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(2015) 07 P&H CK 0029

In the Punjab And Haryana At Chandigarh

Case No : CWP Nos. 10926, 10924, 15034, 19901, 21741, 23465, 20587, 13911, 5396 of 2011 and 10217 of 2013

Sukhdev Raj and Others — APPELLANT

Vs

Union of India and Others — RESPONDENT

Date of Decision : 02-07-2015

Acts Referred:

General Insurance Business (Nationalisation) Act, 1972 — Section 16, 16(1)(g), 17, 17-A

Citation : (2015) 07 P&H CK 0029

Hon'ble Judges : Harinder Singh Sidhu, J

Bench : Single Bench

Advocate : J.K. Sibal, Senior Advocate and Dhawal Bhandari, for the Appellant; S.C. Pathela, Sameer Sachdeva, V. Ram Swaroop and D.R. Bansal, Advocates for the Respondent

Final Decision : Dismissed

Judgement

Harinder Singh Sidhu, J.—This judgment shall dispose of aforesaid ten writ petitions as common issue is involved in all these petitions.

2. However, the facts are being taken from CWP No. 10926 of 2011.

3. Prayer herein is for directions to quash the order dated 28.03.2011 (Annexure P-10), whereby, the request of the petitioners for being given one more opportunity for exercising option under the General Insurance (Rationalization of Pay Scale and Other General Conditions of Service of Development Staff) (Amendment) Scheme, 2003 (hereinafter referred to as ''the 2003 Scheme'') has been declined.

4. To appreciate the issue involved, it is necessary to set out the background, in which the aforesaid request has been made and declined. Prior to 1973, 106 General Insurance Companies (Indian as well as Foreign) were operating. The conditions of service of their employees were governed by contracts of service

between the companies and its employees. On 13.05.1971, the Government of India took over the management of these Companies by enacting the General Insurance (Emergency Provisions) Act, 1971. Thereafter, the General Insurance business was nationalized by enactment of General Insurance Business (Nationalization), Act, 1972 (hereinafter referred to as ''the 1972 Act''). Under Section 16 of the 1972 Act, the Central Government formulated four merger schemes and thereafter four companies namely, New India Assurance Company Ltd.; National Insurance Co. Ltd.; Oriental Insurance Co. Ltd. and United India Insurance Co. Ltd. were allowed to carry on the business of General Insurance.

5. On 29.04.1976, in exercise of the powers under Clause (g) of Sub Section (1) of Section 16 of the 1972 Act, the Central Government notified a scheme (Annexure P-1) to provide for rationalization of pay scale and other terms and conditions of service of the development staff serving in these companies. This scheme was titled as ''General Insurance (Rationalization of Pay Scale and Other Conditions of Service of Development Staff) Scheme, 1976 (hereinafter referred to as ''the 1976 Scheme''). This Scheme has been subsequently amended from time to time in year 1987, 1990, 1996, 2000 and 2003.

6. Initially, the 1976 Scheme was amended by exercising powers under Section 16(1)(g) of the 1972 Act. However, the same was struck down by Hon''ble the Supreme Court in Ajoy Kumar Banerjee and Others Vs. Union of India (UOI) and Others, AIR 1984 SC 127 : (1984) 48 FLR 448 : (1984) LabIC 691 : (1984) 1 LLJ 368 : (1984) 1 SCALE 539 : (1984) 3 SCC 127 : (1984) 3 SCR 252 : (1984) 16 UJ 500 . Thereafter, the 1972 Act was amended in the year 1985 retrospectively w.e.f. 01.01.1973, the appointed day under the 1972 Act. By this amendment, a new Section 17-A was introduced and the Central Government was given power to frame schemes for regulating the pay scales and other terms and conditions of service of officers and other employees of the Corporation or of any acquiring company. A scheme framed thereunder may add to, amend or vary any scheme framed under Section 16 including any addition, amendment or variation made therein by notification under sub-section (6) of Section 16 with respect to rationalisation or revision of pay scales and other terms and conditions of service of officers and other employees of the Corporation or of any acquiring company, to provide for further rationalisation or revision of such pay scales and other terms and conditions of service, notwithstanding that such further rationalisation or revision is unrelated to, or unconnected with, the amalgamation of insurance companies or merger consequent on nationalisation of general insurance business. It was provided that such power could be exercised retrospectively. The validity of Section 17-A was upheld in Kishan Prakash Sharma and Others etc. Vs. Union of India and Others, AIR 2001 SC 1493 : (2001) 3 JT 554 : (2001) 2 SCALE 586 : (2001) 5 SCC 212 : (2001) SCC(L&S) 805 : (2001) 2 SCT 656 : (2001) AIRSCW 1309 : (2001) 2 Supreme 467 .

