IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 09.08.2023

Delivered on: 11.12.2023

CORAM:

THE HON'BLE MR.JUSTICE R.SURESH KUMAR
and
THE HON'BLE MR.JUSTICE K.KUMARESH BABU

W.A.No.209 of 2016
and W.P.Nos.863 & 864 of 2015
and M.P.No.1 of 2015 & C.M.P.No.3145 of 2016

W.A.No.209 of 2016

1.The Chairman cum Managing Director,
M/s.United India Insurance Company Ltd.,
Head Office: 24, Whites Road,
Chennai – 600 014.

2.The Chief Executive,
M/s.General Insurance Public Sector Association (GIPSA),
III, Floor, Jeevan Vinhar (rear portion),
New Delhi – 110 011.

3.The Deputy General Manager,
CC-HO, Pension Department,
United India Insurance Company Ltd.,
Registered & Head Office: 24, Whites Road,
Chennai – 600 014. ...Appellants

vs.

1.V.K.Nagarajan (Died)
2.Union of India,
Rep. by Secretary of Government,
Ministry of Finance,
Department of Economic Affairs,
Room No.166-D,
New Delhi – 110 001.
3.K.N.Bhanumathy
4.Mrs.Suchitra

(RR 3 & 4 brought on record as LRs of the deceased R1 vide order of Court dated 06.03.2020 made in CMP.Nos.10800, 10802 & 10803 of 2019 in W.A.No.209 of 2016) ...Respondents

Prayer: Writ Appeal filed under Clause 15 of Letters Patent, against the order dated 14.10.2015 made in W.P.No.26795 of 2013 passed by the learned Judge of this Court.

For Appellants : Mrs.Chitra Sampath, Senior Counsel
for Mr.T.S.Baskaran

For Respondents : R1 – Died
Mr.P.R.Ramesh Babu, Sr.Standing Counsel for R2

Mr.N.Surya Senthil for R3 & R4
for Mr.D.Dorairajan

W.P.No.863 of 2015

V.C.Muralidharan ...Petitioner

vs.

1.Chairman-cum-Managing Director,
United India Insurance Company Limited,
Head Office: 24, Whites Road, Chennai – 600 014.

2.General Manager,
Personnel Department,
United India Insurance Company Limited,
Head Office: 24, Whites Road, Chennai – 600 014.

3.Chief Executive,
General Insurance Public Sector Association,
GIPSA, 3rd Floor,
Jeevan Tara Building, Sansad Marg, New Delhi – 110 011.

4.Secretary, Ministry of Finance,
Department of Economic Affairs,
Insurance Division, 'A' Wing,
2nd Floor, Lok Nayak Bhavan,
Khan Market, New Delhi – 110 003.

5.Secretary, (Financial Sector),
Insurance Division, Jeevan Deep Building,
Department of Economic Affairs,
Sansad Marg, New Delhi – 110 001. ...Respondents

Prayer: Writ Petition filed under Article 226 of Constitution of India, for issuance of writ of mandamus, to direct the first respondent to consider the representation dated 15.10.2014 and direct the respondents by treating the petitioner as a person voluntarily retired in terms of the Pension Scheme 1995 by working out the amount payable to the petitioner in terms of Para 3(1)(c) of the General Insurance Employees Pension Scheme after levying interest at 6% from 19.03.1991 from the pension due to the petitioner after adjusting the same on the amount outstanding from the petitioner to the first respondent in terms of General Insurance Employees Pension Scheme 1995 by treating the petitioner as a voluntarily retired in terms of clause 22 and 30 of the scheme and allowing pension in terms of the orders rendered by the Supreme Court in C.A.No.6013 of 2011 dated 28.07.2011 and in Review Application No.128 of 2012 in W.P.No.2905 of 1996 by the order dated 07.11.2013 as confirmed in S.L.P.No.15239 of 2014 dated 11.07.2014.

W.P.No.864 of 2015

Ganesan Ramachandran ...Petitioner

vs.

1.Chairman-cum-Managing Director,
United India Insurance Company Limited,
Head Office: 24, Whites Road,
Chennai – 600 014.

2.General Manager,
Personnel Department,
United India Insurance Company Limited,
Head Office: 24, Whites Road,
Chennai – 600 014.

