

(2016) 09 RAJ CK 0079

RAJASTHAN HIGH COURT

Case No: Civil Special Appeal (Writ) No. 178 of 2009.

Mahaveer Prasad Pareek s/o Shri
Magh Rajji Pareek, aged 52
years, by caste Brahmin, resident
of Bhati Bhawan, Near Vinayak
Marbles, Bheru Chowk,
Sumerpur, District Pali -
Appellant @HASH United India
Insurance Company Ltd.,
through its Managing Director-c

APPELLANT

Vs

RESPONDENT

Date of Decision: Sept. 8, 2016

Citation: (2016) 4 RLW 2625

Hon'ble Judges: Govind Mathur and Kailash Chandra Sharma, JJ.

Bench: Division Bench

Advocate: Mr. Sandeep Shah, Mr. Anil Bhandari and Dr. Nupur Bhati, Advocates, for the Appellant; Mr. Mahaveer Singh, Mr. Rajat Arora, Mr. Jagdish Vyas, Mr. M.S. Singhvi, Senior Advocate, assisted by Mr. Rajesh Choudhary and Mr. Hemant Dutt, Advocates, for the Respo

Final Decision: Allowed

Judgement

Mr. Govind Mathur, J. - By the judgment impugned dated 21.2.2008, learned Single Bench dismissed the writ petitions preferred by the appellant-petitioners to claim the benefit of pension on grant of voluntary retirement as per provisions of General Insurance Special Voluntary Retirement Scheme, 2004 (hereinafter referred to as "the Scheme of 2004"). By the same judgment learned Single Bench also decided cases of the employees who sought voluntary retirement under the State Bank of Bikaner and Jaipur Voluntary Retirement Scheme.

2. In these appeals, at the threshold it is stated by learned counsels appearing on behalf of the appellant-petitioners that the case of the appellants was different than the case of the bank employees, but learned Single Bench by treating the provisions of the Scheme of 2004 para-materia to the scheme applicable for bank employees, considered and decided the writ petitions in light of the scheme made for bank employees, instead of considering as per provisions of the Scheme of 2004. It is also pointed out that Hon"ble the Supreme Court in **National Insurance Co. Ltd. and Anr. v. Kirpal Singh, reported in 2014 DNJ (SC) 342**, has already examined the entire issue in question with finding that the employees of the insurance company, who sought voluntary retirement under the Scheme of 2004, are entitled to pension.

3. Per contra, as per learned counsels appearing on behalf of respondent insurance companies, the judgment given by the Apex Court in the case of National Insurance Co. Ltd. and Anr. v. Kirpal Singh (supra) is per incuriam being passed without taking into consideration the other judgments dealing with the same issue. It is asserted that in light of earlier as well as subsequent judgments of the Supreme Court, the law laid down in the case of National Insurance Co. Ltd. and Anr. v. Kirpal Singh (supra) is not correct.

4. The factual matrix necessary to be noticed for adjudication of these appeals is as under:

In exercise of its powers Under Section 17A of the General Insurance Business (Nationalisation) Act, 1972, the Central Government introduced the General Insurance Employee's Special Voluntary Retirement Scheme, 2004. Para 3 of the scheme stipulating the eligibility conditions for employees who could opt for voluntary retirement from the services of the insurance company is as under:

"Eligibility

(1) All permanent full time employees will be eligible to seek special voluntary retirement under this Scheme provided they have attained the age of 40 years and completed 10 years of qualifying services as on the date of notification.

(2) An employee who is under suspension or against whom disciplinary proceedings are pending or contemplated shall not be eligible to opt for the scheme;

Provided that the case of an employee who is under suspension or against whom disciplinary proceeding is pending or contemplated made be considered by the Board of the Company concerned having regard to the facts and circumstances of each case and the decision taken by the Board shall be final."

5. In para 5 of the scheme those seeking voluntary retirement were held entitled to ex-gratia amount to be determined according to the said provision. In Para 6 of the scheme were stipulated other benefits to which the employees opting for voluntary retirement under the scheme would be entitled, are given. Para 6 referred above reads as under:

"6. Other benefits.-

(1) An employee opting for the scheme shall also be eligible for the following benefits in addition to the ex-gratia amount mentioned in para 5 namely:

(a) Provident Fund,

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

(c) Pension (including commuted value of pension) as per General Insurance (Employee's) Pension Scheme 1995, if eligible. However, the additional notional benefit of the five years of added service as stipulated in para 30 of the said pension Scheme shall not be admissible for the purpose of determining the quantum of pension and commutation of pension.

(d) Leave encashment.

(2) An employee who is opting for the scheme shall not be entitled to avail Leave Travel Subsidy and also encashment of leave while in service during the period of sixty days from the date of notification of this scheme."