7. The 2003 Scheme (Annexure P-3), which makes certain changes to the conditions of service of development staff was notified on 02.01.2003. Writ

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petitions were filed in different High Courts challenging the aforesaid Scheme on different grounds. In some cases there were status quo orders and in some cases there were no such orders. CWP No. 3204 of 2003 was filed in this Court in which vide order dated 31.03.2003, status quo was directed to be maintained. The petitions filed in various High Courts including this Court were later transferred to Hon''ble the Supreme Court and were disposed of vide a common judgment dated 03.04.2008, which is reported as National Insurance Co. Ltd. Vs. General Insurance Dev. Officers Asson. and Others, AIR 2008 SC 2657 : (2008) 3 CLT 94 : (2008) 4 SCALE 768 : (2008) 5 SCC 472 : (2008) 2 SCC(L&S) 92 : (2008) AIRSCW 4438 . The writ petitions were dismissed and all the interim orders were ordered to be vacated. In the last paragraph of the judgment, it was observed that it would be in the interest of the Officers and the Insurance Companies if the Development Officers who work within the cost ratio are not transferred unless transfer is required in public interest. As regards promotional prospects and wage revision are concerned, it was directed that the draft policy stated to have been formulated for the said purpose be finalized within a period of three months.

8. After the disposal of the case, the 1976 Scheme was amended by way of notification dated 19.06.2008 (Annexure P-4). This was called the General Insurance (Rationalization of Pay Scale and Other Conditions of Service of Development Staff) (Amendment) Scheme, 2008 (hereinafter referred to as ''the 2008 Scheme''). It was provided that this Scheme shall be deemed to have come into force on 01.04.2003. Thereafter the promotion policy for Development Officers Grade I to the cadre of Scale I Officer was circulated on January 1, 1999.

9. As per Clause 15 C of the 2003 Scheme, a Development Officer could, within sixty days of the commencement of the Scheme submit an option whereby he may opt (a) for Special Voluntary Retirement Package or (b) to render his services as Development Officer (Administration). It was stipulated that if any option was not exercised within sixty days, then the Development Officer shall continue to render service under the 2003 Scheme.

10. After the decision of the Hon''ble Supreme Court rejecting the challenge to the 2003 Scheme, some of the petitioners submitted a representation to the respondent-Insurance Companies that the option which the Development Officers were permitted to exercise under the 2003 Scheme could not be exercised by them within the 60 days provided for in the 2003 Scheme as the transfer and mobility policy and promotion policy was not available with them at that stage and the same has been made available to them on 23.12.2008 and 21.10.2008 respectively. It was also stated in the representation that they could not exercise the option at that stage because of stay granted by various High Courts and subsequently by the Hon''ble Supreme Court. It was, therefore, requested that they be granted one more chance to exercise the option in terms of the 2003 Scheme. One such representation is Annexure P-6.

11. Receiving no response from the Insurance Companies, the Development Officers moved an Interlocutory Application No. 2 of 2010 (Annexure P-7) in

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Transfer Case No. 64 of 2010 before the Hon''ble Supreme Court seeking directions to the respondent- Insurance Companies to extend the time limit for giving the option. Vide order dated 16.08.2010 (Annexure P-8), the said application was permitted to be withdrawn with liberty to pursue the same before the appropriate authority/Court. Pursuant to the orders dated 16.08.2010, the petitioners along with some other Development Officers submitted a representation to the respondents to give one more opportunity to exercise the option as per the 2003 Scheme. The said request has been declined by the impugned order dated 09.03.2011 (Annexure P-10). Hence, the present writ petition.

12. Separate written statements have been filed by the Insurance Companies denying the claim of the petitioners. Regarding the averments that the options could not be exercised because of the order of status quo, it has been stated that the 2003 Scheme notified on 02.01.2003 (Annexure P-2) was to come into force on the date of its publication in the Official Gazette. It was published in the Official Gazette on 03.01.20030. As per Clause 15-C the options were to be exercised within sixty days. The said sixty day period expired on 03.03.2003. The status quo order was issued by this Court in CWP No. 3204 of 2003 on 31.03.2003, which could have no effect on the exercise of the option as by then the sixty day period had long expired and the petitioners had lost the right to exercise the option. It is further stated that a large number of the Development Officers had exercised the options and their options were considered.