3.Chief Executive,
General Insurance Public Sector Association,
GIPSA, 3rd Floor,
Jeevan Tara Building, Sansad Marg,
New Delhi – 110 011.

4.Secretary,
Ministry of Finance,
Department of Economic Affairs,
Insurance Division, 'A' Wing,
2nd Floor, Lok Nayak Bhavan,
Khan Market, New Delhi – 110 003.

5.Secretary, (Financial Sector),
Insurance Division, Jeevan Deep Building,
Department of Economic Affairs,
Sansad Marg, New Delhi – 110 001. ...Respondents

Prayer: Writ Petition filed under Article 226 of Constitution of India, for issuance of writ of mandamus, to direct the first respondent to consider the representation dated 10th October 2014 and direct the respondents by treating the petitioner as a person voluntarily retired in terms of the Pension Scheme 1995 by working out the amount payable to the petitioner in terms of Para 3(1)(c) of the General Insurance Employees Pension Scheme after levying interest at 6% from 19.07.1993 from the pension due to the petitioner after adjusting the same on the amount outstanding from the petitioner to the first respondent in terms of General Insurance Employees Pension Scheme 1995 by treating the petitioner as a voluntarily retired in terms of clause 22 and 30 of the scheme and allowing pension in terms of the orders rendered by the Supreme Court in C.A.No.6013 of 2011 dated 28.07.2011 and in Review Application No.128 of 2012 in W.P.No.2905 of 1996 by the order dated 07.11.2013 as confirmed in S.L.P.No.15239 of 2014 dated 11.07.2014.

For Petitioner in both W.Ps : Mr.M.Ravi, Senior Counsel
for Mr.K.Moorthy
For Respondents in both W.Ps : Mrs.Chitra Sampath, Senior Counsel
for Mr.T.S.Baskaran for R1 to R3

Mr.P.R.Ramesh Babu, Sr. Standing Counsel for R4 & R5

COMMON JUDGMENT

(Judgment of the Court was delivered by K.KUMARESH BABU, J.)

The common issue involved in these *lis* is the applicability of the General Insurance (Employees) Pension Scheme, 1995 to the private parties herein.

2.The brief facts of the case are that the private parties herein had been employed in the insurance sector and had resigned from the employment. For better appreciation, the following details are relevant:

Case No.	***Name of the Petitioner***	***Date of resignation***	***Date of application of Pension Scheme***
W.A.No.209 of 2016	V.K.Nagarajan	09.10.1990	04.10.2011
W.P.No.863 of 2015	V.C.Muralidharan	18.09.1990 Relieved on 12.11.1990	14.03.2014
W.P.No.864 of 2015	Ganesh Ramachandran	19.07.1993 Relieved on 30.07.1993	10.10.2014

3.Heard Mrs.Chitra Sampath, learned Senior Counsel appearing for Mr.T.S.Baskaran, learned counsel for the appellants in Writ Appeal & for R1 to

R3 in Writ Petitions, Mr.P.R.Ramesh Babu, learned Senior Standing Counsel appearing for the second respondent in Writ Appeal & for R4 & R5 in Writ Petitions, Mr.N.Surya Senthil, learned counsel appearing for Mr.D.Dorairajan, learned counsel for the third and fourth respondents in Writ Appeal and Mr.M.Ravi, learned counsel appearing for Mr.K.Moorthy, learned counsel for the petitioners the Writ Petitions.

4.Mrs.Chitra Sampath, learned Senior Counsel would contend that the private individuals were in the services of the Insurance Company and that they had resigned from the services in between 1990 and 1993. The Ministry of Finance, Union of India had framed a Scheme called General Insurance (Employees) Pension Scheme, 1995 which was notified on 28.06.1995 to have a retrospective effect generally from 01.11.1993. The said Scheme envisaged pensionary benefits to certain class of employees who had been in service as on 01.01.1986, who retired prior to 01.11.1993, employees who had retired on or after 01.11.1993 but before the notified date and the employees in service on the notified date. It also mandated that such employees should exercises their option in writing within 120 days from the notified date to become a member of the Provident Fund. They shall also refund within 60 days from the date of the expiry of 120 days from the notification, in cases where they had received Corporations/Companies contributions to the Provident Fund together the interest accrued thereon of simple interest at the rate of 12% and also the entire amount of non-refundable withdrawal if any made from the Corporations/Companies contributions of the Provident Fund together with the simple interest at the rate of 6%.

