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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON 30.09.2016

DELIVERED ON :: 17-07-2017

CORAM

THE HONOURABLE MR.JUSTICE **NOOTY.RAMAMOohana RAO**

AND

THE HONOURABLE MR.JUSTICE S.S.SUNDAR

W.A.MD.Nos.1228 to 1231 of 2016

W.A.MD.No.1228/2016 :

United India Insurance Co.Ltd.,
rep.by its General Manager (P),
No.24, Whites Road,
Royapettah,
Chennai-600 014.

...

Appellant / Respondent No.2

-vs-

1.N.Srinivasan ... 1st Respondent / Writ Petitioner

2.Union of India,
rep.by its Secretary,
Ministry of Finance,
Dept.of Economic Affairs, Banking and Insurance,
3rd Floor, Jeevan Vikar, Sansad Marg,
New Delhi - 110 001. ... 2nd Respondent / 1st Respondent

3.National Insurance Special Voluntary Retired/
Retired Employees' Association,
7A (Old No.4A), South Gangai Amman Kovil 1st Street,
Choolaimedu,
Chennai - 600 094,
rep.by its General Secretary
Mr.V.A.Nagarajan. ... 3rd Respondent / 3rd Respondent

W.A.MD.No.1229/2016 :

National Insurance Co.Ltd.,
rep.by its General Manager,
No.8, Middle Street,
Kolkata - 700 001.

...

Appellant / 2nd Respondent



-vs-

1.D.Rajasekaran

... 1st Respondent / Petitioner

2.Union of India,

rep.by its Secretary,

Ministry of Finance,

Dept.of Economic Affairs, Banking and Insurance,

3rd Floor, Jeevan Vikar, Sansad Marg,

New Delhi - 110 001.

... 2nd Respondent / 1st Respondent

3.National Insurance Special Voluntary Retired/

Retired Employees' Association,

7A (Old No.4A), South Gangai Amman Kovil 1st Street,

Choolaimedu,

Chennai - 600 094,

rep.by its General Secretary

Mr.V.A.Nagarajan.

... 3rd Respondent / 3rd Respondent**W.A.MD.No.1230/2016 :**

New India Assurance Co.Ltd.,

rep.by its General Manager,

No.87, Mahatma Gandhi Road, Fort,

Mumbai - 400 001.

... Appellant / 2nd Respondent

-vs-

1.V.Selvaraj

... 1st Respondent / Petitioner

2.Union of India,

rep.by its Secretary,

Ministry of Finance,

Dept.of Economic Affairs, Banking and Insurance,

3rd Floor, Jeevan Vikar, Sansad Marg,

New Delhi - 110 001.

... 2nd Respondent / 1st Respondent

3.National Insurance Special Voluntary Retired/

Retired Employees' Association,

7A (Old No.4A), South Gangai Amman Kovil 1st Street,

Choolaimedu,

Chennai - 600 094,

rep.by its General Secretary

Mr.V.A.Nagarajan.

... 3rd Respondent / 3rd Respondent**W.A.MD.No.1231/2016 :**

Oriental Insurance Co.Ltd.,

rep.by its General Manager,

No.25, Anna Salai Road,

New Delhi-110 002.

...

Appellant / 2nd Respondent



-vs-

1.S.Anandaraj

... 1st Respondent / Petitioner

2.Union of India,

rep.by its Secretary,

Ministry of Finance,

Dept.of Economic Affairs, Banking and Insurance,

3rd Floor, Jeevan Vikar, Sansad Marg,

New Delhi - 110 001.

... 2nd Respondent / 1st Respondent

W.A.No.1228 of 2016 is filed under Clause 15 of the Letters Patent, against the order, dated 08.06.2016, passed in W.P.MD.No.19431 of 2015, on the file of this Court.

W.A.No.1229 of 2016 is filed under Clause 15 of the Letters Patent, against the order, dated 08.06.2016, passed in W.P.MD.No.19433 of 2015, on the file of this Court.

W.A.No.1230 of 2016 is filed under Clause 15 of the Letters Patent, against the order, dated 08.06.2016, passed in W.P.MD.No.19432 of 2015, on the file of this Court.

W.A.No.1231 of 2016 is filed under Clause 15 of the Letters Patent, against the order, dated 08.06.2016, passed in W.P.MD.No.21110 of 2015, on the file of this Court.

Prayer in WP(MD). 19431 of 2015 to 19433 of 2015 & 21110 of 2015:

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Certiorarified Mandamus and call for the records connected to the issue of the impugned order dated 23.09.2015 in Ref. HO:HR:2831 of the 2nd Respondent and quash the same as illegal and void and consequently directing the 2nd respondent for the grant of notional benefit of 5 years added service as stipulated in para 30 of the General Insurance (Employees) Pension Scheme 1995 as confirmed by the Hon'ble Supreme Court of India in its decision dated 07/04/2015 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.

For appellants in W.A.MD.Nos.1228 & 1229/2016 : Sri A.L.Somayaji,
Senior Counsel,
for Mr.V.Perumal.

For appellants in W.A.MD.Nos.1230 & 1231/2016 : Sri A.L.Somayaji,
Senior Counsel,
for Mrs.Narmadha Sampath.

For respondent 1 in all W.As. : Mr.Ravikumar Paul,
for Mr.K.K.Senthil.

<https://hcservices.ecourts.gov.in/hcservices/>

For respondent 2 in all W.A.Nos. : Mr.N.Shanmuga Selvam,
Central Govt.Standing Counsel.



For respondent 3 in W.A.MD.Nos.1228 to
1230/2016 : Mr.V.Vijayashankar (No appearance)

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JUDGMENT

Nooty.Ramamohana Rao,J.

This batch of Writ Appeals is preferred by Insurance Companies, aggrieved by the common order passed by the learned single Judge, allowing W.P.Nos.19431 to 19433 and 21110 of 2015.

2. First respondent/employees, who have retired voluntarily from service of the appellant insurance companies, have instituted the said writ petitions. Union of India is the second respondent; while National Insurance Special Voluntary Retired/Retired Employees' Association is the third respondent herein.

