SUPREME COURT OF INDIA

National Insurance Co.Ltd.

Vs.

Kirpal Singh

C.A.No.256 of 2014

(T.S. Thakur and Vikramajit Sen JJ.)

10.01.2014

JUDGMENT

T.S. THAKUR, J.

1. Leave granted.

2. The short question that falls for determination in these appeals is whether the respondents who opted for voluntary retirement from the service of the appellant-companies are entitled to claim pension under the General Insurance (Employees) Pension Scheme 1995. The High Court having answered the question in the affirmative, the appellant-Insurance Companies have appealed to assail that view.

3. The controversy arises in the following backdrop:

4. In exercise of its powers under Section 17A of the General Insurance Business (Nationalisation) Act, 1972, the Central Government made what is described as General Insurance Employee's Special Voluntary Retirement Scheme, 2004 (hereinafter referred to as "SVRS of 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. It 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 respondents who opted for voluntary retirement in terms of the SVRS of 2004 afore-mentioned appear to have claimed pension as one of the benefits admissible to them under para 6 above. The claim was rejected by the appellants forcing the respondents to agitate the matter before the High Court in separate writ petitions filed by them. The High Court has by a common order dated 25th January, 2008, allowed the said petitions holding the respondents to be entitled to claim pension. The High Court has taken the view that para 6 of the SVRS 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 SVRS 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, 1976notified 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 was contended on behalf of the appellant-companies that in terms of para 6 of SVRS of 2004 (supra) pension will be admissible to those seeking voluntary retirement only if they were eligible for the same under the Pension Scheme 1995. Para 30 of the Pension Scheme 1995 in turn made only such employees eligible for pension who had completed twenty years of qualifying service. Inasmuch as the respondents 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.

9. On behalf of the respondents, it was argued that the respondents 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 SVRS 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 respondents had, it was contended, voluntarily retired pursuant to the SVRS 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 respondents 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.

10. We find considerable force in the contention urged on behalf of the respondents. The Pension Scheme 1995 provides for “superannuation pension” and “pension on voluntary retirement”. Superannuation pension is regulated by para 29 of the Pension Scheme 1995 while voluntary retirement pension is governed by para 30 which read as under:

"29. Superannuation Pension: 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.

30. Pension on voluntary retirement: (1) At any time after an employee has completed twenty years of qualifying service, he may, by giving notice of not less than ninety days, writing to the appointing authority, retire from service.

xxx xxx xxx

(5) The qualifying service of an employee retiring voluntarily under this paragraph shall be increased by a period not exceeding five years, subject to the condition that the total qualifying service rendered by the employee shall not in any case exceed thirty years and it does not take him beyond the date of retirement."

(6) The pension of an employee retiring under this paragraph shall be based on the average emoluments as defined under clause (d) of paragraph 2 of this scheme and the increase, not exceeding five years in his qualifying service, shall not entitle him to any notional fixation of pay for the purpose of calculating his pension"

11. The SVRS of 2004 does not obviously rest the claim for payment of pension on any one of the above two provisions. That is because what is claimed by the employees- respondents before us is not superannuation pension nor is it pension on voluntary retirement within the meaning of para 30 (supra). As a matter of fact, para 6 (1)(c) of the SVRS of 2004 specifically provides that the notional benefit of additional five years to be added to the service of the retiring employee as stipulated in para 30 of the pension scheme shall not be admissible for purposes of determining the quantum of pension and commutation of pension. It follows that the SVRS of 2004 did not for the purposes of grant of pension adopt the scheme underlying para 30 of the Pension Scheme 1995. Such being the case, the question is whether the provisions of para 6 of the SVRS of 2004 read with para 14 of the Pension Scheme 1995 which stipulates only ten years qualifying service for an employee who retires from service to entitle him to claim pension would entitle those retiring pursuant to the SVRS of 2004 also to claim pension. Our answer is in the affirmative. If paras 29 and 30 do not govern the entitlement for those seeking

