

IN THE HIGH COURT OF JUDICATUE AT MADRAS

DATED : 11.03.2019

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THE HONOURABLE Dr.JUSTICE ANITA SUMANTH

WP.Nos.32555 to 32560 of 2017

and

WMP. Nos.3325 to 3330 of 2018

S.Rajendran ... Petitioner in W.P.No.32555 of 2017
S.Mohan ... Petitioner in W.P.No.32556 of 2017
V.Rajagopalan ... Petitioner in W.P.No.32557 of 2017
B.Sundar ... Petitioner in W.P.No.32558 of 2017
E.Natesan ... Petitioner in W.P.No.32559 of 2017
E.Nagarajan ... Petitioner in W.P.No.32560 of 2017

Vs.

The Chairman and Managing Director,
The New India Assurance Company Limited,
Head Office, No.87, M.G.Road,
Mumbai 400 001 ... Respondent in all the petitions

PRAYER: Writ Petitions filed under Article 226 of the Constitution of India, praying for a Writ of Mandamus directing the respondent herein to consider and pass orders on the petitioner's representation dated 14.10.2017 given for granting notional weightage 5 years of qualifying service for the purpose of calculating pension and other benefits with all arrears with interest on the differential pension, in the light of the decision rendered in W.P. (MD) No.8680 of 2016 dated 21.04.2017 and W.A. (MD) No.1152 of 2017 dated 24.08.2017, within a stipulated time as deemed fit and proper by this Court.

For Petitioners : Mr.Ravi Shanmugam

For Respondent : Mr.V.Perumal

C O M M O N O R D E R

These Writ Petitions have been filed by the petitioners seeking the issuance of Writ of Mandamus directing the respondent/The Chairman and Managing Director, the New India Assurance Company Limited to consider and pass order on the petitioners' representation dated 14.10.2017 for the purpose of granting notional weightage of qualifying service and for the purpose of calculating pension and other benefits with all arrears with interest on the differential pension.

2. Heard Mr.Ravi Shanmugam, learned counsel appears for the petitioner and Mr.V.Perumal, learned counsel appears for the respondent / the New India Assurance Company Limited.

3. Reliance is placed by the petitioners on the decision of learned Single Judge of this Court in WP. No.8680 of 2016 dated 21.04.2017, wherein, an identical question was raised by three petitioners of the New India Assurance Company Limited. The said Writ Petition was allowed and the matter was carried in appeal before the Division Bench in W.A (MD) No.1152 of 2017. The Division Bench by order dated 24.08.2017, concluded in favour of the petitioners as follows:

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

arrears. Aggrieved by the same, this intra Court appeal has been filed.

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

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

5. The learned counsel for the appellant pointed out that Clause 30 (6) of General Insurance (Employees) Pension Scheme 1995 stated that the pension of an employee retiring under this paragraph shall be based on the average emoluments as defined under Clause (d) of paragraph 2 of the scheme and the increase, not exceeding 5 years in his qualifying service shall not entitle him to any notional fixation of pay for the purpose of calculating his pension. It is the contention of the learned counsel for the appellant that the said clause was not taken note of by the Bombay High Court or the Punjab & Haryana High Court.

6. We are of the view that this contention cannot be accepted. When similarly placed optees under the Special Voluntary Retirement Scheme were given certain benefit, the respondents 1 to 3 alone cannot be treated differently. The 1995 pension scheme will have to be applied in the case of respondents 1 to 3 in the same manner

as interpreted by the Bombay High Court. Otherwise it would be a case of discrimination against the respondents 1 to 3 herein.

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

4. Learned counsel for the respondent fairly states that the aforesaid order has attained finality.

5. In the aforesaid circumstances, the respondent is directed to dispose of the petitioners' representation dated 14.10.2017 within a period of four (4) weeks from today and in line with the aforesaid decision of the Division Bench dated 24.08.2017 passed in W.A.(MD). No.1152 of 2017 in the case of The Chairman and Managing Director, The New India Assurance Company Limited Vs. G.Mohan and others, in accordance with law after affording sufficient opportunity to the petitioners.

6. These Writ Petitions are disposed of in the above terms. Consequently, connected miscellaneous petitions are closed. No costs.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

rkp

To
The Chairman and Managing Director,
The New India Assurance Company Limited,
Head Office, No.87, M.G.Road,
Mumbai 400 001

+6 cc's to Mr.Ravi Shanmugam, Advocate SR.No.22818

+6 cc's to Mr.V.Perumal, Advocate SR.No.22908 TO 22913

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VGII(CO)
CSL/02.04.2019