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V.M. GADRE

v.

M.G. DIWAN

MARCH 15, 1996

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[A.M. AHMADI, CJ., N.P. SINGH AND S.P. BHARUCHA, JJ.]

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Life Insurance Corporation Act 1956—Ss. 8(1), 8(3) r/w Pension Fund Rules, Rules 10, 11 and 24—Life Insurance Corporation (LIC) taking over management of Pension Fund of employees of Oriental Government Security Life Assurance Company upon nationalisation—Periodic increase in pension amounts stopped since 1984—Supreme Court by interim orders directing minimum pension of Rs. 375—Petitioners claiming revision of pension consistent with increased cost of living—Held, as a one-time final measure Scheme 'C' worked out by LIC under which minimum pension worked out to Rs. 575 accepted—Constitution of India, Articles 14, 38 and 39.

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Constitution of India—Article 32 r/w 142—Writ Petition by erstwhile employees of nationalised insurance company claiming revision of pension—Held, while exercising jurisdiction under Article 32 read with 142 it would not be permissible for Court to substitute a totally new pension plan in place of an existing one—Practice and Procedure.

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The petitioners were erstwhile employees of the Oriental Government Security Life Assurance Company ('Company'). Under s.8(1) of the Life Insurance Corporation Act, 1956 ('Act') the Pension Fund created by the Company came to be vested in the Life Insurance Corporation of India (LIC). Under s. 8(3) LIC created a trust named the LIC (Oriental) Pension Fund and made Rules and Regulations for its management.

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While there was no increase in the dearness allowance component, the pension was revised by LIC in 1980 and 1984. Thereafter there was no further revision.

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The petitioners numbering 669, of which all but two or three had retired, in a writ petition filed in the Supreme Court in 1988, sought directions to LIC to step up the pension to a minimum of Rs. 375 p.m. and to grant dearness allowance/relief as admissible to pensioners of the Central Government or the State Bank of India with effect from 1.1.1973.

LIC contended that the petitioners were on a better footing than those covered by the Provident Fund Scheme. The Pension Fund was contractual in nature and had to be strictly governed by the Rules framed for the purpose.

By an interim order made in May, 1991 this Court directed the minimum pension to be raised to Rs. 375. During the hearing, at the request of the Court, LIC presented three alternative schemes ('A', 'B' and 'C') of revision of pension. Under Scheme 'C' the minimum and maximum pension amounts would be revised to Rs. 575 and 2131 respectively over a period of five years.

Partly allowing the Writ Petition, this Court

HELD : 1. Scheme 'C' is accepted as a one-time final measure. This scheme is more beneficial and would also provide a measure of satisfaction in view of the annual increments. [490-B]

2. While exercising jurisdiction under Article 32 read with Article 142 it would not be permissible for the Court to substitute all the existing service conditions by a totally new set of service conditions. That would tantamount to re-writing the service conditions and consequentially the retiral benefits as well for all those who had retired long back and are in receipt of pension under the extant rules. [486-H, 487-A]

CIVIL ORIGINAL JURISDICTION : Writ Petition (C) No. 127 of 1988.

(Under Article 32 of the Constitution of India.)

Ms. Indira Jaisingh, P.H. Parekh for the Petitioners.

R.P. Kapur (NP) for the Respondents.

Harish N. Salve, Kailash Vahdaw, (R.B. Misra) for Ms. A. Subhashini for the Respondents.

The following Judgment of the Court was delivered by

AHMADI, CJI. By this petition brought under Article 32 of the Constitution of India by and on behalf of the retired and in-service employees of Life Insurance Corporation of India ('LIC' for short) who

A were employee of the erstwhile Oriental Government Security Life Assurance Company, Limited, (hereinafter called 'the Company'), certain reliefs in regard to the upward revision of pension and dearness allowance or dearness relief payable thereon and other reliefs related thereto are sought. The brief facts which are relevant for our purpose are as follows :

B The erstwhile Company had sometime in the Year 1908 established a Pension Fund for the Oriental employees which on the nationalisation of life insurance business under the Life Insurance Corporation Act, 1956 (hereinafter called 'the Act') has been renamed Life Insurance Corporation (Oriental) Pension Fund. Thus, the responsibility of managing the said
C Fund was taken over by the LIC. The Company had framed rules for the administration of the pension Fund; Rule 10 whereof provided for addition of interest to the said Fund to the extent it would work out to 5% of the amount of the Pension Fund at the close of the year. Rule 11 permitted additions to the Fund by way of subsidies. Rule 24 provided for minimum
D pension.

