

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.770 of 2022

In
Civil Writ Jurisdiction Case No.16872 of 2018

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1. The Life Insurance Corporation of India through the Chairman having its Central Office at Yogakshema, Jeevan Bima Marg, Mumbai- 700021.
 2. The Managing Director, Life Insurance Corporation of India having its Central Office at 'Yogakshema, Jeevan Bima Marg, Mumbai- 700021.
 3. The Executive Director (Personnel), Life Insurance Corporation of India having its Central Office at 'Yogakshema, Jeevan Bima Marg, Mumbai- 700021.
 4. The Zonal Manager, Life Insurance Corporation of India, Jeevan Deep 4th Floor, East Central Zone Office, Exhibition Road, Patna- 800001.
 5. The Senior Divisional Manager, Life Insurance Corporation of India, Bhagalpur Division, Zero Mile, Bhagalpur.
 6. The Branch Manager, Life Insurance Corporation of India, Katihar, Branch.
 7. The Manager (P and R), Divisional Office, Life Insurance Corporation of India, Bhagalpur.
 8. The Chief Manager, Life Insurance Corporation of India, Bhagalpur Branch- 1.

... .. Appellant/s

Versus

1. Alok Kumar Jha S/o Ganga Nath Jha resident of House No. 012/24, Colony No.1 Durgasthan P.O. and P.S. Katihar, District Katihar, PIN- 854105.
2. Keshaw Mandal, S/o- Late Jageshwar Mandal Resident of Mohalla Chandpur, P.S. Falka, District- Katihar.
3. Binod Kumar, S/o- Late Udit Narayan Yadav Resident of Village Gopalpur, P.O.- Bahadurpur, P.S. Sabour, District- Bhagalpur.
4. Pankaj Kumar, S/o Shri Ramawatar Sah Resident of Gita Bhawan, Srikant Road, Bela Bagan, P.O. and P.S. Deoghar, District- Deoghar.
5. Ashok Kumar Mandal, S/o- Sri Dip Narayan Mandal Resident of Village Kumar Dih (Near Reliance Petrol Pump), P.O. Godda College District Godda.
6. Raman Kumar Singh, S/o- Sri Arbind Kumar Singh Resident of Mohalla Gandhinagar, Durgasthan, P.O. and P.S.- Katihar, District Katihar.
7. The Union of India through the Secretary, Department of Financial Services, Ministry of Finance, Jeevan Deep Building, Sahzad Marg, New Delhi-1.
8. The Secretary, Department of Ex-Servicemen Welfare, Ministry of Defense, South Block New Delhi- 11.



... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Rakesh Kumar, Advocate
Mr. Abhimanyu Vatsa, Advocate
Mr. Sameer Sawarn, Advocate

For the Respondent/s :

CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE PARTHA SARTHY
ORAL JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 21-10-2024

The appellant is the Life Insurance Corporation of India (for brevity 'Corporation') aggrieved with the judgment of the learned Single Judge, which allowed the writ petition filed by the party-respondents herein; to the extent of restraining the Corporation from recovering amounts as per the impugned letter dated 06.01.2017, which was a consequence of rationalisation of pay fixation of ex-servicemen, arising from the guidelines issued by the Government of India.

2. The learned Single Judge clearly found that the guidelines issued by the Government of India dated 17.02.2014 applicable to the public sector insurance companies, was not challenged in the writ petition and only the consequential pay fixation under the impugned order was challenged. While declining to interfere with the pay fixation, as noticed above, the Respondent-Corporation was restrained from making any



recovery by reason of such pay fixation.

3. The appeal was filed with a delay of 84 days and we heard the learned Counsel appearing for the Corporation on merits.

4. The learned Counsel for the Corporation pointed out that the guidelines specifically related to ex-servicemen re-employed in public sector banks on or after 01.01.2006 and hence, the re-fixation has to be from the date of appointment and if there is any excess amounts disbursed on the basis of the earlier fixation; it would be perfectly in order to seek refund of the same. It is also contended that there were many cases in which the fixation was found to be bad on the ground of the last pay certificate having not been issued properly. This was a ground specifically raised in the counter affidavit and the supplementary counter affidavit; which the learned Single Judge refused to consider.

