. Moreover, one company cannot have two types of service conditions in the matter of fixing the retirement age of its employees. This is again arbitrary and amounts to capricious action of the respondents. It is also opposed to the judgment of the Apex Court in the case of *S.Sivaguru and others v. State of Tamil Nadu*, (2013) 7 SCC 335, wherein it is held that after the merger of two establishments, there cannot be different service conditions for the employees who had been merged. Though Paragraph 12 initially provided for different age of retirement, i.e., for those who were in service before 21.1.84, 60 years was fixed for retirement and 58 years for those who joined after 21.9.84, this anomaly was done away with the statutory amendment of the scheme of 27.5.98. Therefore, the respondents cannot be allowed to offend Paragraph 12 of the statutory scheme providing 60 years as the age of retirement, even if there is any contractual terms and conditions entered, because the contractual terms have to give way to the statutory scheme. In support of his submissions, he has relied upon a judgment of the Apex Court in the case of *Harwindra Kumar v. Chief Engineer, Karmik and others*, (2005) 13 SCC 300.

6. Since this Court has passed an interim order directing the respondents to permit the petitioners to work till further orders, on 27.3.2017, a petition to vacate the said direction has been filed by the United India Insurance Company Limited. Mr.A.L.Somayaji, learned senior counsel for the second respondent submitted that after the insurance sectors came into field in 2000-2001, the functioning and relevance of LPA came under critical analysis and scrutiny. Therefore, after due deliberations by all the stakeholders for almost five years

viz., in 2005-2006, it was decided to wind up LPA. Accordingly, it was amalgamated with GIC and the services of the employees of LPA were transferred to GIC and GIPSA member companies. For the said purpose of amalgamation, a scheme of amalgamation under Sections 391 to 394 of the Companies Act, 1956 was filed jointly by the LPA and GIC before the High Court of Bombay and after due process of law including receipt of objections to the said scheme, the High Court of Bombay considered the scheme so proposed and granted its sanction to the same in its order dated 27.4.2007. Paragraph-9 of the order of the High Court of Bombay clearly says that the services of the transferred employees shall stand transferred to GIC, NIC, NIA, OIC and UIIC as provided thereunder on such terms and conditions which shall continue to apply to such transferred employees, though such terms and conditions may be at variance with the terms and conditions of the existing employees of each of GIC, NIC, NIA, OIC and UIIC. In terms of the conditions of service entered as part of the scheme of amalgamation as sanctioned by the High Court of Bombay, the age of retirement was decided at 58 years. Similarly, the provident fund contribution also has been fixed at 12% of the basic pay for the officers and 12% of the basic plus DA for the staff with matching contribution by the employer, while 10% of basic pay for all classes of employees with matching contribution by the employer working in GIC/GIPSA members who are in existence. Similarly, in the case of pension, it was decided that the employees of LPA were not entitled to pension. This was accepted by all the employees by their terms of appointment at the time of agreement. When the age of retirement of the petitioners at 58 years was accepted by the employees of the LPA and their union including the petitioners by signing their terms and conditions at the time of merger, only then they were absorbed in the first respondent company. Out of 155 employees of LPA, about 82 employees availed SVRS package while the remaining 73 preferred absorption in the first respondent or other four PSGIC's. Therefore, when there was a scheme of amalgamation and all the employees were transferred with specific conditions, such conditions cannot be altered subsequently. In support of his contention, a judgment of the Apex Court in the case of Union of India and others v. Major R.N.Mathur, (1997) 1 SCC 225 was pressed into service to say that the age of retirement in the appointment order will have a binding effect on the employee and employer.