The petitioners who are erstwhile oriental employees and beneficiaries under the said Fund contend that the pension amount admissible under the said scheme is very meagre and, therefore, to ameliorate the conditions of the old and infirm pensioners it is necessary to revise the
E pension adequately, consistently with Articles 38 and 39 of the Constitution. The petitioners contend that employees other than Oriental employees are paid dearness relief on their pension money while the same benefit is not extended to pensioners governed under the Pension Fund.

F The Oriental employees is a withering class. At the date of the institution of the petition they number 669, all of whom barring two or three had retired, say the petitioners. Under the Pension-plan worked out for such employees, every employee had to contribute 5% of the substantive monthly salary and the employer had to make a matching grant every six months. He also the employer was required to pay interest on the monies
G contributed to the Fund so, however, that the total interest added at the end of each year was equivalent to 5% of the total Fund. After the Act, the LIC took over the assets & properties of the erstwhile Company. By reason of Section 8(1) of the Act, the Pension Fund came to be vested in the LIC. The latter created a trust under Section 8(3), namely, the LIC
H (oriental) Pension Fund which is being managed by the LIC under the

Rules and Regulations made under the Act.

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The Pension-Fund established in 1908 underwent several changes and before it was taken over by the LIC, the erstwhile Company had started giving dearness allowance to the pensioners at varying rates from Rs. 4 to Rs. 8 per month. The increase was granted from the general revenues of the Company and not the Pension Fund. That is because Rule 11 permitted addition to the Fund by way of subsidies by the Company from time to time. The said rule enabled the Company to contribute to the Pension-Fund. Accordingly, even after nationalisation, the petitioners received dearness allowance upto about 1959, when the same was merged with pension and the practice of paying dearness allowance or relief on pension was discontinued. The pension was revised in 1980 and 1984 due to availability of funds in the Pension Fund but not by way of dearness increase. Efforts to seek increase in pension have since failed. The petitioners complain that out of the pension paid to them, 6.38% is deducted every month to guarantee the payment of pension for ten years to the pensioners or their legal representatives. Since the cost of living was increasing by leaps and bounds the Oriental pensioners were finding it difficult to survive on their meagre pensions and hence they demanded increase in their pension amount by addition of dearness allowance as in the case of State and Central Government pensioners. Their plight was even worse because their pensions had not been revised since 1954 and there was actually no increase in the dearness allowance on pensions since the last 33 years or thereabouts. They, therefore, approached the Government to do away with the 6.38% deduction and enhance the pension consistently with the standard of living and other economic factors relevant to the same by giving dearness allowance. Reliefs in regard to certain other matters like medical allowance, family pension, etc., have also been sought.

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The LIC in its counter contends that after the insurance business was nationalised with effect from 1st September, 1956, under Section 7 of the Act all assets and liabilities of existing insurers carrying on business in life insurance came to be transferred to and vested in the LIC. Section 8 of the Act *inter alia* provided for dealing with provident, superannuation and other like funds. The existing Pension Fund governing the Oriental employees was thus taken over by the LIC and has since been managed like an independent trust. This being the only pension scheme operating within the fold of the LIC, it is managed strictly in accordance with the

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A rules and regulations governing the same. The entry to the said Pension Fund was closed by the erstwhile Company in 1947 and therefore all employees who joined the Company after 1947 were not contributories to the Pension Fund but became contributories to the Provident Fund Scheme. Thus, members who joined the Fund did not received any Provident Fund benefits and *vice-versa*. It is further stated that the Pension Fund

B is not akin to the Pension Scheme governing the State employees and the Central employees because it is governed under a different set of rules and regulations and has been treated as a protected fund under the provisions of the Act. On March 2, 1968, the said Pension Fund Rules were amended to secure, among others, a guaranteed pension for 10 years instead of

