

LECTURE SEVEN

SOCIAL SECURITY LAW

1.0 INTRODUCTION

Social Securities trace their origin to the formation of societies. Societies used traditions and norms in providing social security among its members which later developed into modern written laws and regulations on social security.

The earliest social security legislation was enacted in the 16th century in England for the purpose of protecting the poor people. In 1883 the National Health Scheme law was enacted and this was the beginning of the establishment of social security schemes by different countries in the world.

2.0 THE SOCIAL SECURITY PROGRAMMES IN TANZANIA

The history of social security laws in Tanzania dates back to the colonial period when the colonial government provided social security to civil servants.

The Social Security Programmes in Tanzania today have been of diverse nature and they are composed of:-

- a) Pension Schemes
- b) Provident Funds Schemes
- c) Social Security Scheme

All these are public programmes and they differ in various aspects. Below is an analysis of each category.

2.1 The Pension Schemes

The pension schemes aims at assisting an employee after retirement from employment. The truth is that an employee has a pay because he works so when he stops working the earnings fly away. Thus the pension schemes' objectives are to fill the gap which occurs after retirement. There is a difference between pension and a gratuity. The difference between a pension and a gratuity lies in the fact that pension is paid annually while a gratuity is paid in lump sum upon the retirement.

Originally, pension used to be regarded as an old age payment but as time goes pension has been given not only as an old age payment but also in the happening of other events such as suffering an invalidity, becoming sick and failing to continue with employment.

In this area, the laws which are responsible to regulate the pensions include the following:

2.1.1 The Pensions Ordinance, Cap. 371

In Tanzania generally pension schemes began during the colonial times as we have noted earlier. However, the colonial government considered pension not as of right but as a privilege and therefore certain employees were eligible for pensions while others were not eligible at all. The law which used to govern this aspect was the Pensions Ordinance, Cap. 371. Under this law pension is an old age payment to the employees of the

government (civil servants) who were employed in the pensionable offices. This law was repealed and replaced by the Public Service Retirement Benefit Act, 1999.

Due to the changes in the law, the employees who were governed by the Pensions Ordinance were transferred to be governed by the new law. The conditions for entitlement to a benefit under the Public Service Retirement Benefit Act remained the same as those under the Pensions Ordinance but there has been an increase in the number of benefits and there has been many changes in the law to modernise it.

2.1.2 Parastatals Pensions Scheme Act, 1978

This law was enacted during the time when public sector was the leading employer in the economy. It established a scheme for the employees in permanent employments with the public parastatals who held pensionable offices. Thus, the temporary employees as well as the casual employees were not covered by this law. In 2001 this law was heavily amended due to the changes which were being experienced in the country's economy that affected the employment area. There had been changes in economic policies from late 1980's to early 1990's as the country was moving from the planned economy into the free market economy. These new policies insisted on the reduction of the public sector and the increase in the private sector. Thus, during this time one could witness privatisation of the parastatals and this was accompanied with retrenchments and redundancies in a bid to cope with the new forms of ownership and control of the economy. The government was slowly moving from becoming the major employer into becoming a regulator.

2.1.3 The Political Leaders Pensions Act, 1981

This law was passed in order to regulate the pension to be given to the political leaders on retirement from their political positions. In 1986 this law was amended by the Specified State Leaders Retirement Benefits Act, 1986. In short the Political Leaders Pensions Act covered all leaders in general while the Specified State Leaders Retirement Benefits Act, 1986 covered the specified state leaders namely the President, Vice President and The Prime Minister. In effect therefore the Specified State Leaders Retirement Benefits Act took the President, the Vice President and the Prime Minister out of the ambits of the Political Leaders Pensions Act, 1981.

The two legislation continued to operate until 1999 when they were both repealed and replaced by the Political Service Retirement Benefits Act, 1999. This law covers all leaders including the President, Vice President, Prime Minister, Ministers, Deputy Ministers, the Speaker of the National Assembly, Assistant Speaker, Members of Parliament, Regional Commissioners and District Commissioners.

2.2 Provident Fund Schemes

There has been three types of these schemes in Tanzania namely the National Provident Fund Act, 1964, Government Employees Provident Fund, Ordinance, 1942 and Local Government Authorities Provident Fund

Ordinance, Cap.53. The provident schemes were aimed at covering the non pensionable employees and they were named as such because it is the employees who were preparing themselves by saving for the time after retirement. Due to this reason, the provident schemes have been regarded as a wise way of arranging for the future of an employee.

2.2.1 Provident Fund (Government Employees) Ordinance, 1942)

This law established a fund for the benefit of the government employees who were not in pensionable offices under the existing laws.

2.2.2 Provident Fund (Local Authorities) Ordinance, Cap. 53

This law established a fund akin to that under the Government Employees Provident Fund but for the benefit of the employees working under the Local Government in non-pensionable offices under the existing laws.

This law was repealed by the Local Government Service Act, 1982 under s. 16 which established a Fund for the Local Government servants. Later on, the Local Government Service Act, 1982 was amended by The Local Authorities Provident Fund, 2000 and s.16 was repealed. The Local Authorities Provident Fund, 2000 creates a fund for the benefit of the non-pensionable officers and employees of the Local Government.

2.2.3 National Provident Fund Act, 1964

This law covered the employees in the parastatals who were not pensionable together with the employees under other employers who were not the Central Government or the Local Government. This law was repealed by the National Social Security Fund Act, 1997 following this, all the employees under the National Provident Fund Act were transferred to be under the new law.

