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**The Regional Provident Fund Commissioner Provident Fund Organisation,
Vuda Lay out Nad Post, Viskhapatnam, Rep. by Its Asst. P.F.Commissioner,
Mr.M.Sri Rangan and Others Vs. Gedela Rajappadu Srikakulam Dist**

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Vuda Lay out Nad Post, Viskhapatnam, Rep. by Its Asst. P.F.Commissioner,
Mr.M.Sri Rangan and Others Vs. Gedela Rajappadu Srikakulam Dist**

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**Court : Andhra Pradesh State Consumer Disputes Redressal Commission
SCDRC Hyderabad**

Decided On : Dec-30-2009

**Judge : Honâ€™ble Sri Justice D.Appa Rao, President & Sri R.
Lakshminarsimha Rao, Member**

**Appeal No. : F.A.No.977 OF 2007 AGAINST C.D.NO.19 OF 2006 DISTRICT
CONSUMER FORUM SRIKAKULAM**

**Appellant : The Regional Provident Fund Commissioner Provident Fund
Organisation, Vuda Lay out Nad Post, Viskhapatnam, Rep. by Its Asst.
P.F.Commissioner, Mr.M.Sri Rangan and Others**

Respondent : Gedela Rajappadu Srikakulam Dist

**Advocate for Pet/Ap. : Counsel for the Appellants Sri K. Raghuram Reddy,
Counsel for the Respondent no.1 Sri V.Sudhakar Reddy, Counsel for the
Respondent No.2 Served**

Judgement :

Oral Order (As per R.Lakshminarsimha Rao, Member)

The opposite parties are the appellants. They have filed the appeal challenging the order of the District Forum Vishakapatnam. in C.D.No. 19 of 2006.

The facts of the case briefly stated that the complainant was working as watchman in Sri Devi Mahal, Amadalavalasa of the opposite party no.4. The complainant is a contributor to the Provident fund with account number AP/24604/10. The clerk of the opposite party no.4 without informing the complainant furnished the age particulars of the complainant to the opposite parties no.1 to 3. On coming to know of the same the complainant submitted representation to the opposite party no.4 along with the medical certificate as per rule 9 of A.P.S.E. Act showing his age as 45 years to the opposite parties no.1to 3.. The complainant is an illiterate. The opposite party no.4 has submitted the same along with the nomination and declaration form . On 4-07-1996 the complainant made a complaint to the opposite party 3.On 9-08-1996 the opposite party no.3 addressed a letter to the opposite party no.1 to initiate necessary action. As there was no response, the complainant addressed another letter to the opposite party no.1 to take action. On intervention of the president of the complainants union, the opposite party no.1 advised the complainant to submit a notarized affidavit. Without considering any material the second opposite party has issued proceedings on 25-03-2002 stating that the alteration of the date of birth of the complaisant is not permissible. The action of the opposite party no.2 is not in accordance with law.

The opposite parties no.1to 3 resisted the claim by filing counter. It was contended that the complainant submitted representation dated 4-01-1996 for change of his age as 45 years stating that his age was wrongly recorded as 55 years. The complainant submitted another two representations on 7-01-1997. The complainant submitted another two representations on 15-10-1998 claiming his age as 47 years. The date of birth of the complainant recorded in the basic records is valid. Accordingly, the complainants age was taken as 10-03-1940 as declared by the complainant and endorsed by the opposite party no.4. The complainant submitted representation for change of the date of birth only after the inception of the Employees Pension Scheme,1995 since the date of birth of the member plays an important role in determining the eligibility to claim the pensionery benefits. According to the date of birth i.e., 10-03-1940 as declared by the complainant in

form 2(R) dated -01-1996, the complainant is not eligible for pensionary benefits. There is no provision in the scheme to alter the date of birth after the scheme is commenced. In form No.9 . the complainant claimed his date of birth as 29-09-2939, as per F2datted 9-01-1996 as 10-03-1940,as per F2 dated 7-01-1997as 7-01-1952, as per F2 dated 15-10-1998 as 15-10-1958 and as per medical certificate as 7-02-1950.

The opposite party no.4 has contended that the complainant being an illiterate could not file either school certificate or extract from the registrar of births and informed that his date of birth was not registered. As per rule 30 of the A.P.Shops and Establishments Rules issued, the letter of appointment and the format has not prescribed the age and as such the same age of the complainant could not be furnished. As per rule 9 of A.P.shops and Establishment Rules, when a person could not furnish the school certificate or extract from the registrar of birth, the employer has to produce the certificate in form IX from the government Medical Officer, not below the rank of assistant civi surgeon. Prior to the date of issuing of the medical certificate by the assistant civil surgeon the complainant filed another nomination and declaration stating that the age of the complainant as 47 years and the same was sent. The information furnished in form IX and nomination dated 9-01-1996 regarding age was mentioned as mistake and it is not based on any information furnished by the complainant. Finding the mistake, steps for rectification of the same were taken by following the procedure prescribed under the A.P.Shops and Establishment Act.