7. Again taking support from another judgment of the Apex Court in the case of Transport and Dock Workers Union and others v. Mumbai Port Trust and another, (2011) 2 SCC 575 to say that new working hours for new recruits recruited after 1.11.96 cannot be said to be violative of Article 14. Referring to the said judgment, Mr.A.L.Somayaji submitted that when there was introduction of longer working hours for persons employed after a certain date to enhance competitiveness of public sector port

trust, on a challenge that it was violative of Article 14 of the Constitution of India, the Apex Court in the said judgment has held that the port introducing changes only with respect to future employees appointed after a certain date cannot be said to be violative of Article 14, holding that the classification of existing and future employees for the said policy objectives is reasonable, just and bona fide. Taking support from yet another judgment in Pepsu Road Transport Corporation, Patiala through its Managing Director and another v. S.K.Sharma and others, (2016) 9 SCC 206, it was pleaded that once the employees have accepted to continue as employees of the organisation pursuant to an order of merger/transfer with effect from a particular date, then they would be governed by the service conditions available to such employees. For the proposition that the classification of the employees into two categories, namely, those falling under Rules 1 and 2 of the Rules for the age of retirement and those falling under Rule 3 to have a different age of retirement can be held to be a valid classification under Articles 14 and 16 of the Constitution of India, he relied upon a judgment of the Apex Court in B.S.Yadav and another v. Chief Manager, Central Bank of India and others, (1987) 3 SCC 120. On this basis, the learned senior counsel pleaded that having accepted the terms and conditions, more particularly, the age of retirement as 58 years at the time of merger and absorption, it is not open to the petitioners to challenge the said age of retirement on the ground of discrimination, because they cannot be allowed to approbate and reprobate at their sweet convenience, inasmuch as the principle of 'estoppel' will squarely apply to the facts of the present case. Hence the petitioners, having accepted 58 years as the age of retirement at the time of merger, cannot come to this Court asking for enhancement in the age of retirement, the learned senior counsel pleaded.

8.Mrs.Chitra Sampath, learned senior counsel for the first respondent urged this Court to dismiss the writ petition as legally not maintainable, for the reason that when the petitioners were transferred to the five companies under a scheme of agreement under Sections 391 to 394 of the Companies Act, 1956 and the Bombay High Court, after considering the scheme of amalgamation, had granted its sanction to the same in its order dated 27.4.2007, making it clear to them that the services of the transferred employees shall stand transferred to GIC, NIC, NIA, OIC and UIIC as provided thereunder on such terms and conditions which shall continue to apply to such transferred employees, though such terms and conditions may be at variance with the terms and conditions of the existing employees of each of GIC, NIC, NIA, OIC and UIIC, after accepting the agreement order and thereupon after expressing their willingness by signing necessary documents agreeing with the age of retirement at 58 years, the petitioners, without challenging the

correctness of the agreement order or without challenging the terms and conditions of their fresh appointment in the transferred companies on the ground of unreasonableness, if so desired by them, cannot ask for a writ of mandamus merely to extend their age of retirement to 60 years.

9. I find some merits in her submissions. Therefore, let me first see the terms of appointment. When the functioning of LPA came under critical analysis after 2000-2001, in 2005-06, it was decided to wind up LPA. Accordingly, a scheme of amalgamation of LPA with GIC was made ready and the services of the employees of the LPA were decided to be transferred to GIC and GIPSA member companies. For the purpose of such amalgamation of LPA with GIC and transfer of its employees to the five companies, a scheme of amalgamation under Sections 391 to 394 of the Companies Act, 1956 was filed jointly by LPA and GIC before the High Court of Bombay. When the said Company Petition Nos.93 & 94 of 2007 with Company Application Nos.1027 & 1028 of 2006 were taken up on 27.4.2007, finding that there was no objection to the scheme of amalgamation, the Court has granted sanction allowing the aforementioned company petitions. Paragraph-9 of the scheme of amalgamation so sanctioned by the High Court of Bombay, dealing with the issue of transfer of services of the employees of the LPA with five companies, namely, GIC and the four GIPSA member companies, is given as under:-

"Upon the Scheme becoming effective, the services of the Transferred Employees shall stand transferred to GIC, NIC, NIA, OIC & UIIC, as provided herein above on such terms and conditions which shall continue to apply to such transferred employees, though such terms and conditions may be at variance with the terms and conditions of the existing employees of each of GIC, NIC, NIA, OIC & UIIC."

