



2023/KER/49445

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE ALEXANDER THOMAS

&

THE HONOURABLE MR. JUSTICE C. JAYACHANDRAN

MONDAY, THE 14TH DAY OF AUGUST 2023 / 23RD SRAVANA, 1945

WA NO. 1028 OF 2023

AGAINST THE JUDGMENT DTD.02.03.2023 IN WP(C) 10980/2010

OF HIGH COURT OF KERALA

APPELLANTS/RESPONDENTS 1 TO 3 IN W.P. (C) :

- 1 NATIONAL INSURANCE COMPANY LTD.,
HEAD OFFICE 3, MIDDLETON STREET, KOLKATA- 700071,
REP. BY ITS CHAIRMAN.
- 2 CHIEF REGIONAL MANAGER,
NATIONAL INSURANCE COMPANY LTD., KOCHI REGIONAL OFFICE,
1ST AND 2ND FLOORS, OMANA BUILDINGS, JEWS STREET,
PADMA JUNCTION, COCHIN - 682035. (THE POST IS RE-
DESIGNATED AS DEPUTY GENERAL MANAGER)
- 3 GENERAL MANAGER (PERSONNEL), NATIONAL INSURANCE COMPANY
LTD., HEAD OFFICE 3, MIDDLETON STREET, KOLKATA - 700 071.
(APPELLANTS 1 AND 3 ARE REPRESENTED BY THEIR AUTHORIZED
POWER OF ATTORNEY HOLDER - MINI GEORGE, AGED 54 YEARS,
W/O. SUNIL CHACKO, DEPUTY GENERAL MANAGER, NATIONAL
INSURANCE COMPANY LTD., KOCHI REGIONAL OFFICE, 1ST AND
2ND FLOORS, OMANA BUILDINGS, JEWS STREET, PADMA JUNCTION,
COCHIN -682035.

BY ADVS.THAMPAN THOMAS
B.V.JOY SANKAR
R.RAJASREE (CHUTTAMATTATHIL)
NINCY MATHEW

RESPONDENT/PETITIONER IN W.P. (C) :

S.SUDEEP KUMAR,
AGED 70 YEARS, S/O.SANKARAN,
RESIDING AT 'SUSHA', 1/1433, EAST HILL,
CALICUT - 673005.

BY ADVS.SRI.E.K.NANDAKUMAR (SR.)
SRI.M.GOPIKRISHNAN NAMBIAR

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 14.08.2023, THE
COURT ON THE SAME DAY DELIVERED THE FOLLOWING:



ALEXANDER THOMAS & C. JAYACHANDRAN, JJ.

W.A.No.1028 of 2023

Dated this the 14th day of August, 2023

JUDGMENT

C. Jayachandran, J.

The respondents in W.P.(C)No.10980/2010 (the National Insurance Company and its officials) are the appellants herein. The instant writ appeal is preferred challenging the judgment dated 2.3.2023 of the learned Single Judge in the writ petition afore-referred, which directed the respondents therein to pay the leave encashment due to the petitioner therein, together with interest at the rate of 6% per annum, within a period of two months from the date of receipt of a copy of the judgment.

2. The essential facts are as follows:-

The parties are referred to in their original status in the writ petition. The petitioner resigned from the 1st respondent National Insurance Company Ltd. after 21 years of service. Although he was informed that he would be entitled for the benefit of earned leave



encashment, the same was not disbursed to him. Exts.P4 and P5 representations dated 18.8.2007 and 30.10.2007 seeking encashment of the earned leave evoked no response from the respondents. The same was the fate of Ext.P6 reminder. Consequently, the petitioner filed W.P.(C)No.17699/2009 before this Court, which was disposed of vide Ext.P7 judgment dated 20.7.2009, directing the respondents to consider and pass orders on the afore-referred representations of the petitioner. Although the petitioner was afforded an opportunity of hearing, he could not appear for personal hearing, instead of which, he forwarded Ext.P8 detailed representation dated 25.9.2009. However, by Ext.P9 order dated 30.11.2009, the petitioner's representation was rejected, on the premise that the petitioner, having chosen to resign from service, is not entitled to the benefit and that the same is available only for persons who have retired from service.

3. The 2nd respondent filed a statement contending that the service conditions of the employees of the respondent/company are governed



by the General Insurance (Rationalisation of Pay Scales and other Service Conditions of Officers) Scheme, 1975 and General Insurance (Termination, Superannuation and Retirement of Officers and Development Staff) Scheme, 1976, a copy of which is produced as Annexure-R2(A). In the year 1993, The Government of India framed General Insurance (Employees) Pension Scheme. Accordingly, options were invited from all employees indicating their preference to be governed by the Pension Scheme, 1995 or by virtue of the pre-existing Annexure-R2(A) Scheme, 1976. The petitioner, having read and understood the Pension Scheme, 1995, opted not to be governed by the Scheme and expressed his choice to continue to be governed by Annexure-R2(A) Scheme of the year 1976. Annexure-R2(B) is the option form submitted by the petitioner. As per Annexure-R2(C) letter, the petitioner resigned from the service of the respondent/company in the year 2007. The petitioner had also not attained the age of 55 years at the time of tendering Annexure-R2(C) resignation letter. A voluntary retirement upon completion of 20 years of service was applicable only to those employees who opted to



be governed by the Pension Scheme of the year 1995. As per Clause 4(5)(a) of Annexure-R2(A) scheme, only those officers, who retire from the company on attaining the age of superannuation or those who take voluntary retirement under the Scheme, alone are eligible for earned leave encashment, wherefore, the petitioner is not eligible for the said benefit. On such premise, the respondents sought for dismissal of the writ petition.

