

HONOURABLE SRI JUSTICE P. NAVEEN RAO

WRIT PETITION No.33433 of 2014

Date : 20.04.2017

Between :

Dr. Parveen Sultana, Father's Name: Mr. Shah Abdul Ahad Yahiya,
Aged 64 years, Occu: Psychologist, D41, P&T Colony, Bandlaguda,
R.R. Dist.

.... Petitioner

And

Commissioner, Employees' Provident Fund, Barkatpura, Hyderabad
and others.

..... Respondents



The Court made the following:

HONOURABLE SRI JUSTICE P.NAVEEN RAO

WRIT PETITION No.33433 of 2014

ORDER:

The averments in the affidavit filed in support of the writ petition would disclose that petitioner worked as Reader and Principal of Sultan Ul-uloom College of Education from June, 1987 to January, 1998. Petitioner attained the age of superannuation on 06.11.2007. Petitioner as member of Employees' Pension Scheme 1995 (EPS, 1995), entitled to pension based on the service rendered. On attaining the age of superannuation, if 10 years service is rendered or who has rendered 20 years of pensionable service, the pension is granted with extended weightage of two years. According to the petitioner, she has served the employer for a period of 10 years and 7 months and, therefore, she is entitled to weightage of two years and, therefore, her pensionable service should be computed as 12 years seven months and entitled to pension.

2. Grievance of the petitioner necessitating institution of the writ petition is that even though petitioner had applied to the Provident Fund Organization for sanction of pension by complying with all the required formalities, there was inordinate delay to sanction her pension. Petitioner was made to visit the Office of the Provident Fund Organization on several occasions, submit several representations and attend Adalats on her grievance. After protracted correspondence and personal visits, the pension was actually sanctioned only on 26.09.2014. The inordinate delay in sanctioning the pension is entirely attributable to the respondent Provident Fund Organization. According to the petitioner, she submitted application for sanction of pension on 09.09.2009. As pension was not released, she made several representations, participated in Pension Adalath on 10.07.2012 and requested for sanction of pension. Person by name, Mr. Bandari, who was Assistant Commissioner of

Provident Fund Organization, responded positively to the petitioner's request. Her file was called and in the presence of Commissioner (Pension) Mrs. Leelavathi, Mrs. Shyamala (Clerk for Section 9/2) and Mrs. Poornima (PA to Assistant Commissioner) have gone through the file and petitioner was assured that within one week, she would get pension.

3. Contending that a lady senior citizen was harassed and humiliated in not sanctioning her pension immediately on submission of application and driving her to visit the Office again and again, she claims that she is entitled to compensation for suffering, harassment, loss, hardship and damages caused to her since 2009, 12.5% interest per month on the total amount due in addition to Dearness Allowance since 1997 and to compensate for visiting respondent office on 67 occasions. She also prays for payment of costs incurred by her for prosecuting the matter under the Right to Information Act, for approaching the Human Rights Commission, Legal Services Authority of RR District Court and filing the writ petition in this Court. She also prays for penalizing the respondents for not implementing the Bandari's order; to fine the Commissioner-I and Assistant Commissioner for denying the submission of letters filed by her on 11.02.2013, 14.04.2013 and 22.07.2014.

4. In response, in the counter affidavit filed on behalf of respondents 1 to 3, it is contended that petitioner rendered past service of 8 years, 2 months and 14 days, which is rounded off to 8 years and pensionable service of one year, 7 months, 18 days. Thus, aggregating to 9 years 7 months. According to para-12(a) of the pension scheme, person is eligible for superannuation pension only if 10 years or more service is rendered, whereas petitioner service falls short of three months. It is further asserted that claim form submitted by the petitioner was

incomplete, without having the signature of the authorized officer of the employer and, therefore, there was delay.

