216 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP No. 26515 of 2015 (O/M)
Date of decision : 19.5.2017

Santokh Singh Sandhu .... Petitioner (s)

Versus

Chief Manager, Oriental Insurance Co. Ltd. and others .... Respondent (s)

CORAM : HON'BLE MR. JUSTICE KULDIP SINGH

Present:- Mr. Aayush Gupta, Advocate, for the petitioner.
Mr. Sanjeev Pabbi, Advocate, for respondents.

1. Whether the Reporters of local newspaper may be allowed to see the judgment ?
2. To be referred to the Reporter or not.
3. Whether the judgment should be reported in the digest ?

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KULDIP SINGH J. (ORAL)

The petitioner has invoked the writ jurisdiction of this Court under Articles 226/227 of the Constitution of India for quashing the impugned order dated 20.10.2015 (Annexure-P-9), whereby the claim of the petitioner for grant of arrears of pension alongwith interest has been declined. The petitioner seeks direction to the respondents to release the pension alongwith interest.

The brief facts of the case are that the petitioner was working with respondent-Oriental Insurance Company Limited as a Assistant Clerk. On 1.1.2004, a Scheme called 'General Insurance Employees Special Voluntary Retirement Scheme, 2004 (in short 'VRS Scheme of 2004') was notified by the Central Government in the exercise of powers conferred by Section 17-A of the General Insurance Business (Nationalisation) Act, 1972 (in short 'Act of 1972'), whereby all the permanent/full time employees of the insurance companies were made eligible to seek voluntary retirement provided they have attained the age of 40 years and have completed 10 years of qualifying service as on the date of notification. The said scheme remained open for a period of 60 days from the date of said notification. In pursuance to the said VRS Scheme of 2004, the petitioner applied for voluntary retirement and he was allowed the voluntary retirement with effect from 27.2.2004. At the time of retirement, the petitioner was paid ex-gratia amount, gratuity and leave encashment. However, the pension was not paid to him. Aggrieved by the denial of pension, the petitioner and other employees, who were similarly situated, approached this Court by way of filing CWP No. 13382 of 2007, titled as Kirpal Singh Versus National Insurance Company and others, CWP No. 978 of 2005, titled as Shamsher Singh Puri Versus United India Insurance Company Ltd. and another and CWP No. 19331 of 2006, titled as Devender Singh Versus New India Assurance Company and others. The said cases were decided by a common judgment dated 21.1.2005 by a Division Bench of this Court and it was held that the employees, who have more than 10 years of service, but less than 20 years, are entitled to pension under the said VRS Scheme of 2004. The Special Leave Petitions i.e. SLP (C) No. 9953 of 2008, SLP (C) No. 10548 of 2008 and SLP (C) No. 10756 of 2008, filed by the insurance companies against the said judgment was dismissed by the Apex Court on 10.1.2014. Therefore, the said employees were released the pension. The petitioner served a legal notice to the insurance company on 9.5.2015 (Annexure-P-7), seeking pension, which is being paid to the similarly situated employees. Thereafter, he approached this Court by way of filing CWP No. 15518 of 2015, which was disposed of by this Court, vide order dated 31.7.2015 (Annexure-P-8), by directing respondents to decide the legal notice of the petitioner within two months from the date of receipt of certified copy of the order. Consequently, respondents, in pursuance to the order passed by this Court on 31.7.2015 (Annexure-P-8) in CWP No. 15518 of 2015, passed the impugned order dated 20.10.2015 (Annexure-P-9), whereby the claim of petitioner was declined. The petitioner claims that he is covered by the Division Bench judgment of this Court in Kirpal Singh's case (supra) and is entitled to pension.

In reply, respondents have taken the stand that the petitioner was paid ex-gratia amount of Rs. 4,34,990/- over and above all the retiral dues and he is not entitled to any further payment. Respondents justified the non grant of pension, stating that the case of the petitioner is not covered by the said VRS Scheme of 2004. They have supported reasons given in the impugned order dated 20.10.2015 (Annexure-P-9).

I have heard the learned counsels for both the parties and have also carefully gone through the file.

The perusal of impugned order dated 20.10.2015 (Annexure-P-9) shows that while denying the pension to the petitioner, reliance has been placed upon the judgment of the Apex Court in Transfer Case (Civil) No. 48 of 2010, titled as Manojbhai N. Shah and others Versus Union of India and others. Admittedly, a similar controversy had already arisen and three writ petitions were filed before this Court, which are (i) CWP No. 13382 of 2007, titled as Kirpal Singh Versus National Insurance Company and others, (ii) CWP No. 978 of 2005, titled as Shamsher Singh Puri Versus United India Insurance Company Ltd. and another and (iii) CWP No. 19331 of 2006, titled as Devender Singh Versus New India Assurance Company and others, as referred to in the pleadings of the petition and the same were disposed of by a common order by the Division Bench judgment of this Court, vide judgment dated 25.1.2008, titled as Kirpal Singh Versus

National Insurance Company Ltd. and another, 2008 (1) SCT 745. In the said case, same controversy was involved. The Division Bench of this Court in Kirpal Singh's case (supra) considered the point whether in case of an employee, who has qualifying service of 20 years, is entitled to pension or not, the Court observed as under :-

> "14. It is pertinent to mention that all employees, who have completed 40 years of service, were eligible to seek voluntary retirement under the Scheme. In the absence of specific exclusion of para 29, a person, who has completed 10 years of qualifying service eligible to seek voluntary retirement, would be entitled to pension under para 29 of the Pension Scheme. The grant of pension is a relevant factor on the basis of which an employee would decide whether to opt for retirement under the Scheme or not. In the absence of any clear stipulation in the Scheme that pension would be payable on completion of 20 years of qualifying service, the same cannot be made applicable to the petitioner by implication."

