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W.P.No.30600 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.08.2022

CORAM :

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

W.P.No.30600 of 2018

Lakshmi Sivasubramanian

...Petitioner

Vs.

- 1.The Oriental Insurance Co. Ltd.,
Rep. by its Chairman cum
Managing Director,
Regd. Office: Oriental House,
Post Box No. 7037,
25/27, Asaf Ali Road,
New Delhi - 110 002.
- 2.The Oriental Insurance Co. Ltd.,
Rep. by its Manager,
Department of Pension,
Post Box No. 7037,
25/27, Asaf Ali Road,
New Delhi - 110 002.
- 3.The Oriental Insurance Co. Ltd.,
Rep. by its Manager,
Personnel Department - Head Office,
Regd. Office: Oriental House,
Post Box No. 7037,
25/27, Asaf Ali Road,
New Delhi - 110 002.
- 4.The Oriental Insurance Co. Ltd.,
Rep. by its Manager,
Pension Cell Department,



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Regional Office - U.I.L. Building,
Post Box No. 1877,
8, Esplanade,
Chennai - 600 108.

5. The Oriental Insurance Co. Ltd.,
Rep. by its Senior Divisional Manager,
Divisional Office III - V.D.S. House,
Rosy Towers, II Floor,
7, Uttamar Gandhi Salai,
Chennai - 600 034.

...Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Mandamus, directing the respondents to pay pension to the petitioner from the date of relieving from service.

For Petitioner : Mrs.C.S.Monica

For Respondents : Mr.A.Thayaparan,
Standing Counsel

ORDER

The prayer sought for is for a Writ of Mandamus to direct the respondents to pay pension to the petitioner from the date of relieving her from service.

2. The petitioner joined in the respondents-Insurance Company sometime in 1965. After having rendered long years of service, she decided to resign the job and accordingly, she had given the resignation



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letter dated 19.07.1991 and the said resignation, having been considered, was accepted by the letter of the respondent Insurance Company dated 19.08.1991 with effect from that date. Therefore, on 19.08.1991, since the resignation of the petitioner was accepted, she had been relieved from the respondent Insurance Company.

3. Subsequent to such resignation and relieving of the petitioner, there was a Pension Scheme announced by the Government of India for the General Insurance Company employees in General Insurance (Employees') Pension Scheme, 1995 (in short, 1995 Scheme).

4. Inter alia, the salient features of the scheme makes it applicability that the scheme would be applicable under Clause 3 of the scheme that those who were in the service of the Corporation or the Company, as the case may be, on or after the 1st day of January, 1986, but had retired before the 1st day of November, 1993, shall exercise an option in writing within 120 days from the notified date to become member of the Fund.

5. Therefore, the scheme was introduced only in 1995 well after the petitioner's resignation having been accepted by the respondent Insurance



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Company. The petitioner made an attempt to become the member of the Fund and he had made some request in this regard subsequently, i.e. in the year 1999. However, this attempt made by the petitioner, having been considered, was rejected by the respondents, stating that no doubt the scheme would be applicable to those who retired from service before the 1st day of November, 1993, i.e. on or before 01.11.1993 and such persons, who retired from service, can make an option within 120 days. However, the petitioner's case is not a retirement, but it is a resignation which was also accepted by the respondent Insurance Company in 1991. Hence, the petitioner is not entitled to seek for pension by becoming a member of the Fund and therefore, the plea made by the petitioner in this regard was rejected, as against which, an appeal was filed by the petitioner, which was also rejected by the Appellate Authority. Only at this juncture, the present Writ Petition has been filed seeking for a Mandamus, as prayed for.

6. In support of this prayer, the learned counsel for the petitioner Mrs.C.S.Monica would submit that insofar as the petitioner's attempt to become a member of the Fund is concerned, it is in consonance with Clause 3(1)(b) of the scheme, under which, within 120 days, such an



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option could be made and in this regard, an earlier attempt has been made by the petitioner within the 120 days period as to the salient features of the scheme was forwarded to the petitioner, as she was not aware of the scheme subsequently, only after coming to know about the salient features of the scheme, such an attempt was made, which was rejected by the respondents stating that the petitioner, since had resigned from the post, the question of becoming a member of the Fund does not arise, as only the retired people would be entitled to get such a benefit under the 1995 Scheme. The said rejection made by the respondent is bad in law, as the resignation has been made as there was no retirement scheme available at that time, and hence, that could be treated as a retirement for all practical purposes. Therefore, the petitioner would be entitled for the benefit of pension. Therefore, the Mandamus prayed for in this regard can be issued, she contended.

7. However, Mr.A.Thayaparan, learned Standing counsel appearing for the respondents, by relying on the averments made in the counter, would submit that, insofar as the eligibility of the petitioner to seek for pension is concerned, it has already been decided, which was referred ultimately before a Three Judges Bench of the Hon'ble Supreme Court in



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the case of *Senior Divisional Manager, Life Insurance Corporation of*

India Limited and others Vs. Shree Lal Meena reported in (2019) 4

SCC 479, where the distinction between the retirement and resignation has been considered and decided, where the inapplicability of Pension Scheme to employees who had resigned during the relevant period as against those who retired during that period, was also considered and ultimately, it was held that resignation also is a disqualification to seek pensionary benefits under relevant Regulations. Therefore, those who resigned the job could not be entitled to get the benefit of Pension Scheme, as has been held by the Hon'ble Supreme Court in the said decision. Therefore, in view of the settled legal position and also on the basis of the applicability of the scheme which had been clearly stated in Clause 3 of the scheme, the petitioner, who admittedly resigned his job in the year 1991, is not entitled to get the benefit of Pension Scheme. Hence, the plea raised by the petitioner and the prayer sought for is untenable and accordingly, he wants the Writ Petition to be dismissed.

8. I have considered the rival submissions made by learned counsel for either parties and perused the materials placed before this Court.



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9. The issue raised in this Writ Petition is no more res integra, as an exhaustive decision has come from the Hon'ble Supreme Court in the case of ***Senior Divisional Manager, Life Insurance Corporation of India Limited and others Vs. Shree Lal Meena reported in (2019) 4 SCC 479***, (cited supra), where the Court has held as follows:

"- Held, when employee resigns he takes conscious decision to disengage himself from services on terms and conditions as prevalent on that date - Any subsequent scheme would not accrue to his benefit except to the extent which is specifically made applicable to him - Resignation entails forfeiture of service - In service jurisprudence, concepts of "resignation" and "retirement" have different connotations and hence, employee resigning cannot seek benefit of pension scheme especially when resignation is one of the disqualifications for seeking pensionary benefits under relevant Regulations."

10. In view of the said legal position, since the petitioner admittedly has resigned the job in the year 1991, she cannot be equated with the persons who retired from service on or before 01.11.1993 as per Clause 3(1)(a) of the scheme. Therefore, the petitioner is not entitled to get any



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benefit out of the 1995 Pension Scheme. Hence, the prayer is untenable.

Accordingly, this Writ Petition fails and it is dismissed. No costs.

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Index: Yes/No

Internet: Yes/No

Speaking order/Non-speaking order

hvk

To

1. The Chairman cum Managing Director,
Oriental Insurance Co. Ltd.,
Regd. Office: Oriental House,
Post Box No. 7037,
25/27, Asaf Ali Road,
New Delhi - 110 002.

2. The Manager,
Oriental Insurance Co. Ltd.,
Department of Pension,
Post Box No. 7037,
25/27, Asaf Ali Road,
New Delhi - 110 002.

3. The Manager,
Oriental Insurance Co. Ltd.,
Personnel Department - Head Office,
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R. SURESH KUMAR, J.

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