

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CWP-16939-2016

Date of decision: - 14.01.2019

Amar Nath Gujjar

....Petitioner

Versus

Union of India and others

.....Respondents

CORAM : HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present:- Mr. K.L. Kohli, Advocate
for the petitioner.

Mr. Jitender Nara, Advocate
for respondent No.1.

Mr. Ashwani Talwar, Advocate
for respondents No.2 to 4.

HARSIMRAN SINGH SETHI, J. (ORAL)

Present writ petition has been filed by the petitioner challenging the order dated 13.04.2016 by which his claim for the grant of pension has been declined. Learned counsel for the petitioner has made a further prayer that the petitioner has a qualifying service of 19 years, 10 months and 15 days and therefore, a direction should be given to the respondents to grant the pension to the petitioner.

The facts leading to the filing of present writ petition are that petitioner was working as an Assistant with the respondents-Insurance

Company. In the year 2004, the Central Government notified a scheme on 01.01.2004 called 'General Insurance Employees Special Voluntary Retirement Scheme, 2004 (hereinafter referred as 'Scheme of 2004'). By the said Scheme of 2004, the employees of the Insurance Companies were given an option to seek voluntary retirement. Two conditions were imposed to be eligible to exercise their option. Firstly, the employee should be 40 years of age, secondly, he/she should have completed 10 years of qualifying service as on the date of the notification. The employees were given 60 days time to apply for the same. It is an admitted fact that the petitioner applied under Scheme of 2004 for the voluntary retirement and after finding the petitioner eligible in all respects, the request of the petitioner was allowed for the grant of voluntary retirement w.e.f. 12.03.2004. The service benefits were paid to the petitioner upon the said acceptance of voluntary retirement such as ex-gratia, gratuity and leave encashment. Petitioner was denied the benefit of pension by the respondents. The denial of pension was on the ground that petitioner does not have 20 years of service to his credit in order to become eligible for the grant of pension.

Not only the petitioner was denied this benefit, but certain other similarly situated persons, who had less than 20 years of service, were denied the benefit of pension. The said action of the denial of pension by the respondents-Insurance Companies was challenged by the similarly situated persons, by filing CWP No.13382-2007 titled as 'Kirpal Singh Vs. National Insurance Company and others'; CWP-978-2005, titled as 'Shamsher Singh Puri Vs. United India Insurance Company Ltd.

and another'; and CWP-19331-2006 titled as 'Devender Singh Vs. New India Assurance Company and others'.

Division Bench of this Court decided all the above-said writ petitions by a common order on 21.01.2005. By a detailed judgment, it was held that even though an employee might not be having 20 years of service, but in case he had more than 10 years of service on the day when the VRS was allowed, the employee will be entitled for the pension as well.

Against the said judgment passed by the Division Bench, SLP (C) No.9953 of 2008, SLP (C) No.10548-2008 and SLP (C) No.10756-2008, were filed by the Insurance Companies. The Hon'ble Supreme Court considered the controversy as to whether, under Scheme of 2004, an employee will become entitled for the grant of pension, even if the said employee does not have 20 years of service on the date when he was granted the voluntary retirement by the Insurance Company. By a detailed order, the Special Leave Petitions were dismissed by the Hon'ble Supreme Court. After the dismissal of the SLPs by the Hon'ble Supreme Court, the pension was granted by the Insurance Companies to the employees, who had more than 10 years of service on the day when they were granted voluntary retirement, but had less than 20 years of service. As the similarly situated personnel had already been granted the benefits, the petitioner submitted the representations dated 16.05.2014 and 26.08.2014 to the respondents, claiming the same relief. As the representations were not being decided, the petitioner approached this Court by filing CWP No.2661 of 2016, which came up for hearing before

this Court on 10.02.2016. On the said date, the writ petition was disposed of giving a direction to the respondents to pass appropriate orders within a period of two months on the claim being made by the petitioner for the grant of pension on the basis that similarly situated personnel have already been extended the said benefit in view of the order, which had attained finality upto the Hon'ble Apex Court.

Keeping in view the directions given by this Court, the respondents passed an order on 13.04.2016 declining the relief to the petitioner. The relief has been declined to the petitioner on the ground that similarly situated personnel were granted relief in view of the order passed by the Hon'ble Apex Court in their favour and as there is none in favour of the petitioner, he cannot be treated as similarly situated personnel, hence, cannot be granted the relief. Though, the Hon'ble Supreme Court had already held that the employee who had more than 10 years of service, though less than 20 years, is entitled for the pension, still, in defiance to the said order, the insurance company again rejected the claim of the petitioner on the ground that the petitioner does not have 20 years of service to his credit in order to become eligible for the grant of pension.

This order dated 13.04.2016 is under challenge in the present writ petition.

