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Court : Tamil Nadu State Consumer Disputes Redressal Commission SCDRC
Chennai

Decided On : Apr-12-2011

Judge : Thiru a.K. Annamalai, M.a., M.L., M.Phil., Presiding Member Judicial
& Tmt. Vasugi Ramanan, M.a., B.L., Member

Appeal No. : F.A.No.666/2008 [Against order in C.C.No.21/2007 on the file of the
DCDRF, Coimbatore]

Appellant : S.A.Saravanan

Respondent : The Management, M/S.Nepc Textiles Ltd., and Another

Judgement :

The Appellant as complainant filed a complaint before the District Forum, Coimbatore, alleging deficiency against the opposite parties to pay a sum of Rs.1,07,696/- towards arrears of amount due to the complainant with interest at 24% from March 2001 till payment, to pay a sum of Rs.3,00,000/- as compensation towards mental agony and torture caused by them to the applicant, and to award cost. The District Forum, allowed the complaint against the 1st opposite party. Against the said order, this appeal is preferred by the complainant, praying to set aside the order of the District Forum, Coimbatore, dated 25.03.08 in O.P.No.21/2007.

This appeal coming before us for hearing finally on 23.03.2011, upon hearing the arguments of the counsel on both sides, and perused the documents, written submissions as well as the order of the District Forum, this Commission made the following order :-

A.K.ANNAMALAI, PRESIDING MEMBER JUDICIAL

1. The complainant is the appellant.
2. The complainant filed a complaint against the opposite parties praying for the direction for the opposite parties to pay a sum of Rs.1,07,696/- towards arrears of amount due to the complainant with interest at 24% from March 2001 till payment, to pay a sum of Rs.3,00,000/- as compensation towards mental agony and torture caused by them to the applicant, and to award cost.
3. The brief details of the complainant case as per the complaint is as follows :-
The complainant was working in the 1st opposite party's NEPC Textiles Ltd, Coimbatore from 7.8.95 to 11.8.03. The 1st opposite party is covered under Employees Provident Fund Scheme. The complainant is also member under the said scheme. His account number is TN/21376/62. The management of the 1st opposite party regularly deducted employees contribution share amount from complainant's monthly salary till his resignation i.e., 11.8.2003. The complainant requested the 1st opposite party to settle his accounts with all benefits. But the 1st opposite party does not come forward to settle the EPF amount, even after deduction of the contribution amount from the complainant salary. The 1st opposite party have not remitted the P.F. contribution amount for the period of September 2001 to August 2003 to the 2nd opposite party.
4. Then on 1.7.04 the 2nd opposite party has sent a letter to the 1st opposite party regarding the claims inform 19 and 10-C of the complainant. In that the 2nd opposite party requested 1st opposite party to attest the enclosed form 19 and 10-C of the complainant and direct them to remit the default EPF contributions for the period from 2001-02 in respect of all the employees. Even after the complainant forwarded the claim application and repeated request made by him the 2nd opposite party has not taken any steps to settle the claim of the complainant

account. The opposite parties have wantonly delayed in payment of the complainants provident fund. In spite of complainants repeated painful request to the 2nd opposite party to initiate necessary actions to collect the contributions from the 1st opposite party, the 2nd opposite party has not taken any legal steps against the 1st opposite party towards collection of the arrears of contributions to the EPF scheme. This is the deficiency in service on the part of 2nd opposite party.

5. Hence on 10.1.06 the complainant has issued a legal notice to the opposite parties to pay him the amounts as stated above. Both the opposite parties have received the notice. But instead of paying the amounts as stated above to the complainant, the 2nd opposite party has given a reply dated 8.2.06 containing false allegations. Therefore the complainant has no other option than to seek redressal before the Honorable Forum.