3. The common question that has been raised for consideration in the Writ Petitions centres around the entitlement of additional retirement benefits, in terms of the General Insurance Employees Special Voluntary Retirement Scheme,2004.

4. By virtue of the powers available under Section 17-A of the General Insurance Business (Nationalisation) Act,1972, the Central Government framed a scheme, called, The General Insurance (Employees) Pension Scheme 1995, henceforth referred to as "the Pension Scheme,1995".

5. Though the Pension Scheme 1995 was notified in the Gazette of India, Extraordinary, dated 28.06.1995, the same has been brought into force from 01.11.1993. The expression 'company' has been defined in paragraph 2 (f), as meaning National Insurance Company Limited, The New India Insurance Company Limited, The Oriental Insurance Company Limited, and United India Insurance Company Limited, as the case may be. The expression 'pension' is defined in paragraph 2 (q), as including the basic pension and the additional pension, referred to in Chapter-VI of the said Scheme. 'Qualifying Service' has been defined in paragraph 2 (s), as service rendered while on duty or otherwise, which shall be taken into account for the purpose of pension under the Scheme. The expression 'pensioner', as defined in paragraph 2 (r), means, an employee eligible for pension under the said Scheme. The expression 'retirement' has been defined in the following terms in paragraph 2 (t) of the Scheme :

"(i) the retirement in accordance with the provisions contained in paragraph 12 of General Insurance (Rationalisation and Revision of Pay Scales and other Conditions of Service of Supervisory, Clerical and Subordinate Staff)



Scheme, 1974, notified under the notification of Government of India, in the Ministry of Finance (Department of Revenue and Insurance) number S.O.326 (E) dated the 27th May, 1974 ;

(ii) the retirement in accordance with the provisions contained in paragraph 4 of the General Insurance (Termination, Superannuation and Retirement of Officers and Development Staff) Scheme, 1976, notified under notification of Government of India, in the Ministry of Finance (Department of Economic Affairs) number S.O.627 (E), dated 21st September, 1976;

(iii) voluntary retirement in accordance with the provisions contained in paragraph 30 of this scheme."

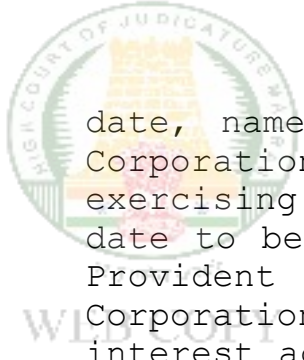
6. Paragraph 3 of the Scheme deals with its applicability. It was rendered applicable to those employees :

(1) (a) who were in service on or before the first day of January, 1986, but retired before the first day of November, 1993; (b) who exercise option in writing within one hundred and twenty days from the notified date to become member of the Fund; (c) refund within sixty days after the expiry of the said period of one hundred and twenty days specified in clause (b) the entire amount of the contribution made by the Corporation or the Company, as the case may be, to Provident Fund, including interest accrued thereon together with a further simple interest at the rate of six percent per annum on that amount from the date of settlement of the Provident Fund amount till the date of refund; (d) refund within sixty days after the expiry of 120 days the entire amount of non-refundable withdrawal, if any, made from the Corporation's contribution or the Company's contribution to the Provident Fund account and the interest accrued thereon prior to the date of final settlement of the Provident Fund, together with interest at the rate of 12% per annum from the date of withdrawal till the date of settlement of the Provident Fund account with a further simple interest on the said amount at the rate of 6% per annum from the date of settlement of the Provident Fund account till the date of refund.

(2) (a) who have retired on or after the first day of November, 1993, but before the notified date; (b) who exercise an option in writing within one hundred and twenty days from the notified date to become members of the Fund; and (c) refund the contribution made by the Corporation or the Company, as the case may be, to the Provident Fund and interest accrued thereon, subject to the same terms and conditions referred to supra in clause (1) of the paragraph.

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(3) The Scheme will also apply to the employees, who are in service of the Corporation or the Company prior to the notified



date, namely, 28.06.1995, and continued to be in service of the Corporation even after the notified date, subject to their exercising option in writing within 120 days from the notified date to become members of the Fund and authorise the trust of the Provident Fund to transfer the entire contribution of the Corporation or the Company to their Provident Fund along with interest accrued thereon to the credit of Pension Fund constituted for the purpose under Paragraph 5 of the Scheme. Such employees are also required to refund within sixty days after the expiry of 120 days specified earlier any non-refundable withdrawal made from the Corporation's contribution or the Company's contribution, as the case may be, to the Provident Fund account and interest accrued thereon together with interest at 12% per annum from the date of such withdrawal till its refund to the Corporation or the Company, as the case may be.

(4) The Pension Scheme would apply to all those employees who joined the service of the Corporation or the company, as the case may be, after the notified date.

(5) The Scheme was also rendered applicable to the members of the families of the members, who were in service of the Corporation or the Company, as the case may be, after the first day of November, 1993, and died after retirement, but before the notified date. Since we are not so much concerned with this part of the Scheme, not much turns on that.

7. Paragraph 5 of the Pension Scheme, 1995, deals with the Constitution of the Fund. Paragraph 7 of the Scheme deals with as to how the fund is required to be commissioned. Under this, the Corporation or the Company, as the case may be, was required to contribute at the rate of 10% per month of the pay of the employees. Paragraph 14 deals with Qualifying Service. Subject to the other conditions contained in the Scheme, an employee, who has rendered a minimum of ten years of service in the Corporation or the Company on the date of retirement, shall qualify for pension. Paragraph 15 has set out that the qualifying service shall commence from the date the employee takes charge of the post, to which he is first appointed on regular basis. As per paragraph 16, the period of probation against a post, if is followed by confirmation in the same or another post, shall qualify for pension. Paragraph 22 has set out that resignation or dismissal or removal or termination or compulsory retirement of an employee from service shall entail forfeiture of his entire past service and, consequently, shall not qualify for pensionary benefits. Paragraph 26 deals with the addition to qualifying service in certain special circumstances. (emphasis is supplied by