2.3 National Health Insurance Schemes

There has been health insurance schemes too to cover the employees in respect of their health and the health of their dependants. In Tanzania the law which deals with this aspect is the National Health Insurance Fund Act, 1999. This law establishes a National Health Insurance Fund and provides for the manner of contributing as well as the benefits available to the employees. This law excludes the employees in the local governments, military, prisons, as well as those already covered under the NSSF Act. The reason for such exclusion is that they are already covered by schemes offering the same benefits with this one, offering benefits in the nature of the health insurance.¹

2.4 Social Security Schemes

At international level social security has been defined by International Labour Organisation (ILO) in 1948 as follows:-

“The protection which the society provides for its members through a series of public measures, against the economic and social distress that otherwise would be caused by the stoppage or substantial reduction of earnings resulting from

¹ SS. 21 (g) and 41 of the NSSF Act, 1997

sickness, maternity, employment injury, unemployment, inability, old age and death, the provisions of medical care and the provisions of subsidies for families with children.”²

It can be observed that the ILO definition seems to be narrow because it excludes the largest population on agriculture and informal sector.

It is argued that social security schemes are more important than private insurance schemes because it is the society itself which tries to protect itself internally, through obligatory schemes against the dysfunctional effects of income interruption. However this is done so as to prevent the citizens from being a burden on the rest of society.³

There is also a contention that the social and economic changes increases the need for social security. For instance changes such as mechanisation and automation give rise to the use of less labour and as a result, it gives rise to the less use of labour a result of which creates unemployment, hence a need for social protection.

2.4.1 The National Social Security Fund Act, 1997

In 1997 there was a change from the National provident fund scheme to the National social security scheme. The NPF was therefore replaced by NSSF whereby the NPF Act was repealed and replaced by the NSSF Act. It can be observed that the NPF was created for the dependent workers who had a regular income and employers who could be obliged to pay contributions directly to the social security institutions while the NSSF included the self employed as well, provided that they can contribute the statutory amount.⁴

Factors which led to the replacement

1. Changes in the social economic and political pattern from the mid 1980's to 1990's. This is the time when multiparty system was introduced in the country. It is the time when liberalisation of economy was the main policy. Thus such market oriented policies such as privatisation and promotion of private sector development were becoming popular. These changes brought new aspirations and expectations among Tanzanian working class and society at large. As a result of these the government retrenched part of its workforce. For instance over 10,000 civil servants were retrenched for the year 1995/6 alone.⁵ This caused NPF to pay substantial amount of terminal benefits. These changes necessitated a transformation of

² “Social Security Schemes in English Speaking African Countries,” *Hifadhi News*, Quarterly Journal of NSSF, Vol. 3, June 1999- August 1999

³ Berghman, J. “The Resurgence of Poverty and the Struggle Against Exclusion: A new Challenge for Social Security in Europe?” In *International Social Security Review*, No. 1 of 1997 by International Social Security Association (ISSA), Geneva.

⁴ Boseert, A., *Traditional and Modern Forms of Social Security in Tanzania*, “An Examination of Their Development,” University of Augsburg, 1967

⁵ Ref. NPF Annual Report, 30th June, 1996, Dar es Salaam, p.6

the national provident fund into a social insurance scheme. Therefore the formation of NSSF was inevitable.

2. Fragmentation of Social Security Scheme

This was evidenced by the existence of social security institutions reporting to different parent ministries with different operating policies. For instance, NPF reported to the ministry of finance, and the Local Authorities Provident Fund reported to the prime minister. This fragmentation of social security scheme needed rectification, so as to have a comprehensive national social security policy under which to coordinate all those systems.

3. Poor Institutional Framework

Since 1964 to 1990 benefit processing and payment functions were centralised at the NPF headquarters. This led to inconveniences to its members. In 1991 the system was decentralised leading to 11 paying centres scattered through regional office. But the members accounts were not updated in time due to the use of external computers. This continued even after installation of own computers owing to computer literacy.

4. Failure to meet the ILO standards

The NPF scheme was short of ILO standards for minimum social protection.⁶ The standard which stipulated that, cash benefits should be in the form of periodical payments and not lump sum payments, the duration of which may be limited in respect of medical care and cash benefits for sickness, maternity and employment, but should be throughout the contingency with regards to employment injury, old age, permanent invalidity and survivorship, cash should replace last earnings to a prescribed extent, the state at least should assume general responsibility for the provision of benefits and the representatives of the participants in the scheme as contributors and beneficiaries should be involved in the management of the scheme and associated in an advisory capacity.

5. Other Reasons

Other reasons include the weaknesses of provident funds as a means of providing protection against contingencies. Generally they lacked principles of insurance (risk pooling) and solidarity. The employees are dependent on income from employment, when work is cut off they have to entirely depend on their own contributions, risk are not shared.

Also the fund had a narrow scope of coverage as they cater for employment sector only but with the result of the civil service sector reform, restructuring and privatisation of parastatal organisations and other economic hardships brought by the liberalised economy, the trend is towards more informal sector which calls for a wider social security scheme.

The provident fund system had no mechanism of adjusting the lump sum paid to inflationary trends. There had not been any categorical

⁶ ILO Convention no. 102 of 1952

proposal of indexation of benefits to inflation brought by micro-economic instability and a salary system which is not indexed to inflation.

