SUPREME COURT OF INDIA

National Insurance Special Voluntary Retired/Retired Employees Association

Vs.

United India Insurance Co.Ltd.

C.A.No.10775 of 2018

(Kurian Joseph and Sanjay Kishan Kaul,JJ.,)

26.10.2018

JUDGMENT

Sanjay Kishan Kaul,J.,

SLP(C) No.31906/2017

1. Leave granted.

2. The appellants are ex-employees of the respondent Insurance Companies, who initially joined as Assistants, between 1972 to 1980,and went out of service taking advantage of the General Insurance Employees' Special Voluntary Retirement Scheme, 2004 (for short 'SVRS-2004 Scheme'). The bone of contention is the plea of these appellants, that they are also entitled to certain benefits arising under the earlier scheme known as The General Insurance (Employees) Pension Scheme, 1995 (for short '1995 Scheme'), which inter alia provided that the qualifying service of an employee, retiring under that1995Scheme, would be increased by a period not exceeding five (5) years, subject to certain conditions.

3. The concept of providing pension to the employees of the respondent Insurance Companies was introduced for the first time by the 1995 Scheme, which was notified in the Gazette of India on 28.6.1995, but was brought into force from 1.11.1993. The relevant para 30 of the 1995Scheme, which is of concern to the present dispute, is as under:

> "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, in writing to the appointing authority, retire from service:
>
> "(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 such employee shall not in any case exceed thirty three years and it does not take him beyond the date of retirement."

4. The aforesaid 1995 Scheme, thus, envisaged an additional notional benefit of five (5) years' service for employees retiring voluntarily under it, with the limitation that the qualifying service rendered by such employees: (i) shall not, in any case, exceed 33 years; and (ii) does not take them beyond the date of retirement.

5. The insurance companies were faced with excess manpower, and, thus, to prune the manpower size, a special scheme, being the SVRS- 2004 Scheme, was introduced for a limited period of sixty (60) days from the date of its notification, that is 1.1.2004. The Scheme was made applicable to permanent, full-time employees eligible to seek special voluntary retirement, provided that they had attained the age of 40 years and had completed the minimum qualifying service of ten (10) years, as on the date of notification. The relevant clauses 5 & 6 read as under:

"5. Amount of ex-gratia:-

(1) An employee seeking Special Voluntary Retirement under this Scheme shall been (sic.) entitled to lower of the ex-gratia amount as given below, namely: sixty days salary for each completed year of service, OR, salary for the number of months of remaining service.

(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.

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 para5, 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 (Employees') Pension Scheme, 1995, if eligible. However, the additional notional benefit of 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. It is, thus, quite apparent that clause (c),as part of the overall package, clearly stated that the notional benefit of five (5) years of added service, as stipulated in para 30 of the 1995 Scheme, would not be admissible for purposes of determining the quantum of pension and commutation of pension to such employees who availed retirement under the SVRS-2004 Scheme. Suffice to say that the SVRS-2004 Scheme provided for additional benefits beyond the 1995 Scheme, while simultaneously curtailing this aforesaid aspect, specifically. Despite this clear stipulation, the appellants sought the benefit of these very five (5) added notional years of service, for calculation of their pension, under the SVRS-2004 Scheme, in addition to the other benefits offered. This demand was declined by the respondent Insurance Company.

7. There is a background to this lis inter se the parties. On an earlier occasion, the employees availing of the SVRS-2004 Scheme, sought to take advantage of the revision of pay-scales, as provided for under the notification dated 21.12.2005, which had retrospective effect from 1. 8.2002. This benefit was denied on the ground that such of the persons who had availed voluntary retirement under the SVRS-2004 Scheme had ceased to be employees of the respondent Insurance Company and were, thus, not entitled to the benefit of revision of pay-scales, retrospectively. In coming to the conclusion, various clauses of the benefits given under the SVRS-2004 Scheme were taken note of, including sub-clause (c) of clause 6(1) reproduced hereinabove. However, what was sought to be taken advantage of was sub-clause (2) of Clause 5 of the SVRS-2004 Scheme, providing for ex-gratia to be computed on the basis of salary received as on the date of retirement, but also providing that in case of wage revision being effected from a date prior to the date of notification of the SVRS-2004 Scheme in the Official Gazette, the benefit of revised pay for purposes of payment of ex-gratia would be allowed. It appears that in the course of justifying their actions, an argument was sought to be advanced on behalf of the insurance company, that apart from the objective of reduction of man-force, the employees were given ex-gratia payment which they were otherwise not entitled to, and were also given an additional amount of pension because a notional period of five (5) years had been added to the number of years served by them (It may be noted, however, that this is contrary to the clear stipulation in the SVRS-2004Scheme). This Court opined in favour of the insurance companies, specifically noticing that retrospective rise in salary is only given to those employees who are in service at the relevant point in time or to those who retired in normal circumstances, and not to those employees opting under such special schemes, like the SVRS 2004 Scheme. No doubt the plea of five (5) years addition for calculation of pension was noticed in the judgement, however, no further discussion of the same formed part of the reasoning.