5. It is further asserted that Bhavishyanidhi Adalat is conducted by the Regional Commissioner every month and cases would be examined for redressal of the grievance. On the assertion of the petitioner that she appeared in Bhavishyanidhi Adalat and Assistant Provident Fund Commissioner assured her, it is contended that same information could not be found in the records of the Office. It is further asserted that no letter is received as stated in the paragraph-7 of her affidavit or immediately it could not be traced to comment upon the said statement. It is further asserted that the Organization has taken all steps to redress her grievance. The claim of the petitioner was returned vide letter dated 01.01.2013 for want of spouse details. Though petitioner submitted a new/fresh application, but without the signature of the authorized signatory/employer, therefore the organization deputed its Officers and got the authorization. It is, therefore, asserted that there was no intentional delay by the organization. It is further asserted that only because the forms submitted by the petitioner were incomplete, authorization could not be given immediately. On fulfilling all the requirements, pension was sanction on 26.09.2014. Petitioner was granted pension @ 874/- and paid minimum pension of 1000/- w.e.f. 01.09.2014.

6. It is further asserted that petitioner has appeared in the Bhavisyanidhi Adalath held on 10.09.2014. The Regional Provident Fund Commissioner (Finance and Accounts) examined the claim of the petitioner and directed the concerned authority to regulate the case of the petitioner as per pre-amended provisions of Paragraph-9 of the EPS, 1995 holding that the Member superannuated before the amendment.

At that stage, when the Commissioner was informed that the computer was not accepting such corrections, the Commissioner (F&A) and Commissioner (Pension) vide note dated 23.09.2014 directed to treat the petitioner case as special case and to process her claim manually and accordingly claim was processed and pension payment order was issued on 26.09.2014.

7. In the additional affidavit filed on behalf of the respondents 1 to 4, it is asserted that no record of the Adalat is maintained. During the Adalat, representations would be received from the members and they would be pursued and issues are resolved at the earliest. It is further asserted that no judgment would be passed in Adalat, but representation, if any, made, be received and forwarded to the respective officers for redressal of the grievance.

8. In the reply filed by the petitioner, she stoutly denied the contentions of the respondents. Dealing with each of the averments of the respondents in their counter affidavits, she contended that they are all lies. Petitioner asserts that she has submitted application on 09.09.2009. In support of her contention that such application was submitted, she contended that her application contained authorized officer signature of her employer and the form was attested by the Manager of the Bank for the purpose of personal identification and address proof. She would further submit that as advised by the EPF Personnel Relation Officer, account was opened in the State Bank of India and pass book was issued to her on 15.09.2009. She has enclosed to her reply affidavit the bank statement showing crediting the amounts of 20,000/- and 1,24,490/- through ESC mode from the Centralized Clearing Processing Centre. This would support her claim that claim was made in September, 2009. She would further submit that she claimed

her retirement benefits from the State Bank of India. She would submit that if documents were incomplete or defect, they would not have settled her dues through bank. She has narrated these aspects in her letters dated 26.07.2011, 26.07.2012, 10.07.2012 and 09.10.2012, but there was no reply to any of her representations/letters. She referred to various representations submitted asking for furnishing of the order passed by Mr. Bandari in Adalat, but same is not furnished. She asserts that she had attended the Bhavisyanidi Adalat held on 10.07.2012.

9. It is appropriate to note at this stage that many of the assertions made by the petitioner in her affidavit filed in support of the writ petition and in her reply to the counter affidavits are not controverted by the respondents.

10. The stand of the respondents that no record would be maintained in Bhavishyanidi Adalat does not appear to be valid. According to the information gathered by the petitioner and placed on record along with reply affidavit, the object of Lok Adalat is codified. It reads as under:

“All Employees Provident Fund Organisation Regional and sub Regional offices of Delhi Region conducts a Bhavishya Nidhi Lok Adalat on 10th of every month. If 10th of any month happens to be a holiday, the Lok Adalat is conducted on next the working day. All type of grievances of subscribers/employees relating to provident fund, pension and Employees Deposit Linked Insurance claims, and complaint against erring employers are heard by senior officers of the office. All out efforts are made to solve the problem/grievance on the spot, if however, the same is not possible, then a time bound schedule is fixed to solve the problem/grievance, and intimation to given to subscribers/complainant. The system of Bhavishya Nidhi Lok Adalat is made to provide timely, easily and justified solution to subscribers/complainant, and minimize their hardships and extend them proper guidance up to their satisfaction.”

