
(2002) 05 DEL CK 0028

In the Delhi High Court

Case No : Civil Writ Petition No. 6999 of 1999

Shri Raj Bhaskar

APPELLANT

Vs

The Oriental Insurance Co. Ltd. and Others

RESPONDENT

Date of Decision : 16-05-2002

Acts Referred:

Citation : (2002) 99 DLT 12

Hon'ble Judges : Sanjay Kishan Kaul, J

Bench : Single Bench

Advocate : M.C. Dhingra, for the Appellant; Vishnu Mehra, for the Respondent

Final Decision : Dismissed

Judgement

Sanjay Kishan Kaul, J.—The petitioner is aggrieved by the non release of his pension which he claims he is entitled to and seeks a writ of mandamus for the same along with interest @ 18% p.a. up to the date of payment.

2. The petitioner joined the services of respondent No.1 - Oriental Insurance Company Limited on 1.1.1960 and rose to the post of Manager. It is stated that on 21.1.1976 by a gazette notification the General Insurance (Termination, Superannuation and Retirement of Officers and Development Staff) Scheme 1976 (hereinafter referred to as the "said scheme") was brought into operation and the same was amended from time to time. The last relevant amendment is stated to have been carried out on 23.12.1991 and the said scheme provided both for voluntary retirement and determination of service. The relevant clause deals with these two modes of cessation of service in the scheme are as under:

"(4A) Notwithstanding anything contained in the foregoing sub paragraphs, an Officer or a person off the Development staff may be permitted subject to vigilance clearance, to seek voluntary retirement on completion of 55 years of age or at any time thereafter on giving three months notice in writing to the appointing authority of his intention to retire. Provided that on a written request form an officer or a person of the Development Staff, such notice may be wagged

in full or in part by the appointing authority."

"(5) Determination of Service

(1) An Officer or a person of the development staff other than one on probation, shall not leave or discontinue this service without first giving notice in writing to the appointing authority of his intention to leave or discontinue the Service and the period of notice required to be given shall be three months:

Provided that such notice may be waived in part or in full by the appointing authority at its discretion."

3. It is further stated in the petition that in 1992 there was no pension scheme in existence and there was no difference in post retiral benefits in cessation of service by either of the aforesaid two modes.

4. The petitioner completed 55 years of age on 24.3.1992 by which time he had rendered 32 years of service and submitted his resignation form service with a request for waiving of the three months notice. It is stated by the petitioner that he was governed by the Contributory provident Fund Scheme to which he had subscribed and provident fund and gratuity were the only two post retiral benefits which were available to an employee. The papers of the petitioner were processed and are stated to have subject to vigilance clearance. On such clearance being received the resignation was accepted on 22.4.1992 with the competent authority agreeing to waive the notice period and the petitioner was relieved from duty from the said date.

5. On 28.6.1995 the Government of India enforced the General Insurance (Employees) pension Scheme, 1995 (hereinafter referred as the pension Scheme) by a gazette notification. In terms of Clause 3 of the pension Scheme the employees who were in service of the company on or after 1.1.1986 but had retired before 1.11.1993 were allowed option to opt for the pension scheme subject to fulfilling certain other conditions including refund of matching contribution of provident fund. Such option had to be exercised within 120 days from the notified date.

6. The petitioner sought to exercise the option and approached the concerned authorities by making a representation i.e. his resignation is in fact liable to be treated as voluntary retirement for him to avail the benefits of the pension scheme since there was no difference between the two. The petitioner submitted his application vide letter dated 12.12.1995. The petitioner was asked to get himself medically examined on 16.1.1996. The petitioner was requested to notify the date of his commutation of pension which was replied to by the petitioner vide letter dated 19.1.1996. The petitioner was also reimbursed the medical expenses on 8.8.1996 in pursuance to his application. Since the pension was not released to the petitioner, the petitioner preferred the writ petition.

7. The writ petition is opposed by the respondents who have filed their counter affidavit. The principle reason for denying the pension to the petitioner is stated

to be the fact that the petitioner has resigned from service and had not sought voluntary retirement. It is stated that the petitioner had misrepresented at the stage of making his application under the pension scheme.

8. A reference has been made to different provisions of the Pension Scheme. Clause 3 (1)(a) makes the Pension Scheme applicable to employees who were in service after 1.1.1986 but had retired before 1st day of November, 1993. Clause 22 provides that in case of resignation or dismissal or removal or termination or compulsory retirement of employee from the service of the corporation or a company shall entail forfeiture of his entire past service and consequently was not qualified for the pensionary benefits. Clause 30 deals with voluntary retirement cases and permits any office employee who has completed 22 years of qualifying service who seeks voluntary retirement by giving notice of not less than 90 days to get pension. Clause 32 provides for compassionate allowance even if an employee is dismissed or removed or compulsory retire or terminated from service if the case is deserving a special consideration to be determined by the authority competent to dismiss or remove or compulsory retire or terminate him from service.