Therefore, the Court allowed the writ petition and directed the insurance companies to pay pension and disburse the same within three months with interest at the rate of 9% p.a. It was found that the eligibility for pension was minimum 10 years of service.

In the present case, the petitioner has 18 years and 7 months of qualifying service for pension. The National Insurance Company challenged the said judgment before the Apex Court by way of filing SLP (C) 10548 of 2008 and the Apex Court, vide judgment dated 10.1.2014, titled as National Insurance Co. Ltd. and another Versus Kirpal Singh, 2014 (2) SCT 21, dismissed the said SLP. The perusal of the judgment of the Apex Court shows that the following questions were considered by it :-

> "2. The short question that falls for determination in these

appeals is whether the respondents who opted for voluntary retirement from the service of the appellant-companies are entitled to claim pension under the General Insurance (Employees) Pension Scheme 1995. The High Court having answered the question in the affirmative, the appellant-Insurance Companies have appealed to assail that view."

After considering the qualifying service and the law point on the issue, the Apex Court observed as under :-

"16. In the case at hand Para 2 of the Pension Scheme 1995 (extracted earlier) defines the expressions appearing in the scheme. But what is important is that such definitions are good only if the context also supports the meaning assigned to the expressions defined by the definition clause. The context in which the question whether pension is admissible to an employee who has opted for voluntary retirement under the 2004 scheme assumes importance as Para 2 of the scheme starts with the words "In this scheme, unless the context otherwise requires". There is nothing in the context of 1995 Scheme which would exclude its beneficial provisions from application to employees who have opted for voluntary retirement under the Special Scheme 2004 or vice versa. The term retirement must in the context of the two schemes, and the admissibility of pension to those retiring under the SVRS of 2004, include retirement not only under Para 30 of the Pension Scheme 1995 but also those retiring under the Special Scheme of 2004. That apart any provision for payment of pension is beneficial in nature which ought to receive a liberal interpretation so as to serve the object underlying not only of the Pension Scheme 1995 but also any special scheme under which employees have been given the option to seek voluntary retirement upon completion of the prescribed number of years of service and age."

Therefore, the judgment in Kirpal Singh's case (supra), passed by a Division Bench of this Court, was affirmed.

The facts of the present case and the facts of Kirpal Singh's case (supra) are similar. Therefore, the petitioner is entitled to the benefit of Kirpal Singh's case (supra), which was affirmed by the Apex Court, unless distinction can be made.

Respondents have tried to make a distinction by applying another judgment of the Apex Court in Manojbhai N. Shah and others Versus Union of India and others, 2015 (1) SLR 59 (decided on 7.1.2015).

A close scrutiny of the said judgment shows that the issue involved in the said judgment was different. The issue involved in the said case was whether the employees, who have retired under the 2004 Scheme, are entitled to get the benefit of revision of the pay, which was retrospectively given with effect from 1.8.2002. The issues formulated by the Apex Court is reproduced as under :-

> "11. The issue involved in all these cases is whether after acceptance of voluntary retirement under the Scheme, such retired employees would be entitled to get benefit of the revision of pay, which was retrospectively given from 1st August, 2002, under the Notification dated 21st December, 2005, which was called the "General Insurance (Rationalisation of Pay Scales and other Conditions of Officers) Second Amendment, 2005 and hereinafter referred to as "the Notification".
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> 12. The Employers denied the benefit of the said Notification or retrospective increase in the salary to the employees who had retired under the Scheme, whereas the said retired employees claimed that they should be given benefit of the retrospective increase in their pay and their pension should be revised because they were in service on 1st August, 2002 and had retired only in or after 2004."

After considering the matter, the Apex Court found that such employees are not entitled to get the benefit of revision of pay.

The question whether employees getting the benefit of Voluntary Retirement Scheme of 2004 are entitled to pension, was not at all in issue in the said case. Therefore, respondents have wrongly relied upon the judgment of Manojbhai N. Shah's case (supra).

From the forgoing discussion, it follows that the case of the petitioner is covered by the Division Bench judgment of this Court in Kirpal Singh's case (supra), which was affirmed in SLP by the Apex Court . Consequently, it is held that the petitioner is entitled to pension as per his qualifying service. The petitioner voluntary retired from service on 27.2.2004 and he approached this Court only in the year 2015 i.e. after a delay of about 11 years. If the other employees could approach this Court, the petitioner could also approach this Court. Therefore, for the period of delay in approaching this Court, the petitioner will not be entitled to any interest on the arrears of pension i.e. from the date of his retirement till 17.12.2015, when he approached this Court for the first time. However, arrears of pension shall be paid to the petitioner with interest at the rate of 9% per annum, starting from 18.12.2015 till the date of payment. Respondents are directed to release the pension and arrears of pension alongwith interest, indicated above, within three months from the date of receipt of certified copy of this order.

In view of above, the present writ petition is allowed.

(KULDIP SINGH)
JUDGE

19.5.2017
sjks

Whether speaking / reasoned : Yes
Whether Reportable : No