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DETERMINATION IN TERMS OF SECTION 30M OF THE PENSION FUNDS ACT 24 OF 1956 (“the Act”) – R TLADI (“complainant”) v CITY OF JOHANNESBURG PENSION FUND (“first respondent”) & CITY COUNCIL OF JOHANNESBURG (“second respondent”)

1. Introduction

- 1.1 This complaint concerns the complainant’s retirement benefit from the first respondent and other matters related thereto.
- 1.2 The complaint was received by this office on 19 July 2005. On 26 September 2005 a letter was dispatched to the first respondent giving it until 17 October 2005 to file its response to the complaint. Further letters requesting a response were sent on 1 August 2006 and 7 May 2007. A response was consequently received from Lekana Employee Benefit Solutions (Pty) Ltd, the fund’s administrator, on 23 May 2007.
- 1.3 After considering the written submissions before this tribunal, it is considered unnecessary to hold a hearing in this matter. This tribunal’s determination and its reasons therefor appear below.

2. The background facts

M Mohlala (Adjudicator), C Nkuhlu (Snr Assistant Adjudicator), F Mtayi (Snr Assistant Adjudicator), K MacKenzie (Snr Assistant Adjudicator), R Maharaj (Snr Assistant Adjudicator), M Ndaba (Snr Assistant Adjudicator), M Daki (Snr Assistant Adjudicator), E De La Rey (Snr Assistant Adjudicator), N van Coller (Assistant Adjudicator), L Mbalo (Assistant Adjudicator), S Gcelu (Assistant Adjudicator), M Ramabulana (Assistant Adjudicator), N Sihlali (Assistant Adjudicator), S Mothupi (Assistant Adjudicator), P Mphephu (Assistant Adjudicator), C Seabela (Assistant Adjudicator), M Qhali (Assistant Adjudicator),

Office Manager: L Manuel, Senior Accountant: F Mantsho

2.1 In February 1996 the complainant retired from the service of the second respondent. When the complainant retired from service, the first respondent paid her R251 311.19 as a retirement benefit. The first respondent commenced paying the complainant a monthly pension from the fund.

3. The complaint

3.1 This tribunal had difficulty discerning the complainant's actual complaint against the first respondent. Nevertheless, it appears that the complainant is unhappy with the contents of the IRP5 which she received in 2000 for the period 1 March 1999 to 1 December 1999. The complainant states that while the IRP5 reflects taxable income of R212 790.00, "standard income tax on employees" (SITE) of R77 145.22 and "pay as you earn" (PAYE) of R6 311.66, she never received the income nor were SITE and PAYE paid to the South African Revenue Service (SARS). The complainant states that SARS consequently demanded the outstanding tax (SITE and PAYE) together with interest from her.

3.2 The complainant is also dissatisfied with the first respondent's failure to pay her a gratuity and to include the additional bonus years which she was entitled to when it calculated her retirement benefit.

4. The response

4.1 According to the administrator the gratuity is an employer-related issue.

4.2 As regards the additional bonus for pensionable service years, the administrator submitted a document indicating that the complainant was given 7 additional bonus service years when she retired from employment. This consequently increased the complainant's pensionable service years from 35 to 42 years.

4.3 Lastly, the administrator states that it is only in possession of those IRP5s that were attached to the complaint.

5. Determination and reasons therefor

Introduction

5.1 The first respondent is a registered pension fund in terms of the provisions of the Act and it is bound by its rules in the same way as its members, officials, shareholders and persons claiming under the rules (see section 13 of the Act). By virtue of the binding nature of the rules, the trustees of the fund, the members, the employer and any service provider such as the administrator of the fund may only do that what is set forth in the rules

(see *Tek Corporation Provident Fund & Another v Lorentz* [2000] 3 BPLR 227 (SCA) at 239D-E).

Complaint in relation to "Bonus" service years

- 5.2 The provision for bonus service years is contained in rule 15. In terms thereof a member shall be granted 1 bonus service year in respect of each completed five years of pensionable service. The complainant's membership of the first respondent commenced on 1 January 1961 and ended on 15 February 1996. Thus, the complainant's actual pensionable service years amounted to 35 years. In terms of rule 15 the complainant qualified for an additional 7 bonus years bringing her final pensionable service years to 42 years. This was what the respondents used in computing the complainant's retirement benefit.
- 5.3 In the circumstances, this tribunal is satisfied that the complainant was given the additional "bonus service" as provided for in the rules. Furthermore, that the additional pensionable service years were taken into account when the complainant's final benefit was calculated. In light of the aforementioned, this part of the complainant's complaint is dismissed.

Complaint in relation to the gratuity

- 5.4 The payment of gratuities in addition to the payment of a pension is provided for in rule 30(7). In terms thereof, the *Manager* shall at 30 November of each year calculate for each pensioner who retired before 1 July 1977 a gratuity equal to R48.00 for each year between the year of commencement of the pension and the year of calculation. Put differently, the complainant would have qualified for a gratuity provided she retired from the employer's service before 1 July 1977.
- 5.5 The complainant retired from the second respondent's service in February 1996. Thus, the complainant did not qualify for a gratuity in terms of rule 30(7).
- 5.6 According to the administrator the payment of a gratuity is an employer-employee matter. If the second respondent is responsible for the payment of gratuities, this tribunal shall not have jurisdiction to investigate it because in terms of section 1 of the Act, any complaint lodged with this office must relate to one of three aspects of a pension fund organization (as defined in the Act), namely, the administration of the fund, the investment of its funds or the interpretation and application of its rules and thereafter the complainant needs to make one of four allegations in the complaint. Gratuities for the second respondent's account are not a pension-related complaint and this tribunal does not have jurisdiction to adjudicate any complaint in this regard.

