

Divisional Controller Vs. Kazi Hamid Ali and Another

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Court : Maharashtra State Consumer Disputes Redressal Commission SCDRC
Nagpur

Decided On : Mar-07-2014

Judge : The Honourable Mrs. Jayshree Yengal, Presiding Member & the
Honourable Mr. S.B. Sawarkar, Member

Appeal No. : First Appeal No. 19 of 2007

Appellant : Divisional Controller

Respondent : Kazi Hamid Ali and Another

Judgement :

S.B. Sawarkar, Member:

1. The present appeal is filed by the original O.P. No.1 now appellant (for brevity called as appellant) against the order of the District Consumer Forum, Akola. The District Consumer Forum, Akola by their order in CC No. 113/2006 dated 12/12/2006 allowed the complaint of the complainant now respondent No.1 against the appellant and respondent No.2. The Forum directed appellant to regularize the pension of the complainant and to pay him compensation of Rs.25,000/- for depriving him of the benefits of his pension. The Forum also directed the appellant- Divisional Controller, to recover the said amount of compensation within 30 days, from Shri Arjun Dabhade, the Divisional Controller by holding him personally responsible. The Forum also directed the respondent

No.2 to provide the arrears of pension from 1/07/2004 at the rate of Rs. 455/- with interest at the rate of 18% till its payments to the respondent No.1 and also to pay Rs.500/- per day to him, if the said amount is not paid in the span of 30 days. Forum further provided that the appellant and respondent No.1 to pay Rs.1500/- each as cost to the respondent No.1 and directed to record the date of judgment to the senior officers of the appellant and respondent No.2 for appropriate order.

2. Aggrieved by the said order, the appellant /original O.P.No.1 filed the appeal only with a prayer to set aside order to pay the compensation of Rs.25,000/- and cost of Rs.1500/- levied on it, which is to be recovered from the Divisional Controller Shri Arjun Dabhade who is held personally liable.

3. The brief facts of the case are that the present respondent No.1 was in the service of appellant as a clerk from 23/06/1971. He retired on 30/06/2004. As he was eligible for getting pension under Pension Scheme, 1995, the appellant prepared his pension papers and sent then original to O.P.No.2 / present respondent No.2-Regional Commissioner Provident Fund Department. However, the Commissioner Provident Fund returned the papers as there was a mistake in the date of birth and efficiency bar certificate.

4. As the pension case was refused for want of proper communication and mistake in the date of birth the respondent No.1 filed a consumer complaint before District Consumer Forum, Akola which was registered as CPA No. 39/2005. The District Consumer Forum passed order on 25/01/2005 against the appellant and approved 1/7/1946 to be the birth date of the respondent No.1 and directed the respondent No.2- Provident Fund Commissioner to start the pension from the month of February-2006. When the above complaint case was being heard the respondent No.1 started getting a pension of Rs.1045/- from the respondent No.2.

5. But again when the respondent No.1/original complainant received the Pension Payment Order (PPO) he found that the released PPO was based on the wrong statement of break in service and pensionable service of 28 years, though the respondent No.1 had rendered 33 years of service and break in his service was of 4 days only.

6. The respondent No.1 therefore, gave notice to appellant No.1 but as the appellant did not give any reply he approached the District Consumer Forum, Akola as above, and filed the complaint that the appellant had sent a break in statement of 1068 days upon which the pension of Rs.1045/- was fixed by respondent No.2. Whereas the respondent No.1 had the break in service of only 4 days. Thus the appellant had wrongly recorded the break in service of 1068 days and had sent the wrong report to respondent No.2 which resulted in the fixing of less pension to the respondent No.1.

7. The respondent No.1 made requests and sent notice to the appellant and raised his grievance. However, the appellant, especially the Divisional Controller Arjun Dabhade, delayed the sending of papers to respondent No.2 which resulted in the wrong calculation in the pension and release of less pension.

8. During the hearing of the above complaint bearing CC No. 113/2006 the appellant and respondent No.2 appeared before the Forum and submitted written version. The appellant submitted that the appellant had sent the report properly to respondent No.2. However, respondent No.2 put the blame on appellant stating that the information was not properly submitted by them. Hence, the proposal was first rejected, and then in second time the pension was not properly, decided based on break in service.