4. The learned Single Judge took note of the legal position that leave encashment is part of the salary and held that the petitioner, who had submitted a resignation by complying with clause no.5 of Annexure-R2(A) Scheme, is entitled to leave encashment as per clause no.4(5) of the Scheme. Accordingly, the writ petition was allowed, directing the respondents to encash the earned leave.

5. Heard Sri.Thampan Thomas, learned counsel on behalf of the appellants and Sri.E.K.Nandakumar, learned Senior Counsel on behalf of the respondent.



6. In addressing the issue before us, we primarily notice that the employees of the respondent/company, including the petitioner in the writ petition, are governed by the General Insurance (Termination, Superannuation and Retirement of Officers and Development Staff) Scheme, 1976, which is produced as Annexure-R2(A), in respect of which fact there is no dispute before us. It is also an admitted fact that pursuant to the introduction of the General Insurance (Employees) Pension Scheme, 1995, the petitioner had not opted to be governed by the said Scheme and his choice vide Annexure-R2(B) is to be governed by the pre-existing Annexure-R2(A) Scheme. In such circumstance, we may straight away refer to the relevant provisions in Annexure-R2(A) Scheme of the year 1976. Superannuation and retirement are governed by Clause 4 of the Scheme and Clause 5 speaks of determination of service. Earned leave encashment is dealt with in Clause 4(5) which is extracted here below:-



*“(5)**(a)When an Officer or a person of the Development Staff has earned leave to his credit according to the rules framed by the Corporation of the Company but has not availed of the same till the date of retirement, he may be paid cash equivalent of leave salary in respect of the period of earned leave at his credit as on the date of retirement, subject to a maximum of 240 days.*

Provided that this paragraph shall not apply to an Officer or a person of the Development Staff referred to in sub-paragraph (4) of this Paragraph and those referred to in paragraph 5 below.”

(underlined by us for emphasis)

7. It could be seen from the above that officers referred to in Clause 4(4) and those referred to in Clause 5 of the Scheme are not entitled to earned leave encashment facility by virtue of the specific exclusion of the officers of those categories, as contemplated in the proviso to Clause 4(5). Now, let us examine the officers who are referred to in Clause 4(4) and Clause 5. Clause 4(4) is not relevant to the instant facts, since it deals with retirement, removal or dismissal of an officer based on the Conduct, Discipline and Appeal Rules; termination of service of an officer; retirement of an officer due to continued illness or accident, etc. We are concerned with Clause 5 in the given facts, which is extracted here below:-



“(5) Determination of Service:-

(1) An officer or a person of the Development Staff, other than one on probation, shall not leave or discontinue his Service without first giving notice in writing to the appointing authority of his intention to leave or discontinue the Service and the period of notice required to be given shall be three months;

Provided that such notice may be waived in part or in full by the appointing authority its discretion.”

8. It is clear from the above extracted Clause that it speaks of an officer or a person of the development staff leaving or discontinuing service, after giving three months notice in writing to the appointing authority. We notice that the petitioner in the writ petition would fit into the category described under Clause 5 above, inasmuch as his service was determined pursuant to a resignation letter tendered by him, with a further request to waive the notice period. It is therefore clear and beyond the cavil of any doubt that Clause 4(5) dealing with earned leave encashment is not applicable to officers covered by Clause 5 by virtue of the proviso to Clause 4(5). Resultantly, the petitioner's claim for earned leave encashment is not supported by the statutory regime in Annexure-R2(A) Scheme.



9. An employee, who leave the service either on retirement, voluntary or otherwise, or on resignation, has no vested/inherent right to stake a claim for leave encashment, unless otherwise enabled by the statute or by norms or rules regulating conditions of service.

10. In the instant case, as we have already noticed, the norms provide leave encashment by virtue of Clause 4(5) to the employees of the organisation, except those who are covered by Clause 4(4) and Clause 5 of the 1976 Scheme, of which the petitioner (respondent herein) belongs to the latter in essence and substance. The incident of retirement, either voluntary or on superannuation, is a *sine qua non* for claiming the benefit of earned leave as per the above norms. The petitioner has not secured either voluntary retirement or superannuation retirement. His resignation cannot be equated to voluntary retirement, since he resigned before he had attained the cut off age of 55 years. There is no question of even remotely treating his resignation as voluntary retirement, in any view of the matter. In other words, the petitioner has not fulfilled the



elementary eligibility conditions for claiming earned leave benefit as per the above norms. So the writ petition is only to be dismissed.

11. Before parting with the judgment, we will address the specific argument raised by the learned counsel for the petitioner in the writ petition. Canvassing a literal interpretation of Rule 5, learned counsel would contend that Rule 5 deals with a situation where there is determination of service pursuant to giving three months notice, whereas, the applicant, who had given only two months notice, is not liable to be governed by Rule 5. This argument can hardly be countenanced, for, those who would legally exit under Rule 5 by giving notice for the prescribed period stand excluded by virtue of the proviso to Clause 4(5), wherefore, something more beneficial can never be contemplated in favour of those who would exit without notice for the prescribed period. The said contention would therefore stand rejected.



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In the light of the above discussion, we cannot sustain the judgment of the learned Single Judge, with the result, the same is hereby set aside. Consequently, this writ appeal is allowed and the writ petition would stand dismissed.

Sd/-

ALEXANDER THOMAS, JUDGE

Sd/-

C. JAYACHANDRAN, JUDGE

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