3.0 MEMBERSHIP INTO SOCIAL SECURITY FUNDS

After this brief description one may now come to a point on the membership to such schemes. Generally, membership in the schemes may be divided into two parts namely:-

- a) Compulsory Membership
- b) Voluntary Membership

3.1 Compulsory Membership

The compulsory membership happens in circumstances where on employment, the employee automatically become a member in a particular scheme. This means the employee is taken to be a member in a scheme merely because of the employment that he secures. In other words the membership in such a scheme is not voluntary but compulsory during the whole tenure of employment. Examples of laws that appears to offer compulsory memberships include the following.

3.1.1 Public Service Retirement Benefits Act, 1999

The Pensions Ordinance was the first law in Tanzania governing pensions and its conditions apparently showed that it was a compulsory scheme to all who were employed in the pensionable offices in the civil service. It was repealed and replaced by the Public Service Retirement Benefits Act, 1999 which has furthered the spirit of the former as being a compulsory scheme. Under Section 5 of this law all employees who have been confirmed in the pensionable offices are regarded as members of this scheme.

3.1.2 Political Service Retirement Benefit Act, 1999

Membership to this scheme is compulsory as well since on appointment to a political post a particular person becomes a member. Under section 4 a leader is defined to mean a person who has ever served or is serving as the president, vice president, prime minister, speaker, minister, deputy minister, deputy speaker, member of parliament, regional commissioner or district commissioner.

3.1.3 National Social Security Fund Act, 1997

Membership to this fund is compulsory to all employees employed in the private sector or in the central government but who are not pensionable or covered by the Parastatals Pension Fund Act, 1978.

3.1.4 National Health Insurance Act, 1999

The membership in this scheme is compulsory to every employee in the Public sector except those exempted as we have seen under the Act.

3.1.5 The Local Authorities Provident Fund, 2000

The membership in this Fund is compulsory to all employees in the Local Authorities and the associated institutions such as the employees in the local government loans board and the employees in this Fund.

3.2 Voluntary Membership

The issue of becoming a member of a Fund or scheme can also be voluntary. This is to say that an employee may choose a fund or a scheme in which to belong. However, this is only possible to employees who are not by virtue of their employment required to be under a particular Fund or Scheme. Some of the voluntary schemes may be found under the following laws:

3.2.1 Parastatals Pensions Scheme, 1978

The period between 1978 to 2001, the membership to this scheme was compulsory and direct only. A person could become a member on being employed into a pensionable permanent office only. However, following the 2001 amendments, it became possible for a person to choose to be a member under this scheme by his own choice. Definition of the word parastatal was taken to include any person who has chosen to become a member. Thus, any person who is not covered by any other scheme may chose to become a member under this scheme.

3.2.1 Local Authorities Provident Fund, Act 2000

Under this law there is a voluntary membership and compulsory membership as well. The compulsory membership is for those employed by the local government as we have seen earlier but again; any person who is not covered by any other scheme may become a member in this scheme.

4.0 SOURCES OF FINANCE

The question of sources of funds for these schemes is very important. This is because the benefits are offered in monetary terms. It should be emphasised also that the Funds are regarded as financial institutions. These institutions are also involved in various projects and investments which needs money.

Thus, the social security funds have various sources of finance to accomplish their tasks. There are those which get their finances from the Consolidated Fund and those which get their finances from the contributions of the members.

4.1 The Schemes Finances from the Consolidated Fund

These schemes have been decreasing in number. The Pensions Ordinance, Cap. 371 created a scheme of this nature but after the repeal and the replacement of the same, the Public Service Retirement Benefits Act has changed the system in which the members contribute to the Public Service Provident Fund.

4.1.1 Political Service Retirement Benefits Act, 1999

By now there is only one scheme which depends on the Consolidated Fund and this is contemplated under the Political Service Retirement Benefits

Act, 1999. However, this is the best scheme in terms of the benefit structure and the amount of the benefits when compared with other schemes.

4.2 The Contributory Schemes

The schemes of this nature are increasing in number as time goes on. It seems that depending on today's lifestyle schemes of this nature are better than non contributory schemes. These Schemes depend on the contributions of both the employer and the employees for their existence. These schemes include those created under the Public Service Pensions Fund, the Government Employees Provident Fund, the Local Authorities Provident Fund, the National Social Security Fund and the National Health Insurance Fund. It is under these schemes that one needs to define clearly the roles of both the employer and those of the employee.

The roles of the employer and employee

In the contributory schemes the roles of an employer are stated to be among *inter-alia* to make sure that their employees are registered under the Funds, to contribute and to remit both their contributions and the contributions of their employees to the Funds. The roles of an employee on the other hand is to contribute to a particular fund in which they are registered. The laws governing these schemes in particular provide for procedures of making the contributions, time for remitting the contributions, amount to be contributed and remitted as well as the penalty to be issued in case of non-adherence to the law or refusal or failure to contribute or to remit the said contributions. Specifically we can look at some of these laws to see how the particular provisions in this respect.

4.2.1 The Public Service Retirement Service Act, 1999

This law establishes a Fund known as Public Service Pensions Fund under provisions of section 31 for the purposes of keeping and managing the the contributions and other moneys obtained under this law. Under section 37 the sources of funds have been identified to include the contributions from the employers and employees, funds available from the investments of the Fund and any amount availed to the Fund by the parliament. This law requires the employers to contribute to the Fund every month. Normally, the employer shall deduct the employee's contribution from the salary of that particular employee and pay the same directly to the Fund. The rate of contribution is 5% of the employee's salary.