11. Page 54 along with reply affidavit contains proforma concerning proceedings in Adalat, such as, the date, venue, Officer attended, etc. This information would discredit the statement of the respondents that no record is maintained. Such approach in dealing with pension claims is not expected from the Organization established by Government of India involved in important State function of managing the provident fund and pension of millions of citizens working in private employment. It is their bounden duty to codify the system of redressal mechanism and to maintain record on grievances. The categorical assertion of petitioner that on 10.07.2012 she attended the Bhavisya Nidhi Adalat and met Officers, whose names are mentioned in the affidavit filed in support of the writ petition, and contention that assurance was given to settle her claim within one week, but is not settled, is not controverted and as required by the procedure of conducting pension adalat record of such proceedings ought to have been maintained. Not maintaining such record, puts the Organization in pure light.

12. The strange plea taken by the respondents that no record of proceedings of Bhavisyanidi Adalat would be maintained and, therefore, no information is available with the Provident Fund Authorities of the proceedings taken place on 10.07.2012 sounds incongruous. Bhavisyanidi Adalat is specifically envisaged to redress grievance of the members of the scheme for resolution of their disputes instantaneously in the Adalat or fast tracking their claim and settling their claims. It would be illogical to assert on their part that though adalats are held every month, but no record is maintained of the proceedings. It would thus mean that holding Adalats is empty formality when no record of proceedings is maintained. Further, inconsistent statement is made in the counter affidavit. It is averred that the complaints received during

the Bhavishyanidi Adalat would be looked into and if possible, would be attended immediately or they would be forwarded to the concerned authority for resolution of the dispute. If what is stated in the affidavit is true, it would necessarily mean that there must be a record of the complaints received and forwarding of those complaints, whereas on instructions, learned standing counsel asserted that no such record is maintained. EPF Organization is established with avowed objective of providing succor to small time employees working in private organizations by creating fund in their favour to be utilized for their needs in times of emergency and also to establish pension fund to enable such employees to get some fixed amount every month after retirement/leaving the job. It acts as the custodian of the small time employees to receive their claims without delay. It cannot behold to the stature of the organization in conducting its affairs in this manner.

13. Along with reply, petitioner enclosed photocopies of several representations submitted by her to Provident Fund Authorities. Most of the representations contained acknowledgments. The earliest representation is dated 26.07.2011 which was acknowledged by EPF Organization on 28.07.2011. In the said representation, she clearly refers to submission of Form-D processed through the college and school where she earlier worked. This would show that by 26.07.2011 she had already submitted her claim.

14. As per paragraph 17A of EPS, 1995, claim should be settled within 30 days from the date of submission. If there are any defects in the claim, the same should be recorded in writing and should be communicated to the applicant within 30 days of receipt of claim. Material on record would disclose that no such intimation was given to petitioner. It is appropriate to notice that respondents admit of receipt of

claim (paragraph 4 of counter affidavit), but have not furnished essential details as to when such claim was made and whether paragraph 17A was complied. The averments are vague. No documents are filed to show that petitioner was informed of deficiencies/claim was returned, at any rate within 30 days as required by paragraph 17A.

15. As seen from the letter dated 10.08.2012, acknowledged by the respondent organization, petitioner stated that she appraised the Commissioner about the details mentioned therein through her letter dated 10.07.2012 and that she stated that three times she had submitted Form -10 D, whereas Commissioner (Pension) Mrs. Leelavathi rejected orally saying that petitioner was not eligible. She further stated that when she asked the said Commissioner to return her Form-10D, she was informed that same was returned to her employer. In her further representation dated 09.11.2012, she stated clearly that for the 4th time she had submitted the Form-10D by stating that earlier forms were returned to the employer. She also refers the last form, prior to this date, claimed to have been sent to her address was not received. Acknowledgment enclosed at page no.64 of the reply affidavit would disclose receipt of Form-10D on 11.09.2012. Thus, this correspondence would disclose that petitioner submitted application long ago and she was never communicated the deficiencies as required by paragraph 17A of EPS, 1995. As seen from the averments in paragraph 6 of the counter, having realized their mistakes, though do not admit, they deputed officer and obtained authorization from the college. If it is their case that claim form was defective it was not necessary for them to depute an Officer to college and secure authorization directly. This would show respondents were trying to cover up their deficiencies and try to pass on the blame on petitioner.