10. When the petitioners union and this apart the petitioners themselves agreed that the absorbing companies would be protecting all their erstwhile service conditions as per the scheme of amalgamation envisaged in respect of their items of service/terms and conditions, namely, provident fund at the rate of 12% of basic pay for officers and 12% of basic pay plus DA for staff with a matching contribution by the employer with a retirement age of 58 years and there is no pension for the absorbed employees, all of them shall continue to be governed by the same even after absorption in these companies. In fact, Mr.K.Arivalagan has given his consent letter signifying acceptance of the terms and conditions that his age of retirement is only at 58 years in the transferred company. On 1.11.2007, when the terms and conditions of the employment of the transferred employees 1 to 13 have been fixed at 58 years,

the ratio laid down by the Apex Court in the case of B.S.Yadav and another v. Chief Manager, Central Bank of India, (1997) 3 SCC 120 holding that when the age of retirement of the new entrants is quite consistent with the conditions prevailing in almost all the sectors of public employment, the petitioners cannot complain violation of Articles 14 and 16 of the Constitution of India. It is also pertinent to extract the relevant paragraphs 16 & 17 of the judgment as follows:-

"16. We have given detailed reasons in our judgment in LIC v. S.S.Srivastava decided on May 5, 1987 justifying the existence of a rule fixing different ages of retirement to different classes of employees of the Life Insurance Corporation of India in the circumstances existing there. The circumstances prevailing in this case are almost the same. Those reasons are equally applicable to the present case too. In Govindarajulu v. Management of the Union Bank of India decided on November 21, 1986 the High Court of Madras has rejected the contentions similar to those which are raised before us. In that case a regulation framed by the Union Bank of India which was similar to the one in this case was upheld. That decision has been approved by us in LIC v. S.S.Srivastava. In Dr Nikhil Bhusan Chandra v. Union of India similar regulations framed by the United Commercial Bank which was also nationalised under the Act came up for consideration before the High Court of Calcutta. The High Court rejected the theory of discrimination put forward on the basis that fixing 60 years as age of retirement for those who were recruited prior to July 19, 1969 and 58 years of age who joined after that date lacked an intelligible differentia. The Calcutta High Court pointed out that the terms and conditions of the service of the employees of the banks which were taken over under the Act had been protected by the Act and it was not possible to hold that there had been any hostile discrimination against the petitioner in that case. We are of the view that the decisions of the Madras High Court and the Calcutta High Court, referred to above, lay down the correct principle. It is true that if the nationalised banks wanted to reduce the age of retirement of the transferred employees they could have

done so. But they have tried to standardise their conditions of service and to bring about some uniformity without giving room for much discontent or dissatisfaction. The question involved in this matter is not one of mere competence. It involves justice and fairness too. Having regard to all aspects of the matter, the nationalised banks have tried to be fair and just insofar as the question of age of retirement is concerned. We cannot say in the circumstances that the Bank's attitude is unreasonable, particularly when the age of retirement of the new entrants is quite consistent with the conditions prevailing in almost all the sectors of public employment.

17. We are of the view that the classification of the employees into two categories, i.e., those falling under Rules 1 and 2 of the Rules for Age of Retirement and those falling under Rule 3 thereof satisfies the tests of a valid classification laid down under Articles 14 and 16 of the Constitution. We do not, therefore, find any ground to declare Rule 3 of the Rules for Age of Retirement, which is impugned in this case, as unconstitutional."

