

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% **Judgment Reserved on : 6th April, 2021**
Judgment Delivered on : 26th April, 2021

+ **W.P.(C) 4271/2021**

SUBHASHINI RAJAN AND ORS. Petitioners

Through: Mr. Anish Dayal, Sr. Advocate with
Mr. Abhishek Misra, Ms. Rupam
Sharma, Mr. Saurabh Bijee and Mr.
Rajat Khattri, Advocates.

Versus

UNION OF INDIA AND ORS. Respondents

Through: Mr. Vivek Goyal & Mr. Abhishek
Khanna, Advocates for R-1/UOI.
Mr. Sanjay Rawat, Advocate for R-3.
Mr. Pankaj Seth, Advocate for R-
4&6.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

HON'BLE MR. JUSTICE AMIT BANSAL

JUDGMENT

AMIT BANSAL, J.

1. The present writ petition has been filed by 82 petitioners, being ex employees of different Public Sector Insurance Companies (PSICs), challenging the *vires* of Life Insurance Corporation of India (Employees) Pension (Amendment) Rules, 2019 and the General Insurance (Employees) Pension (Amendment) Scheme, 2019 for being discriminatory in nature and violative of Article 14 of the Constitution of India in as much as they seek to exclude persons such as the petitioners, who had resigned/left the services of their respective PSICs before coming into force of such amendments. The *W.P.(C) No.4271/2021*

petitioners seek a direction to extend *mutatis mutandis*, the option of pension to the petitioners in the same manner as has been offered to other left over employees of the PSICs, who had retired or taken voluntary retirement or had expired, before coming into force of the said amendment.

2. The petitioners joined the services of different Public Sector Insurance Companies, (impleaded as Respondents), on various dates between 1977 and 1991. While the petitioners were in service, Central Government introduced an index-linked Pension Scheme, vide Life Insurance Corporation of India (Employees') Pension Rules, 1995 and General Insurance (Employees') Pension Scheme, 1995 ('Pension Rules/Scheme') for the employees of the PSICs in addition to the existing Contributory Provident Fund ("CPF"). The said Pension Rules/Scheme was not mandatory and the employees had an option to either opt for the said Pension Rules/Scheme or continue with CPF. The petitioners did not opt for Pension Rules/Scheme and continued with CPF. For the employees who opted for the said Pension Rules/Scheme, there was also an option for voluntary retirement, which was not otherwise there for other categories of employees. Employees joining the PSICs after 28th June, 1995 were automatically covered under the above Pension Rules/Scheme. Vide amendment dated 16th February, 1996, sub-Clause 2A was added to Clause 19 of the Life Insurance Corporation of India (Staff) Rules, 1960 to introduce the concept of voluntary retirement for the CPF Optees as well. However, the newly inserted sub-Clause provided for completion of 55 years of age for the CPF Optees to seek voluntary retirement, whereas for the Pension Optees, the requirement was qualifying service of 20 years for

opting for voluntary retirement. Similar amendment was also brought in respect of PSICs providing general insurance.

3. On 22nd April, 1997, an option was given to the CPF Optees who had joined services on or before 28th June, 1995 to opt for the Pension Rules/Scheme. However, the petitioners did not opt for the same. The petitioners, having put in more than 20 years of qualifying service resigned/left the services of their respective PSICs on various dates between 2000 and 2017. It is stated that the left over employees/CPF employees who did not opt for the Pension Rules/Scheme made representation for one more option to convert into Pension Rules/Scheme. Despite deliberations upon the said representation, no decision in favour of such employees was taken in respect of the same.

4. On 23rd April, 2019, the respondent no.1 promulgated/notified the amendments in the official gazette, which are the subject matter of challenge in the present writ petition.

5. The grievance of the petitioners is that “Final Pension Option” that was introduced in terms of the aforesaid amendments was extended to serving, retired (including those having taken voluntary retirement) and the families of the deceased employees, but not extended to employees who resigned/left/discontinued the services, which included the petitioners. The petitioners sent representations to the Chairperson of the Committee on Subordinate Legislation, Lok Sabha ventilating their grievances with regard to the said amendments. However, the said representations were rejected. Aggrieved by the same, the petitioners had approached the Hon’ble Supreme Court by way of petition under Article 32 of the Constitution of

India, being WP(C) No.1399/2020, which was withdrawn with liberty to approach the High Court. Pursuant to the said liberty, present petition was filed in this Court challenging the said amendments as being arbitrary and discriminatory.

