

V. M. Gadre (Dead) by L. Rs. and others

Vs

M. G. Diwan and others

Writ Petn. (Civil) No. 127 of 1988

(CJI A. M. Ahmadi, N. P. Singh, S. P. Bharucha JJ)

15.03.1996

JUDGEMENT

AHMADI, C.J.I.

1. By this petition brought under Article 32 of the Constitution of India by and on behalf of the retired and in-service employees of Life Insurance Corporation of India ('LIC' for short) who were employees of the erstwhile Oriental Government Security Life Assurance Company Limited, (hereinafter called the Company'), certain reliefs in regard to the upward revision of pension and dearness allowance or dearness relief payable thereon and other reliefs related thereto are sought. The brief facts which are relevant for our purpose are as follows:-

2. The erstwhile Company has sometime in the year 1908 established a Pension Fund for the Oriental employees which on the nationalisation of life insurance business under the Life Insurance Corporation Act, 1956 (hereinafter called 'the Act') has been renamed Life Insurance Corporation (Oriental) Pension Fund. Thus, the responsibility of managing the said Fund was taken over by the LIC. The Company has framed rules for the administration of the pension Fund; Rule 10 thereof provided for addition of interest to the said Fund to the extent it would work out to 5% of the amount of the Pension Fund at the close of the year. Rule 11 permitted additions to the Fund by way of subsidies. Rule 24 provided for minimum pension.

3. The petitioners who are erstwhile Oriental employees and beneficiaries under the said Fund contend that the pension amount admissible under the said scheme is very meagre and, therefore, to ameliorate the conditions of the old and infirm pensioners it is necessary to revise the pension adequately, consistently with Articles 38 and 39 of the Constitution. The petitioners contend that employees other than Oriental employees are paid dearness relief on their pension money while the same benefit is not extended to pensioners governed under the Pension Fund.

4. The Oriental employees is a withering class. At the date of the institution of the petition they numbered 669, all of whom barring two or three had retired, say the petitioners. Under the pension-plan worked out for such employees, every employee had to contribute 5% of the substantive monthly salary and the employer had to make a matching grant every six months. So also the employer was required to pay interest on the monies contributed to the Fund so, however, that the total interest added at the end of each year was equivalent to 5% of total Fund. After the Act, the LIC took over the assets and properties of the erstwhile company. By reason of Section 8(1) of the Act, the Pension Fund came to be vested in the LIC. The latter created trust under Section 8 (3), namely, the LIC (Oriental) Pension Fund which is being managed by the LIC under the Rules and Regulations made under the Act.

5. The Pension-Fund established in 1908 underwent several changes and before it was taken over by the LIC, the erstwhile Company had started giving dearness allowance to the pensioners at varying rates from Rs. 4 to Rs. 8 per month. The increase was granted from the general revenue of the Company and not the Pension Fund. That is because Rule 11 permitted addition to the Fund by way of subsidies by the Company from time to time. The said rule enabled the Company to contribute to the Pension - Fund. Accordingly, even after nationalisation, the petitioners received dearness allowance up to about 1959, when the same was merged with pension and the practice of paying dearness allowance or relief on pension was discontinued. The pension was revised in 1980 and 1984 due to availability of funds in the Pension Fund but not by way of dearness increase. Efforts to seek increase in pension have since failed. The petitioners complain that out of the pension paid to them, 6.38% is deducted every month to guarantee the payment of pension for ten years to the pensioners or their legal representatives. Since the cost of living was increasing by leaps and bounds the Oriental pensioners were finding it difficult to survive on their meagre pensions and hence they demanded increase in their pension amount by addition of dearness allowance as in the case of State and Central Government pensioners. Their plight was even worse because their pensions had not been revised since 1954 and there was actually no increase in the dearness allowance on pensions since the last 33 years or thereabouts. They, therefore, approached the Government to do away with the 6.38% deduction and enhance the pension consistently with the standard of living and other economic factors relevant to the same by giving dearness allowance. Reliefs in regard to certain other matters like medical allowance, family pension, etc., have also been sought.