8. Chapter-V of the Scheme, which commences with para 29, deals with authorised classes of pension payable. Paragraph 29 talks of Superannuation Pension, which shall be granted to an employee, who has retired on his attaining the age specified in paragraph 12 of General Insurance (Rationalisation and Revision of Pay Scales and Other Conditions of Service of Supervisory, Clerical and Subordinate Staff) Scheme, 1974, as well as Paragraph 4 of General Insurance (Termination, Superannuation and Retirement of Officers and Development Staff) Scheme, 1976. Thus, such of those employees, who have retired on attaining the age of superannuation specified in those two Schemes of 1974 and 1976, referred to supra, are eligible to be granted Superannuation Pension. The writ petitioners have not sought for payment of superannuation pension rightly, as they have not retired from service upon attaining the age of superannuation. (emphasis is supplied by me)

9. Paragraph 30 deals with Pension on Voluntary Retirement. Since the bone of contention centres around the payment of Pension on Voluntary Retirement, it would be appropriate to quote Paragraph 30 of the Pension Scheme, 1995, which is to the following effect :

"30. Pension on voluntary retirement - (1)
At any time after an employee has completed twenty years of qualifying service, he may, by giving notice of not less than ninety days, in writing to the appointing authority, retire from service :

Provided that this sub-paragraph shall not apply to an employee who is on deputation unless after having been transferred or having returned to India he has resumed charge of the post in India and has served for a period of not less than one year:

Provided further that this sub-paragraph shall not apply to an employee who seeks retirement from service for being absorbed permanently in an autonomous body or a public sector undertaking to which he is on deputation at the time of seeking voluntary retirement.

(2) The notice of voluntary retirement given under sub-paragraph (1) shall require acceptance by the appointing authority :

Provided that where the appointing authority does not refuse to grant the permission for retirement before the expiry of the period specified in the said notice, the retirement shall become effective from the date of expiry of the said period.



(3) (a) An employee referred to in subparagraph (1) may make a request in writing to the appointing authority to accept notice of voluntary retirement of less than ninety days giving reasons therefor ; (b) on receipt of request under clause (a), the appointing authority may, subject to the provisions of subparagraph (2), consider such request for the curtailment of the period of notice of ninety days on merits and if it is satisfied that the curtailment of the period of notice will not cause any administrative inconvenience, the appointing authority may relax the requirement of notice of ninety days on the condition that the employee shall not apply for commutation of a part of his pension before the expiry of the notice of ninety days.

(4) An employee who has elected to retire under this paragraph and has given necessary notice to that effect to the appointing authority shall be precluded from withdrawing his notice except with the specific approval of such authority:

Provided that the request for such withdrawal shall be made before the intended date of his retirement.

(5) 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.

(6) 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 this scheme and the increase, not exceeding five years in his qualifying service, shall not entitle him to any notional fixation of pay for the purpose of calculating his pension;

Explanation.- For the purpose of this paragraph, the appointing authority shall be the appointing authority specified in Appendix-I to this scheme." (emphasis is played by me now)

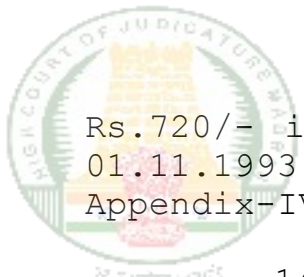


10. From the above provision of Paragraph 30, it is very clear, that at any time after an employee has completed twenty years of qualifying service, he may, by tendering a notice of not less than ninety days' duration in writing to the appointing authority, retire from service. As per Clause (5) of Paragraph 30, the qualifying service of an employee retiring voluntarily 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 33 years and the addition shall also not take him beyond the date of retirement. Thus, for instance, an employee, who has already rendered 28 years of qualifying service, can secure the benefit of additional five years of qualifying service to that of 28 years of actual service, provided, he or she has at least five years of left over service for his or her retirement on superannuation basis. If the left over service is less than five years, obviously, he can only add to his length of qualifying service already put in, the length of service left over for retirement, which is less than five years. The rationale behind it is, that since full pension becomes payable for such of those employees, who have put in 33 years of service, the addition to the length of service of a person, who has proposed to retire voluntarily, cannot fetch him a benefit more than what a person, who secures payment of full pension, by rendering 33 or more number of years of qualifying service and retiring from service on attaining the age of superannuation, would get. In other words, the quantum of pension payable to an employee opting to retire voluntarily cannot exceed the quantum of full pension payable to a person, who retires from service on attaining the age of superannuation, after putting in 33 years or more number of years of service. (emphasis is supplied by me)

11. Paragraph 31 of the Scheme deals with Invalid Pension and Paragraph 32 deals with Compassionate Allowance, to be granted to those employees, who are dismissed or removed or compulsorily retired or terminated from service, provided, such dismissal, removal, compulsory retirement or termination has been effected after 01.11.1993, and also if the case deserves a special consideration. Compassionate Allowance, to be sanctioned, would not be less than the amount of minimum pension payable under Paragraph 35 of the Scheme.

12. Paragraph 33 deals with payment of Family Pension in respect of employees, who die, including to those who retired or died between 01.01.1986 and 31.10.1993, subject to the conditions stipulated in that regard.

13. Chapter-VI deals with Rate of Pension. It commences with Paragraph 34. The amount of pension payable and commutation of services have been detailed therein. Paragraph 35 has specified that the minimum pension shall be Rs.375/- per month in respect of an employee, who has retired before 01.11.1993, and



Rs.720/- in respect of an employee, who has retired on or after 01.11.1993. Dearness Relief payable has been specified in Appendix-IV of the Scheme.

14. Thus, the Pension Scheme, 1995, has, for the first time, rendered pension as payable to the employees of the Corporation or the Company, as the case may be. As such, prior to 28.06.1995, there was no provision for payment of pension to the employees of the Corporation or the Company, as the case may be, and they became entitled for payment of pension for the very first time, pursuant to the notification of the Pension Scheme, 1995.