5.She would submit that in the present case, the first respondent in the Writ Appeal had filed his application only on 04.10.2011, the petitioner in W.P.No.863 of 2015 had filed his application on 14.03.2014 and the petitioner in W.P.No.864 of 2015 had filed his application on 10.10.2014. Therefore, she would contend that even if the Scheme is applicable to them, they would not be entitled to considered as their application are not within 120 days from the notified date i.e. 28.06.1995. She would reiterate that the aforesaid submission is without prejudice to her contention as to the applicability of the Scheme.

6.She would contend that the present applications all have been made pursuant to the judgment of the Hon'ble Apex Court in ***Sheelkumar Jain*** vs. ***New India Assurance Company Limited*** reported in ***2011 (12) SCC 197***. She would submit that the Hon'ble Apex Court in the aforesaid judgment had held that the Scheme would also apply to an employee of Insurance Company who had put in a qualifying service for pension who had voluntarily given up his service after serving 90 days notice period in accordance with Paragraph 5(1) of Scheme 1976.

7.She would submit that the Hon'ble Apex Court in the aforesaid judgment on the facts of the case held that the resignation of the employee should be treated as Voluntary Retirement and therefore, the employee would be entitled for the pensionary benefits. She would submit that the aforesaid judgment of the Hon'ble Apex Court is by a two judges bench. Since similar issues were also there with reference to other Insurance Companies, the same was subsequently dealt with by the Hon'ble Apex Court in a judgment reported in ***2019 (4) SCC 479*** (*Senior Divisional Manager, Life Insurance Corporation of India and Others* vs. *Shree Lal Meena)*. She would point out that the said decision of the Hon'ble Apex Court is by a three judges bench.

8.She would submit that the larger bench of the Hon'ble Apex Court taking into consideration that if an employee in service after the notified date had resigned from service under the Scheme, he would not be entitled for pension. Therefore, it would be self-defeating to hold that an employee who had resigned prior to the notified date would be entitled to pensionary benefits.

9.She would contend that the larger bench had impliedly overruled the judgment of the two judges bench in ***Sheelkumar Jain's*** case by holding that a resignation of an employee could not be treated on par with Voluntary Retirement and the conduct of the employee would have to be determined based upon the relevant rules that have been prevailing upon at that point of time. She would further submit that the larger bench of the Hon'ble Apex Court had in clear terms held that the Pension Scheme, 1995 do not require any interpretation as there was no ambiguity therein. Therefore, she would pray to this Court to allow the Writ Appeal and dismiss the Writ Petitions.

10.Countering her arguments, Mr.M.Ravi, learned Senior Counsel would contend that on the date of the resignation in the case of both the Writ Petitions, there was no Scheme for Voluntary Retirement. He would further submit that the larger bench of the Hon'ble Apex Court had not overruled the judgment in ***Sheelkumar Jain's*** case. But only had held on to the facts of the particular case, the employees were entitled to the benefit of the Scheme 1995. He would contend that the petitioners herein are also similarly placed persons. He would further contend that the petitioners did not have the benefit of the Voluntary Retirement Scheme on the date of his resignation. Therefore, he prays this Court to direct the respondent viz., the Insurance Company to treat the case of the petitioners as Voluntary Retirement persons to whom the Scheme would be applicable and grant pensionary benefits to the petitioners.

11.Mr.N.Surya Senthil, learned counsel appearing on behalf of the respondents 3 & 4 who are the legal heirs of the deceased first respondent employee would submit that under the Scheme, the employee ought to have retired between the period on 01.01.1986 and 01.11.1993 and that the employee ought to have qualified service of minimum 20 years and that the employee ought to have provided 90 days notice seeking Voluntary Retirement. He would submit that as of date, the employee when he tenders his request to discontinue him from service i.e. 09.10.1990, he had completed 24 years of qualified service. He would submit that his letter was in consonance with Rule 5(1) of the General Insurance (Termination, Superannuation, Retirement of Officers and Development Staff) Scheme, 1976 and therefore as per the judgment of the Hon'ble Apex Court ***in Sheelkumar Jain's*** case, he would be entitled for and to be considered the benefits under the Pension Scheme, 1995.