6. The LIC in its counter contends that after the insurance business was nationalised with effect from 1st September, 1956, under Section 7 of the Act all assets and liabilities of existing insurers carrying on business in life insurance came to be transferred to and vested in the LIC. Section 8 of the Act inter alia provided for dealing with provident, superannuation and other like funds. The existing Pension Fund governing the Oriental employees was thus taken over by the LIC and has since been managed like an independent trust. This being the only pension scheme operating within the fold of the LIC, it is managed strictly in accordance with the rules and regulation governing the same. The entry to the said Pension Fund was closed by erstwhile Company in 1947 and, therefore, all employees who joined the Company after 1947 were not contributories to the Pension Fund but became Contributories to the Provident Fund Scheme. Thus, members who joined the Fund did not receive any Provident Fund benefits and vice-versa. It is further stated that the Pension Fund is not akin to the Pension Schemes governing the State employees and the Central employees because it is governed under a different set of Rules and Regulations and has been treated as a protected fund under provisions of the Act. On March 2, 1968, the said Pension Fund Rules were amended to secure, among others, a guaranteed pension for 10 years instead of pension for life to those who were desirous of availing of the same. This was to meet with the demands made by the Oriental Pensioners for improvement in the Scheme. Their main grievance was that there was no guarantee of pension and if they were to die, their legal representatives were granted only the residue of their contributions. It is further contended that increase in pension was given from time to time, the last such increase being of 1984. It is pointed out that the Oriental pensioners received a much larger sum as pension than the amount received by their counterparts by way of contribution to the Provident Fund; while the former contributed only 5% of the basic salary with contribution by the employer to the fund plus the deficit made good placed them on a far better footing than employees governed under the Provident Fund Scheme. To illustrate this, a short comparative chart has been set out in paragraph 11 of the counter affidavit. The LIC further contends that the Pension Fund continued by it after its constitution under the Act was in the nature of a contractual obligation and had to be governed strictly in accordance with the rules and regulations framed for its management.

The LIC, therefore, cannot discriminate between those governed under the Pension Fund and those governed under the Provident Fund Scheme. Yet, However, it has to the extent possible under the Rules and Regulations governing the Pension Fund given grants from time to time to ensure that the fund does not deplete. In fact, the increase in the pension in the year 1984 was so generous that it exceeded the demand for dearness allowance on pension. The deficit made good in excess of 5% contribution required to be made by the Corporation has at times been by it under the rules. Lastly, it is said that this Court should not exercise its jurisdiction under Article 32 of the Constitution because the very same dispute was the subject-matter of Writ Petition No. 5137 of 1976 filed under Article 226 of the Constitution in the High Court of Bombay wherein the Court after considering the pros and cons of the demands made by Oriental employees rejected the same.

7. Rule Nisi was issued on 8-11-1988. While issuing rule, this Court made an interim order after hearing learned counsel for the parties directing the LIC to pay a minimum amount of Rs. 250/- as pension to the pensioners getting less than Rs. 250/ This minimum amount was subsequently raised to Rs. 375/- by an order dated 7-5-1991. The LIC contends that as at present under this court's order the Oriental pensioners covered under the Fund are actually receiving more than the employees covered under the Provident Fund Scheme; any further increase will prompt the latter to demand that they too be covered under the said or similar Pension Scheme. The LIC, therefore, prays that this Court should refrain from hiking up the pension any further as it is likely to set in motion a chain reaction which will throw a huge financial burden on the LIC. Thus, as the position presently stands, the minimum pension is of Rs. 375/- p.m. and the maximum pension is of Rs. 1202. 50/- p.m.

8. It is pointed out by the LIC that since the Fund is recognised under the Income-tax Act, 1962 and Rules framed thereunder, all its investments have to be made in accordance with the provisions of the Act and the Rules, in particular Rule 67, and hence it is obligatory on the part of the LIC to invest the Fund money in accordance with the said provisions. In the year 1986 the corpus available was Rs. 1,95,22,000/- which yielded interest of Rs. 16,73,600/- at the rate of 8.96%, in 1987 the annual corpus was Rs. 1,88,26,000/- which generated interest of Rs. 17,34,400/- at the rate of 9.7% and in the year 1988 the corpus was of Rs. 1,83, 76,000/- and the income by way of interest was Rs. 18,92,500/- calculated at 10.86% . The above are annual mean figures which show that every year the corpus was shrinking notwithstanding the higher interest return. In 1988 the annual outgo was Rs. 31,54,000/- as against the income of Rs. 18,92,500/-. This is on account of the fact that Fund is a reducing one which is expected to dry up with the passing away of the last surviving member. This is to show that the calculation based on 13% return is fallacious.