9. I have heard learned counsel for the parties.

10. Learned counsel for the respondent contended that the matter in controversy is rest integra in view of judgment rendered by different High Courts. Learned counsel contended that the Pension Scheme itself clearly provided the resignation entails forfeiture of entire past service and such an employee would not qualify for the pensionary benefits. This is clearly set out in Clause 22 of the scheme.

11. The aforesaid scheme came up for consideration before the Division Bench of Karnataka High Court in W.A.No. 3779/1998 B. Shesha Yadava v. The Oriental Insurance Co. Ltd. and Ors. decided on 21.6.2000 where also an employee of respondent No. 1 tendered his resignation after putting in 25 years of service on ground of ill health which resignation was accepted. Learned Single Judge dismissed the writ petition in view of Clause 22. The Division Bench initially passed an order that the case of the petitioner may be considered sympathetically under Clause 30 and 32. The representation filed by the appellant did not find favor with the Insurance Company and the Division Bench dismissed the appeal.

12. The other judgment has been passed by a learned Single Judge of Bombay High Court in CW 1825/1996 Madhukar Rangnath Kulkarni v. The New Indian Assurance Co. Ltd. and Anr. decided on 25.9.1996. The learned Single Judge relying upon the judgment of the Supreme Court in V.M. Gadre (Dead) by L.Rs. and others Vs. M.G. Diwan and others, held that it is not for the Courts to give a go by to the pension Scheme framed and to replace it by a totally new scheme. Thus what has to be seen is whether the petitioner is covered by the scheme in order to claim pensionary benefits. The argument that retirement would include

voluntary retirement was not accepted and further it was held that the resignation could not be treated as voluntary retirement.

13. Learned counsel for the petitioner has further strongly relied upon the judgment of the Supreme Court in J.K. Cotton Spinning and Weaving Mills Company Ltd. Vs. State of U.P. and Others, . The Supreme Court was considering the effect of a tender of resignation under the U.P. Industrial Disputes Act, 1947 (hereinafter referred to as the said Act) and held that when an employee voluntarily tenders his resignation which was accepted, the same would not amount to retrenchment and would be covered by the expression voluntary retirement as defined under the said Act.

14. Learned counsel for the petitioner also relied upon the judgment of the learned Single Judge of this Court in Sudarshan Kumar Vs. Delhi Transport Corporation and Another, which was dealing with the Pension Scheme of the DTC dated 27.11.1992. It was held that if a person is entitled to pension on retirement after completing qualifying service, it follows that the said benefit is a benefit earned by the employee because of the services rendered by him. The petitioner in that case had tendered his resignation and the benefit of the scheme was extended to all those who had rendered the qualifying service even though they had resigned and not retired from service.

15. During the course of hearing of this writ petition the parties took time to verify whether any appeal was preferred before the Supreme Court against the judgment of the Karnataka High Court and Bombay High Court. Both the counsel on verification state that it appears that no appeal has been preferred against the said judgments. Another aspect which the counsel for the parties were asked to verify was whether the petitioner in those writ petition had completed the qualifying service and minimum age requirement of 55 years of voluntary retirement in terms of directions passed on 17.4.2002. On 26.4.2002 the Administrative Officer of respondent No. 1 Mr. S.K. Gupta stated that the petitioner before the Karnataka High Court had completed the qualifying service and minimum age requirement of 55 years of voluntary retirement under the scheme of 1976. However, subsequently a written submission was filed by the petitioner to the effect that on verification he found that this was not the correct position. An application was thereafter filed by Sh.K. Gupta on 6.5.2002 to the effect that the petitioner before the Karnataka High Court was less than 55 years of age when he had resigned. Mr. Gupta tendered his unqualified apology for the mistake. This transpired after the judgment was reserved on 26.4.2002.

16. In view of the aforesaid discussion it has to be determined whether the provisions of Pension Scheme would be applicable to the petitioner. There is no doubt that the petitioner had completed the 55 years of age which was a pre-requirement for voluntary retirement under the scheme of 1976. However, the reading of the documents clearly show that he had tendered his resignation which was accepted. The Pension Scheme in terms of Clause 3(1)(a) makes the said scheme applicable to employees who were in service after 1.1.1986 but had

retired before 1.11.1993. The petitioner resigned from service prior to 1.11.1993 but had not retired from service. The Supreme Court in V.M. Gadre's case (supra) had held that the Courts have to go by the Pension Scheme and not to substitute it with something which is not (SIC) in the scheme. The Bombay High Court In Madhukar Rangnath Kulkarni's case (supra) followed the said Supreme Court judgment to reject the case of the pensioner under the same Pension scheme on this ground.

