IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.11.2018

CORAM:

THE HON'BLE Mr.JUSTICE R.SURESH KUMAR

W.P.No.26747 of 2005

Mrs.Jayanthi Meganathan,
21-E, Kanakaraya Malaippan Street,
Mandaveli,
Chennai-600 028. ..Petitioner

Versus

1.The Chairman Cum Managing Director,
The Oriental Insurance Company Ltd.,
Head Office, P.B.No.7037,
A-25/27, Asaf Ali Road,
New Delhi- 110 002.

2.The Manager,
The Oriental Insurance Company Ltd.,
Regional Office, U.I.L., Building,
IV Floor, P.B.No.1877, 8, Esplanade,
Chennai- 600 108. ..Respondents

Prayer: Writ petition filed under Article 226 of Constitution of India praying for issuance of a Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned order of the 2nd Respondent dated 08.02.2005 confirmed by the order dated 13.07.2005 and quash the same and consequently direct the respondents to pay the monthly pension to the petitioner.

For Petitioner : M/s.A.Thiyagarajan

For Respondents : Mr.A.Thayaparan

O R D E R

The prayer sought for herein is for issuance of writ of certiorarified Mandamus to call for the records pertaining to the impugned order of the 2nd Respondent dated 08.02.2005 confirmed by the order dated 13.07.2005 and quash the same and consequently direct the respondents to pay the monthly pension to the petitioner.

2. The facts which are necessary to be noticed for the disposal of this writ petition are as follows :-

3. The petitioner joined the services of the respondent-Insurance Company on 29.02.1984 as she was appointed as Assistant. She served in the post at the Divisional office of the respondent company at Chennai. Since, the petitioner opted for Pension under General Insurance company employees pension scheme 1995, she was covered under the employees Contributory Provident Fund scheme (CPF).

4. While so, on 01.01.2004, the first respondent introduced the "General Insurance Employees" Special Voluntary retirement scheme, 2004.

5. As per the said scheme, the eligibility criteria for applying for the voluntary retirement was that, the employee should have attained 40 years of age and the employee should have also completed 10 years of qualifying service at the date of Gazette Notification introducing the scheme i.e. on 01.01.2004. The scheme also further stipulated that, the employees are also entitled to pension as per the General Insurance (Employees') Pension Scheme, 1995.

6. Since, the petitioner had already rendered 20 years of service and she had already opted for the pension under General Insurance (Employees') Pension scheme, 1995 and she already attained 40 years of age, the petitioner thought of applying for voluntary retirement under the said scheme and accordingly made an application to that effect on 14.01.2004 to the second respondent.

7. It is further to be noted that, in the meantime on 15.01.2004, the first respondent issued a Circular framing certain procedure to be followed, while implementing the Special Voluntary Retirement Scheme, 2004. In the said Circular, it was mentioned that, those who have not completed 20 years of minimum service for eligibility of pension as on the date of relieving, shall not be entitled for any pension.

8. In that circumstances, the second respondent vide his communication, dated 23.02.2004, informed the petitioner that her application for retirement under Special Voluntary retirement Scheme, 2004 had been accepted by the Competent Authority and she will be relieved from service at the close of the office hours on 27.02.2004. However, the petitioner was ultimately relieved from duty only on 29.02.2004 and the ex-gratia payment payable to the petitioner pursuant to the acceptance of the Voluntary Retirement Scheme had also been paid to the petitioner.

9. However, the pensionary benefits payable to the petitioner had not been paid to the petitioner. Therefore, when the same was questioned, it was replied by the respondent stating that, since the petitioner had taken extra ordinary medical leave on loss of pay for 37 days beyond the eligible period of leave for the purpose of calculating the pensionable service, if the said 37 days is reduced, the petitioner would short of 37 days in completing the total qualifying service of 20 years for the purpose of pension under the special Voluntary Retirement scheme, 2004.

