

MANOJBHAI N. SHAH & ORS.

v.

UNION OF INDIA & ORS.

(Transfer Case (Civil) No. 48 of 2010)

JANUARY 07, 2015

[ANIL R. DAVE AND SHIVA KIRTI SINGH, JJ.]

Service Law: Retirement – Voluntary Retirement Scheme – Whether after acceptance of voluntary retirement under the 2004 Scheme, such retired employees would be entitled to get benefit of the revision of pay which was retrospectively given from 1st August 2002 by Notification dated 21.12.2005 – Held: VRS Scheme 2004 was framed by employer to reduce burden of salary and establishment expenditure – Employees who opted under the Scheme retired upon taking some special additional benefits – If benefit of revision of pay scale is given to person who had already opted under the Scheme and had retired, the real purpose with which the Scheme was framed would be frustrated – Therefore, employees who had opted for retirement under the Scheme would not be entitled to additional pension upon revision of pay effected under Notification dated 21.12.2005.

Disposing of the Transfer cases and the Special Leave Petition, the Court

HELD: 1. There is no doubt that the Scheme was framed by the Employers to see that their expenditure in long term is decreased by making one-time payment of additional amount to the employees opting for retirement under the Scheme. With this intention, the employers had floated the Scheme and several employees of the Employers had taken due advantage of the Scheme by opting under the Scheme and by taking not only ex gratia payment of salary but also additional pension, which

A they would not have received otherwise. The employees
opting for retirement under the Scheme were to get
benefit of additional five years of service while calculating
the pension. The said benefit was substantial and the said
benefit along with benefit of ex gratia payment, tempted
B number of employees who opted under the Scheme and
retired happily after getting all retiral benefits. [Para 34]
[623-H; 624-A-D]

2. According to clause 5(2) of the Scheme, ex gratia
amount was to be paid to the concerned employees on
C the date of his/her being relieved and it was clarified that
in case of wage revision effected from a date prior to the
date on which the said Scheme had been notified in the
Official Gazette, the benefit of revised pay for the purpose
of payment of ex gratia would be allowed. Meaning
D thereby, the employees who had opted under the
Scheme and retired from service were entitled only to
revision of ex gratia amount upon retrospective increase
in the salary. The intention was to give benefit only in
relation to ex gratia amount and not in relation to the
E pension. Had the intention been to give benefit of
additional pension also, the said fact would have been
incorporated in the said clause. In normal circumstances
when an employee retires from service, his relationship
with the employer comes to an end. It is also a well
F settled legal position that after retirement, normally no
disciplinary action can be initiated against the concerned
employee. Similarly, the retired employee would not have
any right of redetermination of his pension but only in
cases where salary is revised with retrospective effect,
G the retired employee gets the benefit of additional
pension and that too in certain cases. In the instant case,
it is crystal clear that the employees had already opted
under the Scheme -under a specially made Scheme,
which was framed only with an intention to reduce future
expenditure of the Employers. If all these benefits are
H given to the persons who had already opted under the

Scheme and had retired, the real purpose with which the Scheme had been framed would be frustrated. [Paras 36, 37] [624-F-H; 625-A-E]

3. The employees who retired under the Scheme form a separate class of employees who were given many benefits, which are not given to employees retiring in normal course. If they all form a separate class, by no stretch of imagination it can be said that all those who retired under the Scheme and those who retired in normal course, are similarly situated. Thus, in our opinion, there is no violation of Article 14 of the Constitution of India in the instant case. Similarly, there is no violation of the principle of equal pay for equal work. True, that those who retired under the Scheme did the same work which was being done by those who retired in normal course, but one cannot forget the fact that those who retired under the Scheme got substantially higher retirement benefits. [Paras 38, 39] [625-F-H; 626-A]

National Insurance Co. Ltd. & Anr. v. Kirpal Singh 2014 (1) SCALE 320 – referred to.

Case Law Reference :

2014 (1) SCALE 320 referred to Para 24

CIVIL ORIGINAL JURISDICTION : Transfer Case (CIVIL) No. 48 of 2010.

Under Article 139 of the Constitution of India.

WITH

T.C. (C) Nos. 45, 47, 46 and 49 of 2010, T.C. (C) Nos. 7, 6, 19, 23, 20, 21, 82 and 83 of 2011 and T.C. (C) Nos. 27 and 28 of 2014 & SLP (C) No. 10903 of 2011.

