IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.04.2023

CORAM:

THE HONOURABLE MRS. JUSTICE J.NISHA BANU

W.P.No.28282 of 2015
and M.P.No.1 of 2015

M.Thiagarajan ...Petitioner

Vs

1. United India Insurance Company Limited
Rep. by its Chairman Cum Managing Director
Head Office,
No.24, Whites Road, Royapettah,
Chennai-600 014

2. General Manager (Personnel)
United India Insurance Company Limited
Head Office,
No.24, Whites Road,
Royapettah,
Chennai-600 014

3. Authorized Signatory
Pension Department
United India Insurance Company Limited
Head Office,
No.24, Whites Road, Royapettah,
Chennai-600 014 ...Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, to call for the concerned records from the 3rd Respondent, quash the order of the 3rd respondent dated 19.03.2015 bearing Ref.No.HO:PEN:EMP.NO.349/U2571/2014-15 and consequently direct the respondents to arrive at and fix the pension in respect of the petitioner by taking into account of the dearness allowance, special allowance, taking fixed personal allowance as Rs.250/-, pay arrears of pension with interest at the rate of 15% per annum and pay pension every month on the basis of taking into account of the component of dearness, allowance, special allowance, fixed personal allowance as Rs.250/- and also implement Regulation 54 B of the General Insurance (Employees') Pension Scheme, 1995 by arriving at the pensionary benefit in accordance with the Central Civil Services (Pension) Rules, 1972 and the Central Civil Services (Commutation of Pension) Rules, 1981 as applicable to the Central Government Servants.

For Petitioner : Mr.Balan Haridas

For Respondents : Mr.V.Perumal

ORDER

This writ petition is filed praying to quash the order passed by the 3rd respondent-Authorized Signatory, Pension Department, dated 19.03.2015, wherein, petitioner's representation to pay pension in accordance with the General Insurance Employees' Pension Scheme, in accordance with the Central Civil Services Pension Rules 1972 and Central Civil Services (Computation of Pension) Rules, 1981, was rejected. The petitioner seeks consequential direction to the respondents to arrive at and fix the pension in respect of the petitioner by implementing Regulation 54B of the General Insurance (Employees') Pension Scheme, 1995 by arriving at the pensionary benefit in accordance with the Central Civil Services (Pension) Rules 1972 and the Central Civil Services (Commutation of Pension) Rules, 1981.

2. The petitioner was working as Assistant Manager in the General Insurance Department of Life Insurance Corporation of India from the date of its merger with the United India Insurance Company Ltd., Thanjavur Divisional Office and retired on 31.08.1999 after completion of more than 33 years of service.

3. It is averred in the writ petition that the pay includes basic pay, other allowance and dearness allowance payable on the basic pay upto index no.1148 in the quarterly average of All India Consumer Price

Index. However, the respondent Insurance company, while arriving at the pension payable to the petitioner, had left the dearness allowance component.

4. The learned counsel for the petitioner would submit that a sum of Rs 230/- being the fixed personal allowance was paid to the petitioner, however, it should be Rs.250/- as the personal pay, which was revised as per Government of India notification. He further submits that the pension has to be calculated in accordance with the provisions contained in Central Civil Pension Rules 1972 and the Central Civil Services (computation of pension) Rules 1981. The learned counsel would submit that 54B of the Central Civil Services Pension Rules, 1972, came into retrospective effect from 01.01.1996. The pensionary benefits of the petitioner shall be payable in accordance with the said Rules.

> **"54B. Pensionary benefits to employee mentioned in proviso to clause (k) of paragraph 2 who was in service on or after 1.1.1996-**
>
> *"Notwithstanding anything contained in this scheme, in respect of employee covered by the provisio to clause (k) of paragraph 2, who was in service on or after 1st January 1996, the pensionary benefits shall be*

calculated in accordance with the provisions contained in the Central Civil Services (Pension) Rules,1972 and the Central Civil Services (Commutation of Pension Rules 1981), as applicable to Central Government servants and in accordance with the instructions issued by the Central Government thereunder from time to time."

Provided that where such an employee, who has retired on or after 1.1.1996 and before the date of publication of this scheme in the Gazette or the family of such employee in the event of death of such employee gives a notice in writing within 90 days of the publication of this scheme, expressing an option not be governed by the provisions of this paragraph, then, the provisions of the above paragraph shall not apply in respect of such employee or the family of such employee, as the case may be. Option once exercised under this proviso shall be final."

