PETITIONER:
O.K. UDAYASANKARAN & ORS.

Vs.

RESPONDENT:
UNION OF INDIA & ORS.

DATE OF JUDGMENT: 27/03/1996

BENCH:
MANOHAR SUJATA V. (J)
BENCH:
MANOHAR SUJATA V. (J)
AHMADI A.M. (CJ)
VENKATASWAMI K. (J)

CITATION:
1996 AIR 1901 JT 1996 (4) 420
1996 SCALE (3)383

ACT:

HEADNOTE:

JUDGMENT:

WITH

WRIT PETITION (CIVIL) NO. 437 OF 1993

Ex-servicemen LIC Employees
Association and Ors.
V.
Life Insurance Corporation
of India & ors.

J U D G M E N T

Mrs. Sujata V. Manohar, J.

Leave granted in S.L.P..(C) No.2158 of 1992.

The appellants are the employees of the Life Insurance Corporation of India at Kozhikode. They are ex-servicemen who were re-employed by the Life Insurance Corporation of India after their discharge from military service. There is a gap of more than three years between their discharge from military service and their appointment in the Life Insurance Corporation of India. The dispute raised in this appeal relates to the fixation of salary of these ex-servicemen on their re-employment in the Life Insurance Corporation of India. Along with this appeal. Writ Petition No. 437 of 1993 has also been heard. This petition is filed by the Ex-servicemen Life Insurance Corporation Employees Association and the issue raised in this petition is identical with the issue raised in the appeal. The dispute relates to ex-servicemen who have been appointed after a gap 'of three years or more from their discharge from military service to the life insurance Corporation of India and pertains to those who have been so appointed after 1.1.1988.

The dispute pertains to the interpretation of instructions dated 2nd of June. 1989 issued by the Central Office of the Life Insurance Corporation of India relating to re-employment of ex-servicemen in the Life Insurance Corporation and their pay fixation. The relevant Paragraphs of these Instructions are set out below::

" 3. Pay Fixation on Re-employment:
3.1: Basic Salary of a re-employed Ex-serviceman shall be fitted at the minimum of the scale in which he is appointed. However, if the gross salary as per 'Y' below at the minimum of the scale does not produce an amount equal to or more than the last drawn gross salary as per 'X' below in the Defence Services. additional increment/s as may be necessary, over minimum of the scale shall be allowed to make up the difference and: thus: provide protection to the last drawn gross salary.
3.2: If in exceptional cases, fitment, even at the ceiling of the entry grade does not provide full protection, personal allowance shall be granted which may be absorbed against future increase in emoluments.
3.3: 'X' i.e. last drawn gross salary in the Defence Service at the time of release shall be the aggregate of the following components:
i) Pay as defined in sub-para 3(ix) of the Dept. of Personnel & Training O.M.No. 3/1 /85-East (P II) dated 31 .7.1986. Relevant extracts of the O.M. are given in the Appendix 'A';
ii) Dearness Allowances:
iii) Additional Dearness Allowance;
iv) Interim Relief;
v) City Compensatory Allowance;
vi) Compensation in lieu of Quarters (C . I. L . o .) House Rent Allowance;
vii) Ration Allowance .
3.4: 'Y' i.e. gross salary in L.I.C. shall be the aggregate of the following
i) Basic salary in which the Ex-servicemen is re-employed;
ii) Dearness Allowance;
iii) House Rent Allowance:
iv) City Compensatory Allowance:
3.5: Components of last drawn salary in the Defence Services ('X') including such allowances as are indicated at (3.3) above are to be taken into account on the basis of discharge certificate/Last Pay certificate of the individual employees.............
3.6: The component of pension will not be considered for pay fixation.
3.7: If the Ex-serviceman was reemployed within a period not exceeding 3 years from the date of discharge from the Defence services 'X' (Last Drawn Salary in Defence

Services} to be compared shall be as drawn on the date of release of the Ex-serviceman whereas the Y' (starting salary in L.I.C.) to be compared shall be as on the date of re-employment in L.I.C.

3.8: If. however, he was re-employed more than three years after the date of discharge from Defence Services 'Y' Salary to be compared shall also be as obtaining on the date of discharge. Corresponding fitment may then be given in the revised scale, where necessary applicable at the time of re-employment of the Ex-servicemen.

Example:..........................

The fitment is to be done nationally and actual benefit may be given from 1-1-1988 as shown in para 4 below.

If the basic salary determined on such comparison results in the same or lower than the basic salary at which the employee was fitted on the date of re-employment the existing salary fitment will continue without any change.