The district forum allowed the complaint holding that the opposite party no.1 ought to have permitted the complainant to declare his correct date of birth and he should have made entries in the relevant records showing the age of the complainant as 45 years.

Aggrieved by the order of the District Forum the opposite parties have filed the appeal contending that the district forum ought not to have relied up on the certificate issued by the doctor

The point for consideration is whether there has been mis-appreciation of facts or law in the impugned order?

The learned counsel for the opposite parties no.1 to 3 has contended that there was no negligence on the part of the appellants and negligence if any was only on the part of the opposite party no.4. The complainant was working as watchman in Sri Devi Mahal at Amudala Valasa belonging to the opposite party no.4. The date of birth of the complainant was not registered with the Registrar of Births and Death. As the complainant was not educated there was no evidence available from any school records. It is the contention of the complainant that the clerk of the opposite party no.4 had submitted incorrect particulars of his age without informing him. On coming to know of the same, the complainant stated to have made a representation to the opposite party no.4 by submitting a medical certificate said to have been issued from the Govt. Medical Officer. The opposite party no.3 addressed a letter dated 4.7.1996 to the opposite party no.1 to initiate necessary action. The complainant harped upon the inaction of the opposite party no.1 in taking the action as contemplated in the letter dated 4.7.1996. The opposite party no.1 through letter dated 26.3.2002 informed the complainant that his date of birth could not be changed and the pensionary benefits cannot be extended to him.

The opposite party no.4 had submitted Ex.B1 Form No.9 wherein the name of the complainant has been shown in Sl.No.10 and his age is shown as 55 years, date of eligibility for membership as 29.9.1992 and date of joining FPF as 1.10.1992. It is clear by Ex.B1 that the age of the complainant was 55 years by the date of Ex.B1. Thereafter the complainant had submitted nomination and declaration form stating his age as 40 years and the same was certified by the opposite party no.4. Subsequently, the complainant has submitted an application dated 4.7.1996 that he is aged 45 years and the same was shown by the opposite party no.4 wrongly as 55. The complainant attributed fraud to the clerk of the opposite party no.4 stating that he had obtained the complainant's signature in blank forms and as such the complainant requested to correct his date of birth as 45 basing on Ex.B4 certificate of age issued by Dr.A.Uma, Asst.Surgeon, Govt. Hospital Amudala Valasa. Ex.B4 shows that the doctor examined the complainant and in her opinion the complainant was aged about 45 years as on the date of the examination.

The complainant has submitted Ex.B5 wherein his date of birth was mentioned as 45 years. The complainant was enrolled as member of the employees provident

scheme 1952 w.e.f 29.9.1993. He was allotted PF A/c No.AP/VP/24694/10. The date of birth as recorded in the basic record is valid for all practical purposes and accordingly the complainants age was taken as 10.3.1940 as was submitted by the opposite party no.4. As per the date of birth mentioned in the basic record the complainant is not eligible for pensionary benefits under the employees pension scheme, 1995.

The learned counsel for the opposite parties no.1 to 3 had submitted that there is no provision in the employees pension scheme 1995 to alter the date of birth after its acceptance in employees provident fund organization records. The Employees Pension Scheme 1995 had come into force on 16.11.1995. In order to be eligible for the monthly members pension, any member and the complainant as well should render eligible service of 10 years or more as provided by Sec.12 of the Act. Sec.14 of the Act mandates as follows:

14. Benefits on leaving service before being eligible for monthly members pension.----- (1) if a member has not rendered the eligible service prescribed in paragraph 99) on the date of exit, or on attaining 58 years of age whichever is earlier, he/she shall be entitled to a withdrawal benefit as laid down in Table D or may opt to receive the scheme certificate provided on the date he/she has not attained the 58 years of age.

Relying upon Sec.14 of the Act the learned counsel for the opposite parties no.1 to 3 has submitted that the complainant was not eligible for the benefits under the scheme in view of his age as was mentioned in the basic record. A perusal of the record also show that the opposite party no.4 though mentioned the age of the complainant as 55 years in Ex.B1, he had addressed letter dated 10.6.1996 stating that the age of the complainant was to be rectified by getting it corrected as 45 instead of 50 years. The introduction of employees family pension scheme, it appears that it has made the complainant think to get himself eligible for the benefits by producing a certificate from Asst. Civil Surgeon, Govt. Hospital, Amudala Valasa which, in fact cannot help the case of the complainant in any manner. The complainant could have approached the civil court for rectification of his date of birth and instead he kept quite till the introduction of the family pension

scheme and attributed malafides to his employer the opposite party no.4 who infact has been in hand and glove with him. For all these reasons the appeal deserves to be allowed.

In the result the appeal allowed. Consequently the complaint is dismissed. No costs.

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