8. The beneficiaries of the SVRS-2004 Scheme sought a review of the judgment predicated on a plea that this Court had incorrectly recorded that persons retiring under the SVRS-2004 Scheme would be given the benefit of five (5) years of extra service for calculation of pension, while actually the same had been specifically excluded. However, such endeavour proved to be fruitless and the review application was dismissed on 7.4.2015.

9. That ought to have put the issue at rest, but the insurance companies in their wisdom made a belated attempt to once again urge that issue, by seeking to plead that those observations were only obiter in nature and were factually contrary to the scheme. This application for modification/clarification was, however, refused to be listed by the Registrar as it was found to be a belated endeavour at review. The beneficiaries then filed a Miscellaneous Application which was listed before the Court, but was later withdrawn.

10. We have set out the aforesaid controversy because the real substantive ground forming the basis of the plea of the appellants before us is that what was recorded in the judgment in the Manojbhai N. Shah &Ors case3 amounted to a concession on the part of the insurance companies, which concession in turn resulted in a finding against them to the effect that, the, insurance companies are bound to give the benefit of additional five (5) years' service, as per the 1995 Scheme, even to those persons who have opted for voluntary retirement under the SVRS- 2004 Scheme.

11. The aforesaid controversy, after an initial direction to the insurance companies to examine the demands of the retired employees substantively, was examined by the learned Single Judge, when the former came to be rejected by the insurance companies, by the judgment in WP(MD) No.19431/2015 and connected matters dated 8.6.2016.In this judgement, it was opined that in view of the judgment of the Supreme Court in Manojbhai N. Shah &Ors.,4 this benefit of additional five (5) years' service, as per the 1995 Scheme was admissible despite the clear terms of clause 6(1)(c) of the SVRS-2004 Scheme. The learned Single Judge also opined that since clause 6(1)(c) of the SVRS-2004 Scheme did not specifically exclude the benefits under para 30(5) of the 1995 Scheme, there was no reason to deny the same to the beneficiaries of the SVRS-2004 Scheme.

12. The aforesaid judgment was assailed before the learned Division Bench, which, however, opined to the contrary and dismissed the original writ petition filed by the appellants vide judgment dated 17.7.2017 in WA (MD) Nos.1228-1231/2016. It is this judgment which has been assailed before us.

13. We have examined the impassioned plea made on behalf of the employees by Mr. Guru Krishna Kumar, learned Senior Advocate and the defence put up by the insurance companies through Mr. Rakesh Dwivedi, Senior Advocate and Mr. Jaideep Gupta, Senior Advocate.

14. One of the aspects emphasised by learned counsel for the appellants was that the financial impact would not be huge, as was sought to be contended by the insurance companies, as it would be in the range of Rs.388 to Rs.1477, per beneficiary, per month. We, however, find that this would neither be here nor there, as that cannot be the basis for grant

or refusal of the relief. The question for consideration is whether the beneficiaries under theSVRS-2004 Scheme, which specifically excludes the benefit of additional five (5) years' service of the 1995 Scheme, would still be entitled to claim the said amount contrary to the explicit terms. We are of the view that the answer to this question must be in the negative.

15. It has to be appreciated that the SVRS-2004 Scheme is statutory in character, being a Scheme under Section 17-A of the General Insurance Business (Nationalisation) Act, 1972. It would not be appropriate to add or subtract terms from the Scheme, which has a statutory flavour. There could not have been any concession contrary to the terms of the Scheme, and if such a concession was tenure for the benefit of the retirees, then it had to go through the process of a formal notification. In fact, post the decision in Manojbhai N. Shah &Ors.,5both the parties also understood that there was really no question of availing the benefit, contrary to clause 6(1)(c) of the SVRS-2004 Scheme. This is what resulted in the review application, the clarification and modification application, etc. The rejection of the review application filed by the beneficiaries itself shows that post the judgment, clause 6(1)(c) was once again highlighted before the Bench. Despite this, the review application was dismissed, which clearly shows that this fact was not important for finally coming to the conclusion that the salary revision was not applicable to those who had already retired. Learned senior counsel for the appellant himself acknowledged that in the absence of any specific direction in this behalf, they could not have even filed a contempt petition and thus the fresh round of litigation began.

16. Learned senior counsel for the appellants, however, sought to persuade us by referring to the judgment of this Court in *State of Maharashtra v. Ramdas Shrinivas Nayak & Anr*[1]. where, in para 4, a question arose qua a concession made in the High Court, while contending the matter before this Court. It is in that context that it was observed that this Court would not launch into an inquiry as to what transpired in the High Court:

