THE HON'BLE SRI JUSTICE M.GANGA RAO

WRIT PETITION No.11358 OF 2002

ORDER:

Petitioner, who retired as an Assistant Dairy Manager in the first respondent-Chittoor District Coop. Milk Producers Union Limited, Chittoor, filed this Writ Petition to declare the inaction of the respondents in payment of pension to the petitioner as per revised Pension Rules, 1980, from the date of his retirement on 31.01.1996, as illegal, arbitrary and consequently direct the respondents to pay pension to the petitioner along with arrears.

Brief facts of the case are that the petitioner joined government service on 09.04.1962. Thereafter, A.P. Dairy Development Co-operative Federation Limited (for short 'Federation') came into existence on 01.03.1978. Petitioner was initially taken on deputation basis and thereafter absorbed in the Federation along with 63 other government servants. Thereafter, the Assistant Manager (Administration), District Cooperative Milk Producers Union Limited, vide Memo dated 31.07.1982, directed the staff to submit option forms to the revised pension rules and marked a copy thereof to the petitioner, who responded on 09.01.1985 under Annexure-II agreeing to be governed by the Government scales of pay, pension and pensionary benefits as admissible under Government Rules and the leave rules of the Government applicable on the date of transfer. It was also mentioned that the option exercised is final and will not be modified at any subsequent date. Accordingly, on 09.02.1985, his option was accepted w.e.f.09.01.1985 vide communication sent by the Assistant Manager (Admn.).

A perusal of Communication dated 23.04.1991 sent by the 1st respondent-General Manager, Chittoor District Co-operative Milk Producers Union Ltd., Chittoor (for short 'Union'), to the Vice Chairman and Managing Director of Federation reveals that the 1st respondent submitted the statement showing the Service and Scale of Pay particulars of employees opted to Government Rules working at Union, Chittoor, for the period from 01.04.1990 to 31.03.1991. The petitioner continued to contribute an amount of Rs.4,392/- till his retirement on 31.01.1996.

It is pertinent to mention that vide order dated 24.07.1995 issued by the Assistant Manager (Admn.) of the Union, it is ordered that the petitioner will be attaining the age of superannuation of 58 years as on 11.01.1996 and shall retire from service on the afternoon of 31.01.1996 as his date of birth is 12.01.1938 as recorded in the Service Register. Therefore, the petitioner was directed to submit his pension papers, gratuity claims etc., to the office at an early date so as to enable the Officer to submit the same to the Head Office for early settlement of retirement claims. Accordingly, vide letter dated 31.01.1996 issued by the Assistant Manager (Admn.) the petitioner retired from service. Thereafter, vide letter dated 07.09.1996, the Union forwarded the following pension papers of the petitioner for authorizing pension benefits:

1. Application form for pension, gratuity and commutation in Part-I.
2. Nomination for retirement gratuity in duplicate.
3. List of family members.
4. Declaration under G.O.Ms.No.47 Fin. Dated 12.02.1962.
5. Descriptive rolls in triplicate.
6. Joint photo of family pension beneficiary with identification marks and specimen signatures in triplicate.
7. Part-II indicating calculation of pension/gratuity and N.D.C. in duplicate.
8. Part-III sanction of pension sanctioning authority.
9. Service Register of the pensioner.

Therefore, on 31.01.1996, Last Pay Certificate (L.P.C.) was issued wherein at Serial No.5 particulars of deductions to be made from the pay of the individual are mentioned and against Column No.2, account number and amount of GPF contributed by the petitioner were not mentioned. This was the starting point of the petitioner's grievance.

Vide communication dated 28.02.1997, the General manager of the Federation asked the General Manager of the Union as to why pension papers of the petitioner were sent to them when the petitioner was already covered under EPF as per L.P.C. By virtue of the letter dated 04.04.1997, the General Manager of the Union communicated to the Senior Accounts Officer of the Union seeking clarification as to how the EPF contributions were recovered from the salary of the petitioner when he, being a government optee employee, remitted pension contributions every year. Vide communication dated 10.12.1997, the Senior Accounts Officer informed the petitioner that his pension proposals were returned to the General Manager, MP (F), Chittoor.

Thereafter, the petitioner continued to make various representations for release of his pension benefits and response from other side was that his case is still pending for consideration. Having no option, the petitioner was compelled to file this writ petition.

