
(2016) 07 MP CK 0050
In the Madhya Pradesh High Court
Case No : Writ Petition No. 4246 of 2012

Sudesh Kilewala

APPELLANT

Vs

The New India Insurance Co. Ltd.

RESPONDENT

Date of Decision : 28-07-2016

Acts Referred:

Constitution of India, 1950 — Article 226

General Insurance (Employees) Pension Scheme, 1995 — Rule 18

Citation : (2016) 3 MPLJ 658

Hon'ble Judges : Shri Vivek Rusia, J.

Bench : Single Bench

Advocate : Shri Manoj Manav, Advocate, for the Petitioner; Shri S.V. Dandwate, Advocate, for the Respondents

Final Decision : Disposed Off

Judgement

Shri Vivek Rusia, J.—Facts of the case are as under.

Petitioner was initially appointed in the year 1983 and at the time of retirement he was working as Development Officer in the New India Insurance Co. Respondent/Company introduced a special package called "Special Voluntary Retirement Scheme." Petitioner applied for voluntary retirement on 28.02.2003 and in the application petitioner has mentioned that he has completed 20 years of service in column-8. The said application was accepted under the scheme vide order dated 1.4.2003. The claim of the petitioner for voluntary retirement has been accepted but the respondent has denied pension on the ground that he has not completed 20 years of service from the date of initial appointment till acceptance under the V.R.S. The petitioner submitted various representations and the same has not been decided, hence this petition.

2. Respondents filed return in which entire scheme (Annexure R/1) which was introduced by way of notification dated 2.1.2003. It is submitted in the return that this is a special scheme with added package. It is further submitted that clause-2 deals with payment of amount of ex-gratia especially in the case of

Development Officers seeking special voluntary retirement. In clause-3 several benefits have also been defined in which special clause 3 (ii) deals with the pension under the General Insurance (Employees) Pension Scheme, 1995 (if eligible), therefore, eligibility of the petitioner is to be seen as he has not completed 20 years of service. It is submitted that other benefits of ex-gratia and by way of special package was granted to the petitioner by way of general condition in which six months and above has been referred as one year for the purpose of calculating ex-gratia, therefore, petitioner has already been granted benefits under the said scheme and he is not entitle for the pension.

3. I have heard learned counsel for the parties.

4. It is not disputed that the petitioner when applied for VRS has completed 19 years 7 months of service for the purpose of pension, therefore, his case is to be decided on the basis of the General Insurance (Employees) Pension Scheme, 1995. The rule 18 which reads as under.

(18) Broken period of service of less than one year - If the period of service of an employee includes 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.

5. According to this rule 18 if the period of service of employee includes broken period of less than one year then if such broken period is more than six months it shall be treated as one year. Since the petitioner has completed more than 19 years 7 months, therefore, under this clause he is entitled to be treated as completed 20 years of service. So far as the clause-2 and 3 are concerned employees who are opting VRS are also entitled for pension under sub clause (ii) of clause 3. Clause 2, 3 & 5 are reproduced as under:

2. AMOUNT OF EX-GRATIA-A Development Officer seeking Special Voluntary Retirement Package shall be entitled to the lowest of the exgratia amount as follows:-

(a) sixty days" salary for each completed year of service or

(b) salary for the number of months of service remainintg.

Explanation-For the purpose of this clause "salary" means the aggregate of basic pay and dearness allowance.

3. OTHER BENEFITS-(1)A Development officer seeking Special Voluntary Retirement Package shall be eligible for the following benefits in addition to the ex-gratia amount mentioned in clause 2, namely:-

(i) gratuity as per the Payment of Gratuity Act, 1972 (39 of 1972) or gratuity payable under the principal Scheme, as the case may be

(ii) pension (including commuted value of pension) as per the General Insurance (Employees) Pension Scheme, 1995, if eligible.

(iii) Leave encashment as per the law applicable for the time being in force.

(2) The ex-gratia payable under clause 2 shall be computed as on the date of relieving.

5. GENERAL CONDITIONS- (1) Only completed years of service shall be reckoned for among at the minimum eligible service

(2) The sixty days salary shall mean two months salary and the ex-gratia shall be calculated on the basis of last drawn salary of such Development Officer.

(3) The mere request of such Development Officer seeking Special voluntary Retirement package shall not take effect unless it is accepted in writing by the Company.

(4) A Development Officer shall not be eligible to withdraw the option once made for Special Voluntary Retirement Package.

(5) The Company shall have absolute discretion either to accept or reject the request of a Development Officer seeking Special Voluntary Retirement Package depending upon the requirement of the Company. The reasons for rejection of request of a Development officer seeking Special Voluntary Retirement Package shall be recorded in writing by the Company. Acceptance or rejection of the request of Development Officer seeking Special voluntary Retirement Package shall be communicated to him in writing.

(6) The ex-gratia payable shall be computed as on the date of relieving of a Development Officer.

(7) For the purpose of this Special Voluntary Retirement Package, the age, period of service of Development Officer shall be reckoned in terms of the date of birth and date of joining as per the records of the Company which shall be treated as correct and final and no application for any change in this regard shall be considered.

(8) All payments under the Special voluntary Retirement Package and any other benefit payable to a Development officer shall be subject to prior settlement or re-payment in full of loans, advances, returning of Company's property and any other outstanding due against him and payable by him to the Company.

(9) All payments made under the Special Voluntary Retirement Packages shall be subject to deduction of tax at source as per the Income Tax Act, 1961 wherever applicable.

(10) A Development Officer who is allowed Special Voluntary Retirement Package shall not be eligible for re-employment in the Company and shall not take any employment or an agency in any of the insurance companies for a period of two years from the date of his retirement under Special Voluntary Retirement Package.

