



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 21.04.2017

CORAM:

WEB COPY

THE HONOURABLE Mr.JUSTICE S.S.SUNDAR

W.P. (MD).No.8680 of 2016

1.G.Mohan
2.L.Prince Lionel
3.C.Nagarathinam

.. Petitioners

Vs.

1.The Chairman and Managing Director,
The New India Assurance Company Ltd,
Head Office,
87, M.G.Road,
Mumbai- 400 001.

2.General Insurers (Public Sector),
Association of India,
Through its Secretary General,
3rd Floor, Naveen Vihar Building,
Sansad Marg,
New Delhi.

.. Respondents

PRAYER: Writ petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus calling for the records relating to the impugned proceedings dated 04.02.2016 in the reference letter CORP.HRM/IDD/2016 by the 1st respondent and quash the same and consequently, directing the 1st respondent to give the notional weightage of Five Years to our qualifying service for the purpose of calculating our pension and accordingly grant the revised pension retrospectively and to pay the consequential arrears arising there from with interest on the differential pension and to pay pension, arrears and interest within the stipulated time fixed by this Court.

For Petitioner	: Mr.M.Krishnamoorthy
For R1	: Mr.N.Dilipkumar
For R2	: No Appearance

O R D E R

The Writ Petition has been filed to call for the records relating to the impugned proceedings dated 04.02.2016 in reference letter No.CORP.HRM/IDD/2016 passed by the 1st respondent and quash the same and consequently, directing the 1st respondent to give the notional weightage of five years for qualifying service for the purpose of calculating pension and accordingly, grant the revised pension retrospectively and to pay the consequential arrears with

interest on the differential pension and to pay pension arrears and interest within the stipulated time fixed by this Court.

2. Heard learned counsel appearing for the petitioner and learned counsel appearing for respondent No.1.

3. The brief facts that are necessary for the final disposal of the Writ Petition are as follows:

The petitioner has served as Development Officer in the first respondent company namely, "The New India Assurance Company Ltd", for 25 years. The 1st respondent company notified a Special Voluntary Retirement Scheme (SVRS - 2003) for its employees and as per clause (ii) of the said scheme, the notional addition of 5 years to the qualifying service is given to SVRS - 2003 optees. Accordingly, the petitioner is entitled for gratuity, pension including commutation of pension, leave encashment and also *ex gratia*. However, by way of administrative guidelines issued after the option exercised by the petitioner, the notional weightage of 5 years promised under SVRS - 2003 was denied to the petitioner by the impugned order. The notification dated 05.02.2003 carrying the administrative guidelines insofar as it relates to denial of 5 years weightage has already been quashed as unsustainable by various High Courts and the same has been confirmed by the Hon'ble Supreme Court in S.L.P No.32540 of 2013.

4. The petitioner has appeared to have submitted a representation dated 15.12.2014 to the respondents for providing this notional weightage under SVRS-2003 Scheme. Earlier a Writ Petition in W.P.No.17202 of 2014 filed by the petitioner was disposed of with the direction to the first respondent to consider the representation of the petitioner on merits. Pursuant to that, impugned order on 24.02.2015 was passed.

5. While Supporting the impugned order, one of the contention raised by the respondent is that the Hon'ble supreme Court has already upheld the Special Voluntary Retirement Scheme, 2004, wherein the 5 years weightage was specifically excluded. The petitioner and others who opted for retirement under 2003 Special Scheme are entitled to weightage of 5 years. However, by a subsequent notification, the benefit of the scheme was denied to the petitioner. In 2004, another scheme was introduced wherein the notional weightage of 5 years was not given under the scheme. This was later upheld by Court, based on that it is stated in the impugned order that the petitioner's request was declined. The reason assigned by the respondent for rejecting the petitioner's representation cannot be sustained.

6. The entitlement of the petitioner as per 2003 Scheme is covered by several judgments of High Courts. As a matter of fact, the judgment of Bombay High Court allowing similar Writ Petition filed by the individual employees, who opt for retirement under 2003 Special Voluntary Retirement Scheme, was confirmed by Hon'ble Supreme Court by holding that the second respondent cannot issue administrative instructions contrary to the provisions to the scheme. It is admitted before this court that the judgment of Bombay High Court was taken on appeal before Hon'ble

Supreme Court and that the special leave petition filed by the first respondent was dismissed on 01.09.2014.

7. Having regard to these admitted facts, this Court has no hesitation to allow the Writ Petition. As a result this Writ Petition is allowed and the impugned order dated 04.02.2016 passed by the first respondent is quashed. Consequently, the first respondent is directed to give notional weightage of five years of qualifying service for the purpose of calculating the pension and other benefits to the petitioner.

8. Accordingly, the first respondent is directed to grant revised pension, retrospectively, and to pay the consequential arrears within a period of eight weeks from the date of receipt of a copy of this order.

9. Accordingly the Writ Petition is allowed. No costs.

Sd/-
Assistant Registrar (Records)

/True Copy/

Sub-Assistant Registrar

To

1. The Chairman and Managing Director,
The New India Assurance Company Ltd,
Head Office, 87, M.G. Road,
Mumbai- 400 001.

2. General Insurers (Public Sector),
Association of India,
Through its Secretary General,
3rd Floor, Naveen Vihar Building,
Sansad Marg, New Delhi.

+One cc to Mr. A. Mohan, Advocate, SR.No.53482

+One cc to Mr. N. Dilipkumar, Advocate, SR.No.53327

GNS/TA

RL/5C/3P/SV/SAR4/5.5.2017

ORDER MADE IN
W.P. (MD). No. 8680 of 2016

21.04.2017