15. Exercising the power available under Section 17-A of the General Insurance Business (Nationalisation) Act, 1972, the Central Government made the General Insurance Employees' Special Voluntary Retirement Scheme, 2004, in short, "the Special VRS-2004". This Scheme was published in the Government of India Gazette on 01.01.2004 and brought into force with effect from that date. Certain expressions found in the Scheme have been defined in Paragraph 2 of the Special VRS-2004. Expression "employee" has been defined in Para 2 (e), as an employee of the company working in supervisory, clerical and subordinate positions, as envisaged under the General Insurance (Rationalisation and Revision of Pay Scales and other conditions of service of Supervisory, Clerical and Subordinate Staff) Scheme, 1974, as amended from time to time. Paragraph 3 deals with Eligibility criteria. It reads as under :

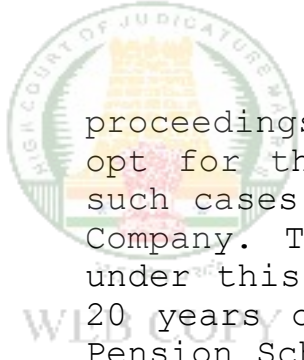
"3. Eligibility:-

(1) 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.

(2) An employee who is under suspension or against whom disciplinary proceedings are pending or contemplated shall not be eligible to opt for the scheme;

Provided that the case of an employee who is under suspension or against whom disciplinary proceeding is pending or contemplated may be considered by the Board of the Company concerned having regard to the facts and circumstances of each case and the decision taken by the Board shall be final."

Thus, all permanent full time employees are 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 i.e., 01.01.2004. An employee, who is under suspension or against whom disciplinary



proceedings are pending or contemplated, shall not be eligible to opt for the Scheme. But, however, a discretion has been left in such cases for any such offer to be considered by the Board of the Company. Thus, the very eligibility to seek voluntary retirement under this Scheme stands apart, in contrast to the eligibility of 20 years of qualifying service prescribed in Para 30 (1) of the Pension Scheme, 1995.

16. Paragraph 4 deals with Period of Operation. Since it has some significance on the controversy at issue, it is extracted hereinbelow :

"4. Period of Operation : This Scheme shall remain open for a period of sixty days from the date of notification in the Official Gazette. The Company shall, however, have the right to prematurely close the scheme at any time if it thinks fit and its decision shall be final."

17. From the above, it becomes clear, that the sustainability of the Period of the Scheme is confined to a maximum of sixty days from 01.01.2004, with liberty to the company to prematurely close the Scheme, if it thinks fit to do so. The company has no power to keep the scheme applicable and alive for any period beyond sixty days. In other words, the shelf life of the Scheme is a maximum of sixty days from 01.01.2004.

18. Paragraph 5 deals with Amount of Ex-gratia, payable to an employee seeking special voluntary retirement under the said Scheme. The ex-gratia amount is to be paid at the rate of sixty days salary for each completed year of service or the salary for the number of months of remaining service for retirement. The other benefits admissible to a special voluntary retirement optee are specified in Paragraph 6. They include :

(a) Provident Fund;

(b) Gratuity;

(c) Pension, as per Pension Scheme, 1995. However, the additional notional benefit of five years of added service as stipulated in Paragraph 30 of the Pension Scheme, 1995, shall not be admissible for the purpose of determining the quantum of pension or commutation of pension; and

(d) Encashment of Leave.

19. Paragraph 8 stipulates the general conditions, which regulate the operation of the Scheme. Condition (xiv) reads as under :

"(xiv) Save as provided in para 5 (2), the benefits payable under this scheme shall be in full and final settlement of all claims of whatsoever nature whether arising under the regulation or otherwise to the employee (or to the nominee in case of death). An employee who voluntarily retires



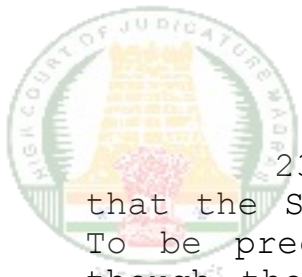
under this Scheme shall not have any claims against the Company for re-employment or compensation or employment of any of his or her relative on compassionate grounds in the service of the company or for any other like benefits."

It, thus, brings forth that the benefits payable under the Scheme shall be full and final settlement of claims of whatsoever nature and also brings about finality to the Scheme.

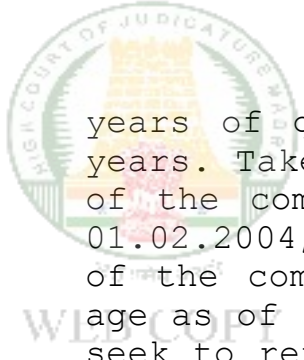
20. Thus, the Special VRS-2004 has offered, as a package, payment of ex-gratia benefit, in addition to the other terminal benefits, which would have become payable to an employee otherwise under the Pension Scheme, 1995, with the sole exception of not extending the notional benefit of five years of added service to the qualifying service, put in by such employee. It is, therefore, clear that the Special VRS-2004 is a unique one and it offered an opportunity for the employees of the Corporation or the Company, as the case may be, to avail the benefit of voluntarily retirement, much before they attain the age of superannuation, or even put in 20 years of qualifying service to seek voluntary retirement under Para 30 of the Pension Scheme, 1995. All those employees, who opt for retirement voluntarily under this Special VRS-2004, will be paid an ex-gratia amount additionally, which is computed as per the terms spelt out in Paragraph 5 of the Scheme, whereas those who seek voluntary retirement under Para 30 (1) of the Pension Scheme, 1995, will not be paid any such ex-gratia amount. (emphasis is played by me)

21. Notwithstanding payment of ex-gratia, denying the addition of five years of notional benefit to the qualifying service already put in, otherwise permitted under Para 30 of the Pension Scheme, 1995, has been objected to by the writ petitioners. It is their plea that the ex-gratia benefit payable under Paragraph 5 of the Special VRS-2004 is independent of the Pension Scheme, 1995, and, hence, the question of denying any part of the benefits of Para 30 of the Pension Scheme, 1995, is impermissible. Further, according to them, the Pension Scheme, 1995, has provided for addition of a maximum of five years, subject to a ceiling of 33 years of qualifying service, to be added to the qualifying service, for securing payment of pension to a person, who voluntarily retires from service under Paragraph 30 of the Pension Scheme, 1995. Such benefit cannot be denied to those who seek voluntary retirement under the Special VRS-2004.

