

SOUTH AFRICA / JUDGMENT

Hangana v Government Employees Pension Fund (2608/2017) [2018] ZAECPEHC 78 (6 November 2018) [2018] ZAECPEHC 78

COURT

Eastern Cape High Court, Port Elizabeth

BEFORE

E Revelas

CASE / FILE NUMBER

2608/2017

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IN THE HIGH COURT OF SOUTH
AFRICA
EASTERN
CAPE LOCAL DIVISION -
PORT ELIZABETH

Case

No.: 2608/2017

In

the matter between:

NOMANGWANYA
HANGANA
Applicant
and
THE
GOVERNMENT EMPLOYEES PENSION
FUND
Respondent

JUDGMENT**REVELAS J:**

1. The applicant was employed by the Department of Education, Eastern Cape Province ('the Department') as an educator since 12 January 1991 until her resignation on 31 January 2015. Since the inception of her employment until her resignation, the applicant made monthly contributions to the respondent, the Government Employees Pension Fund. When the applicant was paid out her pension annuity and gratuity she discovered that the amounts thereof were incorrectly calculated. The error was as a result of incorrect information

pertaining to the duration of the applicant's employment with the Department as was conveyed to the respondent by the Department, who must have lodged a form "Z102" containing all her relevant details. The applicant prevailed on the respondent to respond to her correspondence regarding the matter of her faulty pension payment and to address the problem so that her pension gratuity and annuity could be correctly quantified.

2. In the course of the applicant's quest for co-operation from the respondent, she made a telephone call to the respondent, and was

informed by an unidentified employee of the respondent, that her pension gratuity and annuity had been calculated in accordance with a commencement date of 1 September 1991, which meant that a five year period of pensionable service had been overlooked by the fund in making its calculations.

3. The applicant contends that, even though the respondent was not to blame for the incorrect quantification, it nonetheless, when the error was brought to its attention, failed to take any steps to deal with the matter and it also failed to respond to correspondence from the applicant and her attorneys.
4. Unfortunately the Department could not find any of the applicant's records relating to the information furnished to the respondent upon the applicant's resignation. The respondent was in possession of the applicant's employment details. The applicant requested the respondent to deal with her problem or at the very least to investigate the matter.
5. The respondent failed to adhere to her request and the applicant decided to launch the present application for review to: set aside the respondent's administrative inaction in failing to respond to her correspondence; direct that the respondent furnish her with the relevant information; investigate her complaint and advise her of the outcome. The applicant also sought a cost order against the respondent. The application was brought in terms of the Promotion of Access to Information Act 2 of 2000 and launched on 12 May 2018.
6. Between 18 November 2016 and 7 February 2017 there was correspondence between the State Attorney and the applicant's attorneys of record with a view pension to rectify the applicant's payments.

7. On 13 February 2017 the applicant's attorney of record wrote to the respondent, advised it of the date on which the applicant commenced employment with the Department (12 January 1991) and pointed out the error, namely the fact that the applicant was not given credit for the period 12 February 1991 to an unknown date in 1996. No response was forthcoming from the respondent.
8. A second letter was written to the respondent on 21 April 2017, also without any response thereto. On 8 May 2017 a further letter was sent to the respondent wherein the applicant's attorney advised that she would be launching the present proceedings.
9. The respondent opposed the present application, firstly on the basis that the department ought to have been joined as a party to these proceedings and secondly, that the respondent had paid out the pension benefit as advised by the Department in the completed Z 102 form. Any further amendments to the payment system of the respondent could only be affected by an amended Z 102 form.
10. When the respondent filed its answering affidavit in these proceedings, it also provided the applicant with all the relevant documentation. The applicant for the first time received the information upon which the respondent had relied in calculating the applicant's pension benefit, which included the Z 102 form. The respondent had therefore complied with the relief sought in the applicant's notice of motion. Accordingly, no further affidavits were filed and the matter was set down for the determination of costs only.
11. The respondent argued that the unidentified employee referred to by the applicant, had given her the information she requested and therefore there was no reason to proceed with the application.
12. It is convenient to deal with the question of misjoinder first. The Department had no interest in the outcome of the matter even though the Department supplied the incorrect information to the respondents upon which the respondent acted to the applicant's detriment. The respondent nonetheless had an obligation, once the error came to its attention, to act. Instead, there was inaction.
13. The applicant's request for information was not met with co- operation but inertia until the present application was brought. Joining the Department would have changed nothing.
14. Clearly the respondent had a constitutional duty to see that the applicant was paid out the correct pension amounts. She was entitled thereto. The applicant correctly makes the point that she was entitled to relief in terms of the Promotion of Administrative Justice Act, 3 of 2000, as well as declaratory relief in terms of the Constitution. The respondent in this case failed to act in accordance with its statutory and constitutional obligations and chose to shift the blame onto the Department. Once the respondent realized that there was an error in its calculation of the pension payment, it should have taken steps to rectify it, and not wait for the applicant to take it up with the department or until it was brought to court before finally acting.

15. In the circumstances, the respondent ought to pay the wasted costs of the application.

16. An order is made in the following terms:

The respondent is directed to pay the costs of the application.

E REVELAS

Judge of the High Court

Appearances:

For the Applicant: Adv Bands instructed by Randell & Associates, Port Elizabeth

For the respondents: Adv Nhantsi instructed by Pumeza Bono Inc, Port Elizabeth

Date heard:

18 October 2018

Date delivered: 6 November 2018

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