C pension for life to those who were desirous of availing of the same. This was to meet with the demands made by the Oriental pensioners for improvement in the Scheme. Their main grievance was that there was no guarantee of pension and if they were to die, their legal representatives were granted only the residue of their contributions. It is further contended that increase in pension was given from time to time, the last such increase

D being of 1984. It is pointed out that the Oriental pensioners received a much larger sum as pension than the amount received by their counterparts by way of contribution to the Provident Fund; while the former contributed only 5% of the basic salary with contribution by the employer to the fund plus the deficit made good placed them on a far better footing than employees governed under the Provident Fund Scheme. To illustrate this,

E a short comparative chart has been set out in paragraph 11 of the counter affidavit. The LIC further contends that the Pension Fund continued by it after its constitution under the Act was in the nature of a contractual obligation and had to be governed strictly in accordance with the rules and regulations framed for its management. The LIC, therefore, cannot discriminate between those governed under the Pension Fund and those

F governed under the Provident Fund Scheme. Yet, however, it has to the extent possible under the rules and regulations governing the Pension Fund given grants from time to time to ensure that the fund does not deplete. In fact, the increase in the pension in the year 1984 was so generous that it exceeded the demand for dearness allowance on pension. The deficit made

G good by Corporation has at times been in excess of 5% contribution required to be made by it under the rules. Lastly, it is said that this Court should not exercise its jurisdiction under Article 32 of the Constitution because the very same dispute was the subject matter of Writ Petition No. 5137 of 1976 filed under Article 226 of the constitution in the High Court of Bombay wherein the Court after considering the pros and cons of the

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demands made by oriental employees rejected the same.

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Rule Nisi was issued on 8.11.1988. While issuing rule, this Court made an interim order after hearing learned counsel for the parties directing the LIC to pay a minimum amount of Rs. 250 as pension to the pensioners getting less than Rs. 250. This minimum amount was subsequently raised to Rs. 375 by an order dated 7.5.1991. The LIC contends that as at present under this Court's order the Oriental pensioners covered under the Fund are actually receiving more than the employees covered under the Provident Fund Scheme; any further increase will prompt the latter to demand that they too be covered under the said or similar pension scheme. The LIC, therefore, prays that this Court should refrain from hiking up the pension any further as it is likely to set in motion a chain reaction which will throw a huge financial burden on the LIC. Thus, as the position presently stands, the minimum pension is of Rs. 375 p.m. and the maximum pension is of Rs. 1202.50 p.m.

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It is pointed out by the LIC that since the Fund is recognised under the Income Tax Act, 1962 and Rules framed thereunder, all its investments have to be made in accordance with the provisions of the Act and the Rules, in particular Rule 67, and hence it is obligatory on the part of the LIC to invest the Fund money in accordance with the said provisions. In the year 1986 the corpus available was Rs. 1,95,22,000 which yielded interest of Rs. 16,73,600 at the rate of 8.96%, in 1987 the annual corpus was Rs. 1,88,26,000 which generated interest of Rs. 17,34,400 at the rate of 9.70% and in the year 1988 the corpus was of Rs. 1,83,76,000 and the income by way of interest was Rs. 18,92,500 calculated at 10.86%. The above are annual mean figures which show that every year the corpus was shrinking notwithstanding the higher interest return. In 1988 the annual outgo was Rs. 31,54,000 as against the income of Rs. 18,92,500. This is on account of the fact that Fund is a reducing one which is expected to dry up with the passing away of the last surviving member. This is to show that the calculation based on 13% return is fallacious.

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It is further the case of the LIC that in order to pay a minimum pension of Rs. 375 p.m. it will require an amount of Rs. 8,35,000 at the initial stage to be followed by further subventions to maintain the viability of the Fund and if payment has to be made at that rate from 1.1.1986 the Fund will have to be augmented by a sum of Rs. 26,00,000 to meet its liability upto 30.4.1991 and with the added liability of dearness allowance

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A or relief on pension for the said period the additional liability will be a further Rs. 11,90,00,000, a financial burden which LIC can ill-afford to meet. If the reliefs claimed by the Oriental pensioners is conceded under different heads the total liability is expected to rise to Rs. 24,20,86,642. Such a huge financial burden cannot be borne by the LIC yet the LIC has provided subvention to the tune of Rs. 1,43,00,000 from 1965 to 1985. The LIC's contributions to the Fund thus work out to be 22.5% as against the maximum 10% interest paid on Provident Fund Deposits. The Oriental pensioners are thus better placed and hence the demand by the LIC employees to be brought on par with the Pension-Plan.