22. In the given circumstances, it is contended that the Special VRS-2004 has not amended in any manner the Pension Scheme, 1995, and, hence, the question of denying payment of pension strictly in accordance with the provisions contained in the Pension Scheme, 1995, would amount to an unjust and illegal denial of pension. Since the learned single Judge has upheld the said contention, the present batch of Writ Appeals has been preferred by the Insurance Companies.



23. It is wholly appropriate to notice, at the outset, that the Special VRS-2004 has been framed as a separate facility. To be precise, it is a distinct and unique one. It is not as though the concept of voluntary retirement is introduced for the first time now. There was an option already available to an employee to retire voluntarily before he attains the age of superannuation, under Para 30 of the Pension Scheme, 1995. The Special VRS-2004 is, thus, not an amendment to Para 30 (1) of the Pension Scheme, 1995, nor was it intended to extend the benefit of voluntary retirement scheme only for those who put in ten years of qualifying service but less than 20 years of qualifying service. Thus, implying that Special VRS-2004 is equally available to those who have completed only 10-19 years of qualifying service but to those who have completed 20 or more years of service. Except to the extent it offers the benefits under the Special VRS-2004, no additional benefits can be claimed. In other words, the conditions, subject to which the Special VRS-2004 operates, are unique and they have no comparison with the right to voluntarily retire, as provided for under Para 30 (1) of the Pension Scheme, 1995. It is so obvious, because, when the Pension Scheme, 1995, has already provided for voluntary retirement option to an employee, there was no necessity to bring in the Special VRS-2004, unless the Special VRS-2004 is conceived as a distinct and separate one from that of the voluntary retirement, contemplated under the Pension Scheme, 1995. Therefore, both the Schemes have independent applicability of their own. Consequently, such of those eligible employees have an option to retire voluntarily under both the Schemes, during the time they are operational. The Special VRS-2004 is valid and sustainable for a maximum period of 60 days from the date of its notification on 01.01.2004. It has, thus, a designed short life span so as to prune the manpower size, offering relatively attractive features than the voluntary retirement under Paragraph 30 (1) of the Pension Scheme, 1995. It is for the employees concerned to make up their mind and offer to retire voluntarily under the Special VRS-2004, subject to receiving the benefits listed out under the said Scheme. It is not as if that during this span of life/sustainability of Special VRS-2004, an otherwise eligible employee is prevented from exercising the option under Paragraph 30 of the Pension Scheme, 1995, as no such right is taken away. In other words, all such employees, who have already put in 20 years of qualifying service, have a choice to retire voluntarily either under Paragraph 30 of the Pension Scheme, 1995, or avail the special package of benefits under Special VRS-2004. But, it is appropriate to notice the distinction lying in the eligibility criteria in between both the Schemes in the matter of voluntary retirement. For instance, under the Pension Scheme, 1995, one has to complete a minimum of 20 years of qualifying service, irrespective of the age of the employee to seek voluntary retirement, whereas, under the Special VRS-2004, one has to complete a minimum of 10



years of qualifying service, apart from attaining the age of 40 years. Take a case of two employees A and B. A joined the service of the company as soon as he completed 18 years of age and, by 01.02.2004, completed 20 years of service. B joined the service of the company four years later to A, but completed 40 years of age as of 01.02.2004. Though A is senior in service to B, A cannot seek to retire under the Special VRS-2004, as he has not completed 40 years of age. He can, however, seek to retire voluntarily under Paragraph 30 of the Pension Scheme, 1995, having completed 20 years of qualifying service. However, B can seek voluntary retirement under the Special VRS-2004, as he has completed the age of 40 years, though he has put in less than 20 years of service, but completed 10 years of qualifying service by 01.01.2004, the date of Special VRS-2004 Notification. But, B cannot seek voluntary retirement under Paragraph 30 of the Pension Scheme, 1995, as he has not completed 20 years of qualifying service.

24. Thus, once an employee exercises that option and makes up his mind to opt for Special VRS-2004, he has to confine his claim for those benefits receivable by him, which have been listed out in the Special VRS-2004. He cannot fall back upon the provisions of the Pension Scheme, 1995, for availing of such other additional benefits, which are available thereunder, irrespective of the extent, to which the Pension Scheme, 1995, benefits are extended and telescoped into the Special VRS-2004. To put it differently, the Special VRS-2004 has offered to make available not all the benefits provided for under the Pension Scheme, 1995, but, it has curtailed specifically the benefit of addition of five years of length of service, to be added to the qualifying length of service, provided for under Paragraph 30 of the Pension Scheme, 1995. Paragraph 6 (1) (c) of the Special VRS-2004 has used the following expression :

"c. 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." (emphasis is supplied)

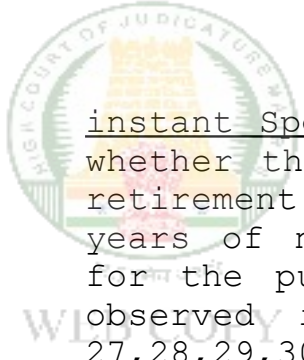
Thus, while making the Special VRS-2004 retiree eligible for receiving proportionate pension, payable for the qualifying length of service put in under the Pension Scheme, 1995, one part of the concession contained in Paragraph 30 of the Pension Scheme, 1995, i.e., additional five years of service to the qualifying service, ~~has been brought into its applicability to the special voluntary retiree under the Special VRS-2004.~~ A clear distinction is thus drawn between the persons retiring voluntarily in terms of



Paragraph 30 of the Pension Scheme, 1995, and those that are opting for special voluntary retirement, under the Special VRS-2004.

