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Court : Kerala State Consumer Disputes Redressal Commission SCDRC
Thiruvananthapuram

Decided On : Oct-15-2010

Judge : The Honourable Shri. Justice K.R. Udayabhanu President & the
Honourable Shri. S. Chandramohan Nair Member

Appeal No. : First Appeal No. A/09/37 (Arisen out of order dated 29/09/2008 in
Case No. CC 112/2007 of District Wayanad)

Appellant : Krishnankutty

Respondent : The Manager, Eleston Estate, Kalpetta Post and Another

Judgement :

SHRI. S. CHANDRAMOAN NAIR : MEMBER

The order dated:29/9/2008 in CC.112/07 of CDRF, Wayanadu is being assailed in this appeal by the complainant who is aggrieved by the dismissal of the complaint by the Forum below.

2. The complainant has approached the Forum stating that though he had handed over the necessary papers showing his year of birth as 1949 in order to receive Employees Provident Fund Pension under the EPS 1995, the 2nd opposite party had rejected his request on the ground that the papers were submitted after retirement of the complainant. It is his case that his date of birth is 1/6/1949 and not 1/6/1947 and that he understood about the mistake only after retirement. The

further case put forth by the complainant is that though he had produced the extract of admission register issued by the headmaster where he had studied up to the 4th standard, the 1st opposite party did not take necessary steps to forward the same for enabling him to get the Employees Provident Fund Pension. Alleging deficiency of service the complaint was filed praying for directions to the opposite parties to correct the date of birth of the complainant in all the entries and to include him in the Employees Pension Scheme 1995 with a further direction to pay compensation of Rs.50,000/- and cost of the proceedings.

3. The 1st opposite party in his version contended that the year of birth stated by the complainant while joining in his Estate was 1947 and it is recorded in the nomination form executed by the complainant. It was also submitted that the complainant had signed the nomination form and change in the date of birth was brought to his notice only after superannuation of the complainant. The 1st opposite party had further submitted that only an extract of the school register had been produced and no birth certificate was produced by the complainant. Contending that there was no deficiency or lapse on the part of the 1st opposite party he prayed for the dismissal of the complaint with cost.

4. The 2nd opposite party in their version contended that an application for change in the date of birth after retirement of the complainant could not be entertained and it was also stated that in the nomination form the complainants year of birth was 1947. It is their further case that the provisions and existing laws did not permit them to entertain the request of the complainant and hence they also prayed for the dismissal of the complaint.

5. Complainant was examined as PW1 and Exts.A1 to A5 were marked on his side. On the side of the opposite parties the 1st opposite party was examined as OPW1 and the Provident Fund Inspector of the 2nd opposite party was examined as OPW2. Exts.B1 to B3 were marked on the side of the opposite parties. It was based on the said evidence that the Forum below passed the impugned order.

6. Heard the counsel for the appellant/complainant and the respondents/opposite parties.

7. The learned counsel for the appellant vehemently argued before us that the Forum below did not appreciate the facts and circumstances of the case in its correct perspective and the Forum below ought to have allowed the case of the complainant and passed orders accordingly. It is submitted that the year of birth shown in Form No.2 was not known to the complainant since he had studied only up to 4th standard and did not know English. Learned counsel further submitted that the 1st opposite party firm was under lock out for nearly 3 years prior to 2006 and hence the complainant was not in a position to submit papers regarding the correct date of birth before his retirement. It is also argued by her that the correct date of birth was proved by producing the extract of the school register which ought to have been admitted by the Forum below. Thus she advanced the contention that the complaint is to be allowed and an order is to be passed directing the opposite parties to correct the date of birth in all the relevant records and also direct the 2nd opposite party to sanction pension under the Employees Pension Scheme, 1995 with compensation and costs for the deficiency of service of the opposite parties.

8. On the other hand, the learned counsel for the 2nd respondent vehemently opposed the contentions of the counsel for the appellant and submitted that the Forum below was right and just in dismissing the complaint as the complainant did not take any effort to correct the mistake in the date of birth, if any, before his retirement. He has also argued that it is only an after thought after retirement that the complainant came forward with the contention that his date of birth is 1/6/1949 and also that the complainant came to know about it only after retirement. He submitted before us that the nomination form produced as Ext.B1 will show that the year of birth is 1947. It is his further case that even if the complainant did not know English he could understand the translation in Malayalam given in the declaration and nomination form and it was knowing fully well that his year of birth is 1947 that he had signed in the said form. The learned counsel submitted that the complainant had approached the forum without any genuine claims and the forum below had rightly dismissed the complaint.

9. On hearing the learned counsel for the appellant and respondents and also on going through the records produced by them, we find that it is the admitted case of

all the parties that the complainant had come forward with claim for pension under Employees Pension Scheme 1995 scheme only after his retirement. In the cross-examination of the complainant as PW1 he has admitted that he had given the date of birth while joining duty and also on joining the Provident Fund scheme and he has no case that the date of birth was given as 1/6/1949 instead of 1/6/1947. He has also admitted that he has given the complaint only after retirement and receipt of all the benefits consequent to his retirement. It is also admitted that he has not given any option before his retirement for joining in the 1995 scheme. On a perusal of the 1995, Employees Pension Scheme we find that the said scheme was introduced as a beneficial scheme to the employees who were in service at the time of the introduction of that scheme. The complainant has no case that he had applied for joining the scheme after payment of the amounts for joining the same while he was in service. It is also found that the complainant/appellant had thought of changing his date of birth only after his retirement. We are not inclined to accept the case of the complainant that he did not know about his date of birth never before his retirement and receipt of the benefits thereunder. As a sequel to the above it is our irresistible impression that the forum below had rightly dismissed the complaint and we find no cogent grounds to upset the order passed by the Forum below.

In the result the appeal is dismissed. Thereby the order dated:29-09-2008 in CC.112/07 of the CDRF, Wayanadu is confirmed. In the nature and circumstances of the present appeal, the parties are left to bear their own costs.

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