12.He would further submit that in the larger bench of the Hon'ble Apex Court, the Apex Court had rejected the claim based on the fact that the employee in that case had slept over for more than two years even after judgment in ***Sheelkumar Jain's*** case. But, however, he would submit that in the present case, the employee has made his application on 04.10.2011 immediately after the judgment in ***Sheelkumar Jain's*** case. Therefore, he would submit that the order of rejection on the ground that the application had not been made within 120 days specified in the Scheme 1995 should not be put against the respondent to deny him of pensionary benefits. Therefore, he would contend that the first respondent would also be entitled for the Pension Scheme, 1995 and the respondent should be directed to grant the pensionary benefits to the deceased first respondent employee and pay all benefits till his death and thereafter the family pension as eligible.

13.We have heard the respective submission made by the learned counsel appearing for the respective parties and we have perused the materials available on record.

14.The issues raised in these proceedings before this Court are no longer *res integra*. The Hon'ble Apex Court in ***Sheelkumar Jain's*** case after considering the facts of the particular case and by interpreting provisions of Paragraphs 22 & 30 of the Scheme 1995 had granted the benefits to the employees concerned particularly, Paragraph 5(1) of Scheme 1976 which dealt with the Termination, Superannuation, Retirement of Officers and Development Staff in the Insurance Companies.

15.The larger bench judgment of the Hon'ble Apex Court in the case of ***Life Insurance Corporation's*** case reported in ***2019 (4) SCC 479*** had considered various aspects and had given a categorical interpretation holding that the act of resignation of an employee could not be termed to be a Voluntary Retirement and had held that the employees therein were not entitled to the benefits of the Pension Scheme, 1995. It would be useful to extract the relevant paragraphs in the aforesaid judgment.

> "*...16.The moot point which, thus, arises for consideration is the effect of the retrospective application of these Rules in the given factual scenario. Had the Pension Rules been only prospective in application, there is no doubt that Shree Lal Meena could not even have endeavoured to prefer a claim. In order to appreciate this aspect, the extent to which retrospectivity applies would have to be analysed, strictly on the basis of these Pension Rules, which are also contributory in their character.*
>
> *17.The undisputed fact is that as on the date when Shree Lal Meena was revolving the thought in his mind of voluntary retirement,*

there was no such provision in the Staff Regulations applicable. Thus, his repeated communications setting forth a thought process for "voluntary retirement" had no legal backing on that date. It is in these circumstances that no response was forthcoming to his letters, when he talked about a concept which did not exist. Conscious of this aspect and wanting to leave the services of LIC, Shree Lal Meena took recourse to what was permissible on that date i.e. "resignation". Section 3 of the Staff Regulations has a heading "Termination". The other expression used before the relevant Regulation 18 is "Determination of Service". The Regulation itself uses the expression "leave or discontinue" service. In whatever manner these expressions are understood, in legal and common parlance, they amount to, first a unilateral act on the part of an employee, desirous of not continuing with her/his service with the employer and then, the acceptance of the same by the employer, subject to a notice period, which, in the present facts, had been waived at the request of the employee. Thus, on the relevant date he took a conscious decision to disengage himself from the services of the appellant, on the terms and conditions as prevalent on that date. As to what happened five years hence, in our view, would have no *bearing on any benefit, which can accrue to such employee as a respondent, except to the extent which is specifically made applicable to him.*

18.It is trite to say that statutory provisions must be given their clear meaning unless there is ambiguity in the wordings. [Grundy v. Pinniger, (1852) 1 LJ Ch 405; Pinner v. Everett, (1969) 1 WLR 1266 : (1969) 3 All ER 257 (HL) : (Pinner case, All ER pp. 258 I-259 A)"In determining the meaning of any word or phrase in a statute the first question to ask always is what is the natural or ordinary meaning of that word or phrase in its context in the statute? It is only when that meaning leads to some result which cannot reasonably be supposed to have been the intention of the legislature, that it is proper to look for some other possible meaning of the word or phrase."] There is no ambiguity in the Pension Rules in question as to require any import to be given that is different from its plain words. The Pension Rules have been brought into force from a retrospective date of 1-11-1993. Thus, they would logically apply to all employees in service on or after 1-11-1993. The respondent was not such a person. There is only one further twist to the Pension