5. At the outset, we have to notice that the re-fixation, as per the impugned order, was based on the guidelines of 2014 issued by the Government of India and so was the recovery ordered, based on such re-fixation. There was no allegation or ground in the impugned order with respect to the last pay certificate furnished by the individual writ petitioners. The



further contention taken in the counter affidavit and the supplementary counter affidavit cannot at all be countenanced, as has been held in ***Mohinder Singh Gill v. Chief Election Commissioner, New Delhi, (1978) 1 SCC 405***. The Hon'ble Supreme Court held and declared that an impugned action is to be judged by the reasons stated while making the order and supplementary reasons in the shape of affidavits are to be excluded.

6. Following the above dictum, we reject, at the outset, the contention taken regarding furnishing of last pay certificate and confine the consideration in the appeal to the matter dealt with in the impugned judgment, as considered by the learned Single Judge.

7. Admittedly, there is no challenge against the guidelines or the fixation as such, which was to rationalise the pay fixation in the public sector organisations, wherein ex-servicemen are appointed on re-employment. We find the learned Single Judge having correctly observed that since there is no challenge against the guidelines, the fixation cannot at all be interfered with. There is also no appeal filed by the writ petitioners against the said finding of the learned Single Judge.

8. In the present case, we confine the consideration to



the recovery and the challenge against the restrictive order passed by the learned Single Judge.

9. The counter affidavit in the writ petition has produced a guideline issued by the Central Government on 17.02.2014, as Annexure-A. It is with respect to the fixation of pay of ex-servicemen on re-employment, who have been so re-employed on or after 01.01.2006. From Annexure-1 series produced, the writ petitioners No. 1, 4, 5 and 6 are seen to have been appointed in the year 2009. The date of appointment of writ petitioners No. 2 and 3 is not evident, but there is no dispute with respect to their appointment also being after 01.01.2006; thus, subjecting themselves also to the fixation directed in 2014.

10. The writ petitioners who were appointed on various dates after 2006, were fixed with their salaries on re-employment as per the extant rules. They were also disbursed with such amounts while they were continuing in service. In the year 2014, the Government brought out the guidelines, which was implemented by the appellant-Corporation only in the year 2017. In the interregnum period also, the writ petitioners were disbursed with salaries, as fixed at the time of their appointment. The re-fixation, which is impugned in the writ petition, also



attempted to recover the excess amounts paid, relating to such fixation from the date of their appointment.

11. We cannot but notice that though the fixation was directed to be made effective to all re-employments made on or after 01.01.2006; there is no retrospective operation given to such fixation from the date of appointment. In such circumstances, the fixation if at all, could be done only from the date of its implementation; which as the learned Single Judge observed, had not been challenged in the writ petition.

12. As far as the recovery is concerned, the higher fixation of pay was not by reason of any fault attributable to the writ petitioners. The writ petitioners had submitted their last pay certificates and the fixation was carried out by the Corporation, who re-employed them. They were also disbursed with such salaries fixed on re-employment, which they withdrew continuously while they were in service. Merely on the basis of rationalisation, the employees cannot be asked to refund the amounts already disbursed to them as salaries; fixed based on extant rules at the time of their appointment. We find absolutely no reason to entertain the appeal.

13. Having gone through the delay petition, we do not find any satisfactory reason projected regarding the delay



occasioned. The Corporation only speaks of delay in obtaining approval for filing appeal, from the higher authorities, but does not even indicate any prompt approval having been sought for, from the higher authority. We also find no reason to condone the delay occasioned.

14. While rejecting the prayer for delay condonation, we also find no valid grounds for appeal. Having considered the merits of the issue, we reject the appeal *in limine* on both counts.

15. Interlocutory applications, if any, shall stand closed.

(K. Vinod Chandran, CJ)

(Partha Sarthy, J)

Sujit/-

AFR/NAFR	NAFR
CAV DATE	
Uploading Date	23.10.2024
Transmission Date	