It is worthy noting that the employer has three roles under this law. The first role is to deduct the contribution of the employee from the salary of that employee. The second role is to contribute to the fund, in which case he is required to contribute 15% of the salary of the employee. Thirdly, he is required to remit the contributions to the Fund every month without delay.

An employer who gives false statements or false documents intentionally, or who fails to disclose any factor which is important in relation to the contributions to the Fund commits a criminal offence. Also any person who

fails to pay his contributions in time or who prevents the functioning of the officers of the Fund commits a criminal offence as well. An employer who deducts a greater amount from the salary of an employee than that which is required under the law commits a criminal offence. Any person convicted of any of these offences shall be liable to a fine of not more than 100,000/= or to imprisonment of not more than two years or both.

4.2.2 Parastatal Pension Scheme, 1978

The system under this law does not differ much with the one under the Public Service Retirement Benefits Act, 1999. Both the employers and the employees have the duty to contribute to a Fund established under this law known as the Parastatals Pension Fund. As to the amount to be contributed, the law gives the powers to the minister for finance to determine the rate of contributions and publish the same under the government Gazette. Currently, the employers contributions are at the rate of 10% of the employees salary and that of the employees is 5% of their salaries. The employer who fails to remit the contribution commits a criminal offence. Delay in submitting the contributions attracts a penalty of 2.5% of the amount due. The furnishing of false statements or false documents as well as the failure to disclose an important matter for the purposes of avoiding the duty to contribute or in order to prevent another person from contributing amounts to a criminal offence which attracts a fine of 500,000/= or imprisonment of not less than two years or both.

4.2.3 The National Social Security Fund Act, 1997

This law establishes a Fund to be known as the National Social Security Fund under section 3 in which all contributions and other money under this law shall be paid. The employers and employees have a duty to contribute to the Fund every month. The employer in particular has four roles to play under this law.

The first role is to make sure that he together with his employees are registered under the Fund. Secondly, he has the duty of contributing the 10% of his employee's salary to the Fund as required under the law. Thirdly, he has a duty to deduct from the employees salary an amount equal to 10% as employee's contribution to the Fund. Finally, he has the duty to remit his contribution together with the contribution of the employees to the Fund. The employer is required to remit the contributions to the Fund at the end of every month. Delay in remitting the contributions attracts a payment of an additional amount of 5% of the amount due as a penalty for such a delay.

4.2.4 The National Health Insurance Act, 1999

Under this law a fund known as the National Health Insurance Fund is established under section 4. It is in this Fund that all contributions to from the members and the moneys obtained under this law are kept and managed. In section 9 the employers are required to contribute to the Fund a sum equal to 3% of the employee's salary and the employee is as well required to contribute a sum equal to 3% of his salary every month. The law gives the duty of remitting the contributions to the Fund to the

Treasury since the employees covered here are government employees whose salaries are paid by the Treasury.

4.2.5 The Local Authorities Act, 2000

Under the provisions of section 4 of this law a Fund known as the Local Authorities Provident Fund is established. The employees covered by this law are known as the depositors while the employers are known as contributing employers. Generally, the depositors have the duty to deposit a sum equal to 5% of their salaries every month to the Fund. The contributing employers on the other hand have the duty to contribute a sum equal to 15% of the employees salary to the Fund every month. Like in other schemes, the employer is required to deduct the contribution of the employee from the salary of the respective employee every month. He shall then remit the same together with his contribution to the Fund every month. However, it is a crime to furnish a false statement or false document with an intention of evading or reducing the lawful contributions. Failure to keep the important records concerning the contributions and deducting a greater amount than the one required by law is also a criminal offence.

5.0 THE MANAGEMENT OF THE FUNDS

The Funds and schemes established under different laws as we have seen, are managed by the boards established under these laws. These boards have different statuses depending on the nature and status of the particular Fund. There are those with corporate status and some which have no corporate status. It can be seen that where the Fund has the corporate status the board established under such a law does not have the corporate status but where the Fund has no corporate status then the Board has the corporate status.

This is because where the Fund has the corporate status then under its name; it can hold property, it can enter into contracts, it can sue and be sued and it has a common seal and perpetual succession. If the Fund has no corporate status then it can not do all these in its own name and that is why it becomes necessary to have a Board with corporate status and which therefore shall have the duty to hold the property of the Fund, can sue and be sued, and can enter into contracts for the Fund as a trustee.

Generally, many of these funds have no corporate status and therefore they are managed by a board with corporate status. Examples include the boards established under the NSSF Act, LAPF Act, and the PPF Act. The boards with no corporate status include those established under the National Health Insurance Act, Public Service Retirement Benefits Act and Political Service Retirement Benefits Act.

These boards generally have the duty to administer the Funds, to keep the moneys of the Funds, to distribute the benefits obtainable under these Funds, to make and review policies for the funds as well as doing many other things depending on the status of the particular board. The boards have a final say in regard to membership, contributions (where it is contributory), investments, payment of benefits, setting of rates,

establishment of branches, employment of the fund's employees and many other matters concerning the funds.

6.0 BENEFITS AND CONDITIONS

Although benefits are a right of a member of a particular fund or scheme there are many other factors to be considered before they are awarded depending on a particular Fund or Scheme.

Every scheme differs from other schemes in a number of ways in as far as number of the benefits, the amount in respect of a benefit, and the conditions for their realisation are concerned. Briefly, we look at some of these schemes.