the benefit of SVRS of 2004, the only other provision which can possibly be invoked for such pension is para 14 (supra) that prescribes a qualifying service of ten years only as a condition of eligibility. The only impediment in adopting that interpretation lies in the use of the word ‘retirement’ in Para 14 of the Pension Scheme 1995. A restricted meaning to that expression may mean that Para 14 provides only for retirements in terms of Para (2)(t) (i) to (iii) which includes voluntary retirement in accordance with the provisions contained in Para 30 of the Pension Scheme. There is, however, no reason why the expression ‘retirement’ should receive such a restricted meaning especially when the context in which that expression is being examined by us would justify a more liberal interpretation; not only because the provision for payment of pension is a beneficial provision which ought to be interpreted more liberally to favour grant rather than refusal of the benefit but also because the Voluntary Retirement Scheme itself was intended to reduce surplus manpower by encouraging, if not alluring employees to opt for retirement by offering them benefits like ex-gratia payment and pension not otherwise admissible to the employees in the ordinary course. We are, therefore, inclined to hold that the expression “Retirement” appearing in Para 14 of the Pension scheme 1995 should not only apply to cases which fall under Para 30 of the said scheme but also to a case falling under a Special Voluntary Retirement Scheme of 2004. So interpreted, those opting for voluntary retirement under the said SVRS of 2004 would also qualify for payment of pension as they had put in the qualifying service of ten years stipulated under Para 14 of the Pension Scheme 1995.

12. We are mindful of the fact that the word ‘means’ used in statutory definitions generally implies that the definition is exhaustive. But that general rule of interpretation is not without an exception. An equally well-settled principle of interpretation is that the use of the word ‘means’ in a statutory definition notwithstanding the context in which the expression is defined cannot be ignored in any forensic exercise meant to discover the real purport of an expression. Lord Denning’s observations in Hotel and Catering Industry Training Board v. Automobile Proprietary Ltd. (1968) 1 W.L.R. 1526 are, in this regard, apposite when he said:

> “It is true that 'the industry' is defined; but a definition is not to be read in isolation. It must be read in the context of the phrase which it defines, realising that the function of a definition is to give precision and certainty to a word or phrase which would otherwise be vague and uncertain-but not to contradict it or supplant it altogether”

13. In The Vanguard Fire & General Insurance Co. Ltd. Madras v. Fraser & Ross & Anr. AIR 1960 SC 971 one of the questions that fell for determination before this Court was whether the definition of the word “insurer” included a person intending to carry on a business or a person who has ceased to carry on a business. It was contended that the definition started with the words “insurer means” and, therefore, is exhaustive. This Court repelling that contention held that statutory definitions or abbreviations must be read subject to the qualification variously expressed in the definition clauses which created them and it may be that even where the definition is exhaustive inasmuch as the word defined is said to mean a certain thing, it is possible for the word to have a somewhat different meaning in different sections of the Act depending upon the subject or the context. That is why all definitions in statutes generally begin with the qualifying words “unless there is anything repugnant in the subject or context”. This Court observed:

> “The main basis of this contention is the definition of the word "insurer" in the s.2(9) of the Act. It is pointed out that that definition begins with the words "insurer means" and is therefore exhaustive. It may be accepted that generally the word "insurer" has been defined for the purposes of the Act to mean a person or body corporate, etc., which is actually carrying on the business of insurance, i.e., the business of effecting contracts of insurance of whatever kind they might be. But s.2 begins with the words "in this Act, unless there is anything repugnant in the subject or context" and then come the various definition clauses of which (9) is one. It is well settled that all statutory definitions or abbreviations must be read subject to the qualification variously expressed in the definition clauses which created them and it may be that even where the definition is exhaustive inasmuch as the word defined is said to mean a certain thing, it is possible for the word to have a somewhat different meaning in different sections of the Act depending upon the subject or the context. That is why all definitions in statues generally being with the qualifying words similar to the words used in the present case, namely, unless there is anything repugnant in the subject or context. therefore in finding out the meaning to the word "insurer" in various sections of the Act, the meaning to be ordinarily given to it is that given in the definition clause. But this is not inflexible and there may be sections in the Act where the meaning may have to be departed from on account of the subject or context in which the word has been used and that will be giving effect to the opening sentence in the definition section, namely, unless there is anything repugnant in the subject or context. In view