C Several reliefs have been claimed in paragraph 55 of the writ petition. The first two reliefs need be noticed. The first is to step up the pension to a minimum of Rs. 375 p.m. and the second is to grant dearness allowance/relief linked with the cost index number in January and July every year as is admissible to pensioners of the Central Government or the State Bank of India with effect from 1.1.1973. There is the demand for refund of the 5% contribution recovered from 1954 and to discontinue the deduction made at the rate of 6.38% from the pension payable under the scheme. Next it is prayed that a Family Pension Scheme and Medical Reimbursement Scheme be introduced and the fixation of the pension amount be revised on the basis of the one calculated on the average pay of last ten months. It is obvious from the above reliefs claimed in this case that the pensioners desire to give a complete go-by to the extant pension-plan and replace it by a totally new scheme. These demands made in a petition under Article 32 of the Constitution totally overlook the fact the Court cannot substitute a totally new pension-plan in place of an existing one as each service and each institution has its own service conditions and merely because in another service the pension-plan is better it cannot be adopted and substituted in a different service. In any service a pension-plan is only one component of the basket of service conditions for that service and it cannot be viewed in isolation and where comparison is permissible all the conditions have to be compared because in one service weightage may have been given to fixation of pension whereas in another the benefit may have been given to house rent or maximum medical expenses. This becomes clear if we examine cases under the Industrial Disputes Act where questions of fixation of service conditions on region-cum-industry basis are attempted. While exercising jurisdiction under Article 32 read with Article 142 it would not be permissible for the Court to substitute all the existing service conditions by a totally new set of service conditions. That would

tantamount to re-writing the service conditions and consequentially the A
retiral benefits as well for all those who had retired long back and are in
receipt of pension under the extant rules. Realising this difficulty the relief
was confined to the first two demands only and that too in a modified form.
The learned counsel for the LIC submitted that if the Court on
humanitarian grounds proposes a reasonable hike in the pensionary benefit B
without raising an excessive fiscal burden, it will have no objection to grant
the same.

We must, therefore, confine ourselves to the first two reliefs. Actually
the relief for fixation of the minimum pension at Rs. 375 p.m. has in fact
been satisfied by the interim order of this Court. Counsel for LIC did not C
contend for its reduction. However, counsel for the petitioners contended
for increase in the minimum in view of the passage of time since the filing
of this petition. During the course of the hearing of this petition at the
behest of the Court, several alternatives were worked out by the LIC and
presented to the Court. these may be reproduced as under :

"Scheme A :

The Pension Fund will be dissolved and the corpus of the Fund
will be applied for issuing individual annuity policies to the pen-
sioners. On doing so all the pensioners will be allowed an increase
of 10% in the pension and the minimum pension will be increased E
to Rs. 500 - per month. The pension presently being paid and the
annuity payable on giving 10% rise to a few of the pensioners are
as follows :

Pension being paid as per the Interim Order dated 7.5.1991 (Rs.)	Annuity on revision (Rs.)
375	500
444	500
512	563
605	666
703	773
806	887
898	988
933	1026
1133	1246
1202.50	1323

A *Scheme B :*

The Pension Fund will be dissolved and the corpus of the Fund will be applied for issuing individual annuity policies to the pensioners. Every pensioner will be given a minimum annuity of Rs. 500 per month. Further, the pension will be increased every year at 2.5% per annum. The pension presently being paid and the annuity payable to a few of the pensioners for the next 10 years will be as follows :

C	Pension being paid as per the Interim Order dt. 7.5.1991	Annuity payable on revision				
		Aug 94	Aug 95	Aug 96	Aug 97	Aug 98
	375	500	513	526	539	552
	444	500	513	526	539	552
	512	25	538	551	565	579
	605	620	636	652	668	685
D	703	721	739	757	776	795
	806	826	847	868	890	912
	898	920	943	967	991	1016
	933	956	980	1005	1030	1056
	1133	1161	1190	1220	1251	1282
	1202.50	1233	1264	1296	1328	1361