5. The petitioner sent a representation dated 08.01.2015 to the 1st respondent seeking pension in accordance with the General Insurance Employees' Pension Scheme stating that his pensionary benefit should be calculated in accordance with the provisions contained in CCS Pension Rules, 1972 and CCS Rules, 1981. Such pensionary benefit will be Basic salary + Dearness Allowance + Special Allowance + Fixed Personal Allowance. But the representation of the petitioner was rejected vide impugned order dated 19.03.2015 by the 3rd respondent. Aggrieved by the same, the present writ petition is filed by the petitioner.

6. The representation of the petitioner was rejected on 19.03.2015 by the 3rd respondent stating that they were not aware of the automatic application of Central Government Rules to General Insurance Employees. When regulation 54 B of General Insurance (Employees') Pension Scheme 1995 makes it very clear that the amendment applies to all employees irrespective of the position in which they are placed w.e.f 01.01.1996, the order of rejection amounts to total non-application of mind and the petitioner is entitled to dearness allowances, special allowances and personal allowance of Rs.250 as part of the pension as the same forms the component of pay.

7. The petitioner would further submit that the rejection of the representation on the ground of delay is totally misconceived as the payment of pension is a recurring cause of action and the position is well settled in the decision of the Hon'ble supreme Court in **M.L.Patil V. State Of Goa, (2023) 1 SCC 660.**

8. The petitioner counsel submits that the basic pension in respect of the petitioner should have been 50% of Rs.16250/- + Dearness allowance as on 31.08.1999 Rs.195/- + Rs.250/- and which ought to have been Rs.8125/- + 50% of the Dearness Allowances as on 31.08.1999 + Rs.98/- + Rs.125/-. However while arriving at the basic pension, Dearness allowance was not taken into account and special pay to a sum of Rs.98/- was withdrawn from 01.08.1997 retrospectively and further fixed personal Allowance was fixed as Rs.115/- instead of Rs.125/-.

9. The learned counsel for the petitioner thus submits that the basic pension arrived at is erroneous and contrary to Rule 54 B of the Pension Scheme. The Dearness Allowance has to be taken into account in terms of Regulation 54 B of the scheme, which makes clear that the pensionary benefit should be calculated in terms of CCS Pension Rules and CCA Commutation of Pension Rules.

10. Per Contra, the learned counsel for the respondents would submit that on 31.08.1999, the petitioner retired from service as an

Administrative Officer and he did not raise any issue regarding his pension up to the year 2015. He having enjoyed the benefits conferred under the General Insurance Employees pension scheme, 1995 (hereinafter referred to as '1995 Scheme') filed the present writ petition after a delay of more than 16 years from his date of retirement i.e 31.08.1999, therefore, the same has to be dismissed on the ground of latches.

11. Heard both sides and perused the materials available on record.

12. On perusal of the records would go to show that the petitioner retired from respondent services whose service conditions are governed by General Insurance Scheme. As per Regulation 54B of the General Insurance (Employees) Pension Scheme, 1995, the pension benefits has to be calculated in terms of CCS Pension Rules and accordingly, the dearness allowance component has to be taken into account for arriving at the pension. However, the 1st respondent/United

India Insurance Company Limited though being bound by the scheme has failed to arrive at the pensionary benefit on the basis of the CCS Pension Rules under the pretext of ignorance about the application of the CCS Pension Rules and pointed out that it has no knowledge of such an automatic application of Central Government Rules to general insurance employees.

13. When the act, scheme or notification has been amended and the validation of its powers are given retrospective effect, certainly, the petitioner is entitled for the pensionary benefits. As such, this court is of the view that the petitioner is entitled for the dearness allowance, special allowance, personal allowance, arrears of pension etc as per Rule 54 B of the General Insurance (Employees') Pension Scheme, 1995 and in accordance with the Central Civil Services (pension) Rules, 1972 and the Central Civil Services (Commutation of Pension) Rules, 1981 as applicable to the Central Government Servants with effect from the date of retirement of the petitioner.

14. In the result, the Writ Petition is allowed on the above terms. No costs. Consequently connected miscellaneous petition is closed.

20.04.2023

Index:Yes/No
msv/nvsri

To

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