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STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC

SUPERIOR COURT

LEO H. TELLIER

:

:

v.

:

C.A. No. 99-1023

:

EMPLOYEES RETIREMENT

:

SYSTEM OF RHODE ISLAND

:

DECISION

DARIGAN, J. Before the Court is an appeal from a decision of the Rhode Island Employees' Retirement Board (Board). Leo H. Tellier (Tellier) seeks reversal of the Board's decision of February 10, 1999, affirming a supplemental decision of a Hearing Officer of the Employees' Retirement System (Hearing Officer) that the appellant is not eligible for a pension from the Employees Retirement System of Rhode Island (Retirement System). Tellier brings the appeal pursuant to G.L. 1956 § 42-35-15. However, G.L. 1956 § 42-35-18(b)(21) excludes from the Administrative Appeals Act (APA) proceedings arising from G.L. 1956 § 45-21-1, et seq., entitled "Retirement of Municipal Employee." Accordingly, this matter, which comes under § 45-21-1 et seq., is not reviewable under the APA.

A declaratory judgment is a method by which a party can petition the court for a declaration of rights, status, and other legal relations when such rights, status, or legal relations are affected by a statute. G.L. 1956 § 9-30-1, et seq.

Pursuant to R.C.P. 1, the courts demand a liberal construction of the rules in order to afford a "just, speedy and inexpensive determination of the action" Sarni v. Meloccaro, 114 R.I. 630, 324 A.2d 648 (R.I. 1974). Thus, this Court will treat the instant matter as a petition for declaratory judgment and

exercise its discretion to render a decision pursuant to the Uniform Declaratory Judgment Act (UDJA). § 9-30-1. In doing so, this Court acknowledges the purpose of the UDJA, this being the termination of controversies. Fireman's Fund Ins. Co. v. E.W. Burman, Inc., 120 R.I. 841, 391 A.2d 99 (1978).

Facts/Travel

Tellier served as a Tax Assessor for the Town of Lincoln, Rhode Island (Lincoln), from December 1, 1980 through July 3, 1987. During that period, Lincoln was not a member of the Municipal Employees' Retirement System (MERS). MERS, which is part of the Retirement System, is created under G.L. § 45-21 et al. to provide an actuarially financed retirement system for municipal employees. Lincoln did not join MERS until July, 1994.

In July, 1993, Tellier commenced employment as a Deputy Tax Assessor for the Town of Cumberland (Cumberland), a participating municipality in MERS. He continued in that position through June 28, 1996.

In December 1994, Tellier, upon learning that Lincoln intended to join MERS, asked town officials to submit his employment records to the Retirement System. Tellier did this in order to facilitate a purchase of service credits for the time he was employed by Lincoln. Tellier also contacted the Retirement System to inform it of his desire to purchase service credits for the time he worked in Lincoln, and to inform it that his Lincoln employment records would be forthcoming.

It was in Tellier's best interest to purchase his service credits before January 1, 1995, because new legislation, which was to become effective on that date, prevented the purchase of more than five years of service credit by a member of the Retirement System. G.L. 1956 § 45-21-16(iv), as amended by P.L. 1994, ch. 139, § 2. Therefore, if Tellier were able to make the purchase before the January 1, 1995 effective date, he could purchase more than five years of service credit. Although Tellier made the

above-mentioned steps to procure his purchase, nothing in the Retirement System files indicated that the Retirement System received or processed any of the paperwork necessary for the purchase.¹

Apparently, after the Retirement System failed to contact Tellier to inform him of the status of his request, Tellier contacted the Retirement System several times between December, 1995 and March, 1996. On April 24, 1996, Joann E. Flaminio, Executive Director of the Retirement System, responded to Tellier with a formal decision of the Retirement System, informing him that he was eligible to purchase only up to five years of service credit for his Lincoln time, pursuant to the January 1, 1995 amendment to § 45-21-16. In the decision, Ms. Flaminio also informed Tellier that pursuant to § 45-21-16(2), a member of MERS must have ten years of contributing service in order to be eligible for pension benefits. Flaminio further stated that any service credit Tellier purchased for his Lincoln time could not count as contributing service.