10. By citing the said reason, the petitioner's request for grant of pension was turned out by the second respondent vide Order, dated 08.02.2005. Aggrieved over the said order and challenging the same, the petitioner filed this writ petition with the aforesaid prayer.

11. I have heard Mr.A. Thiyagarajan, learned counsel appearing for the petitioner who would submit that, the very purpose of the Special Voluntary Retirement Scheme itself is to provide those eligible employees to go for Voluntary Retirement as that would be double way beneficial to both the employee as well as the employer. As per the said scheme, those who completed 10 years eligible service would be entitled to go for voluntary retirement and those who have completed 20 years of eligible service would be entitled to seek for pension.

12. In the case of the petitioner, even though she has completed 20 years of qualifying service, the pension was not allowed for the petitioner by citing the reason that the petitioner since had taken 37 days of extra ordinary medical leave on loss of pay, the said 37 days cannot be included as the eligible period for the purpose of pension under the Voluntary Retirement Scheme and in view of the shortage of 37 days, the petitioner had not completed the 20 years eligibility period for seeking pension and accordingly the said pension scheme would render the petitioner ineligible to seek for pension.

13. In this context, the learned counsel appearing for the petitioner would further submit that, the respondents mainly relying upon Clause 18 of the procedure contemplated under the, head "qualifying service", for the purpose of seeking pension by employees, who had been permitted to go for Voluntary Retirement under the Scheme. For the sake of convenience the said Clause 18 is extracted hereunder :

> (18) Broken Period of Service of less than one year:-
> If the period of service of an employee includes broken period of service of less than one

> year, then, if such broken period is more than six months it shall be treated as one year and if such broken period is six months or less it shall be ignored.

14. The learned counsel for the petitioner would submit that, Clause 18 makes it abundantly clear that the period of service of an employee including broken period of service which is less than one year and more than six months, it shall be treated as one year and if the broken period is less than six months, thus, the said broken period shall be ignored. According to the petitioner, thus the Clause 18, makes it clear that, those who are not having the 20 years of qualifying service for getting pension, however is having broken service of more than six months, that can be calculated as one full year service. However, if the broken service is less than six months, the same can be ignored.

15. By giving such interpretation, the learned counsel for the petitioner would submit that, here in the case on hand, since the petitioner is even according to the respondents, is only short of 37 days because of the leave on loss of pay, that is certainly not more than the six months broken period. Therefore, the said 37 days shortage can be calculated as completion of one full year qualifying service by invoking Clause 18 referred above, thereby, the petitioner is able to attain 20 years of qualifying service and based on which she shall be fully entitled to claim the pension within the meaning of Special Voluntary Retirement Pension Scheme.

16. In support of his contention, the learned counsel appearing for the petitioner has very much relied upon the decision of the Karnataka High Court made in Writ Petition No.13215 of 2005, dated 30.08.2006 in the matter of GS Kamath versus New India Assurance Company Employees Pension Fund and others, as the said judgment having been confirmed by the Division Bench of the Karnataka High Court made in Writ Appeal No.1721 of 2006, dated 06.12.2006. By relying upon these decisions, where, according to the learned counsel for the petitioner, the issue raised in this writ petition is completely covered, he would submit that, the petitioner is similarly placed, hence, she shall also be entitled to claim the pension under the Special scheme, as she has completed the 20 years of qualifying service.

17. Per contra, Mr.A. Thayaparan, learned Standing Counsel appearing for the respondents would submit that, no doubt, the petitioner was eligible to go for Voluntary Retirement under the scheme, since she has already completed 10 years qualifying service and attained the age of 40 at the time of making the application.

18. Based on that eligibility only, the petitioner's application was processed and accepted by the respondents and she was relieved from duty by accepting her Voluntary Retirement.