13. I have heard Ld. Counsel for the parties and perused the record.

14. Ld. Senior Counsel appearing for the petitioners has placed reliance on the parting observations of the Hon''ble Supreme Court while disposing of National Insurance Co. Ltd. Vs. General Insurance Dev. Officers Asson. and Others, AIR 2008 SC 2657 : (2008) 3 CLT 94 : (2008) 4 SCALE 768 : (2008) 5 SCC 472 : (2008) 2 SCC(L&S) 92 : (2008) AIRSCW 4438 that so far as the promotional prospects and the wage revision are concerned, a draft policy stated to have been formulated for the latter be finalised within a period of three months. It is stated that the above directions had been issued in the context of the grievance of the Development Officers that though the 2003 Amendment gives a Development Officer an option to take a voluntary retirement or in the alternative to opt to be in the administration, but the Scheme is silent in regard to career prospects of a Development Officer who opts to work in the administration. Without specifying as to what would be the promotional avenues for a person opting for working in administration, such an option would be meaningless and the amended Scheme would arbitrarily push the Development Officer out of the company. It is submitted that the above grievance was specifically noted by the Hon''ble Supreme Court in paragraph 16 of the judgment. Ld. Senior Counsel has argued that the petitioners were in no position to make an informed choice in the absence of particulars of their promotional prospects and wage revision being known to them and it is only after the same

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were finalized that the petitioners could exercise the option and thereafter they submitted representations. When no decision was taken, they filed an IA, which was permitted to be withdrawn with liberty to approach the appropriate authority/ Court. He states that the action of the respondents in declining their request to give them another chance, in these circumstances is illegal, unjustified and is liable to be quashed.

15. To the contrary the Ld. Counsel for the insurance companies have stressed that 2003 scheme is a statutory scheme and it has been so held in New India Assurance Co. Ltd. Vs. Raghuvir Singh Narang and Another, (2010) 3 JT 645 : (2010) 2 LLJ 853 : (2010) 5 SCC 335 : (2010) 4 SCR 299 : (2010) 3 SLJ 72 . The scheme stipulated that the options were to be exercised within sixty days of the publication of the Scheme and the same not having been done by the petitioners, they forfeited their right to exercise the option. There is no provision in the scheme for extension in time or for being given another chance. They state that though the petitioners had filed an IA in the Hon''ble Supreme Court praying that they be given another chance to submit option, but the same was got dismissed as withdrawn with liberty to approach the authorities. They argue that the Insurance Companies operate all over the country and in no State have Development Officers been permitted to exercise option after the expiry of the sixty day period stipulated in the scheme. They state that the option cannot be permitted to be exercised at this late stage almost 12 years after the period stipulated in the 2003 scheme. They state that with the lapse of time the situation has irreversibly changed. They further state that as per the 2003 Scheme, though the option could be exercised by the Development Officer, but the acceptance or rejection thereof was in the sole discretion of the Insurance company. They further state that when recovery notices issued to the development officers consequent to the 2003 Scheme were challenged before this Court in a bunch of petitions (CWP No. 4571 of 2009 titled ''Rajesh Prashar Vs. Union of India and others'') this court repelled the challenge by holding that once the 2003 scheme has been upheld by the Hon''ble Supreme Court it has to be given effect to and if the petitioners are aggrieved of any provision thereof, the only remedy they have is of seeking a clarification from the Supreme Court.

16. Having considered the arguments of the Ld. Counsel for the parties, I am of the view that the petitions are liable to be dismissed.

17. The Hon''ble Supreme Court in Raghuvir Singh Narang''s case (supra) has held that the 2003 Scheme is a statutory scheme. It was observed as under:-

"24. The special voluntary retirement package is a part of the General Insurance (Rationalisation of Pay Scales and Other Conditions of Service of Development Staff) Amendment Scheme, 2003, made by the Central Government in exercise of the power under Section 17-A of the General Insurance Business (Nationalisation) Act, 1972. Section 17-A, as noticed above, authorises and empowers the Central Government, to frame, by notification published in the Official Gazette, one or more schemes for regulating the pay scales and other

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terms and conditions of service of officers and other employees of the Corporation or of any acquiring company (including the appellant). Sub-section (6) of Section 17-A provides that the provision of Section 17 and of any scheme framed under it shall have effect notwithstanding anything to the contrary contained in any other law or any agreement, award or other instrument for the time being in force. Therefore, the Scheme is statutory in character. Consequently, the provisions of the Scheme will prevail over the provisions of the Contract Act or any other law or any principle of contract, and having regard to the binding nature of the Scheme, the employee upon exercising the option, cannot withdraw from the same."