25. Fortunately for us, Sri A.L.Somayaji, learned Senior Counsel for the appellants, has not raised any objection that those who seek voluntary retirement under the Special VRS-2004 are not entitled for payment of pension. It has been specifically asserted that those who retire under the Special VRS-2004 are entitled for payment of pension. It is the specific case of the appellants, that each of the employees, who opted to retire under the Special VRS-2004, would be entitled to be paid proportionate pension, commensurate to the qualifying length of service put in by him or her. But, what is being objected to is, only addition of five years of service to the qualifying length of service. Therefore, it is the specific case of the appellants before us, that the employees, who sought for retirement under the Special VRS-2004, are entitled and, in fact, are paid proportionate pension, taking into account the qualifying length of service put in by them. However, there was no addition of five years to such quantum of qualifying service in case of optees under the Special VRS-2004. It is, therefore, essential to bear this aspect of the matter in mind.

26. There is no difficulty or dispute, in principle, that any voluntary retirement scheme is purely contractual in nature and that any such scheme amounted to an invitation to make an offer by the employee concerned, but the scheme itself does not amount to an offer or proposal. If any application is made by the employee in terms and in accordance with any such voluntary retirement scheme, then such an application, even though the same is required to be submitted in a fixed proforma, it becomes an offer. The legal principles on the subject have been clearly laid down by the Supreme Court in Bank of India and Others v. O.P.Swarnakar and Others, 2003 (2) SCC 721, and HEC Voluntary Retd. Employees Welfare Society v. Heavy Engg. Corpn. Ltd., 2006 (3) SCC 708. Once again, somewhat similar question has cropped up before the Supreme Court in Bank of India and Another v. K.Mohandas and Others, 2009 (5) SCC 313. In Paragraph 8 of the said judgment. the salient features (of the VRS-2000, in that case) are set out. In those batch of cases also, Pension Regulations, 1995, have been framed by the banks and Regulation 29 (5) thereof stands para-materia the same as that of Regulation 30 (5) of the Pension Scheme, 1995, here in this case. But, the essential distinction lies in the contents of the Pension/VRS-2000 in Bank of India's case, cited supra, and the Special VRS-2004 in the instant case. More importantly, the following expressions were not found mentioned in the VRS-2000 Scheme of the banks, namely, "However, the additional notional benefit of five years of added services, as regulated 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", which are found in the



instant Special VRS-2004, Para 6 (1) (c). The same question as to whether the employees of the banks, who have opted for voluntary retirement under the 2000 Scheme, are entitled to addition of five years of notional service, in calculating the length of service for the purpose of pension, has been considered, as is clearly observed in Paragraph 24 of the said judgment. Paragraphs 27,28,29,30,31,32 and 33 of the said judgment will throw light on the respective rights and obligations of the parties vis-a-vis the other. It is also appropriate to notice the reiteration of the principle to be followed with regard to the precedents, as set out in Paragraphs 54 to 59 of the above judgment, which read as under :

"54. A word about precedents, before we deal with the aforesaid observations. The classic statement of Earl of Halsbury, L.C. In *Quinn v. Leatham* [(1901) 1 AC 495 (HL)] , is worth recapitulating first: (AC p. 506)

"... before discussing *Allen v. Flood* [1898 AC 1 : (1895-99) All ER Rep 52 (HL)] and what was decided therein, there are two observations of a general character which I wish to make, and one is to repeat what I have very often said before, that every judgment must be read as applicable to the particular facts proved, or assumed to be proved, since the generality of the expressions which may be found there are not intended to be expositions of the whole law, but are governed and qualified by the particular facts of the case in which such expressions are to be found. The other is that a case is only an authority for what it actually decides. I entirely deny that it can be quoted for a proposition that may seem to follow logically from it. Such a mode of reasoning assumes that the law is necessarily a logical code, whereas every lawyer must acknowledge that the law is not always logical at all."

(emphasis supplied)

This Court has in long line of cases followed the aforesaid statement of law.

55. In *State of Orissa v. Sudhansu Sekhar Misra* [AIR 1968 SC 647] it was observed: (AIR p. 651, para 13)

"13. ... A decision is only an authority for what it actually decides. What is of the essence in a decision is its ratio and not every observation found therein nor what logically follows from the various observations made in it."

56. In the words of Hidayatullah, J.: (Abdul Kayoom v. CIT [AIR 1962 SC 680] , AIR p. 688, para 19)



"19. ... Each case depends on its own facts and a close similarity between one case and another is not enough because even a single significant detail may alter the entire aspect. In deciding such cases, one should avoid the temptation to decide cases (as said by Cardozo) by matching the colour of one case against the colour of another. To decide, therefore, on which side of the line a case falls, the broad resemblance to another case is not at all decisive."

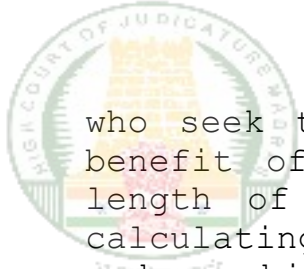
57. It was highlighted by this Court in *Ambica Quarry Works v. State of Gujarat* [(1987) 1 SCC 213] : (SCC p. 221, para 18)

"18. ... The ratio of any decision must be understood in the background of the facts of that case. It has been said long time ago that a case is only an authority for what it actually decides, and not what logically follows from it."

58. In *Bhavnagar University v. Palitana Sugar Mill (P) Ltd.* [(2003) 2 SCC 111] this Court held that a little difference in facts or additional facts may make a lot of difference in the precedential value of a decision.

59. This Court in *Bharat Petroleum Corpn. Ltd. v. N.R. Vairamani* [(2004) 8 SCC 579] emphasised that the courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. It was further observed that the judgments of courts are not to be construed as statutes and the observations must be read in the context in which they appear to have been stated. The Court went on to say that circumstantial applicability, one additional or different fact may make a world of difference between conclusions in two cases."

