**(2019) 04 UK CK 0059**

**In the Uttarakhand High Court**

**Case No :** Writ Petition (S/B) No. 215 Of 2014

Jagmohan Singh APPELLANT

Vs

National Insurance Company Limited And Others RESPONDENT

**Date of Decision :** 09-04-2019

**Acts Referred:**

General Insurance Business (Nationalisation Act), 1972 — Section 17(a)
Constitution Of India, 1950 — Article 136, 226

**Citation :** (2019) 04 UK CK 0059

**Hon'ble Judges :** Ramesh Ranganathan, CJ;N.S. Dhanik, J

**Bench :** Division Bench

**Advocate :** Sanpreet Singh Ajmani, D.S. Patni

**Final Decision :** Dismissed

## Judgement

Ramesh Ranganathan, CJ

1. This writ petition is filed seeking a mandamus commanding the respondents to grant the petitioner pensionary benefits, and also to pay the entire arrears with upto date interest.

2. Facts, to the limited extent necessary, are that the petitioner was selected to undergo training for a period of three months in marketing on 23.12.1982. During the said period, the petitioner was to be paid stipend of Rs 400/- per month. The training was to commence from the 2nd week of January, 1983. The petitioner completed three months' training in General Insurance Marketing and, thereafter, an appointment letter was issued in his favour on 16.09.1983 appointing him as an Inspector on probation at the Haldwani Branch. The petitioner was confirmed as an Inspector Grade-I on 28.08.1984, and he continued in the said post till 1.04.2003.

3. On 02.01.2003, the Government of India, in the exercise of its powers under Section 17(a) of the General Insurance Business (Nationalisation Act), 1972 framed a Scheme to amend the General Insurance (Rationalisation of Pay Scales

 

and Other Conditions of Service of Development Staff) Scheme 1976, which was notified in the Gazette of India. A Special Voluntary Retirement Scheme was introduced, with respect to the development staff serving in all the four nationalized general insurance companies, called the General Insurance (Rationalisation of Pay Scales and Other Conditions of Service of Development Staff) Amendment Scheme, 2003 (hereinafter called the 2003 Scheme), whereby the General Insurance (Rationalisation of Pay Scales and Other Conditions of Service of Development Staff) Scheme, 1976 was amended, and was notified in the Gazette on 02.01.2003.

4. The petitioner made a request for being extended the benefits, under the 2003 Special Voluntary Retirement Scheme, on 14.02.2013. Pursuant thereto, he was relieved from service on 1. 04.2003 by which date he had completed service of 19 years and 9 months (computed from 16.09.1983 till 01.04.2003). It is his case that, if his service is reckoned from 23.12.1982 when he was selected to undergo training, he would have undoubtedly completed more than 20 years of service by 01.04.2003. The respondents however, vide proceedings dated 28.07.2003, rejected the petitioner's request for being extended the benefit of pension, and he was informed that employees, who retired under the 2003 Special Voluntary Scheme, were not eligible for pension as per the said Scheme, unless they completed 20 years of service, but, in the present case, the said condition had not been fulfilled. Aggrieved by the said order, the petitioner invoked the jurisdiction of this Court by filing Writ Petition (S/B) No. 368 of 2004, wherein he sought a writ of certiorari to quash, among others, the letter dated 28.07.2003; and a writ of mandamus to declare, rejection of his claim for pension, as arbitrary and illegal.

5. A Division Bench of this Court, by its order in Writ Petition (SB) No. 368 of 2004 dated 4th July, 2006, dismissed the writ petition expressing their disinclination to accept the petitioner's contention that he must be deemed to have completed 20 years of service. The Division Bench opined that it was a matter of common prudence that when, for certain purposes, the minimum term of service is prescribed as twenty years, it meant that at least a period of twenty years must have expired for taking the benefits thereof; the computation of a fraction only follows after completion of the prescribed period; the petitioner had taken a lame stand, and he could not show how he had completed twenty years of service between 01.07.1984 and 01.04.2003, which fell short of the twenty years minimum service. The writ petition was dismissed holding it to be devoid of merit.