6.1 Public Service Retirement Benefits Act, 1999

Under this law, the benefits obtainable include the pension, gratuity, invalidity payments, **Survivorship payments**, sickness and funeral benefits and withdrawal benefits.⁷ The benefits under this law are given as a right to a member and not a privilege.

6.1.1 Pension

Normally, pension is an old age benefit availed to an employee after retirement from employment. Conditions for granting pension under this law are that the member must have retired and the Director General is satisfied that this employee was in a regular employment. Under this law the retirement age is 55 years but an employee may choose to continue working until 60 years which is a compulsory retirement age. To be eligible to pension the retired employee must have been confirmed to the employment as opposed to an employee serving on probationary terms.⁸ The pension will also be paid in cases of abolition of an office, compulsory retirement, suffering an invalidity, and retirement for public interest.⁹

6.1.2 Death Gratuity¹⁰

Where an employee dies while in service, the Board shall give a certain amount of money to his legal representative, which does not exceed either his annual pensionable emoluments or his commuted pension gratuity, if any, whichever is greater. Also in cases where a retired employee dies before receiving his pensions or gratuity, the board shall give a gratuity to the legal representatives.

If the deceased leaves no widow/er and if his parents were dependent on him without any other means, the board shall grant a pension to the parents the amount of which does not exceed that which should have been given to the said widow/er. In cases where the deceased will have left a child or children who were still dependants, the board shall grant a pension in respect of every child until they reach the age of 21. This pension generally does not exceed the amount that would have been available to the widow/er.

Other benefits obtained under this law include:-

⁷ Ss. 6 and 8, PSRB, Act, 1999

⁸ S. 18, *Ibid.*

⁹ S.16, *Ibid*

¹⁰ S.10, *Ibid.*

- Survival's Benefit¹¹
- Sickness benefit¹²
- funeral benefit¹³
- Invalidity Benefit¹⁴
- Withdrawal Benefit¹⁵

6.2 The Parastatal Pension Scheme Act, 1978

This law has provides for pension, gratuity, withdrawal benefits and survivors benefits. Of importance here is the fact that the pensions and other benefits under this law are not given as absolute rights.¹⁶ Thus, where it is established to the satisfaction of the Board that a member has been guilty of negligence, irregularity or misconduct, the pension, gratuity or other benefit may be reduced or altogether withheld. However there have been various proposals that the provisions be changed so that they provide for pension as of right.

6.2.1 Pension

Under this law as we have noted, pension is an old age benefit that doesnot come as an absolute right. Conditions for granting of pension include the attaining of 55 years or retirement on the grounds of sickness, compulsory retirement for the purposes of facilitating investment, removal for public interest, retirement from service with consent of the president and transfer to public service in circumstances in which he is permitted by law or such service to retire on pension or gratuity. Again the member must have been in service on a pensionable office for not less than 10 years. Pension shall be payable every month in arrears and it shall cease on the death of the member.

Payment of pension may cease in total or partially where a member in receipt of pension is employed afresh in a parastatal where the particular member consents. Where a member in receipt of pension is sentenced to imprisonment by a competent court for any offence involving moral turpitude or is detained under the order of the president made under the Preventive Detention Act, 1962.¹⁷ However, in such circumstances the board may may direct all money or any part of it to be paid to the dependants of the member. After imprisonment the board shall be restored to him with effect from the date when it so ceased but the board may deduct any amount paid to the dependants.

6.2.2 Gratuity

This is a lumpsum payment made to an employee on retirement. The conditions for gratuity are just the same as those for granting pension. However there are various circumstances which may entitle a member to

¹¹ S. 11, *Ibid.*

¹² S. 12, *Ibid*

¹³ S.12(2), *Ibid*

¹⁴ S.13

¹⁵

¹⁶ S. 25 Parastatals Pensions Scheme, 1978

¹⁷ S. 32 *Ibid*

gratuity apart from retirement. Thus where an employee does not qualify to pension the board may grant a gratuity.

For instance, where an employee would have been eligible for pension but only that he has not served for 10 years, he may be entitled to a gratuity of not smaller than the total of his contribution to the Fund together with the compound interest of 5% per annum.

Again a gratuity on marriage of female member¹⁸ may be granted in circumstances where she was employed in a pensionable office for a duration not less than 5 years and she decides to retire from public parastatal service in circumstances which does not make her qualified for pension. The amount shall not exceed 1/12 (one twelfth) of her salary per month she worked or one year salary whichever is smaller. To be granted this gratuity, one must produce evidence to the marriage and the board must be so satisfied that the member has been married.

6.2.3 Death gratuity¹⁹

This is a benefit that is given when a member dies in service of public parastatal. It is normally paid to the legal personal representative of the deceased. The amount of this gratuity shall not exceed the annual pensionable emoluments or commuted pension gratuity whichever is greater.

6.2.4 Survivors Benefits²⁰

In cases of the death of a member who had completed not less than 10 years in service of a pensionable office his dependants may be granted a survivors benefit. Such dependants under this law are the husband/wife of the deceased, who shall satisfy the board that he/she was a dependant on the income of the wife/husband, every child of the deceased under 18 years except a child who was married before the occurrence of death, as well as the parents of the deceased who satisfy the board that they were dependants on the deceased's income.