17. The material fact to be considered is that as to what is envisaged under the word "retirement" in the Pension Scheme. The word "retirement" has been defined under para 2 (t) of the pension Scheme which is as under :

"(t) "retirement" means:-

(i) the retirement in accordance with the provisions contained in paragraph 12 of General Insurance (Rationalisation and Revision of Pay Scales and Other Conditions of Service of Supervisory, Clerical and Subordinate Staff) Scheme, 1974 notified under the notification of Government of India, in the Ministry of Finance (Department of Revenue and Insurance) number S.O. 326 (E) dated the 27th May, 1974;

(ii) the 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 notified under notification Government of India, in the Ministry of Finance (Department of Economic Affairs) number S.O. 627 (E) dated 21st September, 1976;

(iii) voluntary retirement in accordance with the provisions contained in paragraph 30 of this scheme;"

18. The reading of the aforesaid para would show that para (i) would not apply to the petitioner. Insofar as the para(ii) is concerned it has to be retirement under the 1976 scheme for it to fall within the definition of retirement under the Pension Scheme. The petitioner had resigned and have not retired from service. The reading of 1976 scheme itself would show that para 4 of that scheme deals with superannuation and retirement, para 4A deals with voluntary retirement and para 5 deals with determination of service. Thus a distinction has been made between these expressions.

19. Sub-para (iii) of para (t) refers to voluntary retirement but the expression used is a voluntary retirement in accordance with the provisions contained in para 30 of the scheme. Thus it is not any voluntary retirement but a voluntary retirement under the Pension Scheme which would be covered under the definition of retirement.

20. This aspect has also been considered in the case of Madhukar Rangnath Kulkarni's case (supra) by the Bombay High Court in para 8 of the said judgment and I am in full agreement with the views expressed in the said judgment.

21. Learned Single Judge of the Bombay High Court also dealt with the judgment of the Supreme Court in M/s J.K. Cotton Spinning and Weaving Mills Co. Limited (supra) reliance on which is placed by the learned counsel for the petitioner. It was rightly held that observation made therein to the effect that resignation is in the nature of voluntary retirement was made in the context of the provisions of the Industrial Disputes act, 1947 and it cannot have universal application. This is more so as the different phraseologies have been used under the 1976 scheme as well as under the pension Scheme.

22. It is also relevant to note that under the 1976 Scheme voluntary retirement is dealt with in Clause 4A of the scheme which is stated to have been substituted with effect from 1.11.1993 as per the notification dated 1.11.1996. This is so referred to in the copy of the scheme annexed to the writ petition and thus came into being after the retirement of the petitioner. Be that as it may, as already mentioned above, the definition of retirement under the pension scheme only includes voluntary retirement in terms of para 30 of that scheme and not a voluntary retirement under the 1976 scheme. This is consciously so done as is apparent from the fact that though the term retirement under the Pension Scheme includes the term retirement under the 1976 scheme, no such inclusion has been made in respect of voluntary retirement under the said definition of retirement in the pension Scheme and only voluntary retirement in terms of para 30 of the said scheme has been included. This in my considered view, amounts to exclusion of a voluntary retirement under the 1976 scheme from the definition of retirement under the Pension Scheme.

23. Thus the plea of learned counsel of the petitioner that the resignation of the petitioner should be treated as voluntary retirement would be of no help to the petitioner since even the voluntary retirement under the 1976 scheme would not make the petitioner eligible under the Pension Scheme.

24. There is a force in the submission of learned counsel for the respondents that para 22 of the Pension Scheme clearly disqualify the person for pensionary benefits in case of resignation or dismissal or removal or termination or compulsory retirement of an employee from the service and thus the persons the scheme excludes cannot be included by the judicial intervention and the scheme should be applied to the persons for whom it is meant.

25. The fact that the petitioner was over 55 years of age and thus eligible in the category of voluntary retirement under 1976 scheme would also be of no avail to the petitioner since cases of voluntary retirement under 1976 Scheme have been held herein as persons not eligible under the Pension Scheme in view of the definition of retirement under the Pension Scheme including only cases of voluntary retirement under para 30 of the said scheme.

21. The petitioner's application was processed initially on the basis of his claim that he had taken voluntary retirement. In the form for commutation of pension subject to medical examination of the petitioner against the relevant heading of

"reasons for retirement/Cessation of Service," the petitioner had endorsed "voluntary retirement after 55 years of service. This was not the correct factual position as the petitioner had resigned from service.

27. The petitioner is an educated man and was aware of the terms of the 1976 scheme. He chose to resign with his eyes open. On the pension scheme coming into force, the petitioner wanted to avail of the scheme and then only started setting up his case as one of voluntary retirement which also would be of no use to him.

28. I am in full agreement with the views expressed by the learned Single Judge of the Bombay High Court in Madhukar Rangnath Kulkarni's case (supra) and the by the Division Bench of the Karnataka High Court in B.Shesha Yadava's case (supra) in respect of the pension Scheme.

29. I find no merit in the writ petition and the same is dismissed leaving the parties to bear their own costs.