The General Manager, Union, filed counter stating that on formation of the 1st respondent District Union under APCS Act, 1964, the Government by issuing G.O., transferred all the assets hitherto to the control of the Federation for administrative control along with the staff to the 1st respondent. Ever since the transfer, all the employees have become permanent employees of the 1st respondent-Union. In view of severe financial crisis, the Union was forced to close its operations as per enquiry conducted by the Government under the provisions of APCS Act, 1964. Consequent to closure w.e.f.01.09.2002, the Union went under liquidation and a Liquidator was appointed by the Government on 29.07.2003 to lookafter the affairs of the Union and to settle the claims of the employees, if any, as per the rules and eligibility. Further, in pursuance to the closure, the 1st respondent introduced VRS and invited applications from the employees of the Union. Most of the employees both covered under EPF and GPF agreed to go under VRS and accordingly their benefits were settled by the Government. The employees who refused to go under VRS were issued retrenchment orders on 29.08.2002.

Petitioner initially joined as UDC in Government Service, thereafter, he was transferred to Integrated Milk Project at Hyderabad. After formation of the A.P.Dairy Development Corporation, petitioner opted to the service of the Corporation and thereafter to the service of the 3rd respondent Federation. Further, on formation of the 1st respondent Union, petitioner joined in the service of the Union. The Liquidator of the first respondent on receipt of notice of this Court verified the whereabouts of the records and found that the petitioner was treated as EPF employee w.e.f.01.03.1978 and contributions of both employee and employer were deducted and on retirement, the petitioner was paid EPF contributions and no protest was made by the petitioner. In fact, letter issued by the then General Manager of the Union reveals that the petitioner was erroneously treated as EPF employee though his Service Register shows that the petitioner is a GPF employee w.e.f.09.01.1985. But, however, the petitioner was treated as EPF employee and accordingly retired on 31.01.1996. Having remained silent by accepting the deductions towards EPF contributions from 1978, the petitioner cannot raise any grievance after lapse of 20 years and the writ petition is liable to be dismissed.

Respondents 2 and 3 filed counter stating that the petitioner was originally appointed as UDC in the government service and subsequently transferred to the Integrated Milk Project at Hyderabad. After formation of the Federation, which was earlier known as Corporation, most of the employees working in the Milk Project of the Government were transferred to the Federation, on permanent absorption. During the service rendered in Government, the petitioner was covered by the Government Pension rules and after absorption in the Federation, the service rules were made applicable to the employees as per their option given at the time of absorption. Petitioner after formation of the 1st respondent District Union continued to remain as employee of the Union as per Government Orders issued. Petitioner was permanently transferred to the first respondent Union. As per the records available with the second and third respondents, the petitioner was treated as EPF employee and accordingly his PF contributions were deducted and on his retirement, petitioner received EPF amounts without any protest. Petitioner never protested or objected for recovery of EPF amounts during his service. For the service rendered by the petitioner during the period from 1962 to till the date of his absorption, the pro-rata pension of the petitioner has to be fixed by the Government in consultation with Accountant General Office. The entire service of the petitioner in the Federation was treated as EPF employee and accordingly contributions were made by the petitioner and the respondents. After retirement, the petitioner received all the benefits payable to him under EPF. Hence, the petitioner's claim cannot be entertained as the amounts have been settled long back. The representation of the petitioner submitted on 30.06.1998 has been considered and replied through the 1st respondent. The Writ Petition is misconceived and liable to be dismissed.