This is an additional to the death gratuity and shall be given to the estate of the deceased. These benefits shall be paid in arrears and shall be paid for a period of not less than 3 years after death. The payments shall cease where the widow remarries, or on the attainment of 18 years.

6.3 Political Service Retirement Benefit Act, 1999

The benefits obtainable under this law include the pension, gratuity, winding up allowance and many other benefits offered to political servants. These benefits differ in terms of application, the post held and the amount to be payable to a particular member. The circumstances under which these benefits are granted include retirement from a political office following the end of a tenure of office, retirement on medical grounds, abolishment of an office as well as death. In this law we shall only discuss the benefits available to the president.

¹⁸S. 35, *Ibid*

¹⁹ S. 39, *Ibid*

²⁰ S. 40, *Ibid*

Benefits to President

On retirement the president is entitled to the following benefits under this law. To begin with he shall be entitled to annual pension that will be payable to him every month at the rate of 80% of the incumbent president. He will also be entitled to a gratuity the amount of which is 50% of the total salaries received when in office as a president. He is also entitled to winding up allowance the amount of which is the total salaries accorded to the incumbent president for 24 months. Other benefits include the diplomatic passport, for him and the spouse, Health insurance for treatment in the United Republic of Tanzania, the service of two vehicles availed to him by the government, a full furnished house with not less than four rooms (self contained) together with the servant quarter. Maintenance allowance for every month the amount of which shall be equal to 80% of the salary of the incumbent president. He shall also be entitled to security services to him and his family, one personal assistant, one personal secretary, office attendant, one cook, one laundry man, one laundry man, domestic servant, one gardener, two drivers and he will also be entitled to use the VIP lounge.²¹

If the president dies while in power or after retirement but before receiving his benefits the dependants shall be entitled to a gratuity the amount of which is equal to the total of all salaries which were received by the president while in power.²² Again where a retired president dies the widow shall be entitled to a pension of 25% of the salary of the incumbent president.

6.4 The Local Authorities Act, 2000

The benefits which are offered under this scheme are of one type which is the total of the amount available in the account at the time of retirement or on attaining the age of retirement or when employment is terminated on medical grounds or abolishment of an office or any other ground. The dependants are entitled to the whole amount available in the account where the employee dies in service.

6.5 The National Health Insurance Act, 1999

The benefits obtainable under this law are known as the health benefits and they are available to a public servant, his spouse as well as his dependant children up to four children. For this benefit to be obtained the employee must have contributed for more than three months. In case of an employee who retires he shall enjoy the benefits for about three months after which the membership shall cease. The benefits include the costs for treatment of a member who becomes sick, the hospital care costs as approved by the Board and drug and medicine costs in accordance with the Essential Drug List except where the Fund grants otherwise. Where the costs in the list is lower than the actual costs the member shall bear the difference.²³ However the law identifies circumstances under which benefits under this law shall not be paid.

²¹ S. 9 *Ibid*

²² S.10, *Ibid*

²³ S. 16, *Ibid*

These include:

- health care services and drugs not prescribed in an accredited health facility
- public health care services
- illness or injuries arising from attempt suicide or self destruction while the person is insane or is of unsound mind
- purchase of eye lenses, wheel chairs or prosthetic appliances
- illegal abortions
- abuses in the use of drugs or alcohol and any illness that may arise from such abuses
- employment injuries or illness arising from occupational hazards or accidents which are compensated under the schemes
- circumcision
- cosmetic surgery.

6.6 The National Social Security Fund Act, 1997

Part V of the Act deals with the benefits. This part spells out the basis of the scheme which is to provide benefit to members. Section 21 in particular gives a summary of benefits. The elaboration of these benefits flows from ss. 22 to 52 of the Act. It can be seen that some schemes would allow as the working time to be 35 to 40 years and the benefit to be based on that criterion.

A close look at the Act reveals that NSSF is a pension scheme although it is termed NSS. The general idea is social security although the three items of the scheme as seen in section 21 are pension. The NSSF aims at taking care of the employee who become a member from the time he get employed, retire and die.

In order to realise any of the category of the benefits accrued certain conditions have to be fulfilled.

6.6.1 Retirement Pension

Retirement pension shall be payable to a person who attained pensionable age and in respect of whom not less than 180 monthly contributions have been paid.²⁴ I.e. 15 years of contribution and 60 years of age. Every pension scheme does have a limitation on the period of maximum pensionable working period. The amount of the monthly retirement pension is 30% of the average monthly earnings of the retiree supplemented by 1.5% of his average monthly earnings for every 12 months of pension insurance addition to 180 months specified in the Act to a maximum of 67.5% of the average earnings. It should be noted that the average earnings is calculated over the best five years in the last ten years prior to pensionable age. This as it can be seen is a tendency to give advantage to the employee. The obvious reason here for this tendency is interwoven in the intention to give the best pension to the retiree. The Act also fixes the minimum monthly pension as being 80% of the minimum age.²⁵

²⁴ *Ibid.* s. 23

²⁵ *Ibid.* s. 24

As far as the period of the currency of the pension, it is provided that the retirement pension payment shall commence from the month following the month in which the retired employee satisfied the retirement age and the 180 monthly contributions and ends with the death of the pensioner.²⁶

Section 26 addresses a situation where a member has attained a retirement age and has retired from employment but he does not qualify for the failure to meet the 180 monthly contributions. Here it is provided that such a member shall be entitled to the payment of a special lump sum. This special lump sum is defined under section 2 to mean an amount equal to the insured person's last monthly contribution times the number of months of contribution paid to the Fund.