16. Paragraph 17A mandates that if there is delay in settlement, member is entitled to 12% interest per annum. The categorical assertion of petitioner that she submitted her claim on 09.09.2009 is not controverted specifically and material on record would support her contention that she had submitted claim application on 09.9.2009. Admittedly, claim was settled only on 26.09.2014, five years later. Thus, petitioner is entitled to interest at the rate of 12% per annum from 09.10.2009 till the date of actual payment of pension on the entire arrears of pension.

17. It appears from the content of the letters written by the petitioner on various occasions and the averments in the counter affidavits that the respondent organization was under the impression that petitioner had not completed 10 years of service and, therefore, was not entitled to the benefits of EPS 1995. According to the petitioner, she completed more than 10 years of service even in Sultan Ul-uloom College of Education. According to respondents, as stated in their counter affidavits, petitioner had rendered 9 years 7 months. Respondents also admit that if the fraction of year is higher than six months, then it would be treated as one year. Thus, looking from any angle, petitioner is qualified to receive pension. It appears on this ground petitioner was harassed and pension was not paid. The averments made in the counter affidavit would also disclose that petitioner was declared as eligible to receive pension, but on the specious grounds that computer was not accepting the factum of petitioner completing 10 years of service, decision was taken to undertake exercise manually. All this events would show that there was delay in settlement of pension only on the ground that authorities of the respondent organization were under impression that petitioner did not have 10 years of service. In the several letters written by the petitioner,

she categorically refers to the statements stated to have made orally by the Commissioner (Pension), by name, Mrs. Leelavathi. These statements of the petitioner are not denied. In order to cover up of their deficiencies in initially treating the petitioner as not completed 10 years of service and not granting pension on that ground, have invented the theory that employer did not authentic or particulars of spouse of the petitioner were not furnished etc. Thus, delay is occasioned due to lapses of the respondent Organization and not attributable to the petitioner.

18. Since petitioner has completed 10 years of service, she is also entitled to addition of two years for determination of monthly pension.

19. Petitioner is aged 64 years when the writ petition is instituted. She has been going round and fighting for her rightful claim to get monthly pension as per the Employees' Pension Scheme, 1995. The representations would disclose that she has been constantly pursuing with the EPF Organization authorities and has been representing to grant the claim, but authorities concerned are not attending to her grievance with promptitude that is required from such organization. The claim of the petitioner that she was subjected to harassment, humiliation, hardship and suffering are justified. Thus, petitioner is also entitled to awarding of compensation in addition to the interest component for delayed payments, for unnecessarily harassing her and making her going round and round for settlement of her rightful claim and entitled to costs incurred for going before the Human Rights Commission and Legal Services Authority and filing this Writ Petition. In the facts of this case and having regard to the age of the petitioner, I am of the considered opinion that petitioner is entitled to compensation of 25,000/- (Rupees twenty five thousand only).

20. In view of the reasons assigned above, the following directions are issued:

(i) Petitioner is entitled to addition of two years of service towards computation of monthly pension. She shall be paid arrears of amount due on addition of two years;

(ii) The EPF Organization shall pay interest at the rate of 12% per annum from 09.10.2009 till full amount was paid;

(iii) EPF Organization shall pay to petitioner 25,000/- (Rupees twenty five thousand only) as compensation.

(iv) The Regional Provident Fund Commissioner is directed to conduct thorough enquiry into the whole issue and take appropriate action against erring officials and also take all remedial steps to ensure such things do not happen in future.

21. Writ petition is allowed in the above terms with costs quantified at 10,000/- (Rupees ten thousand only). Miscellaneous petitions, if any pending, shall stand closed.

Date: 20.04.2017
kkm

JUSTICE P.NAVEEN RAO

HONOURABLE SRI JUSTICE P. NAVEEN RAO



WRIT PETITION No.33433 of 2014

Date : 20.04.2017

kkm