



For Appellant : Mr.N.Dilip Kumar

For Respondents : Mr.A.Mohan for R1

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J U D G M E N T

(Judgment of the Court was made by G.R.SWAMINATHAN, J.)

This writ appeal is directed against the order dated 21.04.2017 made in WP(MD)No.8680 of 2016 filed by the respondents 1 to 3 herein.

2.The case of the writ petitioners is that they were employed in the appellant insurance company and that they went on voluntary retirement under the Special Voluntary Retirement Scheme introduced by the appellant. Clause II of the scheme provides for the entitlement of pension to the applicants as per the 1995 pension scheme. The 1995 pension scheme provides for notional addition of 5 years to the qualifying service put in by those who opt for voluntary retirement. The General Insurers (Public Sector) Association of India issued an internal administrative guidelines taking away the said notional weightage of 5 years. This was questioned by the writ petitioners in WP(MD)No.8680 of 2016. The learned Single Judge allowed the writ petition and directed the appellant insurance company to give notional weightage of 5 years of qualifying service for the purpose of calculating the pension and other benefits to the writ petitioners. The appellant was directed to grant revised pension retrospectively and pay the consequential arrears. Aggrieved by the same, this intra Court appeal has been filed.

3.It has been brought to the notice of this Court that the very same issue was considered by the High Court of Judicature at Bombay in Nagpur Bench in WP.No.4131 of 2010. The Bombay High Court held that a statutory scheme could not have been prejudicially altered by the executive through any administrative exercise. The order dated 17.06.2013 made in WP.No.4131 of 2010 passed by the Bombay High Court was questioned before the Honourable Supreme Court in SLP (C)No.1480 of 2014. But the Honourable Supreme Court dismissed the SLP. The High Court of Punjab and Haryana had followed the Bombay High Court decision in CWP.No.4071 of 2012 by its order dated 06.01.2016.

4.In view of the aforesaid decisions, there is no need to interfere with the order passed by the learned Single Judge allowing the writ petition filed by the respondents 1 to 3 herein.

5.The learned counsel for the appellant pointed out that Clause 30(6) of General Insurance (Employees) Pension Scheme 1995 stated that the pension of an employee retiring under this paragraph shall be based on the average emoluments as defined under Clause (d) of paragraph 2 of the scheme and the increase, not exceeding 5 years in



his qualifying service shall not entitle him to any notional fixation of pay for the purpose of calculating his pension. It is the contention of the learned counsel for the appellant that the said clause was not taken note of by the Bombay High Court or the Punjab & Haryana High Court.

6. We are of the view that this contention cannot be accepted. When similarly placed optees under the Special Voluntary Retirement Scheme were given certain benefit, the respondents 1 to 3 alone cannot be treated differently. The 1995 pension scheme will have to be applied in the case of respondents 1 to 3 in the same manner as interpreted by the Bombay High Court. Otherwise it would be a case of discrimination against the respondents 1 to 3 herein.

7. In this view of the matter, we see no merit in this writ appeal. This writ appeal stands dismissed. The appellants are given four weeks time from the date of receipt of a copy of this order to disburse the revised pensionary benefits payable to the writ petitioners / respondents 1 to 3 herein. No costs. Consequently, connected miscellaneous petition is also dismissed.

Sd/-

Assistant Registrar (RTI)

/True Copy/

Sub Assistant Registrar

+1cc to Mr. A. MOHAN Advocate in SR. No. 74423

+1cc to Mr. N. DILIP KUMAR Advocate in SR. No. 74386

SKM/ARUL

JS/MR. KKR/SAR.1/15.09.2017/3P-3C

W.A (MD) No. 1152 of 2017

and

C.M.P (MD) Nos. 7994 of 2017

24.08.2017