(11) In the event of the death of a Development Officer whose request for

Special Voluntary Retirement Package has been accepted the compensation which would have become due and payable to the deceased Development officer, shall be paid to the person nominated to receive such dues or his legal heirs in the absence of such nomination.

(12) The benefits payable under Special Voluntary Retirement Package shall be in full and final settlement of all claims of whatsoever nature whether arising under the regulation or otherwise to Development officer (or to his nominee in case of death). A Development officer who voluntarily retired under Special Voluntary Retirement package shall not have any claims against the Company of whatsoever nature and no demand or dispute or difference shall be raised by him or on his behalf, whether for re-employment or compensation or back wages including employment or any of his relative on compassionate grounds in the service of Company or for any other benefits whatsoever.

(13) The ex-gratia payable to a Development Officer on opting for Special Voluntary Retirement Package shall be paid to him pursuant to clause 6 within forty-five days from the date of his relieving.

(14) A Development officer who opts for Special Voluntary Retirement Package shall be eligible for retention of residential accommodation provided to him by the Company or leased accommodation as per the existing rules as applicable to those who retire on attaining the age of superannuation for a period of two months in such case, the amount payable to him shall be released within forty-five days after his vacation of the residential accommodation and he shall also be entitled to all other benefits in relation thereto.

(15) A Development officer seeking Special Voluntary Retirement Package shall make an application in Annexure-1A in triplicate through proper channel, addressed to the Chairman of the Company.

(16) The Company reserves the right to withdraw Special Voluntary Retirement Package at any time if it thinks fit and its decision in this respect shall be final.

6. It is not disputed that the Development Officer other than petitioner who have completed more than 20 years of service are entitled for pension under the General Insurance (Employees) Pension Scheme, 1995, therefore, the employees who opted the VRS under this scheme are also entitled for pension. General Insurance (Employees) Pension Scheme, 1995 is the only scheme available in the establishment of respondent under which pension is payable. If the question of payment of pension is to be decided the provisions under the Scheme would apply and under rule 18 of the scheme the eligibility period has to be counted and as per rule 18 who has completed 19 years 7 months of service has to be treated as 20 years, therefore, the VRS scheme clause 2 & 3 cannot be read in isolation and it has to be read along with the rule 18 of the General Insurance Pension (Employees) Scheme, 1995 and on reading both the provisions together the petitioner is entitled for pension.

7. The similar issue came up for consideration before the Apex Court in case of Indian Bank and another v. N. Venkatramani reported in (2007) 10 SCC 609. Facts of the case are mentioned in para-4 which is reproduced below:

4. A voluntary retirement scheme was floated by the Bank on 9-11-2000. The respondent requested for his voluntary retirement. It was accepted by an order dated 10-2-2001. By then, he had completed 14 years, 9 months and 17 days of service. He filed an application for grant of pension on the premise that he was eligible therefor. It was rejected on the ground that he had not completed 15 years of service. A writ petition filed by him was dismissed by a learned Single Judge of the Madras High Court. An intra-court appeal filed there against has been allowed by a Division Bench of the High Court by reason of the impugned judgment directing:

"Accordingly, while setting aside the order impugned in the writ petition, we direct the respondent to grant pensionary benefits under IBVRS 2000 as per the above referred to Regulations. The arrears of pension payable to the petitioner are liable to be settled with interest. As far as payment of interest is concerned, inasmuch as the petitioner ought to have been paid pension on the date when he was relieved from the services i.e. on 10-2-2001 and since for no fault of the petitioner, he was deprived of the benefits of pension, we are of the view that the petitioner is entitled for interest on the arrears from the date of his superannuation till the date of its payments..."

8. Provisions of VRS and Pension Regulations, 1995 are reproduced as under:

7. Although the respondent has not superannuated in terms of the said scheme, he has taken his voluntary retirement under the voluntary retirement scheme in terms whereof an ex gratia payment equivalent to sixty days' salary was to be paid apart from the other benefits viz. Gratuity payment or leave encashment, which are as under:

"1. Gratuity as per the Gratuity Act/Service Gratuity as the case may be.

2. Pension (including commuted value of pension) as per Indian Bank (Employees) Pension Regulations, 1995/Bank's contribution towards PF as per rules.

3. Leave encashment as per rules."

8. The matter relating to pension is governed by the Pension Regulations.

9. We may notice that although various provisions have been made providing for qualifying service to which our attention has been drawn by Mr. Raju Ramchandran, the manner in which the period of service is to be measured is contained in Regulation 18 of the Regulations which reads as under:

"18. Broken period of service of less than one year - If the period of service of an employee includes 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."

10. The term "broken lot" has been defined in Black's Law Dictionary 6th Edn., p.193, in the following terms:

"Broken lot-Odd lot; less than the usual unit of measurement or unit of sale; e.g., less than 100 share of stock."

9. That in given fact and rules the Apex Court held as under:

13. it may be true that various provisions of the Regulations as for example Regulations 16, 17, 19, 23, etc. provided for qualifying service. Regulation 18 is not controlled by any of the said provisions. It does not brook any restrictive interpretation. It only provides for a rule of measurement. An employee, as noticed hereinbefore, was entitled to pension provided he has completed the specified period of service. How such a period of service would be computed is a matter which is governed by the statute. It is one thing to say that a statute provides for completion of fifteen years of minimum service, but if a provision provides for measurement of the period, the same cannot be lost sight of. Provision of the Regulations which are beneficial in nature, in our opinion, should be construed liberally.

That clause 2 of VRS and Regulation 18 of Pension Regulation, 1995 are para materia with VRS of Pension Scheme, 1995 of present case.

10. Respondents are directed to calculate the pension accordingly and with consequential benefits.

11. Writ petition stands disposed of.