19. However, as per the scheme, unless the employee go for Voluntary Retirement from Service completes 20 years of qualifying service, he or she shall not be entitled to claim pension. This position made it very clear in the very scheme itself, therefore having accepted the terms of the scheme, the petitioner cannot turn around and say that, inspite of the fact that she has not completed the 20 years of qualifying service, she would be eligible and entitled to claim her pension.

20. In that context, the learned Standing Counsel would rely upon Clause 17 of the procedural rule and for the sake of convenience, the said Clause 17 is extracted hereunder :

(17) Counting of period spent on leave:-
All leave during service in the Corporation or concerned Company, for which leave salary is payable shall count as qualifying service.

Provided that extra-ordinary leave on loss of pay granted on medical certificate or on account of employee's inability to join duty due to civil commotion, not exceeding twelve months during the entire service, shall also count as qualifying service.

21. By relying upon Clause 17, the learned Standing Counsel would submit that, the employees would be eligible to seek for pension by completing the qualifying service, provided, the Extra Ordinary Leave on loss of pay granted on medical certificate or on account of employees inability to join duty due to civil commotion and the same is not exceeding twelve months during the entire service, that leave period also shall be counted as a qualifying service.

22. If Clause 17 is applied to the case of the petitioner, even after calculating the one year period as an extra ordinary leave under Clause 17 still the petitioner was taking leave for 37 days more as an Extra ordinary medical leave on loss of pay. The said 37 days cannot be put in under the one year qualifying service by way of extra ordinary leave as contemplated under Clause 17. Therefore, the petitioner admittedly did not attain the 20 years qualifying service and therefore, because of the shortage of 37 days in completing the 20 years qualifying service, the petitioner become ineligible to seek for pension under the scheme. Therefore, based on such shortage of

qualifying service on the part of the petitioner, her eligibility to seek pension cannot be accepted and therefore, on that basis only, the second respondent passed the impugned order dated 08.02.2005 quoting the above Clause 17.

23. Insofar as the submission made by the petitioner's counsel by relying upon Clause 18 is concerned, it is submitted by the learned Standing Counsel for the respondent that, Clause 18 speaks only about the broken period which means those employees, who had a broken service and after rejoining the service that broken period also, if it is less than six months can be taken into account and if it is more than six months it would not be taken into account. By giving such interpretation to Clause 18, the learned Standing Counsel would submit that Clause 18 would no way advance the case of the petitioner and therefore, in view of Clause 17 the petitioner cannot seek any benefits.

24. I have considered the said rival submissions made by the learned respective counsels appearing for both sides.

25. Apart from the admitted facts, the only contraversy which revolves in this case is that, whether the petitioner has attained the qualifying service of 20 years for the purpose of seeking pension on the basis of the Special Voluntary Retirement Scheme, 2004.

26. The scheme makes it clear that, those who have completed 10 years qualifying service and attained the age of 40 can be eligible to opt for Voluntary Retirement Scheme. However, those, who have not completed 20 years of qualifying service even though his or her Voluntary Retirement proposal is accepted, he or she would not be eligible or entitled to claim the benefit of pension. It means that unless you have a qualifying service of 20 years, if you go for Voluntary Retirement Scheme, you will not be entitled for pension.

27. Now the question is, how to calculate the 20 years qualifying service. In order to calculate the same, as relied upon by the learned Standing counsel appearing for the respondents, Clause 17 referred to above can be pressed into service. According to Clause 17 upto one year extra ordinary leave on loss of pay can be taken as a qualifying service. Suppose, if the employee has taken Extra Ordinary Leave on loss of pay beyond the one year period, even then, such extra ordinary leave on loss of pay can be counted for the purpose of qualifying service is the question.

28. In respect of the said issue, this Court is of the considered view that, beyond one year period as contemplated

under Clause 17, the extra ordinary leave on loss of pay cannot be expected to be counted for qualifying service for the purpose of pension under the scheme. Therefore, if Clause 17 is strictly applied in the case of the petitioner, she would not be entitled to claim the benefit of completing the qualifying service of 20 years, because even if the one year qualifying service is taken into account, still the petitioner is short of 37 days as she had taken Extra ordinary leave for 37 days over and above the maximum acceptable period of one year under Clause 17.

