(2015) 07 NCDRC CK 0001

In the National Consumer Disputes Redressal Commission

Regional Provident Fund Commissioner, Karnataka And Ors. APPELLANT

Vs

T. Rama Brahmam And Ors. RESPONDENT

Date of Decision : 22-07-2015

Acts Referred:

Citation : (2015) 07 NCDRC CK 0001

Hon'ble Judges : J.

Final Decision : Petition Dismissed

Judgement

1. THESE Revision Petitions, under Section 21(b) of the Consumer Protection Act, 1986 (for short "the Act"), have been filed by the Regional Provident Fund Commissioner, Bellary, Karnataka, the Opposite Party in the Complaints, against a common order dated 30.08.2013, passed by the Karnataka State Consumer Disputes Redressal Commission at Bangalore (for short "the State Commission") in Appeals No. 1194 -1197, 1199, 1200 -1204, 1211 -1213, 1215 & 1216 of 2013. By the impugned order, the State Commission has dismissed the said Appeals, preferred by the Petitioner herein, questioning the correctness and legality of common order dated 27.06.2013 passed by the District Consumer Disputes Redressal Forum at Bellary (for short "the District Forum") in Complaints No. 44, 45, 46, 47, 48, 49, 51, 52, 53, 54, 55, 56, 57, 59 and 60 of 2013, preferred by the Respondents/Complainants. The District Forum, while partly allowing the said Complaints, had directed the Petitioner to re -fix the pension of all the Complainants, as per para 12(3), 12(4)(a)(b), 12(5) read with para 10(2) of the Employees'' Pension Scheme, 1995, as applicable to individual Complainants, by giving weightage of two years to each of the Complainants, and pay the pension accordingly from the date as applicable to each case and the balance pension within two months from the date of that order. In default the balance amount of pension was to carry interest @ 6% per annum from the date of the order till its realization. Litigation costs, quantified at 1000/ -, were also directed to be paid to each of the Complainants.

2. SUCCINCTLY put, the facts giving rise to the present Revision Petitions are:

that the Respondents/Complainants, who were the employees of an establishment, viz., Tungabhadra Steel Products Ltd. at Hospet, were the members of the Employees'' Provident Fund Scheme, 1952 as well as the Employees'' Family Pension Scheme, 1971. On introduction of the Employees'' Pension Scheme, 1995, w.e.f. 16.11.1995, they opted for the same and, accordingly, their earlier contributions were transferred to the 1995 Scheme, in which they contributed till their retirement. As per the new Scheme, the beneficiaries who would superannuate on attaining the age of 58 years or/and who had rendered 20 years'' service, were to be given the two years weightage, while calculating their pensionable service. Since the Respondents/Complainants had rendered more than 20 years'' service, they were entitled for the same. However, the Petitioner, while calculating the pension amount payable to them, failed to take into consideration their past and present service and consequently did not follow the relevant provisions of the aforesaid Scheme. 2.1 Aggrieved, the Respondents got issued legal notice(s) to the Petitioner, calling upon it to reconsider the matter; re -fix their pension; and pay the differential amount of pension along with interest @ 18% per annum. Dissatisfied with the vague reply, the Respondents filed their separate Complaints before the District Forum, praying for directions to the Petitioner to: (i) re -fix their pension in accordance with para 12(3) read with para 10(2) of the 1995 Scheme and pay the difference in pension; (ii) pay 18% interest per annum on the amount to be paid on account of re -fixation of pension; and (iii) pay 10,000/ - as litigation expenses to each of the Complainants.

On consideration of the evidence adduced before it by the parties as also going through the provisions of the 1995 Scheme, the District Forum held that the Respondents/Complainants were entitled for the weightage of two years and, accordingly, while partly allowing the Complaints, directed the Petitioner to re -fix their pension and pay pension and the balance amount due in the manner, indicated above.

3. BEING aggrieved, the Petitioner filed the afore -noted Appeals, which were dismissed by the State Commission. Hence, the present Revision Petitions.

4. IT is pointed out by the office that these Revision Petitions are barred by limitation, inasmuch as there is inordinate delay ranging between 249 -257 days in filing the same. Since the present Revision Petitions arise out of a common impugned order and similar applications, praying for condonation of the said delay, have been filed along with the same, for the sake of convenience, we propose to consider the explanation furnished in the application filed in Revision Petition No. 1699 of 2015. In paragraph 3 of the said application, a crisp explanation furnished is as under: "3. That the petitioner received the certified copy on 01.08.2014. Certain other documents were called from the counsel. Thereafter, the present revision petition was sent to EPFO, Head Office for seeking legal approval for filing. After receiving the legal opinion, the documents and the certified copy was sent to the undersigned counsel for preparation of

present revision petition. After the revision petition was prepared, it was sent for vetting to HO as per procedure. Thereafter the revision petition has been filed before this Hon''ble Court. It is respectfully submitted that due care has been taken at each stage and the delay has occurred because of circumstances beyond the control of petitioner and due to official requirements, being Government Organisation. It is respectfully submitted that due care has been taken at each and every steps for filing the present revision petition."

We have heard learned counsel for the Petitioner.