Sri V.Jagapati, learned counsel appearing for the petitioner, would contend that the petitioner was selected as UDC by the A.P.Public Service Commission, he was allotted to the Chief Engineer, Nagarjunasagar Dam, he joined in duty on 09.04.1962 and he was paying PF contributions against the Account No.PW4940. Subsequently, he was transferred to Integrated Milk Project, Hyderabad, which was under AP Dairy Development Corporation Federation Limited and he was continued to contribute his PF amount. While working as such, the third respondent through letter No.25229/PC/1981 dated 14.07.1981 requested all the employees to indicate their option to remain under the Government Pension rules or to opt for the pension rules pertaining to the third respondent Federation. Petitioner opted for the revised Pension Rules of 1980 and he was assured that he was eligible for pension as per the Government Rules. PF contributions as well as the pension contributions were paid by the concerned till his retirement on 31.01.1996. After his retirement, he submitted his pension papers on 07.09.1996 to the third respondent. The third respondent through letter No.8185/pc/96 dated 28.02.1997 requested the first respondent to clarify as to why the pension papers were sent instead of submitting them to the State Divisional Office at Kadapa as the coverage is under EPF as per the Last Pay Certificate. Second respondent vide letter No.8185/pc/96 dated 10.12.1997 informed the petitioner that his pension papers were returned seeking clarification by the third respondent. After receipt of the said letter, the petitioner submitted representations to the respondents stating that he has opted for the Government Pension and is entitled for payment of pension.

Learned counsel for the respondents would contend that after formation of the third respondent-Federation, most of the employees worked in the Milk Project were transferred to the third respondent, on permanent basis. Accordingly, the petitioner was also absorbed in the third respondent. As per the Government instructions, the petitioner was permanently transferred to the first respondent Union. After absorption in the third respondent Corporation all through, the petitioner was treated as EPF employee and accordingly his EPF contributions were deducted and on retirement, the petitioner received EPF contributions without any protest. Petitioner never protested or objected for recovery of EPF amounts during his service in the respondent Organization. Petitioner after absorbing him in the third respondent Federation through out his services he was treated as EPF employee and accordingly contributions were made by the petitioner and respondents. After retirement, the petitioner received all the benefits payable to him under EPF. As such, the petitioner's claim cannot be entertained as the terminal benefits have been settled and paid long back. Petitioner is the permanent employee of the first respondent Union, which has now become sick and closed its business activities and is presently under liquidation. Hence, the petitioner cannot claim any relief against respondents 2 and 3 and the writ petition is liable to be dismissed against the respondents.

In the facts and circumstances of the case and in considered view of this Court, it is found that originally, the petitioner was selected and appointed as UDC and allotted to Nagarjuna Sagar Dam and joined duty on 09.04.1962. Thereafter, he was transferred to Integrated Milk Project, Hyderabad, in the year 1967. His Provident Fund contributions were paid against account No.PW4940 from the beginning and the same was continued in the Integrated Milk Project also. The Integrated Milk Project was under the control of Dairy Development Department of the State Government at the relevant time. Later after the formation of the third respondent Federation, all the employees of the Dairy Development Department were absorbed into the third respondent. All through, his PF contributions were paid against account No.PW-4940. The third respondent through letter No.25229/pc/1981 dated 31.07.1982 requested all the employees to communicate their option to remain in Government Pension Rules or to opt for the Pension Rules pertaining to the third respondent Federation. Petitioner had given his option for the revised pension Rules, 1980. PF contributions as well as the Pension contributions were paid by the concerned till his retirement on 31.01.1996.

Learned counsel for the petitioner has taken this Court to various documents filed along with Rev.W.P.M.P.No.40507/2011. The Assistant General Manager, Milk Products Factory, Chittoor, issued Proceedings in Memo ROC No.4639/A1/81 dated 31.07.1982 requesting the staff who opted for Government Pay and Pension Rules to submit the option forms to the revised Pension Rules, without fail. Otherwise, they will forego the benefit of revised Pension Rules, 1980. Accordingly, the petitioner working as Assistant Dairy Manager, Milk Products Factory, Chittoor, submitted his option in Annexure-II to the General Manager, Milk Products Factory, Chittoor, on 09.01.1985. In annexure-II, petitioner has categorically stated that he opted for the Government scales of Pay, Pension and Pensionary benefits admissible under Government Rules and the leave rules of the Government applicable on the date of transfer and the above option exercised is final and binding on the petitioner and it will not be modified in any subsequent date. The Director (Personnel), APDDCF Limited, in Memo No.Per./V-2/3809/76/Vol.IX dated 09.02.1985 accepted the option of the petitioner w.e.f.09.01.1985 on his exercising option, in the prescribed form Annexure-II, to be governed by the Government Scales of Pay, Pension and Pensionary benefits admissible under Government Rules and the leave rules of the Government applicable on the date of transfer. The General Manager, vide letter No.4278/Per.I/91 dated 23.04.1991 addressed a letter to the Vice Chairman and Managing Director, APDDCF Limited, enclosing the statement showing the particulars of service and scale of pay of the employees opted to Government Rules working at Chittoor District Coop. Milk