4. If the basic salary determined on such comparison is higher than the basic salary at which the employee was fitted on the date of re-employment incremental difference that would emerge out of Such fitment would be added to individual's basic pay as on 1-1-1988 and arrears released accordingly from 1-1-1988 only.

Example:.......................

5. FITMENT OF EX-SERVICEMEN APPOINTED ON OR AFTER 1-1-19988

Fitment in these cases will be as per formula given in 3.1 above from 1-1-1988 or the date of appointment in the industry whichever is later.

6.OPTION-CUM-CONSENT LETTER:

An option-cum-consent letter in the enclosed format (Appendix 'B') should be obtained from each existing Ex-serviceman employee opting fitment of salary as per these instruction.

7. FITMENT OF SALARY OF NEW ENTRANTS:

Fitment of salary of all Ex-servicemen appointed in the industry henceforth shall be governed by these instructions."

The dispute relates to the application of Paragraphs 3.7 and 3.8 to ex-servicemen who have been employed by the life insurance Corporation after 1.1.1988. According to the life insurance Corporation the benefit of pay fixation under Paragraphs 3.7 and 3.8 was given only to ex-servicemen who were already employed by the life Insurance Corporation prior to 1.1.1988. This benefit is not available to those ex-servicemen who have been employed in Life Insurance Corporation after 1.1.1988.

To resolve the dispute it is necessary to examine the scheme framed by the Life Insurance Corporation on 2nd of June. 1989. for pay fixation which is in supersession of earlier existing scheme. Paragraph 3 deals with fixation of pay on re-employment of ex-servicemen in Life insurance Corporation. Since ex-servicemen including released emergency commissioned officers. short service commissioned officers and retrenched commissioned officers are relieved from military service at a comparatively young age, certain facilities have been given to them for re-employment in various Government and Public Sector Undertakings including the Life insurance Corporation.

Under Paragraph 3.5 when the ex-serviceman is re-employed by the Life Insurance Corporation he is normally fitted at the minimum of the scale for the post to which he is appointed. However, if his last drawn gross salary in Defence Service as specified in Paragraph 3.3 was more than the gross salary which he will get in Life Insurance Corporation as specified in paragraph 3.4 his salary to he paid in Life Insurance Corporation is adjusted so that he does not get less than his last drawn pay in the Defence Services. This adjustment is done as per Paragraph 3.1 adding to his minimum of the scale additional increments as may be necessary to make up the difference so that his last drawn gross salary is protected, This adjustment is made so as to protect the last drawn salary of ex-servicemen in the case of all re-employed ex-servicemen whether they were appointed prior to 1.1. 1988 or subsequent to 1.1.1988.

Paragraph 3.7, however, provides that if an ex-servicemen was re-employed within three years from the date of his discharge from Defence Services then his last drawn salary in the Defence Services will be compared to his starting salary on the date of his re-employment in life Insurance Corporation so as to adjust the salary first drawn by him on the date of re-employment to equal the last drawn salary.

In other words, he is governed by paragraphs 3.1 to 3.6. Paragraph 3.8 provides that if an ex-servicemen was re-employed more than three years from the date of his discharge from Defence Services his last drawn salary in Defence Services shall be compared with his salary that he would have Been entitled to in the Life Insurance Corporation had he been immediately re-employed. The basic salary that he would have drawn in Life Insurance Corporation on the date of his discharge is thus determined and on the basis of such a salary. the salary which the ex-serviceman will get on the actual date of his re-employment by Life Insurance Corporation is nationally worked out. The figure so arrived at is the basic salary Which will be paid to the ex-serviceman on his re-employment. Paragraph 3.8 also provides that if in the interregnum any revision of pay scales takes place in Life Insurance Corporation the ex-serviceman will get the benefit of such revision in respect of the pay scale so nationally worked out. However, Paragraph 3.8 clearly provides that such a fitment has to be made only nationally and any actual benefit so arising will be given to the existing ex-servicemen only from 1.1.1988 as shown in Paragraph 4. Paragraph 4 sets out that any incremental difference that would emerge out of such fitment would be added to the ex-serviceman’s basic pay as on 1.1. 1988 and arrears would be released accordingly from 1.1.1988 only.