6. The 2nd opposite party filed its version in which denying the allegations of the complainant and stated that M/s.NEPC Textiles Limited, Kannampalayam, the first Respondent, is a covered establishment under Employees Provident Funds and Miscellaneous Provisions Act 1952 and the Schemes framed there under and allotted with Provident Fund CodeNo.TN/21376. The said complainant has been enrolled as EPF member with effect from 7.8.95 and allotted Provident Fund Account No.TN/21376/62. The First Respondent vide their monthly statement of Employees leaving service in Form 10 for 03/2001 has stated that the said member has resigned his service on 28.2.2001 due to personal and not on 11.8.2003 as stated by the complainant. The 1st respondent has since been a chronic defaulter, statutory inquiry under section 7A of the EPF and MP Act 1952 has been initiated against the establishment and dues assessed from 01/2001 to 07/2005. As per the monthly statement of Employees leaving service i.e. from 10 for 03/2001, the date of leaving service has been furnished as 28.2.01, on personal grounds and no contributions has been remitted and posted in the Form 3-A and Form 6-A for the year 2001-02 onwards. Hence, date of leaving service of the complainant cannot be taken as 11.08.2003. The 1st respondent has remitted the dues in respect of the complainant, till the date of leaving his service i.e. 28.02.2001. Based on claim application in Form 19, the Provident Fund amount

standing to the credit of the complainant has been settled in 09/2004. As such, the amount standing to the credit of the complainant under EPF account (i.e. 15.67% contributions + accrued interest) has been released to him in 09/2004. Regarding pension account, his claim in Form 10-C has been returned to the first respondent, for want of details of break in service and non-contributory period and hence not yet settled. Hence, the complainants statement is not correct. As the date of leaving service has been mentioned as 28.2.2001 by the first respondent and no contributions remitted after 28.2.01 and the complainants name is not furnished in the annual returns i.e. from 3A of the establishment from 3/2011 onwards, the claim of the complainant is incorrect and not to be payable. The first respondent has since been a chronic defaulter, statutory inquiry under section 7A of the EPF and MP Act 1952 has been initiated against the establishment and dues assessed from 01/2001 to 07/2005. The photocopy of claim in Form 19 and 10-C of the complainant, which was not attested by the first Respondent has been returned to the complainant to get the signature of the employer, vide this office letter No.TN/CBE/Accts/Gr.02/21376/2004 dated 10.06.2004. The claim application in original duly attested by the first respondent has been received by this Office on 26.8.04 and settled for a sum of Rs.74,153/- on 2.9.04 vide cheque No.855360 dated 2.9.04 and sent to his bank account. Hence, there is no deficiency in service and the complainants statement is incorrect. Hence, the Provident Fund amount standing to the credit of the complainant as on 31.7.04 was fully released to his Bank account and as such the allegation of the complainant is not true. As the first respondent has stated vide Form 10 and 03/2001 that the date of leaving service of the complainant is 28.2.01 and no further contributions has been recovered and remitted subsequent to 28.2.2001, the amount standing to his credit with back period interest has been settled and released fully. On receipt of form 10-C, benefits under EPS 1995 will be released. Hence this is no deficiency of service.

7. 1st opposite party not appeared before the District Forum and set exparte.

8. On the basis of both sides materials after an enquiry the District Forum allowed the complaint against the 1st opposite party by directing the 1st opposite party to pay Rs.1,07,696/- with interest from 11.8.03 at 12% and Rs.10,000/- as compensation and Rs.1,000/- as cost.

9. Aggrieved by the order of the District Forum the complainant come forward with this appeal in order to make the 2nd opposite party also liable for the lapses and to get relief against the 2nd opposite party also he has come forward with this appeal and among the other grounds of appeal is mainly stressed that the 2nd opposite party failed to take criminal action against the 1st opposite party for non payment of employees contribution amount since the 1st opposite party only obtained stay of recovery amount. The deficiency and negligence on the part of the 2nd opposite party also lead to mental agony to the complainant and to his family members unable to pursue their higher studies.

10. When the appeal is taken up for final hearing before this Commission the 1st opposite party as 1st respondent remained absent even prior to the hearing also remained absent and even before the District Forum the 1st opposite party remained absent and thereby set exparte before the District Forum.