Rules. Rule 3(1)(a) of the Pension Rules refers to applicability of these Pension Rules even to such of the employees who "retired" on or after 1-1-1986 and before 1-11-1993. Even for such of the employees, there is a requirement for an option to be exercised, in writing, that within a period of time of 120 days from the notified date they become member of the Life Insurance Corporation of India (Employees) Pension Fund, and refund within 60 days thereafter, the entire amount of LIC's contribution to the Provident Fund, including interest accrued thereon. This is so, as employees who retired during this period of time had availed of the contributory provident fund benefit under the then existing Staff Regulations, and would have to surrender the benefits under those Regulations to the extent they were contributed by LIC, for the new Pension Rules to be made applicable to them. The expression used in Rule 3(1)(a) is clear and unequivocal — "retired". It has not used any alternative expression also, for determination of the relationship of employer-employee, like "resignation". In the same Rules, expressions like "resignation", "dismissal", "removal" have been used, more specifically in Rule 23 of the Pension Rules. When different expressions are used in the same Rules, in different contexts then all of them cannot be given the *same meaning. [Board of Revenue v.Arthur Paul Benthall, (1955) 2 SCR 842 : AIR 1956 SC 35; Kanhaiyalal Vishindas Gidwani v. Arun Dattatray Mehta, (2001) 1 SCC 78 : (SCC p. 89, para 15)"15. … It is true that when the same statute uses two different words then prima facie one has to construe that these two different words must have been used to mean differently."]*

19.What is most material is that the employee in this case had resigned. When the Pension Rules are applicable, and an employee resigns, the consequences are forfeiture of service, under Rule 23 of the Pension Rules. In our view, attempting to apply the Pension Rules to the respondent would be a self-defeating argument. As, suppose, the Pension Rules were applicable and the employee like the respondent was in service and sought to resign, the entire past service would be forfeited, and consequently, he would not qualify for pensionary benefits. To hold otherwise would imply that an employee resigning during the currency of the Rules would be deprived of pensionary benefits, while an employee who resigns when these Rules were not even in existence, would be given the benefit of these Rules.

26.There are some observations on the principles of public sectors being model employers and provisions of pension being beneficial legislations. [Shashikala Devi v. Central Bank of India, (2014) 16 SCC 260 : (2015) 3 SCC (L&S) 319; Asger Ibrahim Amin v. LIC, (2016) 13 SCC 797 : (2015) 3 SCC (L&S) 12] We may, however, note that as per what we have opined aforesaid, the issue cannot be dealt with on a charity principle. When the legislature, in its wisdom, brings forth certain beneficial provisions in the form of Pension Regulations from a particular date and on particular terms and conditions, aspects which are excluded cannot be included in it by implication. The provisions will have to be read as they read unless there is some confusion or they are capable of another interpretation. We may also note that while framing such schemes, there is an important aspect of them being of a contributory nature and their financial implications. Such financial implications are both, for the contributors and for the State. Thus, it would be inadvisable to expand such beneficial schemes beyond their contours to extend them to employees for whom they were not meant for by the legislature."

16.A thorough reading of the judgment of the larger bench of the Hon'ble Apex Court would show that it had deviated itself from the principal laid down in ***Sheelkumar Jain's*** case which is of two judges bench in regard to treating a resigned employee on par with a Voluntarily Retired employee.

17.A common claim of all the employees in these *lis* is that during the time when they had submitted their resignation, there was no scheme for Voluntary Retirement and therefore, having no other option in view of their family exigencies, they were forced to submit their resignations. They had also pleaded so in their respective affidavits filed in support of their writ petitions. In these cases, there was an order of rejection rejecting the request on the ground that they had not made their applications within the period of 120 days as prescribed under the Scheme.

18.Further, in respect of the Writ Petition in W.P.No.863 of 2015 is concerned, the rejection was also made on the basis that the petitioner therein had resigned and not Voluntarily Retired. A specific claim had also been made by the Insurance Company that the Scheme 1976 governing Termination, Superannuation, Retirement of Officers and Development Staff had been amended on 27.07.1990 by way of introducing Paragraph 4(A) which provided for Voluntary Retirement on fulfilling certain conditions. Except for the first respondent in the Writ Appeal, the petitioners have not challenged their orders of rejection but only sought for a direction by way of a mandamus to grant them pension benefits.