The above ratio has also been followed by the Apex Court in its subsequent judgment in *Central Bank of India and others v. Madan Chandra Brahma and another*, (2007) 8 SCC 294, wherein it has been held as follows:-

"14. As we have noticed earlier, the age of superannuation, when Respondent 1 joined service in Gauhati Bank was 58 years and when that Bank merged with Purbanchal Bank, it continued to be 58 years. As far as we can see, there is nothing in the Regulations or the resolution which would enable Respondent 1 to claim that he was entitled to continue until the age of 60 years when the age of superannuation of even an officer originally recruited to the appellant Bank after 19-7-1969 was only 58 years. Even though, Respondent 1 may carry his date of appointment in Gauhati Bank for the purpose of service benefits to the extent specified, the same does not extend to supporting a claim that he must be deemed to have been recruited in the Central Bank prior to 19-7-1969. We are, therefore, of the view that the High Court was in error in holding that

Respondent 1 was entitled to continue in service in the appellant Bank till he attained the age of 60 years and was entitled to monetary benefits on that basis. On a plain reading of Regulation 19 in the context of the materials available, we are satisfied that Respondent 1 was bound to retire on attaining the age of 58 years. The learned Single Judge was, therefore, justified in dismissing the writ petition. The Division Bench was not justified in allowing it.

15. We may notice here that in *B.S.Yadav v. Chief Manager, Central Bank of India* this Court upheld the rule providing for different retirement ages for the employees recruited by Central Bank before its nationalisation and for those recruited to the Bank after its nationalisation. The age of superannuation of the former was 60 years and of the latter only 58 years. When this is the position and the date of retirement is 58 years after nationalisation of the Bank we find no reason to hold that those who came to the Bank after nationalisation by way of amalgamation should stand on a better footing than the employees recruited to Central Bank itself after nationalisation."

The above ratio clearly shows that when the petitioners joined LPA, the age of retirement was 58 years and when LPA merged with General Insurance Corporation and its four subsidiaries, it continued to be 58 years, therefore, there is nothing in the regulation which would enable them to claim that they were entitled to compensation until the age of 60 years.

11. In *Union of India v. Major R.N.Mathur*, (1997) 1 SCC 225, the Apex Court has held as follows:-

"Thus, it is clear that the appointment was made fixing the age of superannuation at 55 years. In terms thereof, the officer is required to retire at the age of 55 years.

5. It is an admitted position that the Fundamental Rules have no application and the statutory rules equally have no application. Under these circumstances, the Tribunal is clearly in error in directing the appellants to retain the respondent herein, in service till 57 years.

6. The appeal is accordingly allowed. In the circumstances, there will be no order as to costs."

12. In view of the above, when the petitioners have agreed to the terms and conditions by giving their consent letter accepting the age of retirement at 58 years in terms thereof, they are required to retire at the age of 58 years only. Secondly, as rightly contended by Mrs.Chitra Sampath, learned senior counsel for the first respondent, the petitioners cannot maintain the writ petition for issuance of a writ of mandamus, since they have not challenged the scheme of amalgamation or the terms of appointment fixing the age of retirement at 58 years. True, as highlighted above, when the petitioners have accepted the amalgamation as sanctioned by the High Court of Bombay in Company Petition Nos.93 & 94 of 2007 and pursuant thereto they have also accepted the terms of appointment by giving their consent letter to retire at the age of 58 years, without questioning the terms of appointment, which they say that the respondents have wrongly obtained from them, cannot come to this Court merely asking for a writ of mandamus. Therefore, on this score also, the writ petition fails.

13. For all the aforesaid reasons, I do not find any merit in the writ petition. Accordingly, the writ petition fails and it is dismissed. Consequently, W.M.P.Nos.8038 & 10009 of 2017 are also dismissed. No costs.

s/d-

Assistant Registrar(CS-V)

True Copy

Sub-Assistant Registrar

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+1 CC to M/s. Row and Reddy, Advocate sr 49178
+2 CC to Mr.T.S. Baskaran, Advocate sr 49171
+1 CC to Mr.V. Perumal, Advocate sr 49605

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W.P.No.7383 of 2017

SP(19/07/2017)

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