On April 26, 1996, Tellier timely appealed the decision of the Retirement System. The Retirement System assigned the appeal to a hearing officer, pursuant to G.L. 1956 § 36-8-3. On appeal, Tellier argued that he should have been allowed to purchase more than five years of service credit, because he had attempted to make his purchase of the service credit before the January 1, 1995 effective date of § 45-21-16(2)(iv).

On October 16, 1996, the hearing officer granted Tellier's appeal. In his decision, the hearing officer set out the issues before him as: "(i) whether [Tellier] is eligible to purchase his municipal service time under the old enactment [before January 1, 1995] of [G.L. 1956 § 45-21-16] which does not limit his purchase to five years; and, if so; (ii) under what formula would the purchase credit be based upon."

¹ James Reilly, Assistant Executive Director at the Retirement System, stated that Tellier made efforts to resolve all outstanding matters concerning his purchase of service credits before the January 1, 1995 commencement of the five year purchase limit. See Decision of Hearing Officer, page 3, October 16, 1996.

Decision of Hearing Officer, page 4, October 16, 1996. The hearing officer decided that because Tellier had taken all reasonable action in order to apply for the purchase of service credits under the old law (pre-1995 amendment to § 45-21-16), he was entitled to the benefits of the old law - meaning that he could purchase more than five years of service credit. The hearing officer further found that Tellier was required to purchase the service credit at full actuarial cost or full actuarial value. In the decision, the hearing officer also noted that pursuant to § 45-21-16(2), a member must have ten years of *contributing* service in order to be eligible to receive a retirement allowance.

The hearing officer's decision was not implemented by the Retirement System. According to the Retirement System, there was a disagreement between it and Tellier as to whether the service credits that Tellier was permitted to purchase under the decision could be considered contributing service credits. Tellier alleges that the Retirement System was simply refusing to implement the decision of the hearing officer.

At the request of the Retirement System, the hearing officer scheduled a conference with Tellier and the Retirement System on February 19, 1998, to determine whether the service credits that Tellier was entitled to purchase were considered contributing service credits.

On August 4, 1998, the hearing officer issued a supplemental decision. In the supplemental decision, the hearing officer held that only the years in which a municipal employee had been a contributing member of MERS could be counted towards the ten year vesting requirement. Therefore, the service credits that Tellier could purchase could not be considered contributing service credits. Thus, Tellier, who was not a contributing member of MERS for ten years, was not eligible for retirement benefits.

Tellier appealed the hearing officer's supplemental decision to the full Board. At an appeal hearing held on February 10, 1999, the Board unanimously voted to affirm the supplemental decision of the hearing officer. Purchased time, the Board determined, could not count towards the ten year vesting requirement. Transcript of the Decision of the Retirement Board, page 18. The Retirement Board held that § 45-21-16(b)² "clearly says a member [of MERS] has to have ten years of contributory service." Id. at 19.

On March 1, 1999, Tellier commenced this action in Superior Court. In his "appeal," Tellier argues that the Board is estopped from denying him his pension because the Retirement System did not raise the issue of whether the purchased time was considered contributing time at the appellant's original hearing.

G.L. 1956 § 45-21-16(2)

Section 45-21-16(2) of the General Laws, which was enacted in 1992 by P.L. 1992, ch. 306, art. 3, states:

"(2) Except as specifically provided in §§ 45-21-19 through 45-21-22, no member is eligible for pension benefits under this chapter unless the member has been a contributing member of the employees' retirement system for at least ten (10) years.

(i) Provided, however, a person who has ten (10) years service credit on or before June 16, 1991 is vested.

(ii) Furthermore, any past service credits purchased in accordance with § 45-21-62 are counted towards vesting.

(iii) Any person who becomes a member of the employees' retirement system pursuant to § 45-21-4 shall be considered a contributing member for the purpose of this chapter.

(iv) Notwithstanding any other provision of law, no more than five years of service credit may be purchased by a member of the System.