6. It is contended on behalf of the petitioners by Sh. Anish Dayal, Senior Advocate that once it is decided to implement “Final Pension Option” in respect of employees who were in service as on 28th June, 1995, as also in respect of retired (including those having taken voluntary retirement) and the families of the deceased employees, there was no justification to exclude employees such as the petitioners who had resigned/left the services of the PSICs before the date of ‘Final Pension Scheme’. It is contended that exclusion of the petitioners from the said ‘Final Pension Option’ is arbitrary and discriminatory and *ultra vires* Article 14 of the Constitution of India. When the object of the ‘Final Pension Scheme’ was to grant a final opportunity to all left over employees who were in service on 28th June, 1995 and had not opted for the Pension Rules/Scheme, the classification made between employees such as the petitioners who had left or resigned from the services and those who had retired from the service or had expired after 28th June, 1995, has no reasonable nexus to the object sought to be achieved. It is also contended that there was no provision of voluntary retirement when the petitioners had left employment of PSICs, therefore they did not have any option but to resign.

7. Counsel appearing for the respondent no. 3, The New India Assurance Company Ltd., on advance notice placed reliance on the judgment of the Supreme Court in ***Senior Divisional Manager, Life Insurance Corporation of India Limited & Ors. Vs. Shree Lal Meena*** (2019) 4 SCC 479 and ***W.P.(C) No.4271/2021***

submitted that the present case is fully covered by the said judgment. Since, the issue involved in the present case is purely legal, we have heard arguments in this matter at the admission stage itself so as to determine whether the matter requires issuance of notice or not.

8. The amendments brought about by the Public Sector Insurance Companies on 23rd April, 2019, sought to provide one more final option of 90 days to the employees of the PSICs to opt for the Pension Rules/Scheme. In their wisdom, the respondents determined that the said Final Option should only be provided to employees (i) who were in service of the PSICs before 28th June, 1995 and were still in service on the date when the said amendment was notified viz. 23rd April, 2019 (amendment date); (ii) who were in service of PSICs before 28th June, 1995 but had retired before the amendment date ; and, (iii) who were in service of the PSICs before 28th June, 1995 and had died while in service before the amendment date or had retired but died before the amendment date. There was a conscious decision to exclude employees such as the petitioners who had resigned or had otherwise left the services of the PSICs before the amendment date.

9. In our view, such exclusion cannot be termed as discriminatory or arbitrary or violative of Article 14 of the Constitution by any stretch of imagination. The two categories of employees constituted separate classes and there was an intelligible differentia that prevailed between them. The employees such as the petitioners presumably left the employment of PSICs and sought employment elsewhere. They cannot have the best of both the worlds, on one hand, earning salary or other remuneration on account of employment/other engagement after they left the services of PSICs, and on the other hand, seek advantage of beneficial schemes introduced by the

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PSICs after they had left the employment of PSICs. The PSICs were fully justified in extending the benefit of the pension scheme only to the specified categories of employees as determined by them. As per their own case, if the Petitioners had stayed on with the PSICs till the age of 55, they would have been entitled to the benefit of 'voluntary retirement' and in that case would have been eligible for the benefits under the amendments.

10. The Supreme Court, in *Sh. Lal Meena* supra was also seized of a similar issue. In the said case before the Supreme Court, the employees of the PSICs, like the Petitioners in the present case, resigned from service, at a time when the Pension Schemes in respect of the PSICs were not in force. The service rules of PSICs did not provide for voluntary retirement, and therefore, the employees in question tendered their resignations. The Pension Schemes came into force subsequently, but with retrospective effect. The issue that arose before the Supreme Court was whether the employees who had resigned from the services before the Pension Schemes were notified, but after the date when they were given effect to retrospectively, would be entitled to the benefit of the Pension Schemes in question. In this context, the Hon'ble Supreme Court observed/held that (i) under the Service Rules of the PSICs, resignation entails forfeiture of entire past service and consequently, would not qualify for pensionary benefits; (ii) resignation and other terms such as termination/determination of service or leaving or discontinuing service, amount to unilateral act on the part of the employee of not continuing with his/her service with the employer, followed by acceptance of terms by the said employer; (iii) even if the Pension Rules were applicable to an employee, who sought to resign, the entire past service of the employee would be forfeited and who would not qualify for

pensionary benefits; (iv) when the Legislature in its wisdom brings beneficial provisions such as the Pension Regulations from a particular date and on particular terms and conditions, aspects which have been excluded cannot be included in it by implication; and, (v) accordingly, the Pension Scheme could not be extended to employees who were specifically excluded by the legislation from its ambit.

11. In our view, the present case is squarely covered by the dicta of the aforesaid judgment of the Hon'ble Supreme Court. In the present case, all the petitioners resigned/left the employment of the PSICs between 2000 and 2017, before the aforesaid amendments were brought to the effect and when they were below the age of 55, so that they could not take 'voluntary retirement'. The said category of employees was squarely excluded from the ambit of the amendments and it was the specific intent of the Legislature not to extend the benefit of Pension Rules/Scheme to such categories of employees. The excluded categories, such as the Petitioners constituted a separate class based on an intelligible differentia. The said exclusion cannot be said to be discriminatory or arbitrary or violative of Article 14 in any manner. In our view, there is no merit in the writ petition.

12. The petition is therefore dismissed.

AMIT BANSAL, J.

RAJIV SAHAI ENDLAW, J.

APRIL 26, 2021

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