> "4 It is simply not done. Public Policy bars us. Judicial decorum restrains us. Matters of judicial record are unquestionable. They are not open to doubt. Judges cannot be dragged into the arena. "Judgments cannot be treated as mere counters in the game of litigation" (Per Lord Atkinson in Somasundaram Chetty v. Subramanian Chetty, AIR 1926 PC 136). We are bound to accept the statement of the Judges recorded in their judgment, as to what transpired in court. We cannot allow the statement of the judges to be contradicted by statements at the Bar or by affidavit and other evidence. If the judges say in their judgment that something was done, said or admitted before them, that has to be the last word on the subject. The principle is well settled that statements of fact as to what transpired at the hearing, recorded in the judgment of the court, are conclusive of the facts so stated and no one can contradict such statements by affidavit or other evidence. If a party thinks that the happenings in court have been wrongly recorded in a judgment, it is incumbent upon the party, while the matter is still fresh in the minds of the judges, to call attention of the very judges who have made the record to the fact that the statement made with regard to his conduct was a statement that had been made in error (Per Lord Buckmaster in Madhu Sudan Chowdhri v. Chandrabati Chowdhrain, AIR 1917 PC 30). That is the only way

to have the record corrected. If no such step is taken, the matter must necessarily end there. Of course a party may resile and an Appellate Court may permit him in rare and appropriate cases to resile from a concession on the ground that the concession was made on a wrong appreciation of the law and had led to gross injustice; but, he may not call in question the very fact of making the concession as recorded in the judgment."

17. The aforesaid paragraph was, once again, extracted with approval in *Y. Sleebachen & Ors. v. State of Tamil Nadu*[2] through Superintending Engineer Water Resources Organisation/Public Works Department &Anr.

18. On the other hand, it was canvassed by the insurance companies that there could be no concession against law [*Tripura Goods Transport Association & Anr. v. Commissioner of Taxes &Ors*[3].].Learned counsel also referred to New India Assurance Company Limited v. Raghuvir Singh Narang & Anr. to buttress the plea that if there is a scheme which has a statutory character, then there could not be any contention which could be permissibly raised, contrary to the Scheme. Even qua contractual schemes, if one has availed of the benefits, it would not be open to raise pleas and seek benefits beyond what is stipulated in the Scheme.

19. The earlier judgments in *Bank of India & Ors. v. O.P. Swarnakar & Ors*[4]. And *HEC Voluntary Retired Employees Welfare Society & Anr. v. Heavy Engineering Corporation Ltd. &Ors*[5]., dealing with voluntary retirement schemes have been taken note of in the impugned judgment, to come to the conclusion that the terms of such schemes must be strictly followed, and the contract cannot be varied. We may add here that apparently there are certain observations in paras 33 and 34 of the impugned order, which may also run contrary to clause 5(1) of the SVRS-2004 Scheme, insofar as the Division Bench has opined that the words "whichever is less" have been excluded from clause 5 of the SVRS-2004 Scheme. It may be noted that such is not the case, for clause 5 of the SVRS-2004 Scheme, as extracted above, explicitly provides, in clause 5(1), that an employee seeking special voluntary retirement, under the Scheme shall be entitled to the lower of the ex-gratia amounts as mentioned thereunder. We feel it suffice to clarify that what is binding between the parties is the statutory scheme itself, as per its terms.

20. We have, thus, no hesitation in coming to the conclusion that statutory or contractual, such voluntary retirement schemes as the SVRS- 2004 Scheme have to be strictly adhered to, and the very objective of having such Schemes would be defeated, if parts of other Schemes are sought to be imported into such voluntary retirement schemes. What is offered by the employer is a package as contained in the Schemes of voluntary retirement, and that alone would be admissible.

21. The issue which arose in Manojbhai N. Shah &Ors.12 Was qua the revision of pay, with retrospective effect. That was the only issue. That issue was decided against the beneficiaries of the SVRS-2004 Scheme. If there are certain observations made by that Bench while deciding so, qua aspects which are not forming the subject matter of that dispute, the same

cannot be read to amount to grant of relief/benefits, contrary to the terms of the Scheme, and that too, in the absence of any specific directions.

22. The intent of the SVRS-2004 Scheme was made even more explicitly clear by clause 8 specifying the general conditions in sub- clause(xiv), which reads as under:

> "8. General conditions:
>
> (xiv) Save as provided in para 5(2) the benefits payable under this scheme shall be in full and final settlement of all claims of whatsoever nature, whether arising under the regulation or otherwise to the employee (or to the nominee in case of death). An employee who voluntarily retires under this Scheme shall not have any claims against the Company for re-employment or compensation or employment of any of his or her relative on compassionate grounds in the service of the company or for any other like benefits."

23. It is, thus, abundantly clear that nothing more would be given than what is stated in the Scheme, and for that matter, nothing less. If the employees avail of the benefit of such a Scheme with their eyes open, they cannot look here and there, under different schemes, to see what other benefits can be achieved by them, by seeking to take advantage of the more beneficial schemes, while simultaneously enjoying the more beneficial aspects of the SVRS-2004 Scheme.

24. We, thus, find no reason to interfere with the impugned order, except with regards to observations made in paras 33and 34 of the impugned order, and consequently, the appeals are dismissed leaving the parties to bear their own costs.

Judgment Referred.

[1](1982) 2 SCC 0463
[2](2015) 5 SCC 0747
[3](1998) 2 SCC 0264
[4](2010) 5 SCC 0335
[5](2003) 2 SCC 0721
[6](2006) 3 SCC 0708