



**IN THE HIGH COURT OF SOUTH AFRICA
(EASTERN CAPE DIVISION, GQEBERHA)**

CASE NUMBER.: 3676/2021

In the matter between:

NOMAKWEZI PAPU

Applicant

And

GOVERNMENT EMPLOYEES PENSION FUND

Respondent

JUDGMENT

Beshe J

[1] The applicant is a retired educator who was employed by the Department of Education, Eastern Cape. She retired on 31 October 2019 on the ground of ill health.

[2] The dispute between the parties concerns the quantification of applicant's pension benefits by the respondent following her retirement. Applicant asserts that her benefits were incorrectly calculated by the respondent who relied on an incorrect date as to when her pensionable service commenced. To this end, applicant seeks the following relief:

‘Directing that the respondent’s failure to correct its records relating to the applicant’s pensionable service period commencing on 12 February 1987 and concluding on 31 October

2019 be judicially reviewed and set aside, alternatively, declared unlawful as administrative action which is not lawful, reasonable or procedurally fair.

Directing that the respondent take such administrative or other steps as may be necessary to correct its records so as to reflect the applicant's pensionable service discharged with the Department of Education, Eastern Cape Province, commencing on 12 February 1987 and terminating on 31 October 2019.'

[3] The 12 February 1987 is the date that applicant alleges her pensionable service commenced. That during the period 12 February 1987 to 31 October 2019 when she retired, she contributed to the pension fund uninterrupted. Upon requesting an estimate of her benefits during 2019, her employment details in the document provided by respondent reflected her pensionable service date as commencing on 1 March 1995. Following her retirement, respondent advised her of what was due to her in the form of gratuity and annuity figures. Not being satisfied with respondent's figures/calculations, she requested information pertaining to documentation upon which respondent based its calculations. It was after a lot of song and dance that respondent finally provided the applicant with certain documents which included a form Z102. This is a form that is allegedly completed by the employer (in this case, the Department of Education) and submitted to the respondent. It appears to be common cause that the respondent relied on this form in computing applicant's pension benefit. In the said form, applicant's commencement date is recorded as being the 1 March 1995. It is also common cause that in other documents furnished to the applicant by the respondent, the 12 February 1987 features as the date upon which applicant commenced her service with the Department of Education. Applicant's complaint is that the respondent failed to investigate the contradictions that appear ex facie the documents at its disposal and to accordingly correct the date on which applicant started working as an educator. Applicant contends that respondent's failure to take steps to correct the

information relating to her pensionable period of service is reviewable and falls to be set aside. That respondent's failure in this regard amounts to unlawful administrative action, it is unreasonable and procedurally unfair, so the applicant contends.

[4] Respondent had raised the nonjoinder of the Member of Executive Council for Department of Education as a part in limine. That point together with opposition to the merits of the application was not pursued with any enthusiasm. Respondent's counsel Mr Lambrechts rightly pointed out that a number of decisions emanating from this court were against the respondent. He could not point to any reason why this court should not follow those decisions. He conceded that documents at respondent's disposal were contradictory and drew the court's attention to annexure D30 to the founding affidavit. A form T.I. 111 wherein an amount is reflected as the annual pensionable amount for the period when applicant is said to have been on probation from 1987 to when she was permanently employed in 1995.

[5] Respondent pointed out in answer that applicant was only admitted to the pension fund with effect from 1 March 1995 when she was permanently employed. This is also reflected in the said form T.I. 111. Be that as it may, as both counsel have pointed out, courts have previously reiterated the constitutional duty on the part of the respondent to see to it that the applicant was paid the correct pension amounts. See in this regard the matter between Nomangwanya Hangana and the present respondent.¹ In that matter, Revelas J went to state that "the respondent failed to act in accordance with its statutory and constitutional obligations and chose to shift the blame onto the Department. Once the respondent realised 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". This decision was quoted with approval and followed in subsequent

¹ Nomangwanya Hangana Case Number 2608/2017 per Revelas J at paragraph [14].

cases. Namely *Nomangwanya Hangana v Government Employees Pension Fund*²; *Washington Mhlontlo v Government Employees Pension Fund*³. All these decisions emanate from the Eastern Cape Division of the High Court, Gqeberha.

[6] The facts of this present case are similar to a large extent to those of the two cases referred to earlier, *Hangana* and *Mhlontlo*. I am also in agreement with the sentiments expressed by Revelas J in *Hangana* matter about what is expected of the respondent. By failing to follow up or investigate the information at its disposal in order to rectify or confirm the date applicant became entitled to a pension, the respondent acted unlawfully, unreasonably and procedurally unfair. This is so because as provided for in Section 3 (1) of the Promotion of Administrative Justice Act (PAJA).⁴ Administrative action which materially and adversely affects the rights of legitimate expectations of any person must be procedurally fair. In my view, for respondent to simply state that it does not keep records of employers and substantially relies on Form Z102 which is completed by her employer is not enough and is therefore not procedurally fair. Fortunately, this assertion was not persisted with in argument. I am satisfied that the applicant has made out a case for the order she seeks. As far as costs are concerned, I see no reason why I should not grant a costs order as sought by the applicant in view of the previous matters where the courts in this division have made a pronouncement about the defences raised by the respondent, dismissing them.

[7] Accordingly, the following order will issue:

1. That the respondent's failure to correct its records relating to the applicant's pensionable service period commencing on 12 February 1987 and concluding

² Case number 3353/2019.

³ Case Number 2398/2020.

⁴ Act 3 of 2000.

on 31 October 2019 be judicially reviewed and set aside as being unlawful administrative action, which is not reasonable and/or procedurally fair.

2. That the respondent takes such administrative or other steps as may be necessary to correct its records so as to reflect the applicant's pensionable service discharged with the Department of Education, Eastern Cape Province, commencing on 12 February 1987 and terminating on 31 October 2019.

3. That the respondent pays the applicant's costs, as between attorney and client.

N G BESHE
JUDGE OF THE HIGH COURT

APPEARANCES

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Date Heard : 15 February 2024

Date Reserved : 15 February 2024

Date Delivered : 5 March 2024