
(2017) 10 DEL CK 0065

In the Delhi High Court

Case No : Civil Writ Petition No. 3584 Of 2016

Ex. Assistant Chintada George

APPELLANT

Vs

Union Of India & Ors

RESPONDENT

Date of Decision : 31-10-2017

Acts Referred:

Citation : (2017) 10 DEL CK 0065

Hon'ble Judges : Sunil Gaur, J

Bench : Single Bench

Advocate : Bijendra Singh, Saroj Bidawat, Sankar N. Sinha

Final Decision : Disposed Of

Judgement

Sunil Gaur, J

1. Petitioner, who was working as an Assistant (Clerical) with respondent-Insurance Company had sought retirement under General Insurance Employees Special Voluntary Retirement Scheme, 2004. Petitioner's application of 20th January, 2004 was accepted by respondent on 22nd January, 2004 and this was conveyed to petitioner by respondent-Insurance Company vide Communication of 1st March, 2004 (Annexure P-5). Petitioner, who was a confirmed employee of respondent-Company stood retired under the Special Voluntary Retirement Scheme, 2004 on 31st March, 2004. It is so evident from the relieving order (Annexure P-7) of the said date. Under the aforesaid Scheme, ex gratia payment was made to petitioner on 18th January, 2006. It is so evident from respondent's Communication (Annexure P-8). It is the case of petitioner that from the year 2008 till the year 2014, he had been orally requesting respondents to pay the pension, but to no avail. Ultimately, petitioner claims to have sent a Representation (Annexure P-10) on 23rd July, 2015 to respondent-Company which was not responded to. Still, petitioner did not approach the Court and only in April, 2016, he had filed the instant writ petition seeking grant of pensionary benefits under the Special Voluntary Retirement Scheme, 2004 with effect from

the date of his retirement with interest.

2. Learned counsel for petitioner relies upon Supreme Court's decision in National Insurance Co. Ltd. & Anr. v. Kirpal Singh (2014) 5 SCC 189 to submit that while considering Special Voluntary Retirement Scheme, it was ruled that employees who had opted for voluntary retirement under the Scheme would qualify for pension provided they had put in qualifying service as stipulated in the Special Voluntary Retirement Scheme and the qualifying service of 20 years as stipulated in the pension Scheme, 1995 would be inapplicable.

3. To resist this petition, learned counsel for respondent-Insurance Company submits that this petition is barred by delay and laches as there is inordinate delay of more than one decade in filing this petition and that it has been filed after Supreme Court's decision in Kirpal Singh (supra). Reliance is placed upon Supreme Court's decision in Manojbhai N. Shah & Ors. V. Union of India & Ors. (2015) 4 SCC 482 and a decision of co-ordinate Bench of this Court in Arun Oswal v. M/s. Oriental Insurance Company Limited 2015 SCC OnLine Del 13419 to submit that in a similar case where an employee had rendered 19½ years of service, his claim for pension was declined as he had not completed 20 years of service. So, it is submitted that this petition deserves dismissal.

4. In rebuttal, learned counsel for petitioner submits that the decision of Single Judge Bench in Arun Oswal (supra) is sub judice as an appeal is still pending against it. Reliance is placed upon Supreme Courts' decision in Union of India And Others v. Tarsem Singh (2008) 8 SCC 648 to submit that on ground of delay alone, a good case cannot be thrown out.

5. Upon hearing and on perusal of the Special Voluntary Retirement Scheme, 2004, the material on record and the decisions cited, I do find that there is unexplained delay of more than one decade, but on the ground of delay alone, a meritorious claim cannot be thrown out as Supreme Court in Tarsem Singh (supra) has reiterated that in cases relating to pension, etc., there is an exception to the rule, i.e. in case of continuing wrong, relief can be granted even if there is a long delay by restricting the relief to period of three years prior to filing of the writ petition. The ratio of Supreme Court's decision in Tarsem Singh (supra) squarely applies to the instant case as petitioner has a good case on merits because his application seeking voluntary retirement under the Scheme in question was accepted unconditionally. Under the Special Voluntary Retirement Scheme, 2004, as applicable to petitioner, the eligibility is of having attained the age of 40 years and of completing 10 years of qualifying service.

6. In the instant case, petitioner had rendered 14 years of service and the age of petitioner on the date of voluntary retirement was 49 years. The stand of respondents that petitioner ought to have rendered minimum 20 years of service as required under the General Insurance (Employees') Pension Scheme, 1995, has been considered by Supreme Court in Kirpal Singh (supra) wherein this scheme containing identical provisions was the subject matter of consideration as

petitioner therein had not rendered 20 years of qualifying service, but was allowed to retire under this very Special Voluntary Retirement Scheme, 2004 of respondents . The High Court in Kirpal Singh's case ruled that he was entitled to pension under this Special Voluntary Retirement Scheme, 2004 though he had not rendered 20 years of service and the said decision stands affirmed by Supreme Court in Kirpal Singh (supra) while holding as under: -

"In the case at hand Para 2 of the Pension Scheme, 1995 (extracted earlier) defines the expressions appearing in the Scheme. But what is important is that such definitions are good only if the context also supports the meaning assigned to the expressions defined by the definition clause. The context in which the question whether pension is admissible to an employee who has opted for voluntary retirement under the 2004 Scheme assumes importance as Para 2 of the Scheme starts with the words "In this Scheme, unless the context otherwise requires". There is nothing in the context of the 1995 Scheme which would exclude its beneficial provisions from application to employees who have opted for voluntary retirement under the Special Scheme, 2004 or vice versa. The term retirement must in the context of the two schemes, and the admissibility of pension to those retiring under the SVRS of 2004, include retirement not only under Para 30 of the Pension Scheme, 1995 but also those retiring under the Special Scheme of 2004. That apart, any provision for payment of pension is beneficial in nature which ought to receive a liberal interpretation so as to serve the object underlying not only of the Pension Scheme, 1995 but also any special scheme under which employees have been given the option to seek voluntary retirement upon completion of the prescribed number of years of service and age."

7. In the face of Supreme Court's decision in Kirpal Singh (supra), no reliance can be placed upon decision of a co-ordinate Bench in Arun Oswal (supra) as it is sub judice before a Division Bench of this Court. So far as Supreme Court's decision in Manojbhai (supra) is concerned, I find that the said decision pertains to issue of giving pay rise to employees and it was held that by no stretch of imagination, it can be said that all those who retire under the Scheme and those, who retire in normal course are similarly situated. To say the least, the decision in Manojbhai (supra) is of no relevance to the case in hand.

8. In the considered opinion of this Court, the ratio of Supreme Court's decision in Kirpal Singh (supra) aptly applies to the instant case. Since petitioner is eligible to pension, which includes commuted value of pension under the General Insurance (Employees') Pension Scheme, 1995, therefore, respondents are directed to grant the admissible arrears of pension to petitioner under Clause 6 (c) of the General Insurance Employees' Special Voluntary Retirement Scheme, 2004 for a period of 3 years preceding 26th April, 2005 till date and henceforth, in terms of the General Insurance Employees Special Voluntary Retirement Scheme, 2004.

9. With aforesaid directions, this petition is disposed of while leaving the parties

to bear their own costs.