of this qualification, the court has not only to look at the words but also to look at the context, the collocation and the object of such words relating to such matter and interpret the meaning intended to be conveyed by the use of the words under the circumstances. Therefore, though ordinarily the word "insurer" as used in the Act would mean a person or body corporate actually carrying on the business of insurance it may be that in certain sections the word may have a somewhat different meaning."

(emphasis supplied)

14. To the same effect is the decision of this Court in Paul Enterprises & Ors. v. Rajib Chatterjee and Co. & Ors. (2009) 3 SCC 709 where this Court once again reiterated that the interpretation clause should be given a contextual meaning and that all statutory definitions must be read subject to the qualification variously expressed in the interpretation clause, which created them. In State of Maharashtra & Anr. v. B.E. Billimoria & Ors. (2003) 7 SCC 336 also this Court restated the principle that meaning of an expression must be determined in the context in which the same has been used. Reference may also be made to K.V. Muthu v. Angamuthu Ammal (1997) 2 SCC 53 where this Court made the following apposite observations:

"Apparently, it appears that the definition is conclusive as the word "means" has been used to specify the members, namely, spouse, son, daughter, grand-child or dependent parent, who would constitute the family. Section 2 of the Act in which various terms have been defined, open with the words "in this Act, unless the context otherwise requires" which indicates that the definitions, as for example, that of "Family", which are indicated to be conclusive may not be treated to be conclusive if it was otherwise required by the context. This implies that a definition, like any other word in a statute, has to be read in the light of the context and scheme of the Act as also the object for which the Act was made by the Legislature.

While interpreting a definition, it has to be borne in mind that the interpretation placed on it should not only be not repugnant to the context, it should also be such as would aid the achievement of the purpose which is sought to be served by the Act. A construction which would defeat or was likely to defeat the purpose of the Act has to be ignored and not accepted.

> Where the definition or expression, as in the instant case, is preceded by the words "unless the context otherwise requires", the said definition set out in the Section is to be applied and given effect to but this rule, which is the normal rule may be departed from if there be something in the context to show that the definition could not be applied".
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> (emphasis supplied)

15. We may also gainfully refer to the decision of this Court in Reserve Bank of India v. Peerless General Finance (1987) 1 SCC 424 where this Court declared that the best interpretation is the one in which the Court relies upon not only the test but also the context in which the provision has been made. We can do no better than to extract the following passage from that decision:

> "Interpretation must depend on the text and the context. They are the bases of interpretation. One may well say if the text is the texture, context is what gives the colour. Neither can be ignored. Both are important. That interpretation is best which makes the textual interpretation match the contextual. A statute is best interpreted when we know why it was enacted. With this knowledge, the statute must be read, first as a whole and then section by section, clause by clause, phrase by phrase and word by word. If a statute is looked at, in the context of its enactment, with the glasses of the statutemaker, provided by such context, its scheme, the sections, clauses, phrases and words may take colour and appear different than when the statute is looked at without the glasses provided by the context. With these glasses we must look at the Act as a whole and discover what each section, each clause, each phrase and each word is meant and designed to say as to fit into the scheme of the entire Act. No part of a statute and no word of a statute can be construed in isolation. Statutes have to be construed so that every word has a place and everything is in its place."
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> (emphasis supplied)

16. In the case at hand 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 SVRS 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.

17. In the result these appeals fail and are hereby dismissed but in the circumstances without any order as to costs.