(Emphasis supplied)

6. The appellant-petitioners, who opted for voluntary retirement in terms of the Scheme of 2004, appear to have claimed pension as one of the benefits admissible to them under para 6 above. The claim was rejected by the respondents, thus, they approached writ court with a stand that para 6 of the Scheme of 2004 read with para 14 of the General Insurance (Employees) Pension Scheme 1995 entitled the employees to claim pension so long as they had rendered a minimum of ten years of service in the Corporation/Company from whose service they were seeking retirement. Para 14 of the Pension Scheme 1995 reads as under:

"Qualifying Service: Subject to the other condition contained in this scheme, an employee who has rendered a minimum ten years of service in the Corporation or a Company, on the date of retirement shall qualify for pension."

7. A conjoint reading of para 6 of the Scheme of 2004 and para 14 of the Pension Scheme 1995, would leave no manner of doubt that any employee retiring from the service of the company/corporation would qualify for payment of pension if he/she has rendered a minimum of ten years of service on the date of retirement. The expression "retirement" has been defined in para 2(t) of the Pension Scheme 1995 as under:

"2 Definition: In this Scheme, unless the context otherwise requires:-

xxx xxx xxx

(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 of 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;

8. It is asserted by the appellant-petitioners that they had not sought voluntary retirement in terms of para 30 of the Pension Scheme 1995 which is a general provision and which stipulates twenty years of qualifying service for being eligible to claim pension nor was it a case where the Scheme of 2004 either specifically or by necessary implication adopted para 30 of the Pension Scheme 1995 for determining the eligibility of those seeking retirement under the said scheme. The appellants-petitioners voluntarily retired pursuant to the Scheme of 2004, which was different from what was envisaged under para 30 of the Pension Scheme 1995. The condition of eligibility for pension stipulated under para 30 viz. twenty years of qualifying service had, therefore, no application to the appellant-petitioners implying thereby that the claim for pension ought to be seen in the light of Para 14 of the Pension Scheme 1995 treating retirement under the Special Scheme of 2004 also as a retirement for the purposes of that para.

9. It is submitted on behalf of the respondents that in terms of para 6 of the Scheme of 2004, pension will be admissible to those seeking voluntary retirement, if they were eligible for the same under the Pension Scheme 1995. Para 30 of the Pension Scheme 1995, made only such employees eligible for pension who had completed twenty years of qualifying service. Inasmuch as the appellant-petitioners had not admittedly completed twenty years of qualifying service on the date of their voluntary retirement, they were not eligible for pension under the Pension Scheme 1995.

10. The issue sought to be agitated in these appeals was also examined by the Apex Court in the case of National Insurance Co. Ltd. and Anr. v. Kirpal Singh (supra) wherein it was held that "Para 2 of the Pension Scheme 1995 (extracted earlier) defines the expressions appearing in the scheme. But what is important is that such definitions are good only if the context also supports the meaning assigned to the expressions defined by the definition clause. The context in which the question

whether pension is admissible to an employee who has opted for voluntary retirement under the 2004 scheme assumes importance as Para 2 of the scheme starts with the words "In this scheme, unless the context otherwise requires". There is nothing in the context of 1995 Scheme which would exclude its beneficial provisions from application to employees who have opted for voluntary retirement under the Special Scheme 2004 or vice versa. The term retirement must in the context of the two schemes, and the admissibility of pension to those retiring under the Scheme of 2004, include retirement not only under Para 30 of the Pension Scheme 1995 but also those retiring under the Special Scheme of 2004. That apart any provision for payment of pension is beneficial in nature which ought to receive a liberal interpretation so as to serve the object underlying not only of the Pension Scheme 1995 but also any special scheme under which employees have been given the option to seek voluntary retirement upon completion of the prescribed number of years of service and age."

11. As already stated, counsels for the respondent insurance companies accept the position that the law laid down in the case of National Insurance Co. Ltd. and Anr. v. Kirpal Singh (supra) relates to the same issue, but, as per them that does not prescribe correct position of law in light of the other judgments on the issue in question.

12. It is stated that in the case of **Union of India v. Rakesh Kumar, reported in (2001) 4 SCC 309**, the Apex Court, while examining the issue whether the member of Border Security Force resigning under Rule 19 of the Border Security Force Rules, 1969 after serving for ten years or more but less than twenty years were entitled to pension/pensionary benefits or not, held that no pension could be allowed to any person enrolled with the Border Security Force, if he has not completed the qualifying service prescribed under the Rules.

13. Reliance is also placed upon the judgment of Apex Court in **Vice Chairman & MD v. R. Varaprasad, reported in (2003) 11 SCC 572**, wherein the Apex Court held that the employees who have obtained voluntary retirement at their own knowing it well that the scheme, guidelines and circulars governing the voluntary retirement does not prescribe for the pension, then it is not open for the courts to rewrite the terms of contract of service by awarding pension.