11. On hearing the appellant/complainant and the 2nd opposite party as 2nd respondent in this appeal by their arguments, contentions, and upon the averments on perusal of the District Forum order this Commission is passing the order on merits. It is an admitted case that the complainant was in the employment of 1st opposite party and the 1st opposite party during the period of this employment recovered contributions towards Provident Fund and pension fund and the contribution along with employers contribution were all collected or paid to the 2nd opposite party. It is also not in dispute that the complainant received from the employer 1st opposite party and claimed his dues as contention and Provident Fund amounts from the 1st opposite party through the 2nd opposite party and the 2nd opposite party has forwarded his claim papers to the 1st opposite party regarding the contention of the 2nd opposite party in their written version before the District Forum the complainant was said to have resigned from his job on 28.2.01 and not stated that he resigned on 11.8.03. The 1st opposite party was a chronic defaulter in paying the contribution to the 2nd opposite party an for the period of default from 1.2.2001 to 7.2.2005 necessary action was taken and also they have filed a writ petition before the Honble High Court in 2004 and the 1st opposite party has paid the contributions only up to 28.2.01 and thereby on the basis of the same claim form was received and the accounts were settled and

there was no payment after 28.2.01 and thereby the question of non payment will not arise. On the basis of the calculations regarding the contribution of employees share and EPS share in all for 15.67% in EPF account and 8.33% in EPS account were worked out up to 28.2.01 and thereby as the 1st opposite party not attested the claim form it was returned and there was no deficiency of service on the part of the 2nd opposite party.

12. While considering this contentions the complainant /appellant contended even though the 1st opposite party was in default in payment of the amounts collected from the employees to remit the same with the 2nd opposite party, 2nd opposite party being the controller of the EPF and EPS they have got powers to proceed against the 1st opposite party for the lapses and for non payment of amount to the fund and to take criminal action as well as other actions against the 1st opposite party and in this case the 2nd opposite party failed to take any action against the 1st opposite party in the case of complainant regarding the settlement of dues for the period from 28.2.01 to 11.8.03 and as far as the 2nd opposite party is concerned has stated that they have not received the contributions from the period of 1.3.2001 to August 2003. Hence the claim petition was sent to the 1st opposite party for attestation which was not returned after attestation and thereby since the 1st opposite party was a chronic defaulter and there was also case pending for necessary action against the opposite party and also the writ was pending before the Honble High Court, Madras. The District Forum considered the details of the complaint regarding the 2nd opposite party and in the order in para 10 the District Forum has pointed out that the 2nd opposite party has taken various steps against the 1st opposite party and also filed documents in this regard along with the proof affidavits and also the documents were marked as Exhibit B1 to B33 in which it was clearly established from the documents Exhibits B21 and B22 that the 2nd opposite party has taken necessary steps against 1st opposite party and as per the Exhibit B21 the steps were taken for attachment by sending notice of demand for attachment of properties by the recovery officer of ESI and as per Exhibit B22 the 1st opposite party filed a writ against the 2nd opposite party and others regarding the recovery proceedings taken by the 2nd opposite party in which the Honble High Court directed the 1st opposite party to pay the demand amounts in 10 monthly instalments regarding the dues payable to the 2nd opposite party and

others and in those circumstances the complainants allegations regarding the 2nd opposite party cannot be considered as an acceptable and true one and regarding the criminal action to be taken against the 1st opposite party it is left to discretion of the 2nd opposite party and in view of the directions of the Honble High Court regarding the payment to be made to the 2nd opposite party in instalments which cannot be considered that the 2nd opposite party failed to initiate criminal action at the stage would amount to be proper one and thereby the complainant himself can take criminal action if so desired against the 1st opposite party under the relevant provisions of criminal law and as far as our case is concerned the District Forum has already granted the relief of dues payable to the complainant by the 1st opposite party along with the contributions of the employer in all for Rs.1,07,696/- and the same was ordered to be paid with interest by the 1st opposite party himself and in those circumstances as far as the 2nd opposite party cannot be held liable to pay the amounts from 28.2.01 to 11.8.03 alleged have been paid by the complainant to the 1st opposite party which was not sent to the 2nd opposite party by the 1st opposite party and in those circumstances in view of the considered findings of the District Forum on the basis of the materials placed before it regarding the 2nd opposite party the findings of the District Forum needs no interference by this Commission and thereby this appeal deserves to be dismissed.

13. In the result, the appeal is dismissed, by confirming the order of the District Forum, Coimbatore in O.P.No.21/2007 dated 25.03.08 as against the 2nd opposite party. There will be no order as to cost in this appeal.

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