Notice of motion was issued on 19.10.2016 and reply has been filed by the respondent(s)-Insurance Company to the claim of the petitioner. In the reply, once again, it has been reiterated that under the Scheme of 2004 an employee needs to have 20 years of service to his

credit in order to become eligible for the grant of pension. Further, the respondents relied upon the judgment of the Hon'ble Apex Court in **Manojbhai N. Shah and others Vs. Union of India and others, 2015(4) SCC 482** to contend that in view of the judgment of the Supreme Court, which has come into existence after the dismissal of the SLPs by the Hon'ble Supreme Court in **Kirpal Singh's case (supra)**, the petitioner is not entitled for the grant of pension.

I have heard the counsel for the parties, gone through the record.

It is a very sorry state of affair that even where the point of law has been settled upto the Hon'ble Supreme Court, the similarly situated employees are being denied the benefit of the said judgment and are being forced to approach this Court.

It is expected that once the insurance company raised an objection for the non-grant of pension to the employees, who had less than 20 years of service and the said objection was set aside by a Division Bench of this Court and the said order has been upheld even upto the Hon'ble Supreme Court of India and the relief of pension has been granted to the similarly situated personnel(s), the same objection should not have been taken by the respondents denying the relief to the petitioner. The case of the petitioner has been rejected by the respondents on 13.04.2016 and by the said date, the respondents themselves in compliance of the order that Hon'ble Supreme Court of India in **Kirpal Singh's case (supra)**, had already released the benefit, as being claimed by the petitioner herein, to the similarly situated employees. Still, by

taking the same objection, which stood rejected by this Court as well as the Hon'ble Supreme Court of India, the benefit was denied to the petitioner. This act needs to be condemned.

It is a settled proposition of law that once a judgment has become final by the competent Court of Law, the same should be implemented qua similarly situated personnel as well and no one should be forced to approach this Court after the point of law had attained finality upto the Hon'ble Supreme Court.

In this regard, the reliance can be placed on the judgment of this Court rendered in **Satbir Singh Vs. State of Haryana, 2002(2) S.C.T. 354**. The relevant portion of the said judgment is as under: -

“When judgments attain finality to which the State is a party, duty is casted upon the State to grant relief to its employees who are similarly situated and on identical facts. Benefit of such approach are many and it causes no disadvantage to the interests of the State. It is not necessary for the State to require each one of its employees to approach the Courts of law for grant of a relief which the State ought to grant to the employees in normal course of its administration, particularly, the cases of the kind afore-referred. Such principles is well known and accepted for years now. By referring to few judgments we would only predicate the principle with greater emphasis of its application in the day-to-day affairs of the State. In the case of **Dr. (Mrs.) Santosh Kumari v. Union of India and others, JT 1994 (7) SC 565 : 1995(1) SCT 527 (SC)** the Hon'ble Apex Court held as under : -

“The allotment of seats should go according to merit. It does not depend upon who comes to Court and who does not. The matter is one of principle and should not depend upon who comes to the court. A more deserving candidate may not have the means of

approach the Court.”

A bare perusal of the order would show that it has been settled that everyone should not be forced to approach the Court for the grant of same relief, which has already extended to the similarly situated employees.

Further, the respondents tried to differentiate the case by placing reliance upon a judgment of Hon'ble Supreme Court of India in **Manojbhai N. Shah's case (supra)**. This argument is also to be rejected. The same argument was pressed by the Insurance Company before this Court in CWP No.26515 of 2015, decided on 19.05.2017, titled as 'Santokh Singh Sandhu Vs. Chief Manager, Oriental Insurance Co. Ltd. and others' by relying upon the **Manojbhai N. Shah's case (supra)**. The Co-ordinate Bench of this Court rejected the said argument and held that the decision in **Manojbhai N. Shah's case (supra)** is not applicable in the present case keeping in view the distinguishable facts in both the cases. The relevant portion of said judgment is under: -

“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”.

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).”

No other argument has been raised by the respondents in support of the order dated 13.04.2016 (Annexure P-11).

In view of the settled proposition of law, the impugned order dated 13.04.2016 is set aside. It is held that the case of the petitioner is fully covered by the judgment of the Hon'ble Supreme Court in **Kirpal Singh's case (supra)**. Let the department process the case of the petitioner for the grant of pension. The arrears shall be computed and be

paid to the petitioner within a period of two months from the date of receipt of a certified copy of this order. The petitioner shall be entitled for interest from the date he approached this Court by filing CWP No.2661 of 2016 i.e. 18.01.2016 onwards @ 9% per annum till its realization.

Present writ petition stands allowed in above terms.

January 14, 2019
naresh.k

(HARSIMRAN SINGH SETHI)
JUDGE

Whether reasoned/speaking?	Yes
Whether reportable?	No