V. Giri, T. R. Andhyarujina, Jaideep Gupta, Gautam Narayan, V. Parthiban, T. V. S. Raghuvendra Sreeyas, Mubashir Mushtaq, Nikhil Nayyar, Tatini Basu, Rashmi Rai, Juno Rahman, Jyoti Mendiratta, Abhay Kumar, Rishabh

A Sancheti (For T. Mahipal), Dinesh Mathur, Jyoti Dastidar (For R. P. Goyal), A. Radhakrishnan, B. Sunita, Sushma Suri, B. K. Prasad for the Appearing Parties.

The Judgment of the Court was delivered by

B **ANIL R. DAVE, J.** 1. A common legal issue was involved in several writ petitions and appeals pending before different High Courts and therefore, transfer petitions had been filed in this Court so that all pending cases can be transferred to and decided by this Court.

C 2. Upon hearing the learned counsel and upon perusal of the facts of the cases, this Court found that substantial questions of general importance were involved in the said cases and therefore, it would be in the interest of justice if all the cases are heard and decided together and therefore, all these cases
D have been transferred to this Court.

3. The issue involved in all these cases is with regard to
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retiral benefits to be given to a special class of retired employees of five nationalized general insurance companies. The undisputed facts and legal issues involved in all these cases are as under:

The insurance companies, who have been described
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hereinafter as “the Employers” were in financial difficulties and so as to cut their expenditure, the Employers framed a scheme named “General Insurance Employees Special Voluntary Retirement Scheme, 2004” (hereinafter referred to as “the Scheme”), so as to enable its employees to retire prematurely on certain conditions with some special benefits.

4. Normally a person gets pension when he retires from
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service after putting in the period of pensionable service as per his service conditions. All the employees, in the instant case, would be eligible to get pension if they retire from service after putting in 20 years of service.

5. As stated hereinabove, so as to curtail the expenditure,
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it was decided to reduce the number of employees and in

pursuance of the Scheme, offers were invited from the employees who wanted to opt for voluntary retirement even before completion of the period of normal pensionable service.

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6. As per the provisions of the Scheme, it was open to the employees to opt for retirement even on completion of 10 years of qualifying service, provided they had attained the age of 40 years. The Scheme had a limited duration of 60 days, during which the employees had to decide whether they wanted to opt for the Scheme. The employees opting for retirement under the Scheme were also to be given some additional benefits, namely, payment of 60 days' salary for each completed year of their service or salary for the number of months of their remaining service, whichever was less. So far as determination of the amount of pension is concerned, as per the Scheme, five years' service was to be notionally added to the service of the retiring employees and on that basis pension was to be paid to them.

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7. In addition to the aforesaid benefits, the retiring employees were also to get usual benefits under the provisions of the Payment of Gratuity Act, 1972 and the amount of Provident Fund, which they were otherwise entitled to.

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8. Thus, the employees opting for voluntary retirement under the Scheme were to get benefit of ex gratia amount as well as benefit of additional pension which would result from the addition of the notional five years' service.

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9. Several employees took benefit under the Scheme and retired in pursuance of the aforesaid Scheme in 2004.

10. After retirement of the aforesaid employees, the Employers revised pay scales of their employees under Notification dated 21st December, 2005 giving benefit of revision of pay retrospectively with effect from 1st August, 2002, provided the employees were in service on or after 1st August, 2002.

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A 11. The issue involved in all these cases is whether after
acceptance of voluntary retirement under the Scheme, such
retired employees would be entitled to get benefit of the revision
of pay, which was retrospectively given from 1st August, 2002
under the Notification dated 21st December, 2005, which was
B called the "General Insurance (Rationalisation of Pay Scales
and Other Conditions of Officers) Second Amendment, 2005
and hereinafter referred to as "the Notification".

C 12. The Employers denied the benefit of the said
Notification or retrospective increase in the salary to the
employees who had retired under the Scheme, whereas the
said retired employees claimed that they should be given
benefit of the retrospective increase in their pay and their
pension should be revised because they were in service on 1st
D August, 2002 and had retired only in or after 2004.