6. The petitioner, thereafter, sought review of the said order by filing Review Application No. 209 of 2006 in Writ Petition (S/B) No. 368 of 2004 and the Division Bench, in its order dated 8. 04.2008, observed that the review petition was without force and was liable to be dismissed. The Division Bench, however, made it clear that CPF contribution shall be paid to the petitioner according to the rules with interest, if payable. Aggrieved thereby, the petitioner herein

 

carried the matter in appeal to the Supreme Court.

7. By its order in Special Leave to Appeal (Civil) CC No. 11239 of 2008, the Supreme Court opined that no ground was made out for interference under Article 136 of the Constitution. The Special Leave Petition was dismissed. However the Supreme Court made it clear that the said order would not come in the way of the petitioner applying for regular pension, if he was entitled to it.

8. The petitioner invoked the jurisdiction of this Court six years thereafter, by filing the present writ petition, on 07.07.2014, evidently, because of the judgment of the Supreme Court in National Insurance Company Limited vs. Kirpal Singh : (2014) 5 SCC 189 (judgment in Civil Appeal No. 256 of 2014 dated 10.01.2014). We shall refer to the said judgment a little later in this order.

9. Sri Sanpreet Singh Ajmani, learned counsel for the petitioner, would submit that, since the Supreme Court had granted them liberty to seek regular pension if they were entitled thereto, the petitioner had submitted a representation to the authorities; since no response was forthcoming thereto, they had perforce to invoke the jurisdiction of this Court again by way of the present writ petition; in terms of Paragraph 3(ii) of the Special Voluntary Retirement Scheme, a Development Officer is entitled to certain benefits in addition to ex gratia, including pension as per the General Insurance (Employees) Pension Scheme, 1995 if eligible; Paragraph-14 of the General Insurance (Employees Pension Scheme), 1995, enables an employee, who has rendered minimum 10 years of service in the Corporation, on the date of his retirement to qualify for pension; Paragraph-18 provides that, if the period of service of an employee includes the broken period of service of less than one year, then, if such broken period is more than six months, it shall be treated as one year and, if such broken period is six months or less, it shall be ignored; Paragraph-19 provides that the period spend by an employee on training in the Corporation, immediately before his appointment, shall be counted as qualifying service; Paragraph-55 of the 1995 Scheme stipulates that matters, relating to pension and other benefits in respect of which no express provision has been made in the 1995 Scheme, shall be governed by the corresponding provisions contained in the Central Civil Service (Pension) Rules, 1972 or the Central Civil Services (Commutation of Pension) Rules, 1981; and as per the aforesaid Rules, the qualifying service, for the purpose of computing pension, is 10 years; and the petitioner is entitled to be granted pension which was illegally denied to him by the respondent-Corporation.

10. In the counter-affidavit, filed on behalf of the respondents, it is stated that, after the order of the Supreme Court on 22.08.2008, the Senior Divisional Manager had rejected the petitioner's representation by his order dated 07.10.2010; the said order dated 7.10.2010 was never subjected to challenge, and has attained finality; it is only with a view to get over delay and laches, that the petitioner had filed a representation in the year, 2015; the Supreme Court, in Kandimalla Raghavaiah and Co. vs. National Insurance Co. and another : (2009) 7 SCC 768, has held that the cause of action cannot be extended by filing

 

representation and sending notices; as per the administrative instructions, for implementation of Development Officers Amendment Scheme, 2003, those who have not completed twenty years of minimum service, as eligibility for pension, shall not be entitled for any pension; these instructions have not been subjected to challenge in the present writ petition; Paragraph-9 of the petitioner's appointment letter dated 23.12.1982 stipulates that the training period shall not be reckoned as service for any purpose whatsoever; the law declared by the Supreme Court in Kirpal Singh is not applicable, since the Supreme Court had, in the said judgment, opined that the word "retirement", in Paragraph-14 of the 1995 Scheme, should not apply to cases which fall under Paragraph-30 of the said Scheme, but also to a case falling under the Special Voluntary Retirement Scheme of 2004; pension was denied to the petitioner as he did not complete twenty years of service, which was mandatory for granting pension under the Voluntary Retirement as well as the Pension Scheme; the petitioner is not entitled to have the training period reckoned for the purpose of computing 20 years of service; as per the Special Voluntary Retirement Scheme, twenty years of minimum service is required for grant of pension; and the writ petition as filed is devoid of merit.

