(2016) 07 P&H CK 0166

In the Punjab And Haryana At Chandigarh

Case No : LPA No. 1280 of 2016 (O&M)

New India Assurance Company — APPELLANT

Vs

Manpreet Singh Anand — RESPONDENT

Date of Decision : 23-07-2016

Acts Referred:

General Insurance (Employees) Pension Scheme, 1995 — Rule 30(5), 29
General Insurance Business (Nationalisation) Act, 1972 — Section 17

Citation : (2016) 4 SCT 847

Hon'ble Judges : Ajay Kumar Mittal and Ramendra Jain, JJ.

Bench : Division Bench

Advocate : Ravi Kapur, Advocate, for the Appellants

Final Decision : Disposed Off

Judgement

Ajay Kumar Mittal, J.—This order shall dispose of LPA Nos. 1279 and 1280 of 2016 as according to the learned counsel for the appellants, both the appeals are against the common judgment rendered by learned Single Judge. However, the facts are being taken from LPA No.1280 of 2016.

2. LPA No. 1280 of 2016 has been preferred by the appellant- New India Assurance Company against the order dated 6.1.2016 passed by learned Single Judge in CWP No.4071 of 2012 whereby the writ petitioners have been held entitled to the benefit of five years of service towards computation of pension in terms of Rule 30(5) of the General Insurance (Employees) Pension Scheme, 1995 (in short, "the Pension Scheme 1995").

3. A few facts relevant for the decision of the controversy involved as available on the record of LPA No.1280 of 2016 may be noticed. The respondent-writ petitioners were working as Development officers in the appellant-Assurance Company - a public sector undertaking being governed by the provisions of General Insurance Business (Nationalization) Act, 1972 (in short, "the 1972 Act"). Section 17 of the 1972 Act empowers the Central Government to frame

rules with reference to the service conditions of staff employed in the establishment of Assurance Company. The Central Government had framed rules namely General Insurance (Rationalization of pay and other conditions of service of Development Staff) Scheme, 1976. Similarly, the Central Government also framed Pension rules as per notification dated 28.6.1995. Rule 29 of the Pension Scheme 1995 provides for superannuation pension while Rule 30 provides for pension on voluntary retirement. Rule 30(5) of the Pension Scheme 1995 envisages notional benefit of five years'' service while deciding pensionary benefits for the employees opting for voluntary retirement. On 2.1.2003, the Central Government had framed General Insurance (Rationalization of pay and other conditions of service of Development staff) Amendment Scheme, 2003 (in short, "the 2003 Scheme") which included amount of ex gratia, gratuity, pension and leave encashment as per rules. On 5.2.2003, the association of Insurance companies, appellant No.3 had issued administrative guidelines vide circular dated 5.2.2003 in which a condition was mentioned that five years notional benefit under Rule 30(5) of the scheme will not be available for those opting under special voluntary retirement package. Such a restriction was not included in the principal scheme framed by the Central Government. In March 2003, all the petitioners had submitted their options for special voluntary retirement scheme under the 2003 Scheme within the prescribed date. The petitioners were to be relieved on 31.3.2003 but respondent No.2 did not relieve them. The issue was challenged by various employees in the Apex court which upheld the 2003 scheme. In the meantime, status quo was directed to be maintained. On 11.4.2008, the petitioners were relieved under special voluntary retirement scheme. The benefits were paid. However, the notional benefit of five years'' service was not granted to the petitioners while determining the pensionary benefits despite the fact that each of the petitioners was liable for the same having more than 20 years of qualifying service to his credit. Various representations sent by the petitioners and the legal notice failed to evoke any positive response from the respondents. Aggrieved thereby, the petitioners approached this Court by filing a Civil Writ Petition. The learned Single Judge after considering the matter allowed the writ petition vide judgment dated 6.1.2016 relying upon the judgment of the Bombay High Court (Nagpur Bench) in CWP No.4131 of 2010 decided on 14th and 17th June 2013). The Special leave petition filed by the Insurance company against the said judgment was dismissed on 1.9.2014. The petitioners were held entitled to the benefit of five years of service towards pensionary benefits in terms of Rule 30(5) of the 1995 Scheme. Hence this Letters Patent Appeal by the appellant-New India Assurance Company.

4. We have heard learned counsel for the appellants.

5. The impugned order dated 6.1.2016 has been passed by the learned Single Judge following the judgment rendered by the Bombay High Court on the issue in question. The learned Single Judge had relied upon the following observations of the Bombay High Court in CWP No.4131 of 2010 decided on 14th and 17th June, 2013:

"Thus, in absence of administrative guidelines the respondents themselves had confusion about the scope of 2003 Scheme. We have already noted above that paragraph 15C of 2003 Scheme provided for a Special Voluntary Retirement Package and paragraph 3 of Annexure-I with this Scheme vide its clause (II) itself made optees entitled to pension as per 1995 Pension Scheme. A person seeking voluntary retirement is bound to understand this to convey that he gets pension under paragraph 30(5) of 1995 scheme with due weightage. Even if, we assume that there was any doubt or confusion, as per judgment of Hon''ble Apex Court (supra) the same needs to be resolved in favour of petitioners. The controversy is squarely covered by the judgment of Hon. Apex Court in favour of these petitioners. In any case, it is well settled that a statutory scheme like 2003 Scheme could not have been prejudicially altered by executive through any administrative exercise. The respondents have not even attempted to rebut this. In this situation, we do not find any substance in various defences as raised by Adv. Pophali. The provisions of paragraph 30(5) of 1995 scheme needed to be adhered to & implemented in case of present petitioners. Admittedly, that has not been done. Hence, writ petition is accordingly allowed. Rule is made absolute in case of present petitioners only in terms of prayer clause (1). The respondents are directed to provide for necessary weightage and resulting hike in the VRS amount to these petitioners by completing necessary exercise within a period of six months from today. The petitioners shall receive the consequential dues and arrears by 31st January 2014. If the amounts are not so paid to them by the said date, the respondents shall pay to the respective petitioners simple interest @ 7% per annum on said amount from 1st February 2014 onwards till the amounts are actually paid. Rule is made absolute in the above terms.

No costs."

6. The SLP filed by the Insurance company against the order passed by the Bombay High Court was also dismissed by the Apex Court vide order dated 1.9.2014. Learned counsel for the appellant-company has not been able to distinguish the decision rendered by the Bombay High Court which has been upheld by the Apex Court. Consequently, finding no merit in the appeals, the same are hereby dismissed. Equally there is no merit in the application filed under Order 41, Rule 27 of the Code of Civil Procedure for seeking to produce letter dated 23.01.2003 appended as Annexure A-1 as the parameters for leading additional evidence are not satisfied. Since the main appeals have been dismissed, the issue of condonation of delay in filing as well as in refiling the appeals is left open.