E	Pension being paid as per the Interim Order dt. 7.5.1991	Annuity payable on revision				
		Aug 99	Aug 2000	Aug 01	Aug 02	Aug 03
	375	566	580	595	610	625
	444	566	580	595	610	625
F	512	593	608	623	639	655
	605	702	720	738	756	775
	703	815	835	856	877	899
	806	935	958	982	1007	1032
	898	1041	1067	1094	1121	1149
G	933	1082	1109	1137	1165	1194
	1133	1314	1347	1381	1415	1450
	1202.50	1395	1430	1466	1503	1541

Scheme C :

H If the corpus of the Fund on dissolution of the Oriental Pension

Fund is taken to be Rs. 2 crores and if an increase of 10% per annum in the annuity is to be provided, the minimum pension amount that would be possible is Rs. 575 p.m. and the pension payment to a few of the pensioners for the next 5 years would be as follows :

As per Interim Order dt. 7.5.1991	Annuity Policies As above					
	Aug 94	Aug 95	Aug 96	Aug 97	Aug 98	Aug 99
Rs. 375	575	633	696	766	843	927
Rs. 444	575	633	696	766	843	927
Rs. 512	575	633	696	766	843	927
Rs. 605	666	733	806	887	976	1074
Rs. 703	773	850	935	1029	1132	1245
Rs. 806	887	976	1074	1181	1299	1429
Rs. 898	988	1087	1196	1316	1448	1593
Rs. 933	1026	1129	1242	1366	1503	1653
Rs. 1133	1246	1371	1508	1659	1825	2008
Rs. 1202.50	1323	1455	1601	1761	1937	2131

Individual Annuity policies will be issued to provide for the payment as above."

We have carefully considered the three schemes worked out at our behest. It was emphasised on behalf of LIC that any increase in pension will throw a corresponding financial burden on establishment. It was further urged that in law the pensioners are not entitled to any increase but the LIC has always adopted a humanitarian approach in such cases and has, therefore, even in the past granted reasonable increases in pension. Therefore, counsel for the LIC contended the increase, if any, must take into consideration the financial burden that may fall on the LIC. However, counsel for the pensioners submitted that the pensioners having served the establishment faithfully during their service can legitimately expect a reasonable sum by way of pension which would help them to survive in these days of high inflation. The pensioners when they subscribed to the pension-plan could not have imagined the fall in the rupees value and could not have visualised the high cost of living and, therefore, where the establishment can bear the burden, the court should not deny to them a reasonable increase in pension.

Taking in view the above submissions we are of the opinion that Scheme 'A' gives only a marginal benefit to the pensioners at the levels

- A below the minimum. Scheme 'B' is an improved version of scheme 'A' and offers an annual increase but having regard to the age factor of the pensioners the progression in regard to annual increments is rather slow and limited. We are, therefore, inclined to accept Scheme 'C' since we are accepting it as a one-time final measure. We find that this scheme is more beneficial and would also provide a measure of satisfaction in view of the
- B annual increments.

- In the result we allow the petition to the aforesaid limited extent only. We reject the rest of the reliefs prayed for. We make it clear that we are accepting Scheme 'C' in full and final settlement of the claim made by the petitioners. No further claim will be entertained. Under Scheme 'C' the
- C petitioners will be entitled to revised pension from August, 1994. Annual increase in pension will be allowed as per the said table of Scheme 'C'. If there are intermediary scales, the pension in regard to them will be fixed by the LIC. The difference in pension paid for the month of August, 1994 and thereafter and that payable under Scheme 'C' Should be worked out within
- D two months and be paid to the pensioner or his legal representatives (if he or she is no more) within even time. Future pension should be paid as per formula of scheme 'C', which will supersede all prior arrangements in regard to the pension plan. We once again make it clear that this revised Scheme 'C' pension-plan is in full and final settlement of all claims of the pensioners. The petition shall stand so disposed of with no order as to costs.

- E J.N.S.

Petition disposed of.