E 13. The High Court of Gujarat took a view that the
employees who had retired under the Scheme were not entitled
to any benefit of pay rise under the Notification as they had
already retired in 2004 or 2005 and at the time when the salary
had been revised, they had already severed the relationship
with the Employers and were no more in employment.

F 14. On the other hand, the High Court of Himachal Pradesh
held that the employees who had retired under the Scheme
were entitled to the benefit of pay revision which had taken
place by virtue of the Notification and therefore, their pension
should be revised after considering revision in their pay.

G 15. Before dealing with the issue, it would be apposite to
find out the conditions on which the employees were made to
retire voluntarily under the Scheme. Under the Scheme, the
employees were to get certain special benefits as they were
to retire even before completion of the requisite period of
service, which would have enabled them to get pension and the
employees were also to get some special benefits like *ex gratia*

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payment of salary and additional weightage in calculation of pension payable to them.

16. So far as the Scheme is concerned, the relevant portion, with which we are concerned for the purpose of deciding these cases, is as under:

"3. Eligibility:-

(1) All permanent full time officers 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 service 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 officer who is under suspension or against whom disciplinary proceedings is pending or contemplated may 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.

4. Period of operation:-

This Scheme shall remain open for a period of sixty days from the date of notification in the Official Gazette. The company shall, however, have the right to prematurely close the scheme at any time if it thinks fit and its decision shall be final.

5. Amount of ex-gratia:-

(1) An employee seeking Special Voluntary Retirement under this Scheme shall be entitled to lower of the ex-gratia amount as given below, namely:-

A Sixty days salary for each completed year of service,
OR

Salary for the number of months of remaining service.

B (2) The ex-gratia shall be computed on the basis of his/
her salary as on the date of relieving. In case wage revision
is effected from a date prior to the date of this notification
in the Official Gazette, the benefit of revised pay for the
purpose of payment of ex-gratia will be allowed.

C 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:-

D (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;

E (c) pension (including commuted value of pension) as per
General Insurance (Employees') 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

G (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."

H 17. The Notification dated 21st December, 2005, by virtue

of which pay scales and other terms and conditions of service of certain employees had been revised with retrospective effect contained the following clauses which are necessary for our purpose:

"1.

(1) This Scheme may be called the General Insurance (Rationalisation and Revision of Pay Scales and other conditions of service of Supervisory, Clerical and Subordinate Staff) Second Amendment Scheme 2005.

(2) Save as otherwise provided in this Scheme, this Scheme shall be deemed to have come into force on the 1st day of August, 2002.

(3) This Scheme shall be applicable to all employees who were in whole-time service in Supervisory, Clerical and Sub-ordinate Staff cadres of the Corporation or Company as on, or after, the 1st day of August, 2002:

Provided that the employees whose resignations had been accepted or whose services had been terminated during the period from the 1st day of August, 2002 and the date of publication of this Scheme, shall not be eligible for the arrears on account of revision under this Scheme:

Provided further that the employees, who had sought special voluntary Retirement under:

(a) The General Insurance Employees' Special Voluntary Retirement Scheme, 2004 (S.O.B.(E) dated the 1st January, 2004), in the case of company; or

(b) The General Insurance Corporation of India Employees' Special Voluntary Retirement Scheme, 2004 (S.O. 454 (E) dated the 1st April, 2004) in the case of Corporation.

And have been relieved thereunder prior to the date of this

A notification shall not be eligible for any benefit arising from this Scheme other than that provided for by sub-paragraph 2 of paragraph 5 of the General Insurance Employees' Special Voluntary Retirement Scheme, 2004, or, the General Insurance Corporation of India Employees' Special Voluntary Retirement Scheme, 2004, as the case may be.

(4) Nothing contained in this Scheme shall entitle an employee to claim overtime allowance higher than what he had been entitled to prior to the publication of this Scheme."

C 18. In the light of the aforesaid Scheme and the Notification, we have to consider whether the employees who had opted for voluntary retirement under the Scheme are entitled to get the benefit of additional pension on the basis of revised salary in pursuance of the Notification.

E 19. The learned counsel appearing for the employees, who had retired under the Scheme, had vehemently submitted that pension is a right of an employee for the services rendered in the past and as the pension depends upon the last salary paid or payable to the employee, the employee, who had opted for the Scheme and retired, must be given benefit of the revised pay and his pension must also be enhanced accordingly.

