

(2011) 08 MAD CK 0468

In the Madras High Court

Case No : Writ Petition No. 7566 of 2009

N. Mohan Sai @ Janakiraman

APPELLANT

Vs

The Assistant P.F. Commissioner (Pension) and The Regional
Provident Fund Commissioner, Employee's Provident Fund
Organisation

RESPONDENT

Date of Decision : 17-08-2011

Acts Referred:

Employees Pension Scheme, 1995 — Rule 17(A)

Citation : (2011) 08 MAD CK 0468

Hon'ble Judges : K. Chandru, J

Bench : Single Bench

Advocate : R. Karthikeyan, for the Appellant; K. Ramu, for the Respondent

Final Decision : Dismissed

Judgement

K. Chandru, J.—The Petitioner has filed the present writ petition, seeking to challenge an order of the first Respondent dated 04.12.2008 intimating the Petitioner that there was no provision under the Employees' Pension Scheme 1995 to pay interest to the members for delay in settlement of claims which was beyond their control. Challenging the same, the writ petition came to be filed.

2. Notice of motion was ordered on 23.04.2009. On notice from this Court, the Respondents have filed a counter affidavit dated 31.07.2011.

3. It is seen from the records that the petitioner during his tenure from 01.10.1974 to 15.05.1997 had served in three different establishments. There was a break for a period of two years, 11 months and 27 days during the three spells of employment. The petitioner had lastly served under M/S. J.K. Paper Mills Ltd., Rayagoda, Orissa State, which comes under the Sub-Regional Office of the PF Organisation at Berhampur, Orissa. The Sub-Regional office of EPFO, Berhampur, Orissa, where the Petitioner concluded his last service had forwarded the Input Data Sheet (IDS) on 12.07.2007, mentioning his date of appointment as

24.02.1983 to 15.05.1997. Based on the said information, the Regional Office at Chennai released the Petitioner's pension since the Petitioner had preferred to receive the pension amount through the State Bank of India, Perampur.

4. Since the Petitioner had served in various establishments in different States such as Tamilnadu, Maharashtra and Orissa etc., the Respondents found that there were discrepancies in his service particulars and hence, the papers were returned to the Provident Fund Office at Berhampur for rectification. The Petitioner had not given a proper claim form as per Form 10-D of the Scheme. Hence, it was returned to the previous employer, which is evidenced by the letter produced by the Petitioner in which his previous employer addressed to him on 12.04.2005. The said letter may be usefully reproduced as follows:

With reference to your letter dated 01.04.2005 and as per the advice of APFC, Berhampur, copy of which endorsed to you also, we enclose herewith Form 10-D(P) in duplicate duly filled by us with an advice to return us the same after completing the following formalities for our onward submission to APFC for sanction of monthly member pension.

1. You have to open a Bank a/c either with Indian Bank/S.B.I, and mention the address of the Bank in page 6 under column 14 and a/c No. in Page No. 7 in the Box.

2. 4 Nos. Pf Joint passport photos with wife without attestation are required.

3. Page No. 9 is to be completed where ever columns are left blank.

5. It was stated by the Respondents that there was difficulty in processing the Petitioner's papers as the original account number given in respect of his account at Nagpur office did not tally with the Petitioner's number and unless correct account numbers are not furnished, it becomes impossible for the Respondents to process the application. In paragraph 6 of the counter affidavit it was averred as follows:

6. It is further humbly submitted that the Respondent office of EPFO received the pension papers duly processed with advise for disbursement from Berhampur, Orissathrough their letter dated 03.07.2008 and without any further delay the pension amounts have been paid by the Respondents in September 2008. Thus there is no delay attributable to any of the Respondents. The delay had occasioned, neither willfully nor wantonly but only due to mistakes committed by the previous employer M/S. J.K. Papers Limited and no filing of proper claim from in 10-D. The delay even according to the Petitioner hasnot occasioned at Chennai. The Chennai office only was a facilitator for disbursement of pension amounts to the petitioner, since he settled in Chennai past retirement. At the time of retirement of the Petitioner, the Provident Fund Account of the Petitioner was maintained, admittedly at BerhampurOffice, within whose jurisdiction the petitioner worked at the time of retirement. Thus all papers had to be processed by Berhampur Office and not by any of these Respondents, except disbursal of

pension amounts.

It is in that view of the matter, the Respondents refused to consider the case of the Petitioner for grant of interest.

6. It is necessary to refer to the relevant rule relating to payment of interest viz., Rule 17-A of the Employees' Pension Scheme 1995, which reads as follows:

17 A Payment of Pension.-The claims, complete in all respects submitted along with the requisite documents shall be settled and benefit amount paid to the beneficiaries within thirty days from the date of its receipt by the Commissioner. If there is any deficiency in the claim, the same shall be recorded in writing and communicated to the applicant within thirty days from the date of receipt of such application. In case the Commissioner fails without sufficient cause to settle a claim complete in all respects within thirty days, the Commissioner shall be liable for the delay beyond the said period and penal interest at the rate of 12 per cent. per annum may be charged on the benefit amount and the same may be deducted from the salary of the Commissioner.

7. This is a peculiar provision where the delay in non-payment of pension though results in grant of penal interest at the rate of 12 per cent, the liability is fixed on the Commissioner, who was responsible for the delay. But in the present writ petition, the Petitioner has only made the authorities at Chennai namely APFC (Pension), Chennai and RPFC, Chennai as party respondents. The office of the Provident Fund Commissioner at Orissa including the Sub-Regional Office at Berhampur had not been made as parties. Since the last service of the Petitioner was at Berhampur, Orissa, if at all there was any delay in processing his paper, it was done at Orissa and not the Respondents who were processing his pension papers. Therefore, the Petitioner had to file his claim making liable the Commissioner at Orissa. Since the personal responsibility of recovery has been fixed on the officer concerned and without notice to such officer, no order can be passed by this Court. Hence, this Court is unable to entertain the petitioner's request for payment of penal interest.

8. Further if there is any deficiency of service on the part of the PF Department, it is not necessary for the Petitioner to file any writ petition before the High Court. Since the Supreme Court vide its judgment in Regional Provident Fund Commissioner Vs. Shiv Kumar Joshi, has held that the provisions of Consumer Protection Act, 1988 will apply to the PF Claims. Under the said Act, for the deficiency of service on the part of the respondents, compensation by way of damages can be claimed. Therefore, the Petitioner will be well advised to move the Courts at Orissa including the forums under the Consumer Protection Act claiming the reliefs which are made in this writ petition.

9. For the reasons set out above, this Court is not inclined to entertain the writ petition. Accordingly, the writ petition stands dismissed. However, there will be no order as to costs.