

Department of Posts, Reptd. by the Chief Postmaster General Vs. K. Ravikumar and Others

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Court : Kerala State Consumer Disputes Redressal Commission SCDRC
Thiruvananthapuram

Decided On : Apr-02-2011

Judge : Honourable Mr. Justice Smt.Valsala Sarangadharan Member &Amp;
Honourable S.Chandramohan Nair Member

Appeal No. : First Appeal No. 504 of 2009 (Arisen out of Order Dated 30/04/2009
in Case No. OP 458 of 99 of District Thiruvananthapuram)

Appellant : Department of Posts, Reptd. by the Chief Postmaster General

Respondent : K. Ravikumar and Others

Judgement :

S. CHANDRAMOHAN NAIR, MEMBER

1. The order dated 30.4.09 of CDRF, Thiruvananthapuram in OP.458/99 is being assailed in this appeal by the third opposite party. As per the impugned order, opposite parties 1 to 3 are jointly and severely liable to pay to the complainant a sum of Rs.25,000/- with cost of Rs.2,000/- within 2 months, failing which the amount shall carry interest at 12% per annum from the date of default till date of payment.

2. The complainant has approached the Forum stating that in response to a newspaper advertisement for the post of Manager in South Indian Federation of Fishermen Societies he had applied for the said post and that the society sent a telegram to the complainant directing him to appear for an interview on 8.5.99. As the complainant was not in receipt of any intimation, he contacted the society and came to know that a telegram was already sent to him on 5.5.98 itself. The complainants case is that when he contacted the Alamcode Post Office, he was informed that no such telegram was received in that Post office and on insisting for the telegram the register was verified and he was told that a telegram was received by them and they had handed over the same on 17.5.99. Alleging deficiency in service in not delivering the telegram on time, the complaint was filed praying for directions to the opposite parties to pay a sum of Rs.2 lakhs as compensation and Rs.50,000/- for the mental agony suffered by the complainant.

3. Resisting the complaint, the opposite parties filed version contending that the complaint is not maintainable before the forum and that they are protected under Section 6 of the Indian Post office Act and Section 9 of the Indian Telegraph Act. Seeking refuse under the said provision, they prayed for dismissal of the complaint.

4. The evidence consisted of the evidence of PW1, the complainant, and Exts. P1 to P7. The opposite parties examined the first and second opposite parties as DW1 and 2. Exts. D1 to D9 were marked on the side of the opposite parties.

5. Heard the appellant and the first respondent. The representative of the appellant vehemently argued before us that the third opposite party/appellant is to be exonerated from the liability and also that the forum below had gone wrong in finding deficiency in service on the part of the opposite parties 1 to 3. It is his very case that the telegram was received on 7.5.99 at 16 hours and the telegram was sent out for delivery to the addressee on the very same day itself through the second opposite party. It is also his case that on 8.5.99, the second opposite party returned the telegram in question as undelivered with the remark enquiry dated 7.5.99 and that on 8.5.99, the telegram was returned undelivered due to the reason that LANGUAGE Hence he argued for the position that it was not due to any fault of the opposite parties 1 to 3 that the telegram could not be delivered to

the complainant.

6. On the other hand, the learned counsel for the first respondent/complainant argued before us that the appellant cannot be absolved from the liability of payment of compensation along with the first and second opposite parties since the appellant is the employer of the first and second opposite parties and it is only the vicarious liability that is fastened on the third opposite party. He has also argued that the first and second opposite parties have not preferred any appeal and the order as against them has become final. It is his further case that when the order as against the first and second opposite parties is not challenged, the third opposite party who is the appellant herein cannot argue on merits. Since, the forum below has found deficiency in service on the part of the first and second opposite parties and has ordered for the compensation which is unchallenged the learned counsel argued for the position that the present appeal is liable to be dismissed with compensatory cost.

7. On hearing the representative of the appellant and the learned counsel for the first respondent and also on perusing the records, we find that the short question to be concerned is whether the third opposite party can be absolved from the liability of payment of the amount along with the first and second opposite parties. We find that the first and second opposite parties who are found deficient in their services have not preferred any appeal and the forum below had found that the opposite parties 1 and 2 had committed willful default and the third opposite party being their employer is vicariously liable for the damages. We find that since the first and second opposite parties have not preferred any appeal, the order as against the third opposite party is also conclusive. The third opposite party/appellant cannot argue the case on merits, since on payment of the amount the appellant being the employer can recover the amount from the first and second opposite parties who are the employees of the appellant. We find no merit in the appeal and the appeal is liable to be dismissed.

In the result, the appeal is dismissed. The order dated 30.4.09 of CDRF, Thiruvananthapuram in CC.458/99 is confirmed. In the facts and circumstances of the present appeal, the parties are directed to suffer their respective costs.