29. However, in respect of not only under the calculation of Extra Ordinary Leave for the purpose of qualifying service, even otherwise, in respect of all the employees, who opt for Voluntary Retirement Scheme and who have not completed 20 years of service but shortage of 20 years of qualifying service with lesser than six months period then, whether that said shortage of lesser than six months period can be taken into account for the purpose of making it as one year. In other words, whether the less than six months period of shortage for 20 years qualifying service can be rounded off .

30. In this context, the exact issue had been considered by the Karnataka High Court in the said Judgment, which is heavily relied upon by the learned counsel for the petitioner. While giving interpretation to Clause 18, the learned Judge has given the following finding:

> 6.In my opinion, since Rule 18 is an independent rule which is not qualified in any manner and for purposes of application of the Rules, be it Rule 30 or otherwise, the broken period of service of an employee would necessarily have to be construed in the express terms of Rule 18 and it is plain and categorical that the broken period of service of less than one year and if such period is more than six months, it should be treated as one year and read in favour of the petitioner and no gloss can be placed on the same as sought to be urged by the respondents that such broken period of service would be applicable only in respect of the broken period exceeding 20 years for the purpose of interpreting Rule 30. This is wholly untenable. Hence, I have no hesitation in allowing the petition. The petition is allowed. Annexure-J is quashed. The respondents are directed to deem that the petitioner has rendered 20 years of qualifying service and sanction him pension under the 1995 Pension Scheme, within a period of eight weeks from the date of receipt of a certified copy of this order.

31. Aggrieved over the said finding given by the learned Judge of the Karnataka High Court, the New India Assurance Company had preferred an intra Court appeal before the Division Bench of Karnataka High Court in Writ Appeal No. 1721 of 2006, where the Division Bench passed the final order on 06.12.2006. While agreeing with the decision taken by the learned Single Judge, the Division Bench has given the following findings, which are usefully extracted herein :

> "3.A copy of Special Voluntary Retirement Scheme 2004 has been produced as Annexure 'A'. According to the said Scheme, in addition to the ex-gratia amount mentioned in the Scheme, an employee opting for the Scheme shall be eligible for the benefits of (i) Provident Fund, (ii) Gratuity as per payment of Gratuity Act, 1972 or Gratuity payable under the Rationalisation Scheme as the case may be and (iii) Pension (including commuted value of pension) as per General Insurance (Employees) Pension Scheme 1995, if eligible.
>
> 4.Clause:14 of the General Insurance (Employees) Pension Scheme 1995 Provides for the qualifying service and it is extracted hereunder:
> "14.Qualifying Service:- Subject to the other condition contained in this scheme, an employee who has rendered a minimum ten years of service in the Corporation or a Company, on the date of retirement shall qualify for pension."
> Clause-18 reads thus:
> " 18.Broken period of service of less than one year:- If the period of service of an employee includes broken period of service of less than one year, then, if such broken period is more than six months it shall be treated as one year and if such broken period is six months or less it shall be ignored."
>
> Clause-29 reads thus:
> "29.Superannuation Pension:- Superannuation pension 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 and in Paragraph 4 of General Insurance (Termination, Superannuation and Retirement of Officers and Development Staff Scheme, 1976."
> Clause-30(1) reads thus:-
> "30(1).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."