14. Much emphasis is given upon the judgment given by the Apex Court in the case of **Bank of Baroda v. Ganpat Singh Deora, reported in (2009) 3 SCC 217**, wherein an employee of Bank of Baroda sought and granted voluntary retirement under the voluntary retirement scheme applicable with the bank on completion of 13 years of service. The bank in light of the regulations 14, 28 and 29 of the scheme refused to award pension. The Apex Court while affirming the decision of the bank held that the retirement scheme offered by the bank is special scheme, however, any employee who has availed voluntary retirement without completing qualifying service given under the statutory provisions is not entitled for pension, though he

may be eligible to avail voluntary retirement from service under the scheme applicable.

15. Reliance is also placed upon the judgments of Apex Court given in **Bank of Baroda v. S.K. Kool through his LRs, reported in (2014) 2 SCC 715** and **Assistant General Manager, State Bank of India v. Radhey Shyam Pandey, reported in (2015) 12 SCC 451**, the judgments in line with the law laid down in the case of Bank of Baroda v. Ganpat Singh Deora (supra).

16. It shall be appropriate to mention here that all the cases cited by learned counsels for the insurance companies pertain to the voluntary retirement scheme applicable for banks and not to the insurance companies. The submission of learned counsels is that the scheme of the bank is para materia to the Scheme of 2004. It is also brought into knowledge of the Court that Hon"ble the Supreme Court in the case of **Manoj Bhai Shah v. Union of India, reported in (2015) 4 SCC 482**, even after considering the judgment delivered in National Insurance Co. Ltd. and Anr. v. Kirpal Singh (supra) arrived at the conclusion that the employees voluntarily retired under a special scheme forms a separate class than the serving employees or the employees retired in regular course and, therefore, such voluntarily retired employees must not forget the fact that they received substantial higher retiral benefits and, therefore, they cannot claim any discrimination vis-a-vis the other employees.

17. In the case aforesaid the issue was with regard to grant of revised pay with retrospective effect to the employees who either were working with the insurance companies or retired from service in regular course. In our opinion, this case is having no application in the instant matter.

18. So far as the cases relating to bank employees are concerned, we would like to state that the Apex Court has taken into consideration the scheme which is specifically applicable for the employees of the banks and not to the employees of insurance companies. In the case of National Insurance Co. Ltd. and anr. v. Kirpal Singh (supra) the Apex Court examined the issue in light of the scheme made by the Government for the employees of insurance companies. The ratio of the case is extracted by examining all relevant provisions of the applicable scheme and that covers the issue under adjudication in these appeals, hence, by the force of Article 141 of the Constitution of India, we are abide by that. The argument advanced by learned counsel that the judgment given in the case of National Insurance Co. Ltd. and Anr. v. Kirpal Singh (supra) is per incuriam, is also having no force.

19. In the case of **K.P. Manu v. Chairman Scrutiny Committee for Verification of Community Certificate, reported in (2015) 4 SCC 1**, it was held that per incuriam are those decisions given in ignorance or forgetfulness of some inconsistent statutory provisions or of some authority binding on the court concerned, so that in such cases some part of the decision or some step in the reasoning on which it is

based, is found, on that account to be demonstrably wrong.

20. In the case at hand, though an effort is made by learned counsels that the scheme applicable to the bank employees is para materia to the scheme applicable for the employees of the insurance companies, but we are not satisfied with that. True it is, both the schemes pertain to voluntary retirement of public undertakings, but there are certain minor changes. The Apex Court in the case of National Insurance Co. Ltd. and Anr. v. Kirpal Singh (supra) examined the scheme applicable for the employees of the insurance companies which is also subject matter of instant matters and ratio of that is based on sound application of law. We do not find any just reason to adopt the reasoning given by the Apex Court in the cases of the scheme pertaining to bank employees when a direct judgment arising out of the same scheme is available. It is also pertinent to state that the Apex Court in the case of National Insurance Co. Ltd. and Anr. v. Kirpal Singh (supra) did not ignore or forget to apply the law laid down by the authority binding on it. As a matter of fact the ratio of the judgments in the cases relating to bank employees is founded on a scheme different, hence, on basis of that it cannot be said that the judgment given in the case of National Insurance Co. Ltd. and Anr. v. Kirpal Singh (supra) is per incuriam. This judgment is having binding upon us in view of the provisions of Article 141 of the Constitution of India and, therefore, these appeals deserve acceptance in terms of that judgment.

21. Accordingly, the appeals are allowed. The judgment impugned dated 21.2.2008, passed by learned Single Bench is set aside. The writ petitions preferred by the appellant-petitioners are allowed. The condition of eligibility for pension stipulated under para 30 of the pension scheme of 1995 shall be having no application for the appellant-petitioners. Their claim of the pension is required to be settled in light of para 14 of the pension scheme of 1995 treating their retirement under the special Scheme of 2004 also as a retirement for the purpose of that para. The appellant-petitioners are declared entitled for the pension from the date of their retirement.