



W.P.No.24749 of 2010

IN THE HIGH COURT OF JUDICATURE AT MADRAS

WEB COPY

DATED: 28.02.2024

CORAM:

THE HONOURABLE MR.JUSTICE G.CHANDRASEKHARAN

W.P.No.24749 of 2010

and

M.P.No.02 of 2010

1. General Insurance Officers All India Association,
Registration No.S/45597 of 2003,
Rep.by its Additional General Secretary,
53, Rajah Muthiah Road,
Periamet, Chennai – 600 003.

2. A. Chengalvarayan,
Administrative Officer,
National Insurance Company Limited,
Division -II
11, Ramakrishna Road,
Salem- 636 007.

....Petitioners

Vs

1. Union of India,
Ministry of Finance,
Department of Financial Services,
Insurance and Pension,
Rep. By its Joint Secretary,
Jeevadheep Building,
Parliament Street,
New Delhi – 110 001.

2. National Insurance Company Limited,
Rep. By its Chairman Cum Managing Director,
No.3, Middleton Street, Kolkatta – 700 071.



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3. United India Insurance Company Limited,
Rep. By its Chairman Cum Managing Director,
24, Whites Road, Thousand Lights,
Chennai – 600 014.

4. The Oriental Insurance Company Limited,
Rep. By its Chairman Cum Managing Director,
A-25/27, Asaf Ali Road,
New Delhi – 110 001.

5. New India Assurance Company Limited,
Rep. By its Chairman Cum Managing Director,
Mumbai – 400 001.

....Respondents

PRAYER: Writ Petition is filed under Article 226 of Constitution of India, pleased to issue a Writ of Certiorari calling for the records from the 1st Respondent relating to the Notification dated 08.10.2010 vide S.O.2470(E) and the consequential Administrative instructions issued by the Respondents 2 to 5 dated 18.10.2010 and quash the same in so far as it relates to the introduction of new pension Scheme and consequential deduction for the same as illegal, arbitrary, unconstitutional without jurisdiction and consequentially direct the Respondents to continue the Pension Scheme as it stood prior to the issuance of the impugned proceedings.

For Petitioner	: Mr.N.G.R.Prasad for M/s.Row and Reddy
For R1	: M/s.N.K.Nithila Vani CGSC
For R2 to R5	: M/s.V.Perumal



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ORDER

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The Writ Petition has been filed to call for the records from the 1st Respondent relating to the Notification dated 08.10.2010 vide S.O.2470(E) and the consequential Administrative instructions issued by the Respondents 2 to 5 dated 18.10.2010 and quash the same in so far as it relates to the introduction of new pension Scheme and consequential deduction for the same as illegal, arbitrary, unconstitutional without jurisdiction and consequentially direct the Respondents to continue the Pension Scheme as it stood prior to the issuance of the impugned proceedings.

2.The issue involved in this Writ Petition is that a notification of Ministry of Finance (Department of Financial Service) dated 08.10.2010 issued with regard to implementing general insurance (Rationalization of Pay Scales and other Conditions of Service of Officers) Amendment Scheme, 1975.

3.This notification is mainly challenged on the ground that under 9A of this notification a New Pension Scheme Fund is created and as per this



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scheme, Officers joining the service of the Corporation or the Company, as the case may be, on or after the 1st day of January 2004 are covered under the New Pension Scheme.

4.It is the submission of the learned counsel for the petitioner that retrospective operation of the scheme cannot be given effect to.

5.In reply, learned counsel for the respondents submitted that, the Under Secretary to the Government of India issued a clarificatory letter to the Chief Executive, General Insurers' (Public Sector) Association of India, on 20.11.2012, wherein it is stated that the implementation of New Pension Scheme for the employees joining in the services of the Corporation or the Company, as the case may be, would be implemented on or after 01.04.2010 instead of 01.04.2004. He further submitted that in the light of this clarificatory letter, nothing survives in this Writ Petition. That apart, the Association cannot file this Writ Petition. It is for the individual employee who is affected by the scheme to agitate this matter.

6. The learned counsel for the respondent brought to the notice of this Court that, as per Section 17 A(4) of the General Insurance Business



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(Nationalization) Act, 1972 , the Central Government has powers to frame a scheme or to add or to amend or vary any scheme framed under this Section or to make such addition, amendment or variation in any scheme framed under this Section with retrospective effect from a date not earlier than the appointed date. It is his further submission that, the **appointed day as per Section (3)(d)(s) of the General Insurance Business (Nationalization) Act, 1972, a day not being a day later than 2nd day of January 1973.** In that case, when there is no challenge made to Section 17(A), petitioner cannot challenge the retrospective effect given.

7. In reply to this submission, the learned counsel for the petitioner submitted that, now that clarification letter was issued on 20.11.2012 stating that New Pension Scheme for employees joining in the service of the Corporation or Company on or after 01.04.2010 instead of 01.04.2004. This clarification almost satisfied petitioner's requirement. However, it is not known whether anyone has been appointed between 01.04.2010 and 18.10.2010. He further submitted that, this Writ Petition may be disposed giving liberty to the petitioner to challenge Section 17A of the General Insurance Business (Nationalization) Act, 1972.



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8. In the nature of narration to the issue involved in this Writ Petition and the clarification letter dated 20.11.2012, wherein it is stated that New Pension Scheme for the employees joining the service of the Corporation or Company, as the case may be, would be implemented on or after 01.04.2010 instead of 01.04.2004, this Writ Petition is disposed of giving liberty to the petitioner to challenge Section 17A of the General Insurance Business (Nationalization) Act, 1972, if deemed necessary. No costs. Consequently, connected miscellaneous petition is closed.

28.02.2024

Index :Yes/No
Internet:Yes/No
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To

1. Union of India,



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Insurance and Pension,
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