18. Consequently, the challenge of the respondents in that case to the acceptance of their option for voluntary retirement even though they had withdrawn it before its acceptance, was rejected because as per the 2003 scheme option once given could not be withdrawn. It was held the scheme being statutory, its provisions would override the general provisions in the Contract Act.

19. Clause 15-C, which deals with the exercise of the option is reproduced below:

"15-C. Special Option.- (1) A Development Officer may, within sixty days of the commencement of the General Insurance (Rationalization of Pay Scales and Other Conditions of Service of Development Staff) Amendment Scheme, 2003, opt-

(a) for Special Voluntary Retirement Package as per Annexure-I appended hereto; or

(b) to render his services as Development Officer (Administration) under paragraph 21-A, as per Annexure II.

(2) A Development Officer, who does not exercise any of the options under sub-paragraph (1) within the stipulated period of sixty days, shall continue to render services as such under the General Insurance (Rationalization of Pay Scales and Other Conditions of Service of Development Staff) Amendment Scheme, 2003."

20. This provision clearly states that the option can be exercised within sixty days of the commencement of the Scheme. It is not denied that the said sixty days period expired on 3.3.2003 as the scheme had been published in the Official Gazette on 3.1.2003, which is the date of commencement of the Scheme. Admittedly, the petitioners had not exercised the option during the sixty days period.

21. There is no provision in the 2003 scheme, under which the period for exercise of option can be extended. The status quo order was passed by this Court on 31.3.2003, which is after the expiry of the sixty day period for the exercise of the options and hence the plea of the petitioners that they could not exercise the option because of the status quo orders passed by the Courts cannot be accepted. The 2003 scheme has been upheld the Hon''ble Supreme Court in General Insurance Development Officers Association''s case (supra).

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When the petitioners filed IA in the above case praying that directions be issued to the respondent - Companies to give them another chance to exercise their option, because they could not so exercise it in a meaningful way as the transfer and mobility policy as well as the promotion policy was not available with them at that stage and the same was made available to them on 23.12.2008 and 21.10.2008 respectively, the Hon''ble Supreme Court did not grant their prayer but only permitted them to withdraw the application with liberty to approach the appropriate authority/ Court. Now, the representation moved by the petitioners to provide one more opportunity has been declined by the respondents by stating that such a request cannot be acceded to.

22. In view of the fact that the scheme is statutory in nature, and there is no provision therein for extension of time for exercising the option, it would not be legally permissible for the respondents to accede to the request of the petitioners as the respondent companies are equally bound to act as per the provisions of the Scheme. Such a course would be permissible only if the scheme were to be amended to incorporate such a provision. The Hon''ble Supreme Court while disposing of the petitions challenging the legality of the Scheme, did not grant any such relief to the petitioners, nor did it grant such relief in the IA filed by the petitioners. The scheme having been upheld by the Hon''ble Supreme Court, it is not open to this Court to issue any direction to the respondents to extend the time or grant permission to the petitioners to exercise the option. Consequently, no such direction can be issued in the present case.

23. The issue raised in these petitions is squarely covered by the decision dated 27.05.2011 of this Court in CWP No. 4571 of 2009 (supra) and other connected cases, wherein, it was observed as under:

"The petitioner, in the present case, accordingly has come to challenge some of the recovery notices, which have been issued consequent to the scheme formulated in the year 2003. Learned counsel for the petitioner has made number of submissions. He would first submit that interim order staying the policy formulated in the year 2003, would mean that the same was not in operation for period from 2003 to 2008 and so recoveries cannot be effected. This, of course, is answered by the respondents in a manner that policy of 2003 once upheld has to be given effect too and interim order passed, if any, would merge with the final order passed by the Hon''ble Supreme Court. Counsel for the respondents contends that there is no change introduced in the policy formulated in the year 2008, so far as the cost ratio is concerned. It is further pointed out that the cost ratio was not first time introduced in the year 2003, but is an old Policy introduced since 1976 and is being continued. Only the definition of certain term was introduced in 2003 Policy, which led to certain consequences. Once the challenge to 2003 Policy has been upheld, the policy obviously can be given effect. If the contention of the counsel for the petitioner is to be accepted, it may lead to interference in the policy, which has already been upheld by the Hon''ble Supreme Court. If 2008 Policy is having effect on 2003 Policy framed

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earlier to the detriment of the petitioner and which according to him, would be unfair and unreasonable, the petitioner would have to seek clarification from the Hon''ble Supreme Court. It would not be appropriate to interfere in the policy, which has already been upheld. So far as the proposed action of the recovery against the petitioner is concerned, this is only on the basis of 2003 Policy and nothing more."

24. Accordingly there is no merit in the petitions and the same are dismissed.

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