A perusal of Paragraph 3.8 and Paragraph 4 clearly brings out the fact that the fitment under Paragraph 3.8 has to be done only in the case of ex-servicemen who were employed prior to 1.1.1988. Paragraph 3.8 itself clearly provides that the benefit will be given to an existing ex-serviceman. The existing ex-serviceman. though employed prior to 1988 will get actual benefit only from 1.1.1988 and not for any date prior thereto. Such a provision would not have been required had this concept of notional fitment under Paragraph 3.8 not been made applicable only to existing ex-servicemen. Paragraph also says that the incremental difference will be added to the individual’s basic pay as on 1.1. 1988 and arrears will be released accordingly. The entire scheme of Paragraph 3.8 and Paragraph 4. therefore. deals with existing ex-servicemen or ex-servicemen who had been employed prior to 1.1. 1988. The examples which have been annexed to Paragraph 3.8 are also all examples of ex-servicemen who joined Life Insurance Corporation prior to 1.1.1988. thus clearly bringing out the intention to cover under Paragraph 3.8 existing ex-servicemen who had been in the employment of Life Insurance Corporation prior to 1.1.1988 The example which is appended to Paragraph 4 also deals with a case of an servicemen employed long prior to 1.1.1988.

Paragraph 5 makes this position amply clear by setting out that ex-servicemen who are appointed after 1.1.1988 shall be fitter from shall be fitted as per formula given in Paragraph 3.1 above either from 1.1.1988 or the date of appointment which ever is later. Paragraph 7 again clarifies this position by saying that the fitment of salary of all ex-servicemen appointed in the industry henceforth shall be governed by these instructions. The use of the past tense in referring to the employment of ex-servicemen by Life Insurance Corporation in Paragraphs 3.7 and 3.8 is also indicative of the fact that it refers to ex-servicemen who were employed in the Life Insurance Corporation prior to the coming into force of the new scheme.

The reason for giving the benefit of Paragraph 3.8 to ex-servicemen who were employed by the Life Insurance Corporation prior to 1.1.1988 is referred to in the counter-affidavit filed on behalf of respondents 1 and 2 in the writ petition as also in the affidavit filed on behalf of the respondents in the appeal. Normally, whenever a person is re-employed in Government service or public service, when the process of fixation of his pay is undertaken, the component of pension which is received by the employee from his earlier employer is always deducted and adjusted in the salary which he gets on re-employment. This was being done in the case of ex-servicemen re-employment by Life Insurance Corporation prior prior at to the coming into operation of the new scheme. The Life Insurance Corporation decided to treat its ex-servicemen employees more liberally by providing under the new scheme in Paragraph 3.6 that the component of pension will not be considered for pay fixation. The appellants herein as also all ex-servicemen who have been employed after 1.1.1988 have thus been allowed to retain their pension from Defence Services. The pay which they are getting in Life Insurance Corporation on the basis of the Formula fixed under Paragraph 3.1 is in addition to the pension which they are vetting. This benefit. however. was apparently not available to existing reemployed servicemen prior to 1.1.1988. As a result of negotiations which took place between the Life Insurance Corporation and the employees. it was decided to compensate the existing re-employed ex-servicemen who had lost the benefit of service in Life Insurance Corporation for a period exceeding three years after their discharge by giving them a notional fitment in the Life Insurance Corporation pay scales in the manner set out in Paragraph 3.8. There was no question of giving such a benefit to ex-servicemen employed after 1.1. 19.88.

Dr. Dhawan, learned counsel appearing for the ex-servicemen has emphasized the fact that an option-cum-consent letter under Paragraph 6 was also taken from ex-servicemen employed after 1.1.1988. This is disputed by the respondents. However. Paragraph 6 itself quite clearly provides that the option-cumconsent letter has to be obtained from each existing ex-serviceman employee opting fitment of salary as per those instructions. It is. therefore. quite clear that the option is to be exercised only by existing ex-servicemen employees of Life Insurance Corporation, thus reinforcing the contention of the respondents that fitment as per Paragraph 3.8 is not available to ex-servicemen re-employed in Life Insurance Corporation after 1.1.1988. The respondents have admitted their mistake in asking for such consent letter if they have done so. They have also admitted that they made a mistake in granting to the three appellants before us the benefit of Paragraph 3.8 although they were engaged after 1.1.1988. They have sought to correct this mistake by their letter of 16.1.1991 by recalculating their salary from 1991. They are entitled to reduce the pay of the appellants on the basis of the correct fitment to be given to the appellants in the light of the instructions of 2nd of June, 1989. The High Court was, therefore right in rejecting the contentions of the appellants. The High Court has also directed that for recovery of excess amount so paid reasonable instalments should be given to the appellants so that undue hardship is not caused to them.

In these circumstances. we see no reason to interfere with the findings given by the Kerala High Court. The appeal and the petition are. therefore, dismissed. However. there will be no order as to costs.