

NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION
NEW DELHI

REVISION PETITION NO. 23 OF 2012

(Against the Order dated 08/07/2011 in Appeal No. 579/2010 of the State Commission Kerala)

1. ASSISTANT PROVIDENT FUND COMMISSIONER
EPFO, Sub Regional Office, V.K Complex, Fort Road
Kannur
Kerala

.....Petitioner(s)

Versus

1. M. RAJAN
Mothetty House, P.O Koodali
Kannoor
Kerala

.....Respondent(s)

BEFORE:

HON'BLE MRS. REKHA GUPTA, PRESIDING MEMBER

For the Petitioner : Mr Amit Gupta, Advocate with
Mr Vipin Kr Soni, EO, AR

For the Respondent : Mr A K De, Advocate

Dated : 17 May 2017

ORDER

REKHA GUPTA, PRESIDING MEMBER

The present revision petition has been filed against the judgment dated 08.07.2011 of the Kerala State Consumer Disputes Redressal Commission, Thiruvananthapuram ('the State Commission') in First Appeal no 579 of 2010.

2. The facts of the case as per the respondent/ complainant are that the respondent was an employee of Kanhirode Weavers Industrial Co-operative Society and was a member of EPF having more than 20 years of service from 01.09.1976 to 31.01.1997. The respondent discontinued his service on 31.01.1997 on medical grounds. Thereafter the respondent filed an application for provident fund benefit and for disablement pension and the same was rejected by the petitioner/ opposite party. A complaint was filed before the Consumer Disputes Redressal Forum, Kannur as CC no. 210/10 and the Forum allowed the complaint and directed the petitioner to reconsider the matter and gave disablement pension to the respondent. The State Commission confirmed the order of the Forum as per the judgment dated 01.09.2005. Accordingly, the petitioner sanctioned the disablement pension of Rs.250/- per month from 01.02.1997. At present the respondent completed 30 years of age as on 01.04.2009 and claimed reduced pension. The petitioner rejected the application of the respondent on the ground that there was no provision under EPS 1995 to convert disablement pension into a reduced pension. The act of the petitioner amounts to deficiency in service, hence, the complaint.

3. The petitioner contended that the respondent was not a consumer as per the CP Act. The respondent's claim for disablement pension was allowed based on the direction of the State Commission of Kerala and hence, the complaint was estopped from raising the dispute again before the Forum. The petitioner admits that

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he was a subscriber of EPF from 01.09.1976 till cessation on 31.01.1997. The respondent was sanctioned monthly disablement pension of Rs.250/- with effect from 01.02.1997 and the respondent was drawing the pension on that date. On 27.05.2009 the respondent submitted a letter stating that he had attained 50 years on 01.04.2009 and requested to sanction pension payable to those who attained 50 years of service. In reply to the said letter the petitioner informed the respondent on 16.06.2009 that there was no provision under EP Scheme 1995 to convert disabled pension into reduced pension. The respondent was drawing disablement pension under paragraph 15 of EP Scheme with effect from 04.02.1997 and hence, ceased to be a member of EP Scheme 95 with effect from that date and a ceased member of the EPS 95 cannot claim another benefit under the same scheme. Hence prays for dismissal of the complaint.

4. The District Consumer Disputes Redressal Forum, Kannur (the District Forum) vide its order dated 13.09.2010, while allowing the complaint gave the following order:

"In the result the complaint is allowed directing the opposite party to issue pension payment order for reduced pension to the complainant from 01.04.2009 along with Rs.500/- as cost of the proceedings to the complainant within one month from the date of receipt of this order failing which the complainant is at liberty to execute the order as per the provisions of Consumer Protection Act."