F 20. It had been further submitted by the learned counsel that upon retirement, though the relationship between the employees and the Employers had come to an end, the employees were entitled to the amount of pension payable to them as per the Scheme and also as per the General Insurance (Employees) Pension Scheme, 1995. Simply because an employee retires and the relationship of an employee and employer comes to an end would not mean that such a retired employee would not get a particular benefit from the employer if such a benefit is given to other employees. It had been further submitted that in the instant case even though the employees had opted for retirement under the Scheme, they are entitled

to pension, especially when there is a provision for payment of pension in the Scheme. In the circumstances, there cannot be any dispute with regard to the fact that the employees are entitled to pension on the basis of revised pay.

21. It had been further submitted by the learned counsel appearing for the employees that the employees had accepted retirement under the Scheme as there was a specific provision in Clause 5(2) of the Scheme that in case any wage revision is effected from a date prior to the date of Notification of the said Scheme in the Official Gazette, the benefit of revised pay for the purpose of payment of ex gratia would be allowed.

22. It had been, therefore, submitted that the wage revision had taken place in pursuance of the Notification dated 21st December, 2005, and as the pay revision was made with retrospective effect from 1st August, 2002 and that the employees were very much in service on 1st August, 2002, they were entitled to the benefit of revision of the pay scales under Notification dated 21st December, 2005.

23. It had been further submitted that the pension is determined on the basis of the salary last drawn and if the salary is revised, the pension should also be revised accordingly. According to the learned counsel, as there was an upward revision of the salary with effect from 1st August, 2002, determination of the amount of pension of the employees who took benefit of the Scheme, should also be re-determined on the basis of the revised pay.

24. So as to substantiate the submissions made hereinabove, the learned counsel had relied upon the judgment delivered in *National Insurance Co. Ltd. & Anr. Vs. Kirpal Singh* [2014 (1) SCALE 320] which lays down the law to the effect that even if an employee has retired, he is entitled to the benefit of subsequent upward pay revision and if a retired employee is not given the benefit, the action of the employer

A would be violative of Article 14 of the Constitution of India.

25. It had also been submitted that by not revising pay of the retired employees, the Employers had also violated the principle of equal pay for equal work because the retired employees had also done same type of work in the past which was done by the employees who had not retired.

26. In support of all the abovestated submissions, several judgments were cited by the learned counsel appearing for the employees who had retired under the Scheme.

27. On the other hand, the learned counsel appearing for the Employers had submitted that the purpose behind enactment of the Scheme was to see that the financial burden of the Employers is reduced in future by making one-time ex gratia payment. It had been submitted that the employees had accepted the offer given by the Employers with regard to their retirement as a special case under the scheme and as a result of retirement under the Scheme, the employees were substantially benefitted because they were given ex gratia payment to which they were otherwise not entitled to and they were also given additional amount of pension because a notional period of five years had been added to the number of years served by them.

28. In other words, if an employee had rendered service for 13 years, for the purpose of determination of his pension, it would be treated as if he had worked for 18 years and in that event, pension payable to the concerned employee would be much higher because an employee getting pension upon completion of 13 years' service and upon completion of 18 years' service cannot be the same. It is an admitted fact that upon addition of five more years of service, an employee would get sizeable more amount of pension.

29. It had been thereafter submitted that upon entire payment made by the Employers to the employees who had

opted for voluntary retirement under the Scheme, the relationship of the employer and the employee had come to an end and therefore also the employees were not entitled to any additional amount of pension.

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30. It had also been submitted by the learned counsel appearing for the Employers that the employees, who retired under the Scheme, very well knew that they were to get some additional benefits under the Scheme and their relationship with the Employers had come to an end upon their acceptance of retirement under the Scheme. The benefit which had been given by the Employers under the Notification dated 21st December, 2005 was only to the employees who were in service at the relevant time and had continued in service or the employees who had retired in normal course on or after 1st August, 2002.

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31. Those who had retired under the Scheme had been given additional benefits and as their relationship with the Employers had come to an end, there was no question of making payment of additional pension to them.

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32. It had been further submitted that no discriminatory treatment was given to the employees who had retired under the Scheme as they belonged to a separate class and there was no violation of principle of equal pay for equal work.