11. Sri D.S. Patni, learned counsel for the respondents, would contend that the writ petition is not only liable to be dismissed on the ground of delay and laches, but also on the principle of res judicata; the earlier order of the Division Bench in Writ Petition (S/B) No. 368 of 2004 dated 04.07.2006, a judgment inter parties, has attained finality on the Special Leave to Appeal preferred thereagaint being dismissed by the Supreme Court; though the law declared by the Supreme Court in Kirpal Singh is inapplicable to the case on hand, the petitioner has, evidently, invoked the jurisdiction of this Court only after the said judgment was pronounced by the Supreme Court; the order of rejection passed on 7.10.2010 has not been subjected to challenge in the present writ petition; the liberty granted by the Supreme Court was only for the petitioner to claim regular pension, if he was eligible; the petitioner has again sought pensionary benefits in terms of the Special Voluntary Retirement Scheme; and since he is not entitled for regular pension, which is available only to employees who have retired from service on attaining the age of superannuation, he is not entitled for the relief sought for in the present writ petition.

12. As noted hereinabove, the petitioner's claim for pensionary benefits, in terms of the Special Voluntary Retirement Scheme, was negated by the Division Bench of this Court in its order in Writ Petition (S/B) No. 368 of 2004 dated 04.07.2006. The review petition filed thereafter was again dismissed by the Division Bench by its order dated 08.04.2008. The Special Leave to Appeal preferred thereagainst was dismissed by the Supreme Court by its order dated 22.08.2008. The liberty granted to the petitioner by the Supreme Court was only to seek regular pension, if the petitioner was entitled thereto.

13. In the present writ petition, while the prayer is no doubt couched in wide

 

terms and the petitioner has sought payment of pension, there is no averment, in the affidavit filed in support thereof, regarding the petitioner's entitlement for regular pension. It is, however, not open to the petitioner to claim the benefit of pension under the 2003 Voluntary Retirement Scheme, since the order passed by the Division Bench of this Court, in Writ Petition (S/B) No. 368 of 2004 dated 04.07.2006, has attainted finality and cannot be reopened in subsequent legal proceedings.

14. The judgment of a competent Court is binding inter-parties and cannot be re-agitated in collateral proceedings. An order or judgment of a Court/Tribunal, even if erroneous, is binding inter-parties. The binding character of judgments, of Courts of competent jurisdiction, is in essence a part of the rule of law on which administration of justice is founded. (The Direct Recruit Class-II Engineering Officers' Association and others vs. State of Maharashtra and others : (1990) 2 SCC 715; U.P. State Road Transport Corporation vs. State of U.P. and Anr. : (2005) 1 SCC 444). Matters in controversy, in writ proceedings under Article 226, decided after full contest, after affording fair opportunity to the parties to prove their case, by a Court competent to decide it and which proceedings have attained finality, is binding inter-parties. (Gulabchand Chhotalal Parikh vs. State of Bombay (Now Gujarat) : AIR 1965 SC 1153; State of Punjab vs.Bua Das Kaushal : AIR 1971 SC 1676). Once a matter, which was the subject-matter of a lis, stood determined by a competent Court, no party can thereafter be permitted to reopen it in a subsequent litigation. (Swamy Atmananda and Ors. vs. Sri Ramakrishna Tapovanam and Ors. : AIR 2005 SC 2392; Ishwar Dutt vs. Land Acquisition Collector and Anr. : (2005) 7 SCC 190). Issues which have been concluded inter-parties cannot be raised again in proceedings inter-parties. (State of Haryana vs. State of Punjab and Anr. : (2004) 12 SCC 673).

15. The only question, which this Court can examine in the present writ petition, is whether or not the petitioner is entitled for regular pension. The General Insurance (Employees') Pension Scheme, 1995 was published in the Gazette of India on 28.06.1995. The said Scheme, in terms of Paragraph 3 thereof, applies to employees, who have retired on or after the 1st day of November, 1993. Paragraph 2(r) of the 1995 Scheme defines "pensioner" to mean an employee eligible for pension under the Scheme. Paragraph 2(s) of the 1995 Scheme defines "qualifying service" to mean the service rendered while on duty or otherwise which shall be taken into account for the purpose of pension under the Scheme. Paragraph 2(t) of the 1995 Scheme defines "retirement" to mean retirement in accordance with the provisions contained in Paragraph 4 of the General Insurance (Termination, Superannuation and Retirement of Officers and Development Staff) Scheme, 1976 and voluntary retirement in accordance with the provisions contained in Paragraph 30 of the 1995 Scheme.