5. IN our opinion, the explanation furnished is vague to the core and is wholly unsatisfactory. Though the impugned order had been passed by the State Commission on 30.08.2013 in the presence of Counsel for the Petitioner, yet for a considerable period of eleven months neither the Petitioner nor its Counsel bothered to obtain the certified copy of the said order. Admittedly, the free certified copy of the impugned order had been received by the Petitioner on 01.08.2014. However, even after receiving the same at that belated stage, the Petitioner did not take prompt action in the matter. Due to the said carelessness on the part of the Petitioner, the Revision Petitions, which were required to be filed within a period of 90 days under Regulation 14 of the Consumer Protection Regulations, 2005, were filed in this Commission on 06/14.07.2015, i.e. after inordinate delay ranging between 249 -257 days, that too from the date of receipt of the impugned order and not from the date of the impugned order, in which case it would be much more than what has been reported now. The application is conspicuously silent about the date -wise developments in connection with processing of the matter at the Petitioner''s end. The averments made in the application that after receiving the copy of the impugned order, certain documents were called for; the matter was referred to the Head Office for approval/vetting; due care has been taken at each and every stage; and the delay in filing the present Revision Petitions has occurred because of circumstances beyond the control of the Petitioner, in the absence of any date -wise developments in the matter, is a classic example of an indifferent attitude and laxity on the part of the Petitioner. Except for the afore -stated bald explanation of official requirements/departmental clearances, there is not even a whisper as to how the said delay occasioned in processing the matter at its end. The Petitioner, being a government instrumentality, ought to have pursued its cause prudently and diligently, which was not so in these cases.

6. THE question of delay by the Government Departments in prosecuting the cases has been engaging the attention of the Courts. Recently, in Postmaster General and Ors. V. Living Media India Ltd. & Anr. [: (2012) 3 SCC 563], the Hon''ble Supreme Court has been pleased to observe as under: "28. Though we are conscious of the fact that in a matter of condonation of delay when there was no gross negligence or deliberate inaction or lack of bona fides, a liberal concession has to be adopted to advance substantial justice, we are of the view that in the facts and circumstances, the Department cannot take advantage of

various earlier decisions. The claim on account of impersonal machinery and inherited bureaucratic methodology of making several notes cannot be accepted in view of the modern technologies being used and available. The law of limitation undoubtedly binds everybody, including the Government.

29. In our view, it is right time to inform all the government bodies, their agencies and instrumentalities that unless they have reasonable and acceptable explanation for the delay and there was bona fide effort, there is no need to accept the usual explanation that the file was kept pending for several months/ years due to considerable degree of procedural red tape in the process. The government departments are under a special obligation to ensure that they perform their duties with diligence and commitment. Condonation of delay is an exception and should not be used as an anticipated benefit for the government departments. The law shelters everyone under the same light and should not be swirled for the benefit of a few.

(emphasis supplied)

Bearing in mind the afore -stated facts and the above observations as also the observations of the Hon''ble Supreme Court in Anshul Aggarwal vs. New Okhla Industrial Development Authority [: (2011) 14 SCC 578] to the effect that while deciding an application for condonation of delay, the Court has to keep in mind that the special period of limitation has been prescribed under the Act for filing appeals and revisions in consumer matters and the object of expeditious adjudication of the consumer disputes will get defeated if highly belated petitions filed against the orders of the Consumer Foras are entertained, we are not inclined to condone an inordinate delay of 249 -257 days in filing of the present Revision Petitions, more so when condonation of delay in such cases would cause further delay in settlement of small claims of retired employees for whom each extra rupee matters a lot.

7. EVEN on merits, we find that the issue involved in these Revision Petitions already stands concluded by a catena of orders of this Commission, particularly by order dated 09.04.2013 in Assistant Provident Fund Commissioner, Raichur Vs. Basappa Ningappa Kaltippi, Revision Petition No. 784 of 2013, relied upon by the State Commission in the impugned order, as well as by order dated 28.07.2014 in Regional Provident Fund Commissioner, Bellary Vs. Mohammad Khasim, Revision Petition No. 2864 of 2014 & other connected matters. In Mohammad Khasim (supra) a Coordinate Bench of this Commission, on examination of the benevolent provisions of the Employees'' Pension Scheme, 1995, with reference to the earlier Schemes, viz., Employees Provident Fund Scheme, 1952 and Employees Family Pension Scheme, 1971, has held that the Complainants would be entitled to the weightage of two years in terms of Sub - Para (2) of Para (10) of the 1995 Scheme and accordingly dismissed the Revision Petitions preferred by the Petitioner.

8. IT is pertinent to note that a large number of Special Leave Petitions,

preferred by the Petitioner against our earlier order dated 03.05.2013 in Revision Petition No. 1330 of 2013 and connected cases, have been recently dismissed by the Hon''ble Supreme Court, vide order dated 23.03.2015, leaving the question of law open to be decided in an appropriate case. Thus, the orders passed by the lower Fora in relation to a large number of similarly situated Pensioners having attained finality, non -grant of similar relief to the Respondents/Complainants in the computation of their pensionary benefits would not only create an avoidable anomaly, it will be discriminatory as well. Consequently, the Revision Petitions are dismissed on the ground of inordinate delay as well as on merits.