Producers Union Limited, Chittoor, for the period from 01.04.1990 to 31.03.1991 wherein the petitioner's particulars were also given along with 70 others. The General Manager vide letter in ROC No.5637/Per.I/92 dated 19.11.1992 requested the Senior Accounts Officer, Chittoor, to obtain a Demand Draft for Rs.1,96,357/- in favour of the Secretary, APDDCF Limited, Pension Fund Trust, Hyderabad, towards pension contribution for the year 1991-92 (01.04.1991 to 31.03.1992) of 65 employees who have opted to Government rules. Petitioner was shown at Sl.No.10 in the statement of contributions for the period April, 1991 to March, 1992. U.D.Note No.5637/Per-I/92 dated 06.07.1993 of the General Manager shows that they paid pension contributions in respect of the employees opted to Government Pension Rules for the period from 01.04.1991 to 31.03.1993 wherein also the name of the petitioner was mentioned. Likewise, pension contributions were also made from 01.04.1993 to 31.03.1994 vide letter No.5637/Per.I/92 dated 31.08.1994. In the said statement, the name of the petitioner finds a place. Likewise, for the period from 01.04.1994 to 31.03.1995 and 01.04.1995 to 31.03.1996, pension contributions were also paid to the employees who have opted for the Government Rules wherein the petitioner's name is also shown to the effect that the Pension contributions were paid regularly. But, in view of the mistake occurred in the Last Pay Certificate issued on retirement of the petitioner on 31.01.1996 wherein in column No.5 of the certificate, by mistake, GPF account number was not shown instead account No.AP/22041/262 was shown. It appears that during the period of transfer, temporarily by mistake amounts have been deducted towards EPF and credited to account

No.AP/22041/262 for which the petitioner is not eligible. In view of the above correspondence, without any hesitation, it could be concluded that the petitioner has opted for the Government scales of pay, pension and pensionary benefits to the Government Rules and the same was accepted by the third respondent Federation w.e.f.09.1.1985. From the date of his initial appointment, GPF and PF contributions were deducted and credited to Account No.PW-4940 and the same was continued even after his absorption in the third respondent-Federation and they were continued to deduct the amounts towards pension contribution and remitted the same to the Secretary, APDDCF Limited, Pension Fund Trust, Hyderabad, from 01.04.1991 to 31.03.1996. The action of the respondents in denying the pensionary benefits to the petitioner due to the mistake occurred in the Last Pay Certificate given to the petitioner and petitioner's acceptance of EPF and other retirement benefits without any protest or objection would not absolve the respondents from payment of pension and pensionary benefits to the petitioner.

Learned counsel for the petitioner relying on the judgment in ***Gorakhpur University vs. Dr.Shitla Prasad Nagendra***[1] and ***Goa Sampling Employees' Association vs. General Superintendance Co. of India Pvt. Ltd.***[2] would contend that pension and gratuity are no longer matters of any bounty to be distributed by Government but are valuable rights acquired and property in their hands and any delay in settlement and disbursement whereof should be viewed seriously and dealt with severely by imposing penalty in the form of payment of interest.

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[1] AIR 2001 SC 2433
[2] AIR 1985 SC 357

Hence, the contention of the respondents that the petitioner has received the EPF and other retirement benefits without any protest and the first respondent Organization where the petitioner has worked on the date of retirement, was closed on 01.09.2002 and went under liquidation and Liquidator was appointed by the Government on 29.07.2003 to lookafter the affairs of the first respondent Union to settle the claims of the employees, if any, as per the rules and eligibility, is untenable. The respondents arbitrarily denied the pension to the petitioner.

For the reasons stated above, the Writ Petition is allowed directing the respondents to pay the Pension and Pensionary benefits as per the option exercised by the petitioner on 09.01.1985 along with all arrears with interest @ 12% per annum, as the petitioner, retired employee, was deprived of his pensionary benefits and put to severe financial difficulties.

Miscellaneous petitions pending in this petition, if any, shall stand closed. There shall be no order as to costs.

(M.GANGA RAO, J)

28.09.2018
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