5. Aggrieved by the order of the District Forum, the petitioner filed an appeal before the State Commission. The State Commission while dismissing the appeal observed as under:

"We this Commission perused the records available in the case file and heard the detailed arguments of counsels and find that there is no prohibition or restriction to opt either the disablement pension or the regular pension as per the Employees Provident Fund. The disablement pension is a scheme envisaged by the Government a special benefit for the disabled persons alone. The scheme was introduced as a part and parcel of the social welfare policy of the Government. It is on a compassionate ground. At the time of applying the disabled pension he was not eligible for getting the regular pension. At that time he did not complete the prescribed years of minimum pension. After he attained the eligible age for getting the regular pension he opted regular pension instead of the disablement pension. He was not having any demand for both disablement pension and eligible pension. We are also satisfied that the opposite parties are not having any financial additional burden if convert his scheme from the disablement pension to eligible pension and as per the provisions of the Act also this conversion of pensions one to another is not prohibited anywhere. The only additional burden to the opposite party is to be some office work. The act of the opposite party is nothing but a normal bureaucratic, are seeing every offices in our country, it is highly necessary to reshuffle the oldest office manuals and to prevent be bureaucratic sadism of the office staff of our offices. All of our offices, the clerk is decider and passing orders all other higher officers are saying simply 'yes papa' 'Yes Pappa'. In the result, no beneficiary is availing the Government benefits. Hence, it is rightly necessary to change the law and Rules. Why we forget the words of the great poet, 'Kumaranasan'. It is nothing but a deficiency in service as per the provisions of the CP Act. The opposite parties are liable to answer this deficiency which was committed by them. We uphold the decision taken by the Forum below. It is quite legally liable and acceptable."

The Government is granting pension to an employee on the completion of the particular employment. It will no way affect another employment. There is no legally settled position to cut short this pension from the salary of the present employment. It is against the principle of law and natural justice. The very same time the central and State Government introduced Voluntary Retirement and Pension Scheme. The ex-serviceman is availing pension even though he is entering in another re-employment. The very same government is fixing the minimum years of service for the eligibility of the minimum pension. This are discriminations and against the Government both central and state enhanced the age of entering into the service in every so many services. At the very same time they did not enhanced the retirement age and minimum years of the service for eligible person. In this circumstance deduction of pension from the salary is illegal and discriminatory. The pension schemes introduced under the Social Welfare Schemes for the particular category of the people on compassionate grounds. It cannot be estopped their regular

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eligibility of the pension benefit. The disabled person introduced in connection with his and her disability. It cannot be prevented him to receive his regular pension. Fortunately, his permanent total disability can be cured in future by the new inventions in the field of medical sciences, then he will be disqualified to get his disability pension.

In the result, this appeal is dismissed and confirmed the order passed by the Forum below.”

Hence, the present revision petition.

I have heard the learned counsel for the parties. Learned counsel for the petitioner Mr Amit Gupta, and Mr n Kumar Soni, EO and AR of the petitioner had contended that the petitioner had approached the District and the State Commission and compelled the petitioner to pay him the disablement pension under Rule 15 instead of monthly pension under Rule 12, under the orders of the Consumer Fora. The respondent/ plaintiff had been availing of the benefit of disablement pension since 01.02.1997 after availing of the pension for he has now attained the age of 50, and now wishes to take the benefit of Rule 12 and draw the monthly pension in lieu of disablement pension which is not permissible as per rules. Rule 15 of the EPF Act. Reads as under:

“15. Benefits on permanent and total disablement during the service – (1) A member, who is permanently and totally disabled during the employment shall be entitled to pension as admissible under [paragraph 12] subject to a minimum of Rs. 250/- per month notwithstanding the fact that he/she has not rendered the pensionable service entitling him/her to pension under paragraph 12 provided that he/she has made at least one month's contribution to the Pension fund.

(2) The monthly member's pension in such cases shall be payable from the date following the date of permanent total disablement and shall be tenable for the life-time of the member.

(3) A member applying for benefits under this paragraph shall be required to undergo such medical examination as may be prescribed by the Central Board to determine whether or not he or she is permanently and totally unfit for the employment which he or she was doing at the time of such disablement.

From this it is clearly mentioned that the monthly member's pension in such case shall be payable from the date following the date of permanent total disablement and shall be tenable for the life time of the members. This makes it quite clear that once having availed of the disablement pension under Rule 15 the said employee cannot get the benefit of the same for the life time of the members and there is no provision under the said rules allowing pension under Rule 12 on attaining the age of 50 years. A retired employee having once already availed the benefit of pension under Rule 15 and having attained the age of 50 cannot thereafter claim pension under Rule 12.