27. From the above judgment of the Supreme Court, the principle that clearly emerges is that when clear and unambiguous terms are offered in a Voluntary Retirement Scheme, it is the import of those terms and stipulations that bind the parties. When once both sides take an informed decision upon proper contemplation of all the terms and conditions contained in the Special VRS-2004 and upon knowing fully the gamut of the play outlined by the terms stipulated therein, one gets completely bound by such terms. The Special VRS-2004, therefore, unambiguously brought this feature out, making it clear that those

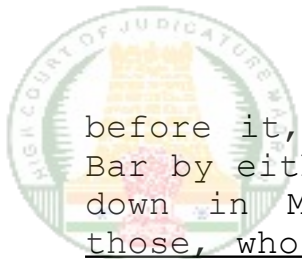


who seek to avail the Special VRS-2004 are not entitled to the benefit of addition of five years of service to the qualifying length of service already put in by them, for the purpose of calculating the pension. When such terms are expressed in clear and unambiguous words, the employees cannot be allowed to resile from such conditions and later on seek to ignore them. This feature distinguishes the present case from Bank of India and Another v. K.Mohandas and Others' case, cited supra.

28. Reliance is also placed by Sri Ravikumar Paul and Sri K.K.Senthil, learned counsel for the writ petitioners, on the judgment rendered by the Supreme Court in National Insurance Company Limited and Another v. Kirpal Singh, 2014 (5) SCC 189. That was a case, where the very claim for payment of pension under the Special VRS-2004 was doubted and disputed, whereas, the Supreme Court has made it very clear that pension under the Pension Scheme, 1995, becomes payable even to those, who retire under the Special VRS-2004. Fortunately, payment of pension is not disputed before us by the learned Senior Counsel for the appellants. What is disputed is, only addition of five years to the qualifying service for payment of pension.

29. An argument has also been built up that a review application has been moved by the National Insurance Special Voluntary Retired/Retired Employees Association in the Supreme Court in the judgment rendered by the Supreme Court on 07.01.2015 in Manojbhai N.Shah and Others v. Union of India, 2015 (4) SCC 482, and, in that review application, the issue relating to the addition of five years to the qualifying length of service has been raised. The Supreme Court, in Manojbhai N.Shah's case, cited above, was considering essentially about the additional pensionary benefits under the Notification, dated 21.12.2005. In those circumstances, in paragraph 35 of the judgment, the Supreme Court held that the employees, who opted for retirement under the Scheme would not be entitled to additional pension, upon revision of pay, effected under the Notification, dated 21.12.2005. During the course of that order, it appears, particularly in paragraphs 22 and 23 of the said judgment, a statement/assertion has been made on behalf of the Insurance Company that addition of five more years of service to the qualifying length of service would be added to the VRS optees. It is, therefore, contended that a different contention is sought to be raised before this Court now by the Insurance Companies.

30. A judgment of a Court cannot be read like a provision in a statute is read. A judgment decides the issue that was brought before it. Whatever has been observed in a judgment does not amount to ratio nor is it open for one to speculate that the judgment has been laid, as such, because of a particular statement of fact made before the Court. Judgment of a Court is a pronouncement of its opinion on the issue brought



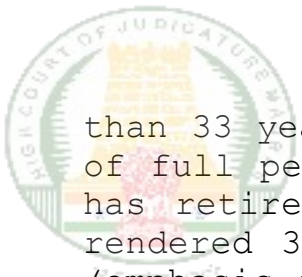
before it, but not a pronouncement on all statements made at the Bar by either side of the parties. In our opinion, the ratio laid down in Majojbhai N.Shah's case, referred to supra, is, that those, who have availed benefits under the Special VRS-2004 Scheme are not entitled to be paid additional quantum of pension, pursuant to the Notification dated, 21.12.2005, revising the pay scales of the employees, no doubt, with retrospective effect, by which date, the employees concerned were in the service of the respective Insurance Companies. Manojbhai N.Shah's case, above, has never dealt with the question as to whether the employees, who opt for the Special VRS-2004, are entitled for addition of five years of length of service to their qualifying length of service. Hence, the reliance placed upon certain statements/assertions of fact attributable to the Insurance Companies cannot tilt the issue brought before us.

31. Unfortunately, the learned single Judge, having quoted the provision contained in Paragraph 6 (1) (c) of the Special VRS-2004, has completely omitted from consideration the latter clause contained therein, specifically denying the benefit of added service to the qualifying service. The learned single Judge has proceeded on the premise that the Pension Scheme, 1995, is not amended by the Special VRS-2004. There is a clear error committed in this regard by the learned single Judge, inasmuch as if any amendment to the Pension Scheme, 1995, is contemplated at the first instance, such an issue would have been addressed squarely and would not have been left for any guess work. There is no necessity for introducing a whole new Scheme, called the Special VRS-2004, if the intention is merely to amend the Pension Scheme, 1995. Far from seeking to amend the Pension Scheme, 1995, a whole new Scheme is put in place with a limited shelf life/sustainability period, offering a different package of benefits. Once the sixty days' period from the date of notification of the Special VRS-2004 comes to an end, the employee will not have any right to opt for Special VRS-2004 benefits. If he still wants to retire voluntarily, thereafter, he can only retire as per Paragraph 30 of the Pension Scheme, 1995. In that case, such a person will not be entitled for payment of ex-gratia, as specified in Paragraph 5 of the Special VRS-2004. Thus, the benefits derivable by the employees, who propose to retire voluntarily from the service of a Corporation/Company, under the Pension Scheme, 1995, and the Special VRS-2004 are distinct from each other. If one opts to retire voluntarily under Paragraph 30 of the Pension Scheme, 1995, he is only entitled to add to his qualifying length of service, already put in, a maximum of five years, subject to the ceiling of 33 years or the remainder of service left over for retirement on superannuation, whichever is less, whereas, if one opts to avail retirement under the Special VRS-2004, he is entitled to exercise a specific option under the Scheme, firstly, within sixty days from 01.01.2004, the date of its notification, and, secondly, he should have completed 40 years of



age as of 01.01.2004 and ought to have completed a mere 10 years of qualifying service, but not necessarily 20 years of service. Further, he will be entitled to be paid ex-gratia at the rate of two months' salary for every completed year of service or the salary for the number of months of remaining service for retirement, on superannuation basis. Since he derives this benefit of payment of ex-gratia, which is not available for a voluntary retirement service optee under Paragraph 30 of the Pension Scheme, 1995, he is required to forgo the benefit of addition of five years of length of service to the qualifying length of service, already put in by him, which is available to those retire voluntarily under Paragraph 30 of the Pension Scheme, 1995. It is, thus, left to the informed choice of the employee concerned.