In connection to early retirement it is provided that a person who is within five years of the pensionable age has paid contributions for at least 180 months, may claim early retirement pension under 27(1) of the Act. The payment of early retirement pension is not without restrictions. The first restriction is that the amount of early retirement pension is the normal pension under s. 24 but reduced by 0.5% of the monthly average earning.²⁷ The second restriction is that if such amount to be paid after the calculation is lower than the minimum pension under subsection (3) of section 24 then it shall not be paid.²⁸ The aim of these restrictions is to discourage people from early retirement.

6.6.2 Invalidity Pension

Under s. 28 (1) an invalidity pension is payable to an insured person who

- a) is suffering from permanent invalidity,
- b) is under pensionable age,
- c) either-
 - i) has made 180 contributions
 - ii) at least 36 monthly contributions have been paid in respect of him of which twelve or more were paid in the period of 36 months immediately preceding the date of commencement of invalidity.

Permanent invalidity is defined under the subsection (2) of section 28 to mean permanent loss of two thirds or more of the earning capacity because of physical or mental invalidity. As far as s. 28(1)(c) (ii) is concerned, there are two main arguments advanced. First it is argued that this condition is intended to make sure that some consideration must have been paid for the benefit. Second argument is that this condition is intended to encourage people to be contributing. The amount of invalidity pension is 30% of the average monthly earnings of the insured person supplemented by 1% of his average monthly earnings for every twelve months of pension contributions in addition to 180 monthly contributions. If a person qualifies under s.28(1)(C) (ii) can not get supplemented benefits. Under s. 29(2) the monthly rate of invalidity shall be supplemented by 1% of average monthly earnings for every twelve

²⁶ *Ibid.* s. 25

²⁷ *Ibid.* s. 27(2)

²⁸ *Ibid.* s.27 (3)

months between which ever is later of the pensionable age and either the date of entitlement to invalidity pension; or the date of completion of 180 months contributory employment. If for example pensionable age would have been 01/01/2003; and the date of invalidity occurs on 01/01/1990 and date of completion of 180 months of contributory employment was on 01/01/1994. The pensioner can begin to add 1% on the later date of completion of 180 monthly contribution.

The invalidity pension is payable for the duration of a permanent invalidity from one month after the date of invalidity until the attainment of a pensionable age or on the death of the invalid. It should be noted that the payment of invalidity pension will end at the attainment of pensionable age only if at the time the insured person is entitled to retirement pension at the same or higher rate.²⁹ As regards the insured persons suffering from invalidity but has not satisfied the conditions under paragraph (c) of subsection (1) of section 28 a special lump sum is awarded. Sometimes a beneficiary of an invalidity pension may be required to undergo a medical examination failure of which the payment ceases.³⁰

6.6.3 Survivors Pension

The basic condition for an award of this pension is that the deceased would have been entitled to pension himself. This means that if the deceased would have been entitled to an invalidity pension or would have attained a pensionable age and was entitled to retirement pension then the survivors pension shall be payable to his dependants.³¹ If the insured person was in receipt of retirement or invalidity pension, the amount of survivors pension is paid in lump sum equal to the insured person's monthly pension times 12.³² If the insured person did not satisfy conditions specified under s. 33 then his dependants are entitled to a special lump sum payment.³³

Section 34 provides for the breakdown of the amount of survivors pension. This breakdown cuts down across the two types of dependants defined under s.33(2) namely the spouse (widow or widower) and children under the age of 21 years receiving full time education or a child under 18 years. Thus where the widow or widower is accorded 40% of the pension and where there are more than one widow or widower then this amount will be distributed equally among such widows. The dependant children are accorded 60% of the pension which should be distributed equally among them. Where there are no dependant children then the widow or widows are accorded 100% of the pension and likewise if there is no widow the dependant children shall receive 100% of the pension. In the event that there are neither children nor a widow then 100% of the pension is accorded to the parents of the deceased for life. It should be noted that this provision does not prejudice the relevant laws of inheritance and it is

²⁹ NSSF Act, s.30

³⁰ *Ibid.* s.32

³¹ *Ibid.* s.33(1) and (2)

³² *Ibid.* s. 33 proviso

³³ *Ibid.* s. 36

subject to any will of the deceased. Therefore if a person dies without a will then s. 34 will apply.

Duration of the survivors pension is provided for under s. 35. Here it the duration of survivors pension is for life or until remarriage, if at the occurrence of death of the insured person the widow is above 45 years and has dependant children who are below 15 years. Where the widow is below 45 years and has no dependant children below 15 years then the duration is two years. As far as the child is concerned the payment will go on until he attains the age of 18 or until he terminates full time education but not later than the age of twenty one. It may be for life if the child is an invalid.

6.6.4 Retirement and Invalidity grant

This is provided for under s.37 of the Act. Thus where an insured person qualifies for retirement pension or invalid pension he shall be entitled to a lump sum payment before getting monthly payment. This lump sum payment is sometimes called compounded lump sum and sometimes it is called gratuity pension lump sum. The amount of this lump sum payment is equal to 24 times monthly amount of the retirement or invalidity pension.³⁴ Normally the amount paid as lump sum is reduced from the total entitlement thus monthly pension is reduced. Worthy noting is the fact that if the deceased insured person had not received a retirement or invalid pension prior to his death, the dependants of the deceased insured person are entitled to the lump sum payment.