Learned counsel for the respondent Mr A K De argued in favour of the order of the State Commission. He contended that it is true that there is no provision in the Employees' Pension Scheme 1995 for conversion of disablement pension to regular pension, and it is also true that after taking the benefit of pension he ceases to be an active employee and it is also true that there is no specific provision to allow pension under Rule 12 after attaining the age of 50 years. He contended, however, that since the EPF scheme is a benevolent scheme a liberal and liberal view ought to have been taken to benefit the employee otherwise it takes away from the very object of the said scheme.

I have carefully gone through the documents on record and the EPF Rule. Rule 12 of the EPF Scheme reads as under:

“12. Monthly Member's Pension – (1) A Member shall be entitled to

(1) superannuation pension if he has rendered eligible service of 10 years or more and retires on attaining the age of 58 years.

(2) In the case of a new entrant, the amount of monthly superannuation pension or early pension, as the case may be shall be computed in accordance with the following factors namely -

Monthly member's pension + Pensionable salary x pensionable service

70)

[Provided that the members' monthly pension shall be determined on a pro-rata basis for the pensionable service up to the 1st day of September 2014 at the maximum pensionable salary of six thousand and five hundred rupees per month and for the period thereafter at the maximum pensionable salary of fifteen thousand rupees per month].

(5) In the case of an existing member and in respect of whom the date of commencement of pension is before the 16th November 2000 -

(i) The superannuation or early pension shall be equal to the aggregate of -

(a) pension is determined under sub-paragraph (2) for the period of service rendered from the 16th November 1995 or Rs.335 - per month whichever is more.

(b) past service pension as provided in sub-paragraph (3)

(ii) The aggregate of (a) and (b) calculated as above shall be subject to the minimum of Rs. 500 - per month provided the eligible service is 24 years. Provided further, if it is less than 24 years the pension shall be proportionately lesser but subject to the minimum of Rs. 265 - per month

6. Except as otherwise expressly provided hereinafter the monthly member's pension under sub-paragraphs (2) to (5) mentioned hereinabove, as the case may be shall be payable from a date immediately following the date of completion of 58 years of age notwithstanding that the member has retired or ceased to be in the employment before that date.

7. A member if he so desires, may be allowed to draw an early pension from a date earlier than 58 years of age but not earlier than 50 years of age. In such cases, the amount of pension shall be reduced at the rate of [four per cent] for every year the age falls short of 58 years.]

15. Benefits on permanent and total disablement during the service - (1) A member who is permanently and totally disabled during the employment shall be entitled to pension as admissible under [paragraph 12] subject to a minimum of Rs. 250 - per month notwithstanding the fact that the member has not rendered the pensionable service entitling him/her to pension under paragraph 12 provided that she/he has made at least one month's contribution to the Pension fund

(2) The monthly member's pension in such cases shall be payable from the date following the date of permanent total disablement and shall be tenable for the life-time of the member

(3) A member applying for benefits under this paragraph shall be required to undergo such medical examination as may be prescribed by the Central Board to determine whether or not he or she is permanently and totally unfit for the employment which he or she was doing at the time of such disablement

In this case the respondent had earlier fought a legal battle to claim the pension under Rule 15 stating that he was eligible for the same. He claimed permanent disablement pension at the age of 38 when he was eligible for pension under Rule 12, knowingly and consciously opting for pension under Rule 15 and he has been getting disablement pension since the age of 38 years. Rule 15 makes it very clear that a monthly member pension "shall be payable for the life time to a member once sanctioned and availed off". The respondent having opted for the same is now attempting to change the option to opt for pension under Rule 12. He could have opted earlier for pension under Rule 12 but then he would have got the reduced pension only at the age of 55 years. However, he saw the benefit of getting the disablement pension at the age of 38 years. Learned counsel for the respondent has also admitted that there is no provision for taking the benefit of pension both under Rule 15 and then under Rule 12. There is also no provision for conversion of disablement pension under Rule 15 to avail of reduced pension under Rule 12. The EPF Scheme 1995 and all other pension schemes are to benefit the employees, however these benefits cannot be claimed and allowed beyond the rules in violation of the said rules by taking a so called "lenient and liberal view".

In view of the above, the lower Fora have erred in allowing the complaint in contravention of the Rules. The present revision petition is allowed and orders of the lower Fora are set aside and the complaint is dismissed.

REKHA GUPTA
PRESIDING MEMBER