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33. Upon hearing the learned counsel and upon going through the judgments rendered by different High Courts and the relevant provisions pertaining to the Scheme and the Notification dated 21st December, 2005, we are of the view that the employees who had taken benefit under the Scheme and had already retired would not be entitled to additional pension due to retrospective increase in pay in pursuance of Notification dated 21st December, 2005.

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34. There is no doubt that the Scheme had been framed by the Employers to see that their expenditure in long term is decreased by making one-time payment of additional amount

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A to the employees opting for retirement under the Scheme. Strength of the staff was going to be reduced substantially due to voluntary retirement of several employees and the reduction in the staff was to result in reduction in the burden of salary and establishment expenditure. With the aforesaid intention, which
B had been clearly revealed in the Scheme, the Employers had floated the Scheme and several employees of the Employers had taken due advantage of the Scheme by opting under the Scheme and by taking not only ex gratia payment of salary but also additional pension, which they would not have received
C otherwise. It is not in dispute that the employees opting for retirement under the Scheme were to get benefit of additional five years of service while calculating the pension. As stated hereinabove, the said benefit was substantial and the said benefit along with benefit of ex gratia payment, tempted number
D of employees who opted under the Scheme and retired happily after getting all retiral benefits.

35. Normally, retrospective rise in salary is given to those who are in service at the relevant time or who had retired in normal circumstances. The employees who had opted under
E the Scheme had not retired as per the normal conditions of service but had retired under the Scheme upon taking some special additional benefits.

36. It is also pertinent to consider clause 5(2) of the
F Scheme, which has been reproduced hereinabove. According to the said clause, ex gratia amount was to be paid to the concerned employees on the date of his/her being relieved and it was clarified that in case of wage revision effected from a date prior to the date on which the said Scheme had been notified in the Official Gazette, the benefit of revised pay for the
G purpose of payment of ex gratia would be allowed. Meaning thereby, the employees who had opted under the Scheme and retired from service were entitled only to revision of ex gratia amount upon retrospective increase in the salary. Intention of
H the Employers is clearly revealed from clause 5(2) of the

Scheme. The intention was to give benefit only in relation to ex gratia amount and not in relation to the pension. Had the intention been to give benefit of additional pension also, the said fact would have been incorporated in the aforesaid clause. In normal circumstances when an employee retires from service, his relationship with the employer comes to an end. It is also a well settled legal position that after retirement, normally no disciplinary action can be initiated against the concerned employee. Similarly, the retired employee would not have any right of redetermination of his pension but only in cases where salary is revised with retrospective effect, the retired employee gets the benefit of additional pension and that too in certain cases.

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37. In the instant case, it is crystal clear that the employees had already opted under the Scheme -under a specially made Scheme, which was framed only with an intention to reduce future expenditure of the Employers. If all these benefits are given to the persons who had already opted under the Scheme and had retired, the real purpose with which the Scheme had been framed would be frustrated.

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38. We do not agree with the submission made on behalf of the employees that action of the Employers in not giving pay rise to the employees in pursuance of the Notification is discriminatory in nature. The employees who retired under the Scheme form a separate class of employees who were given many benefits, which are not given to employees retiring in normal course. If they all form a separate class, by no stretch of imagination it can be said that all those who retired under the Scheme and those who retired in normal course, are similarly situated. Thus, in our opinion, there is no violation of Article 14 of the Constitution of India in the instant case.

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39. Similarly, there is no violation of the principle of equal pay for equal work. True, that those who retired under the Scheme did the same work which was being done by those who retired in normal course, but one cannot forget the fact that

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A those who retired under the Scheme got substantially higher retirement benefits. In the circumstances, we do not accept the said submission also.

B 40. Some submissions were made by the learned counsel for the employees regarding power of the Employers in relation to issuance of the Notification dated 21st December, 2005. We are of the view that an Employer can fix salary for its employees and we do not agree with the submission that the Notification was not issued properly or legally.

C 41. In the circumstances, we are of the view that the employees who had opted for retirement under the Scheme would not be entitled to additional pension upon revision of pay effected under the Notification dated 21st December, 2005.

D 42. All judgments directing the Employers to make additional payment of pension to the employees retiring under the Scheme are set aside and, accordingly, all the transferred cases are finally disposed of and Special Leave Petition (C) No.10903 of 2011 is dismissed.

E Devika Gujral Transfer Cases & S.L.P disposed of.