9. It is further the case of the LIC that in order to pay a minimum pension of Rs. 375/- p.m. it will require an amount of Rs. 8,35,000/- at the initial stage to be followed by further subventions to maintain the viability of the Fund and if payment has to be made at that rate from 1-1-1986 the Fund will have to be augmented by a sum of Rs. 26,00,000/- to meet its liability up to 30-4-1991 and with the added liability of dearness allowance or relief on pension for the said period the additional liability will be a further Rs. 11.90.00.000/- a financial burden which LIC can ill-afford to meet. If the reliefs claimed by the Oriental pensioners is conceded under different heads the total liability is expected to rise to Rs. 24,20,86,642/-. Such a huge financial burden cannot be borne by the LIC yet the LIC has provided subvention to the turn of Rs. 1,4300,000/- from 1965 to 1985. The LIC's contributions to the Fund thus work out to be 22.5% as against the maximum 10% interest paid on Provident Fund Deposits. The Oriental pensioners are thus better placed and hence the demand by the LIC employees to be brought on par with the Pension-Plan.

10. Several reliefs have been claimed in paragraph 55 of the writ petition. The first two reliefs need be noticed. The first is to step up the pension to a minimum of 375/- p.m. and the second is to grant dearness allowance/relief linked with the cost index number in January and July every year as is admissible to pensioners of the Central Government or the State Bank of India with effect from 1-1-1973. There is the demand for refund of the 5% contribution recovered from 1954 and to discontinue the deduction made at the rate of 6.38% from the pension payable under the scheme. Next it is prayed that a Family Pension Scheme and Medical Reimbursement Scheme be introduced and the fixation of the pension amount be revised on the basis of the one calculated on the average pay of last ten months. It is obvious from the above reliefs claimed in this case that the pensioners desire to give a complete go-by to the extant Pension-Plan and replace it by a totally new scheme. These demands made in a petition under Article 32 of the constitution totally overlook the fact the Court cannot substitute a totally new Pension-Plan in place of an existing one as each service and each institution has its own service conditions and merely because in another service the Pension-Plan is better it cannot be adopted and substituted in a different service. In any service a Pension-Plan is only one component of the basket of service conditions for that service and it cannot be viewed in isolation and where comparison is permissible all the conditions have to be compared because in one service weightage may have been given to fixation of pension whereas in another the benefit may have been given to house rent or maximum medical expenses. This becomes clear if we examine cases under that Industrial Disputes Act where questions of fixation of service conditions on region-cum-industry basis are attempted. While exercising jurisdiction under Article 32 read with Article 142 it would not be permissible for the Court to substitute all the existing service conditions by a totally new set of service conditions. That would tantamount to re-writing the service conditions and consequentially the retiral benefits as well for all those who had retired long back and are in receipt of pension under the extant Rules. Realising this difficulty the relief was confined to the first two demands only and the that too in a modified form. The learned counsel for the LIC submitted that if the Court on humanitarian grounds proposes a reasonable hike in the pensionary benefits without raising an excessive fiscal burden, it will have no objection to grant the same.

11. We must, therefore, confine ourselves to the first two reliefs. Actually the relief for fixation of the minimum pension at Rs. 375/- p.m. has in fact been satisfied by the interim order of this Court. Counsel for LIC did not contend for its reduction. However, counsel for the petitioners contended for increase in the minimum in view of the passage of time since the filing of this petition. During the course of the hearing of this petition at the behest of the Court, several alternatives were worked out by the LIC and presented to the Court. These may be reproduced as under:-

12. We have carefully considered the three schemes worked out at our behest. It was emphasised on behalf of the LIC that any increase in pension will throw a corresponding financial burden on the establishment. It was further urged that in law the pensioners are not entitled to any increase but the LIC has always adopted a humanitarian approach in such cases and has, therefore, even in the past granted reasonable increases in pension. Therefore, counsel for the LIC contended that increase, if any, must take into consideration the financial burden that may fall on the LIC. However, counsel for the pensioners submitted that the pensioners having served that establishment faithfully during their service can legitimately expect a reasonable sum by way of pension which would help them to survive in these days of high inflation. The pensioners when they subscribed to the pension-plan could not have imagined the fall in the rupee value and could not have visualised the high cost. of living and, therefore, where the establishment can bear the burden, the Court should not deny to them a reasonable increase in pension.