Thus, it is clear that 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. The contention of the appellant is that the respondent (writ petitioner) had not completed twenty years of qualifying service at the time of his voluntary retirement. The question is whether in calculating twenty years mentioned above Clause-18 can be applied. If Clause-18 is applicable, since the respondent had completed 19 years 8 months and 6 days, the fraction of the year can be taken as one year as it was more than six months and in that case, the respondent can be deemed to have completed twenty years of qualifying service. The contention of the appellant is that Clause-18 is not applicable to the counting of the period of twenty years mentioned in Clause-30 and therefore, an employee will be eligible for pension only if he has completed full twenty years. But as rightly observed by the learned Single Judge, Clause-18 is part of the entire Scheme and Clause-18 is general in nature and its application is not confined or restricted to any particular Clause or situation and therefore, there is no reason not to apply Clause-18. What Annexure-'A' Special Voluntary Retirement Scheme 2004 stipulates is that the employee should be eligible for pension as per General Insurance (Employees) Pension Scheme 1995 and not as per Clause-30 of the said Scheme. Clause-18 is also part of the General Insurance (Employees) Pension Scheme 1995 and therefore, if the application of the said Clause is beneficial to the employee, we find no reason to deny such benefit to the employee. In this view of the matter, we do not find any illegality in the impugned order.

5. Accordingly, Writ Appeal is dismissed.

32. I have carefully gone through the decision made by the Karnataka High Court, both by the learned Single Judge, as well as the Division Bench

33. Exactly the issue which is cropped up in this writ petition has been engaged before the learned Judges, in the said two decisions and exhaustively the learned Single Judge as well as Division Bench has given the complete answer to the question. The benefit under Clause 18 has to be construed only for those, who were not able to complete the 20 years of qualifying service with shortage of broken period of less than six months has to be benefitted and only for the said purpose, Clause 18 was introduced. Under Clause 18, an employee, who have completed 19.6 months period for qualifying service and still short of 20 years period for which, some days or months, but certainly less than six months, still required, the said period can be rounded off as a qualifying service for the purpose of calculating pensionable service under the Special Voluntary Retirement Pension Scheme.

34. I am in complete agreement with the reasoning and conclusion reached by the learned Judge of the Karnataka High Court as confirmed by the Division Bench of the same High Court as referred to above.

35. Except the aforesaid interpretation, if any other interpretation is sought to be given as claimed by the learned Standing Counsel appearing for the respondent / Insurance Company/employer, that would shatter the very purpose of the Voluntary Scheme itself, because, an employee who is having 10 years qualifying service would become eligible to opt for Voluntary retirement Scheme. Only for the purpose of getting pension, the Scheme made it clear that those who have completed 20 years qualifying service would be eligible to seek pension. When that being so, an employee, who was able to complete 19 years and more service as the qualifying service, only for the shorter period i.e. less than six months to complete the 20 years qualifying service, the benefits conferred under the scheme cannot be denied to those employees. That is the reason why Clause 18 has been specifically introduced to make it that, the broken period of service less than six months can be rounded off to one year. This is the only plausible interpretation, because in the very same Clause 18, it was also made it clear that if the broken period is less than six months period, then it can be ignored. Therefore, the concession conferred under the Scheme especially under Clause 18 cannot be denied to the petitioner and that is the reason why the interpretation, which was given by the Karnataka High Court is fully agreeable to this Court and therefore taking que from the said decision

and by respectfully following the Division Bench Judgment of the Karnataka High Court referred to above, this Court is of the view that, the petitioner is entitled to succeed in this writ petition.

36. In the result, the impugned order is quashed and the respondents are directed to take the service of the petitioner before accepting her Voluntary Retirement from Service as the qualifying service of 20 years by which the petitioner become eligible to seek for pension and accordingly the pension shall be calculated and it shall be paid to the petitioner including arrears within a period of three months from the date of receipt of a copy of this order. With these directions, the writ petition is allowed. No costs. Consequently, connected miscellaneous petition, if any is closed.

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Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To
1.The Chairman Cum Managing Director,
The Oriental Insurance Company Ltd.,
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+1cc to Mr.A.Thiyagarajan, Advocate, SR.No.76312
+1cc to Mr.P.Sukumar, Advocate, SR.No.76325

W.P.No.26747 of 2005

Kak(09/10/2019)