16. Paragraph 14 of the 1995 Scheme defines "qualifying service" to mean that, subject to the other conditions contained in the Scheme, an employee, who has rendered a minimum of ten years of service in the Corporation on the date of his

 

retirement, shall qualify for pension. Paragraph 15 of the 1995 Scheme stipulates that, subject to the provisions contained in the Scheme, qualifying service of an employee shall commence from the date he takes charge of the post to which he is first appointed on regular basis. Consequently, the period spent by the petitioner on training is required to be excluded in computing "qualifying service" on completion of which an employee is eligible for payment of pension.

17. Paragraph 29 of the 1995 Scheme relates to 'superannuation pension' and, thereunder, superannuation pension will be granted to an employee who has retired on his attaining the age specified in Paragraph 4 of the General Insurance (Termination, Superannuation and Retirement of Officers and Development Staff) Scheme, 1976. Paragraph 30 of the 1995 Scheme relates to 'pension on voluntary retirement' and, sub-para (1) thereof, stipulates that, at any time after an employee has completed twenty years of qualifying service, he may, by giving notice of not less than ninety days in writing to the appointing authority, retire from service. In terms of paragraph 30(1) of the 1995 Scheme, pension is available to employees who voluntary retire from service only if he opts for voluntary retirement after completion of twenty years of qualifying service.

18. As noted hereinabove the liberty granted, by the Supreme Court to the petitioner, was only to claim regular pension if he was entitled thereto, and not for pension under the Special Voluntary Retirement Scheme, since such a prayer was negated by the Division Bench in its order in Writ Petition (S/B) No. 368 of 2004 dated 4.07.2006.

19. In the present case, the petitioner has not retired from service on his attaining the age of superannuation, but has sought premature retirement under the Special Voluntary Retirement Scheme. He is, therefore, admittedly not entitled to claim superannuation pension. As the only pension, other than pension on voluntary retirement, is superannuation pension in Paragraph 29 of the 1995 Scheme and, since the petitioner is not entitled thereto as he did not retire from service on attaining the age of superannuation, the earlier order of the Division Bench, in Writ Petition (S/B) No. 368 of 2004 dated 04.07.2006, would disable the petitioner from seeking the very same relief all over again.

20. In Kirpal Singh, on which great stress is placed on behalf of the petitioner, eligibility of an employee to be granted pensionary benefits under the Special Voluntary Retirement Scheme, 2004 arose for consideration. The Supreme Court observed therein that the 1995 Scheme provided for superannuation pension and pension on voluntary retirement; and the Special Voluntary Retirement Scheme, 2004 did not rest the claim for payment of pension on either Paragraph 29 or Paragraph 30 of the 1995 Scheme. In the present case, the petitioner opted to voluntarily retire from service and claimed benefits under the 2003 Scheme. While the 2003 Scheme, amending the 1976 Scheme, was notified on 02.01.2003, the petitioner opted for voluntary retirement on 14.02.2003, and was relieved from service on 01.04.2003, long before the Central Government notified the General Insurance Employees' Special Voluntary Retirement Scheme,

 

2004.

21. In Kirpal Singh, the Supreme Court examined the scope of the General Insurance Employees' Special Voluntary Retirement Scheme, 2004 which is inapplicable to the petitioner as he voluntarily retired from service even prior to the 2004 Scheme coming into force. The judgment in Kirpal Singh has, therefore, no application.

22. Since the judgment of the Division Bench in Writ Petition (S/B) No. 368 of 2004 dated 04.07.2006, a judgment inter-parties, has attained finality, the petitioner would not be entitled for pension in terms of the General Insurance (Rationalisation of Pay Scales and Other Conditions of Service of Development Staff) Amendment Scheme, 2003, since the petitioner's claim for such pensionary benefits, under the said Scheme, was negated by the Division Bench of this Court in Writ Petition (S/B) No. 368 of 2004 dated 04.07.2006.

23. The writ petition fails and is, accordingly, dismissed. No costs.

 