13. Taking in view the above submissions we are of the opinion that Scheme 'A' gives only a

marginal benefit to the pensioners at the levels below the minimum. Scheme 'B' is an improved version of scheme 'A' and offers an annual increase but having regard to the age factor of the pensioners the progression in regard to annual increments is rather slow and limited. We are, therefore, inclined to accept Scheme;C; since we are accepting it as a one-time final measure, we find that this scheme is

"Scheme A:

The Pension Fund Will be dissolved and the corpus of the Fund will be applied for issuing individual annuity policies to the pensioners. On doing so all the pensioners will be allowed an increase of 10% in the pension and the minimum pension will be increased to Rs.500/- per month. The pension presently being paid and the annuity payable on giving 10% rise to a few of the pensioners are as follows:-

Pension being paid as per the Interim Order dated 7-5-1991 Annuity on revision

(Rs.)	(Rs.)
375	500
444	500
512	563
605	666
703	773
806	887
898	988
933	1026
1133	1246
1202.50	1323

Scheme B:

The Pension Fund will be dissolved and the corpus of the Fund will be applied for issuing individual annuity policies to the pensioners. Every pensioner will be given a minimum annuity of Rs.500/- per month. Further, the pension will be increased every year at 2.5% per annum. The pension presently being paid and the annuity payable to a few of the pensioners for the next 10 years will be as follows:-

Pension being paid as per the Interim Order dt. 7-5-1991 Annuity payable on revision

Aug 94	Aug 95	Aug 96	Aug97	Aug98
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375	500	513		526	539	552
444	500	513		526	539	552
512	525	538		551	565	579
605	620	636		652	668	685
703	721	739		757	776	795
806	826	847		868	890	912
898	920	943		967	991	1016
933	956	980		1005	1030	1056
1133	1161	1190		1220	1251	1282
1202.50		1233	1264	1296	1328	1361

Pension being paid as per the Interim Order dt. 7-5-1991 Annuity payable on revision

Aug 99	Aug 2000	Aug 01	Aug 02	Aug 03		
375	566	580	595	610	625	
444	566	580	595	610	625	
512	593	608	623	639	655	
605	702	720	738	756	775	
703	815	835	856	877	899	
806	935	958	982	1007	1032	
898	1041	1067	1094	1121	1149	
933	1082	1109	1137	1165	1194	
1133	1314	1347	1381	1415	1450	
1202.50		1395	1430	1466	1403	1541

Scheme C:

If the corpus of the fund on dissolution of the Oriental Pension Fund is taken to be Rs. 2 crores and if an increase of 10% per annum in the annuity is to be provided, the minimum pension amount that would be possible is Rs. 575/- p.m. and the pension payment to a few of the pensioners for the next 5 years would be as follows :

Pension being paid As per the Interim Order dated 7-5-91 Annuity Policies As Above

Aug'94	Aug'95	Aug'96	Aug'97	Aug'98	Aug'99	
Rs.375/-	575	633	696	766	843	927
Rs.444/-	575	633	696	766	843	927
Rs.512/-	575	633	696	766	843	927
Rs.605/-	666	733	806	887	976	1074
Rs.703/-	773	850	935	1029	1132	1245
Rs.806/-	887	976	1074	1181	1299	1429
Rs.898/-	988	1087	1196	1316	1448	1593
Rs.933/-	1026	1129	1242	1366	1503	1653
Rs.1133/-	1246	1371	1508	1659	1825	2008
Rs.1202.50/-	1323	1455	1601	1761	1937	2131

Individual Annuity policies will be issued to provide for the payment as above."

more beneficial and would also provide a measure of satisfaction in view of the annual increments.

14. In the result we allow the petition to the aforesaid limited extent only. We reject the rest of the reliefs prayed for. We make it clear that we are accepting Scheme 'C' in full and final settlement of the claim made by petitioners. No further claim will be entertained. Under Scheme 'C' the petitioners will be entitled to revised pension from August, 1994. Annual increase in pension will be allowed as per the said table of Scheme 'C'. If there are intermediary scales, the pension in regard to them will be fixed by the LIC. The difference in pension paid for the month of August, 1994 and thereafter and that payable under Scheme 'C' should be worked out within two months and be paid to the pensioner or his legal representatives (if he or she is no more) within even time. Future pension should be paid as per formula of Scheme 'C', which will supersede all prior arrangements in regard to the pension plan. We once again make it clear that this revised Scheme 'C' pension-plan is in full and final settlement of all claims of the pensioners. The petition shall stand so disposed of with no order as to costs. Order accordingly