32. There is also one another additional feature, which requires to be noticed by us. As per Paragraph 29 of the Pension Scheme, 1995, if a person attains the age of superannuation and retires from service, he is obligated to be paid 'superannuation pension'. All such employees, who render 33 or more number of years of service, will receive the full quantum of superannuation pension. Even if he renders more qualifying service than 33 years, say, 35 years or 36 years also, he will get the same amount of pension, which is paid to the one, who has put in 33 years of qualifying length of service, and nothing more. Similarly, if an employee renders 29 years or 30 years or 31 years of qualifying service and retires from service on attaining the age of superannuation prescribed, he will not get full pension, but, he will get only proportionate pension, commensurate to his length of qualifying service. Thus, such of those employees, who put in less than 33 years of qualifying length of service, would not get full quantum of superannuation pension, but would get only proportionate quantum of superannuation pension, commensurate to the qualifying length of service rendered by them; whereas, if any of the employees, who have put in less than 33 years of qualifying service, opts for voluntary retirement under Paragraph 30 (1) of the Pension Scheme, 1995, he will be entitled to addition of five years to qualifying length of service, put in by him, provided the total length of qualifying service does not go beyond 33 years. Provided further that such an employee must have a left over service of five years for superannuation. If, on the other hand, the employee has less than five years of service, let us say, only 48 months of left over service for attaining the age of superannuation, the addition to the qualifying length of service already put in by him would be confined to four years, but not five years. In any case, the total qualifying length of service shall not exceed 33 years. Thus, the rationale in between grant of full quantum of superannuation pension and addition of certain length of service to the qualifying length of service already rendered in case of voluntary retirement is riveted around the fact, that in no case, the employee shall have the benefit of more



than 33 years of qualifying length of service and the same quantum of full pension, that is liable to be granted to an employee, who has retired on attaining the age of superannuation, after having rendered 33 years or more number of years of qualifying service. (emphasis is supplied)

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33. If we examine the Special VRS-2004, a fiction is introduced in Paragraph 5 of the said Scheme. Payment of ex-gratia amount at the rate of sixty days' salary for each completed year of service or the salary for the number of months of remaining service for retirement is offered to be paid. Illustratively, if an employee 'A', who has rendered 31 years of service and he is still left with five years of service for attaining the age of superannuation, were to opt for voluntary retirement under the Special VRS-2004, he would not be offered 62 months of salary as ex-gratia at the rate of two months' salary for 31 years of service rendered thusfar, but he would be paid only 60 months of salary for the remaining five years of service left for attaining the age of superannuation. In other words, he will be deemed and treated to have served notionally the company till such time he would attain the age of superannuation. Thus, if he is deemed to have served the company till he has attained the age of superannuation, the question of any addition to the qualifying length of service for superannuation pension would not arise. Therefore, by offering payment of ex-gratia by way of salary for the remainder of service till the time of attaining the age of superannuation, notionally, the employee is sought to be treated to have served the company until he would have attained the age of superannuation.

34. Let us put it differently. Take another case, where an employee 'B' has rendered only 28 years of qualifying length of service, but he has another 7 years of service left over for superannuation. In such a case, he is entitled to be paid, if he opts for voluntary retirement under the Special VRS-2004, as ex-gratia, the salary for the remaining 84 months, but not for 56 months at the rate of two months for 28 years of qualifying service put in by him. This was the reason, why, while providing the two alternatives for working out the amount of ex-gratia payable under Paragraph 5 of the Special VRS-2004, the words 'whichever is less' are omitted.

35. In both the illustrations referred to supra, the employee concerned is fictionally or notionally treated and deemed to have rendered the service to the company till he would have attained the age of superannuation, and, on that basis, even though physical service may not been rendered to the company/corporation concerned, salary payable for the remainder of service is offered as ex-gratia. Thus, by offering payment of ex-gratia, the company/corporation is treating the optee under the Special VRS-2004 to have retired from the service of the



company/corporation, on attaining the age of superannuation. There is absolutely no doubt, that upon attaining the age of superannuation, under the Pension Scheme, 1995, no benefit of addition to the qualifying length of service is still allowed. For this reason also, the addition of five more years of length of service to the qualifying length of service put in by the optees under the Special VRS-2004 does not arise. Any such claim, in fact, goes beyond the Pension Scheme, 1995.

36. It is a settled principle of law, that a Special Voluntary Retirement Scheme has to be construed strictly in accordance with the terms and conditions stipulated therein, and, by any interpretative process, more benefits, than that are contemplated by that Scheme, can not be claimed or allowed. We are, therefore, of the opinion, that the learned single Judge has committed a grave error in ignoring from serious consideration the specific limitation provided for under Paragraph 6 (1) (c) of the Special VRS-2004. The order passed by the learned single Judge is, therefore, unsustainable and, it is, accordingly, set aside.

37. Writ Appeals stand allowed. No costs. Consequently, the connected C.M.P.MD.Nos.8177 to 8180 are closed.

Sd/-

Assistant Registrar(RTI)

/True Copy/

Sub Assistant Registrar

To

+4ccs to M/S.V.PERUMAL, Advocate SR.No. 65858

+4ccs to M/S.K.K.SENTHIL, Advocate SR.No. 65811

Judgment in
W.A.MD.Nos.1228-1231/2016
17-07-2017

DIXIT

JM/SKN RSK/SAR 2/20.07.2017/22P/9C