19.Since already their request had been considered and rejected, we are *prima facie* of the view that they would not be entitled for a mandamus. But, considering the fact that these *lis* have been kept pending for nearly a decade, we propose to analyze their entitlement for extending the Scheme 1995. In the facts of the present case, it has been admitted that the first respondent in the Writ Appeal had submitted his resignation on 09.10.1990 likewise, the petitioners in writ petitions also submitted their resignations on 18.09.1990 & 19.07.1993.

20.It is pertinent to note that the General Insurance Scheme, 1976 had been amended by insertion of Paragraph 4(A) vide notification dated 27.07.1990 which provided for a Voluntary Retirement Scheme from the dates on which these employees submitted their resignation as noted supra. It could be seen that such applications have been made after 27.07.1990 i.e., after the amendment bringing in a Scheme for Voluntary Retirement. When that be so, the employees cannot be heard to say that there was no Voluntary Retirement Scheme on the date of submitting their resignation.

21.Further, the larger bench of the Hon'ble Apex Court had also distinguished scope of a resignation and Voluntary Retirement. Therefore, the claim of the employees that their resignation should be treated as Voluntary Retirement is far reaching.

22.We had extracted the reasonings given by the larger bench of the Hon'ble Apex Court, particularly, in paragraph No.19 as extracted supra. The import of the Hon'ble Apex Court therein, is that an employee who had been in service at the time of the implementation of the Scheme, had resigned he would not be entitled to the pension as per the terms of the Scheme & therefore even an employee who resigned earlier would not be entitled to.

23.In the present case also, the employees had resigned prior to the introduction of the Scheme without applying for the Voluntary Retirement which was available to them. Therefore on that ground also they would not be entitled to the benefits of the Scheme 1995.

24.Further as per Para 4A of Scheme 1976 framed for Volutary Retirement, the minimum age for a person to opt for Voluntary Retirement shall be 55 years. For better appreciation, the same is extracted hereunder:

> *Notwithstanding anything contained in the forgoing subparagraphs, an officer or a person of the Development Staff may be permitted, subject to vigilance clearance, to seek voluntary retirement.*
>
> *(a) on completion of 55 years of age or at any time thereafter on giving ninety days notice in writing to the appointing authority of his intention of retire.*
>
> *Provided that on a written request from an officer or a person of the Development Staff such notice may be waived in full or in part by the appointing authority; or*
>
> *(b)in accordance with the provisions contained in paragraph 30 of the General Insurance (Employees') Pension Scheme, 1995, made under Section 17A of the General Insurance Business (Nationalisation) Act, 1972, (57 of 1972) and published under Notification of the Government of India, in the Ministry of Finance*

(Department of Economic Affairs) Insurance Division No.S.O.585(E) dated 28th June, 1995.

25.In the present case all the three employees on the date of submitting their resignations have not completed 55 yeas of age. The same could also be fortified from the age given by them in their respective affidavits filed in support of their writ petitions. They would have submitted their resignations only as they do not qualify for Voluntary Retirement. On this ground also their claim to treat them as Voluntarily Retired to enable them for applying 1995 Scheme cannot be entertained, as they have not reached the qualifying age to apply for Voluntary Retirement.

26.In the result, the Writ Appeal is allowed and both the Writ Petitions are dismissed. However, there shall be no order as to costs. Consequently, the connected miscellaneous petitions are closed.

(R.S.K.,J.) (K.B.,J.)
11.12.2023

Index: yes/no
Speaking order:yes/no
pam

To

1.The Secretary of Government,
Union of India,
Ministry of Finance,
Department of Economic Affairs,
Room No.166-D,
New Delhi – 110 001.

2.The Secretary, (Financial Sector),
Insurance Division, Jeevan Deep Building,
Department of Economic Affairs,
Sansad Marg, New Delhi – 110 001.

R.SURESH KUMAR, J.
and
K.KUMARESH BABU, J.

Pam

**Pre-delivery Common judgment in
W.A.No.209 of 2016
and W.P.Nos.863 & 864 of 2015**

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