



WEB COPY

W.P.No.34249 of



IN THE HIGH COURT OF JUDICATURE AT MADRAS

**DATED : 24.10.2024**

CORAM

**THE HONOURABLE MR.JUSTICE VIVEK KUMAR SINGH**

**W.P.No.34249 of 2022**  
**and W.M.P.No.33696 of 2022**

1.B.Shivadharmaraj  
2.K.Murugesan  
3.K.R.S.Chandrasekaran  
4.K.R.Venkateshwaran

... Petitioners

Vs.

1.The Union of India,  
Rep by its Secretary,  
Ministry of Finance,  
(Department of Economic Affairs),  
Insurance Division, New Delhi 110 001.

2.National Insurance Company Limited,  
Rep by its Chairman-cum-Managing Director,  
No.3, Middleton Street,  
Kolkatta 700 071.

... Respondents

**Prayer:** Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, to direct the respondents to forthwith revise the pension of the petitioners based on the revision of pay of 01.08.2002, 01.08.2007, 01.08.2012 and 01.08.2017 and to recalculate the pension after adding the notional 5 years of qualifying service to the petitioners' service and consequently to pay all arrears of pension with interest of 12% and other monetary benefits as applicable to the petitioners.



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For Petitioners : Mr.K.Selvaraj

For Respondents : Mr.J.Madana Gopal Rao, SPC for R1  
No appearance for R2

### **ORDER**

This Writ Petition has been filed for a direction to the respondents to forthwith revise the pension of the petitioners based on the revision of pay of 01.08.2002, 01.08.2007, 01.08.2012 and 01.08.2017 and to re-calculate the pension after adding the notional 5 years of qualifying service to the petitioners' service and consequently, to pay all arrears of pension with interest at 12% p.a and other monetary benefits as applicable to the petitioners.

2. Heard the learned counsel on either side and also perused the materials available on record.

3. Reliance is placed by the petitioners on the decision of learned Single Judge of this Court in W.P.No.8680 of 2016 dated 21.04.2017, wherein, an identical question was raised by three petitioners of the New India Assurance Company Limited. The said Writ Petition was allowed and the matter was



carried in appeal before the Hon'ble Division Bench in W.A(MD).No.1152 of 2017. The Hon'ble Division Bench by order dated 24.08.2017, had passed the order in favour of the petitioners. The relevant paragraphs of the order reads as follows:

*'2.The case of the writ petitioners is that they were employed in the appellant insurance company and that they went on voluntary retirement under the Special Voluntary Retirement Scheme introduced by the appellant. Clause II of the Scheme provides for the entitlement of pension to the applicants as per the 1995 pension scheme. The 1995 pension scheme provides for notional addition of 5 years to the qualifying service put in by those who opt for voluntary retirement. The General Insurers (Public Sector) Association of India issued an internal administrative guidelines taking away the said notional weightage of 5 years. This was questioned by the writ petitioners in W.P(MD).No.8680 of 2016. The learned Single Judge allowed the writ petition and directed the appellant insurance company to give notional weightage of 5 years qualifying service for the purpose of calculating the pension and other benefits to the writ petitioners. The appellant was directed to grant revised pension retrospectively and pay the consequential arrears. Aggrieved by the same, this intra Court appeal has been filed.*



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3. It has been brought to the notice of this Court that the very same issue was considered by the High Court of Judicature at Bombay in Nagpur Bench in W.P.No.4131 of 2010. The Bombay High Court held that a statutory scheme could not have been prejudicially altered by the executive through any administrative exercise. The order dated 17.06.2013 made in W.P.No.4131 of 2010 passed by the Bombay High Court was questioned before the Hon'ble Supreme Court in SLP © No.1480 of 2014. But the Hon'ble Supreme Court dismissed the SLP. The High Court of Punjab and Haryana had followed the Bombay High Court decision in CWP.No.4071 of 2012 by its order dated 06.01.2016.

4. In view of the aforesaid decisions, there is no need to interfere with the order passed by the learned Single Judge allowing the writ petition filed by the respondents 1 to 3 herein.

5. The learned counsel for the appellant pointed out that Clause 30(6) of General Insurance (Employees) Pension Scheme 1995 stated that the pension of an employee retiring under this paragraph shall be based on the average emoluments as defined under Clause (d) of the paragraph 2 of the scheme and the increase, not exceeding 5 years in his qualifying service shall not entitle him to any notional fixation of pay for the purpose of counsel for the appellant



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*that the said clause was not taken note of by the Bombay High Court or the Punjab & Haryana High Court.*

*6. We are of the view that this contention cannot be accepted. When similarly placed optees under the Special Voluntary Retirement Scheme were given certain benefit, the respondents 1 to 3 alone cannot be treated differently. The 1995 pension scheme will have to be applied in the case of respondents 1 to 3 in the same manner as interpreted by the Bombay High Court. Otherwise it would be a case of discrimination against the respondents 1 to 3 herein.*

*7. In this view of the matter, we see no merit in this writ appeal. This writ appeal stands dismissed. The appellants are given four weeks time from the date of receipt of a copy of this order to disburse the revised pensionary benefits payable to the writ petitioners/respondents 1 to 3 herein.'*

4. Learned Counsel for the respondent fairly states that the aforesaid order has attained finality.

5. In the aforesaid circumstances, the petitioners are directed to make representations before the Competent Authority, within a period of two weeks from the date of receipt of a copy of this order and on such representations being made, the respondents are directed to dispose of the same within a



period of eight weeks therefrom by taking into consideration of the aforesaid decision of the Hon'ble Division Bench dated 24.08.2017 passed in W.A.(MD).No.1152 of 2017 in the case of the ***Chairman and Managing Director, the New India Assurance Company Limited Vs. G.Mohan and others***, in accordance with law after affording sufficient opportunity to the petitioners.

6.This Writ Petition is disposed of in the above terms. No costs.  
Consequently, connected Miscellaneous Petition is closed.

**24.10.2024**

vkf

Index : Yes / No

Speaking order / Non-speaking order

Neutral Citation : Yes / No

To

1.The Union of India,  
Rep by its Secretary,  
Ministry of Finance,  
(Department of Economic Affairs),  
Insurance Division, New Delhi 110 001.

2.National Insurance Company Limited,  
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**VIVEK KUMAR SINGH, J.**

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