The five (5)-year limit does not apply to any purchases made prior to

² Although the Retirement Board referred to the relevant statute as § 45-21-16(b), under the 1999 reenactment of the statute, subsection (b) was changed to subsection (2). No substantive changes to the subsection were made.

the effective date of this provision. A member who has purchased more than five (5) years of service credit maximum, before January 1, 1995, shall be permitted to apply the purchases towards the member's service retirement. However, no further purchase will be permitted. Repayment, in accordance with applicable law and regulation, of any contribution previously withdrawn from the System is not deemed a purchase of service credit."

Sections 45-21-19 through 45-21-22, referred to in the first section of § 45-21-16(2), cover retirement for disability, and thus do not apply to Tellier. Likewise, § 45-21-62, referred to in subsection (ii), which provides for the purchase of service credits for employees who were over the age of 60 when they commenced employment, does not apply to Tellier. Furthermore, Tellier did not become a member of MERS pursuant to § 45-21-4; therefore, the exception to the ten year vesting requirement set forth in subsection (iii) does not apply to him. Since Tellier does not qualify for any of the exceptions provided in subsection (2), the language at the beginning of § 45-21-16(2) - "no member is eligible for pension benefits under this chapter unless the member has been a contributing member of the employees' retirement system for at least ten (10) years" - applies to Tellier.

To be considered a "contributing member" of the Retirement System, an employee must be working for a public employer who is a member of the Retirement System, and the employee must be making contemporaneous contributions to the Retirement System. See McGrath v. Rhode Island Retirement Board., Etc., 88 F.3d 12, 14 (1st. Cir. 1996). As stated in McGrath: "It is readily evident that, under [§ 45-21-16(2)], an employee may only count years of actual service for purposes of meeting an applicable ten-year vesting requirement. Thus, purchased credits . . . [cannot] be counted toward vesting[.]" Id.

The record makes clear that the only time Tellier was a contributing member of MERS was during his employment in Cumberland, from 1993 to 1996. Therefore, Tellier did not accumulate ten

years of actual service as a contributing member of MERS. As such, Tellier's purchased time cannot be counted toward vesting in pension benefits.

Estoppel

Tellier argues that the Board should be estopped from raising the contributing time issue at this point because it did not raise the issue at the original hearing.

"The indispensable elements of equitable estoppel, or estoppel *in pais*, are:

'first, an affirmative representation or equivalent conduct on the part of the person against whom the estoppel is claimed which is directed to another for the purpose of inducing the other to act or fail to act in reliance thereon; and secondly, that such representation or conduct in fact did induce the other to act or fail to act to his injury.'"

Providence Teachers Union v. Providence School Board, 689 A.2d 388, 391-92 (R.I. 1997) (quoting Lichtenstein v. Parness, 81 R.I. 135, 138, 99 A.2d 3, 5 (R.I. 1953)).

The "affirmative conduct or equivalent conduct" by the Retirement System, according to Tellier, was the lack of discussion of the contributing time issue at the first hearing. However, as noted in the hearing officer's supplemental decision, the issue of contributing member time was raised at the first hearing, "albeit in a somewhat peripheral fashion near the conclusion of discussions." Supplemental Decision of the Hearing Officer, page 3. Therefore, the issue was preserved by the Retirement System.

Furthermore, in his original decision, the hearing officer stated:

"As of December 31, 1992 a member must have ten (10) years of contributing service in order to be eligible to receive a retirement allowance: See RIGL 45-21-16(b). *To the extent that [Tellier] qualifies under the applicable aforesaid statute*, as a result of the ruling made hereunder, he is required to purchase his service credit at full actuarial cost or full actuarial value as defined under RIGL

45-21-2(8)." (Emphasis added.) Decision of the Hearing Officer, page 6.

The Hearing Officer clearly informed Tellier in the first decision that he must have ten years of contributing service to be eligible for a retirement allowance. Tellier cannot claim to have relied on language in the first decision which induced him to believe he was eligible for pension benefits. Accordingly, the Board is not estopped from raising the issue of contributing time, which was necessarily considered, as an essential part of § 45-21-16(2), during the first hearing.

After a review of the entire record, the Court declares that Tellier is not entitled to retirement benefits pursuant to § 45-21-16, since he has not accumulated ten years of contributing service time. Accordingly, the Court declares the decision of the Board to be correct.

Counsel shall prepare the appropriate order.