6.6.5 Funeral grant

An insured person who dies is given burial benefits under s. 38. This grant is given as a reimbursement to a family member who incurred expenses for the burial of the deceased insured person. The amount payable is to be determined by the board having regard to general economic conditions. It should be noted that the funeral grant is not claimable except as reimbursement.

6.6.6 Employment Injury Benefit

This is provided for under sections 39 and 40 of the NSSF Act. In regard to this there two issues needs to be addressed:

The first one is whether there is a conflict between NSSF Act and the Workmen's Compensation Ordinance; and the second one is whether one can enjoy benefit both from NSSF Act and Workmen's Compensation Ordinance.

The answer to both issues is negative.

Here unlike the Workmen's Compensation Ordinance, employment injuries include commuting accidents as defined under s. 3 of the Act.³⁵ Also the Act covers accidents occurring to the employee during working hours ant the work place as well as at any other place where the insured person would not have been except for his employment. This provision seems to be wider than the one under the Workmen's Compensation Ordinance. The

³⁴ NSSF Act s. 37(3)

³⁵ Commuting accident means accident occurring to the insured person and involving his employers means of transport.

occupational diseases are also covered where they occur in connection with specific activity in a special occupation or where there are causal relationship to specific agents or exposure. Type and amount of the injury benefits are stipulated under s.40. Thus as regards medical care the amount is what shall be prescribed by the qualified medical practitioner which shall include essential pharmaceuticals or hospitalisation while cash payment is also recoverable in both temporary and permanent disability suffered by the insured person. As far as temporary disability is concerned, cash payment after certification of a medical board on the disability is 60% of the average daily earnings for up to 26 weeks. On the other hand on occurrence of permanent disability, the amount payable after certification by a medical board on the disability, shall be 70% of the average monthly earnings, to be paid monthly throughout the period of the disability.

Differences between invalidity pension and employment injury benefit lies on the fact that invalidity pension is given whether an invalidity is connected with the employment or not while employment injury benefit is given only where the injury is connected with employment.

6.6.7 Health Insurance Benefits

These are benefits provided for under s. 41 as described under s. 42 of the same Act. This kind of benefit become available after the insured person has contributed to the Fund for a minimum of three months before the medical contingency. This benefit is available to the insured person, his or her spouse, and his four children. The medical benefits envisaged here are to be provided by accredited hospitals³⁶ having agreements with the Fund. This covers, preventive and curative care, simple pathology, essential drugs, x-rays, laboratory tests, hospitalisation and minor surgery. The forms and procedures for the payment of these benefits are described by the regulations made by the Minister.

6.6.8 Maternity benefit

This kind of benefit is accorded to an insured person who has made at least thirty six monthly contributions of which twelve contributions are made in the thirty six months prior to date of confinement and upon the receipt of the director general of medical certificate from an accredited medical provider, certifying that the woman expects delivery of a child. Also such a benefit is payable after 3 years from the day when the last payment was made to the insured person unless the child dies within a period of twelve months.³⁷

There are two types of benefits namely cash benefits and medical care. The cash benefit is at the rate of 100% of the average daily earnings for a period of twelve weeks while the medical care is made during pre-natal and post-natal period by an accredited medical practitioner or midwife.³⁸ If prolonged post -natal cares is entertained, that may make the scheme

³⁶ NSSF Act s.43

³⁷ *Ibid.* s. 44 (a), (b),(c)

³⁸ *Ibid.* s.45

unable to meet the risk. Thus the proviso to s. 45(b) limits the prolonged medical care after delivery to only twelve weeks.

NB: -This section apply to both married and unmarried employees
-The provisions of s. 25B of the Employment Ordinance are made inapplicable to employers registered with the Fund.³⁹

7.0 INALIENABILITY AND PROTECTION OF THE BENEFITS

Most of the Schemes discussed here offer benefits which are inalienable. Thus every assignment or charge on benefit and every agreement to assign or charge any benefit is void. Therefore even on bankruptcy of a beneficiary the benefit shall not pass to any trustee or other person acting on behalf of creditors. Under section 77 of the NSSF Act, protection against attachment is clearly stipulated to the extent that on the event of bankruptcy of the insured person his contributions to the Fund shall not form part of his assets except in accordance with the terms of the Fund. The sum standing to the credit of an insured person therefore remains to be the property of the Fund until paid out in accordance with the provisions of the Act. It is for this purpose that in the event of his insolvency or bankruptcy they cannot be liable to attachment in satisfaction of his debts.⁴⁰

The benefits are also protected by giving priority for payment of contributions where there has been an order of attachment issued against the property of employer and a subsequent sale of the same. That the proceeds of the sale shall not be distributed to any person entitled thereto until any amount due in respect of contributions payable by the employer under the Act has been settled.⁴¹

8.0 TIME AND MANNER OF MAKING CLAIMS

Every scheme provides for the time and manner of making claims which must be adhered to by a member of that particular scheme.

Under NSSF Act, 1997

A person entitled to a benefit is required to make a claim to the director general within a prescribed time and in the prescribed manner or in a manner accepted by the director general. He must also produce any necessary document such as certificates, and other evidences for the purpose of determining the right to benefits as the director general may require. He may also be required to attend at such places and at times appointed by the director general.⁴²

³⁹ *Ibid.* s. 46

⁴⁰ *Ibid.* s. 76

⁴¹ *Ibid.* s. 75

⁴² *Ibid.* s. 49