

Destination One Vs. Punit Pal Kaur and Another

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Court : Union Territory Consumer Disputes Redressal Commission UT Chandigarh

Decided On : Nov-15-2007

Judge : K.C. Gupta, President & the Honourable Mr. Maj. Gen. S.P. Kapoor, Member

Appeal No. : Appeal Case No. 547 of 2007

Appellant : Destination One

Respondent : Punit Pal Kaur and Another

Advocate for Def. : Mr. Subhash Ahuja

Judgement :

K.C. Gupta, President:

1. This appeal has been directed by opposite party No.1 against order dated 16.5.2007 passed by Consumer Disputes Redressal Forum-II, U.T. Chandigarh (hereinafter to be referred as District Consumer Forum), whereby complaint of Punit Pal Kaur Guron, respondent No. 1 (complainant) was accepted and the appellant was directed to refund Rs. 75,000 to respondent No.1 along with interest @ 9% p.a. from the date of respective deposits till payment and further to pay Rs. 5,000 as compensation for mental agony and harassment besides Rs. 25,000 as litigation expenses.

2. Briefly stated the facts are that respondent No. 1 (complainant) had taken admission at the institute of appellant and respondent No. 2 M/s. Tehnosys Embedded Systems on 18.7.2005 vide agreement Annexure A-1. According to the said agreement, there was training of six months and after conclusion of the training, appellant was to provide job to respondent No. 1 within 9 months of the signing of the contract, failing which it was liable to refund whole of the amount to her.

3. It was next averred that respondent No.1 completed six months training on 18.1.2006 starting from 18.7.2005 and certificate Annexure R-2 was issued by the appellant but as per terms and conditions of the agreement, appellant failed to provide her job.

4. Alleging deficiency in service, complaint was filed and respondent No. 1 prayed that directions be issued to the appellant as well as respondent No.2 to refund the entire amount which was paid by her during the training besides Rs. 3,000 as costs of litigation.

5. The appellant and respondent No. 2 contested the complaint and filed written replies taking identical pleas. The appellant took preliminary objection that the complaint was not maintainable as it pertained to breach of contract of personal service which was not maintainable. It, however, admitted that respondent No. 1 had taken admission on 18.7.2005 and had executed agreement but asserted that she was offered the job of Firmware Embedded Systems (P) Ltd. and she did not join there and insisted for a job outside Chandigarh and copy of the appointment letter dated 7.5.2006 is Ex. R.1. Later on with their efforts she was called for job in Mascot in December, 2005 but she did not show any interest and the copy of the communication received from Mascot is Ex. R.2. Similarly an offer was made by HCL but she was rejected because of her performance. The appellant further stated that her batch mates had already got good jobs but respondent No. 1 was not sincere in getting job and was interested to get back her money. Therefore, it prayed that there was no deficiency in service and complaint should be dismissed.

6. Parties adduced their evidence by way of affidavits.

7. After hearing Counsel for the parties, District Consumer Forum vide order dated 16.5.2007 accepted the complaint with costs of Rs. 2,500 and made an order as stated in the earlier part of the judgment.

8. Aggrieved by the said order, OP No. 1 has filed the present appeal.

9. We have heard Counsel for appellant Mr. Subhash Ahuja, Counsel for respondent No. 1 Mr. H.K. Arora, Mr. Diwan Sharma, Advocate for respondent No. 2 and carefully gone through the file.

10. It is an admitted fact that respondent No.1(complainant) had joined the institution of appellant as well as respondent No. 2 for getting training and had executed an agreement annexure A-1 dated 18.7.2005. A perusal of Clause-I of the said agreement shows that appellant as well as respondent No. 2 had guaranteed job in a reputed company after conclusion of training of six months in their institution. Clause-11 further provides that in case the appellant as well as respondent No.2 failed to provide job within 9 months of signing the contract, then total amount was to be refunded to respondent No. 1. There is no dispute about it that respondent No. 1 had completed six months training from 18.1.2005 to 18.1.2006. Certificate Annexure R-1 to this effect has been provided by the appellant.

11. The case of respondent No. 1 is that she had approached the appellant several times for getting the job but it failed to provide a job to her and as such she was entitled to refund of the amount of Rs. 75,000.

12. Now the question to be seen is whether appellant had provided job to her or it failed to provide the job. The first appointment letter Annexure R-1 is dated 7.5.2006 while appellant was to provide job to respondent No. 1 till 18.4.2006. According to agreement, appellant had already committed default which made it liable to refund the amount. Annexure R-2 dated nil is not any copy of the appointment letter but it is intimation by Mascot Networks Pvt. Ltd that respondent No. 1 had appeared for interview in Mascot and she had successfully cleared three rounds of interview. It is not mentioned in it that how many rounds were to clear and whether after three rounds she was entitled to appointment or not. Thus,

it is of no use. Annexure R-3 is copy of fax message from other candidates and not from any company. Again Annexure R-4 is not an appointment letter. It is intimated in this message that Info Security Workshop was scheduled for 28.9.2006. Thus, appellant had failed to provide job to respondent No. 1 in terms of the contract dated 18.7.2005.

13. Counsel for appellant next contended that it was contract of personal service and as such it was unenforceable under the contract Act. In our opinion, contention of learned Counsel is not tenable. There could be contract of personal service if there is relationship of master and servant i.e. between the doctor and the employer. In that event service provided by the doctor would be excluded from the purview of Section 2(1)(o) of the Consumer Protection Act. If through agreement Annexure A-1 appellant had guaranteed to provide service to respondent No. 1 after completion of the training i.e. to provide service then it is not case of personal service.

14. Counsel for appellant next contended that affidavit of Ashwani Kumar s/o Sh. Naresh Kumar proved that appointment letter Annexure R-4 was sent to respondent No. 1 by respondent No. 2 through him. Of course Ashwani Kumar stated that he has been serving as peon since June, 2004 and letter Annexure R-1 was sent to respondent No.1 by respondent No.2 through him and he had gone to deliver on 7.5.2006 in the evening at her resident House No. 3335, Sector-46-C, Chandigarh and her father Sh. Sikandar Singh was also present but respondent No. 1 declined to take delivery of the letter by telling her father that she had already got another offer in Chandigarh. This affidavit cannot be believed in view of the certificate Annexure A-8 issued by Vivek Madaan, Sqn Ldr. of Indian Air Force. In the affidavit dated 5.2.2007 respondent No. 1 had stated on oath that her father was a member of the Indian Air Force as a Master Warrant Officer and he was on active duty on 1.5.2006 to 31.5.2006 and he was not granted any leave during the said period. Certificate A-8 to that effect has been issued by Vivek Madaan Sqn. Ldr. which is countersigned by Wing Commodore, commanding officer. Therefore, in view of this certificate the affidavit of Ashwani Kumar cannot be believed.

15. We concur with the reasoning given by the District Consumer Forum and hold that there is no force in the appeal and consequently, it is dismissed.

16. Copies of this order be communicated to the parties, free of charge.

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