9. The Forum considering the contention raised before it, came to the conclusion that the Divisional Controller did not appropriately prepare the papers of the pension, six months before the retirement and dealt the case in careless manner and communicated wrong date of birth. Therefore, the pension case was rejected. After respondent No.1 filed a complaint before the Forum, the appellant corrected the date of birth but made mistake in forwarding the break in service statement to respondent No.2 which resulted in the less fixation of pension for which the respondent No.1 was again required to approach the Forum by filing second complaint. The Forum found that the appellant dealt the case not only in the careless manner but personally the Divisional Controller- Shir Arjun Dabhade filed wrong and misleading affidavit before the Forum and did not file the appropriate dates expected by the Forum with the intention to mislead the Forum.

10. The Forum therefore, found that there were lot many ambiguities and mistakes in the record of the appellant and the Divisional Controller Shri Arjun Dabhade is personally responsible for delay in sending papers to the respondent No.2.

11. The Divisional Controller filed false information before the Forum of which the Forum took judicial notice. The Forum also considered that the respondent No. 2- Provident Commissioner, dealt the case of the respondent No.1 in a lackadaisical manner and deprived the respondent No.1 of the benefits of the pension.

12. The Forum held that both appellant and respondent were responsible of unpardonable mistakes and delays in fixing the pension and therefore gave the directions as above of compensation to the respondent No.1 from the appellant to be recovered from the personal pay of the Shri Arjun Dabhade, the Divisional Controller.

13. Aggrieved, the Divisional Controller (the appellant) filed appeal before us, when it was being heard on, 13/01/2014 the respondent No.2 filed a pursis informing that the respondent No.2 " Provident Fund Commissioner, complied with the order of the District Consumer Forum dated 12/12/2006 to the extent of the liability fixed on them as per clause Nos. 4(b), 4(c) and 5 of the impugned order. Therefore, the respondent No.2 did not file any written notes of argument. The appellant and the respondent No.1 filed their respective notes of written notes of argument and requested them to treat the same as their oral arguments.

14. The respondent No.1/ original complainant submitted that the order of the Forum is correct, appropriate and the appeal is not tenable because it is not filed by the aggrieved party of the order. The respondent contended that the appellant was only directed to provide the compensation of Rs.25,000/- and cost of Rs.1500/- which was to be recovered from the personal pay of the Divisional Controller- Shri Arjun Dabhade. Hence no cost or compensation was levied against the appellant.

15. The appellant contended that the respondent No.1 was in the service of the appellant and therefore, any grievance between the respondent and the appellant would not fall in the category of the consumer complaint as the appellant is not a

service provider as is envisaged in the Section 2 (i) (0) of the Consumer Protection Act. The appellant in support of its submission relied upon the judgment of the Honble Supreme Court in the case of State of Orissia Vs. Divisional Manager, LIC reported in AIR SC 1996 page 2519 / SCC-1996-8-655, in which the Honble Supreme Court observed that the services rendered by the employer are free of cost and therefore, the employee could not claim relief under the Consumer Protection Act as the same were excluded by the exclusionary clause .

16. The appellant also relied on Madras High Court judgment in case of Indian Bank Vs President District Consumer Forum, in which the Honble High Court observed that the dispute between the employer and employee regarding benefits accrued in service do not fall as a service as defined U/s (2)(i)(0) of the Consumer Protection Act and hence District Consumer Forum had no jurisdiction to entertain the complaint. The appellant therefore submitted that the submission of break in statement of the respondent No.1 submitted to the respondent No.2 by the appellant employer was a service rendered, free of cost. The appellant was just a mediator to forward papers to the respondent No.2 therefore, it was excluded from the purview of the definition of service given under the Consumer Protection Act, 1986 and that the Forum ignored the fact that it had no jurisdiction to decide complaint. The appellant further submitted that though the appellant submitted break in service statement which had discrepancies still the appellant had deposited the full subscription of the respondent No.1 to respondent No.2, of which the respondent No.2 should have taken appropriate note and should have fixed the pension appropriately.

17. The appellant therefore, argued that the Forum had no jurisdiction to decide the issue relating to submission of pension papers by appellant to respondent No.2 as the grievances of the respondent No.1 did not fall in the ambit of consumer dispute under the Consumer Protection Act, 1986. The respondent No.1 was a employee of the appellant and the appellant was rendering the service free of cost to it and was a mediator forwarding the paper to the respondent No.2.

18. Thus we have heard the parties and considered the papers placed before us. In the present case the respondent No.2 filed a pursis along with the orders issued

by them, in pursuance of the directions issued by the Forum below in the impugned order. Thus, the order is appropriately complied with by the respondent No.2/ original O.P. No.2, which also indicates that the respondent has now started receiving the correct pension and has received arrears also.

19. The issue before us is now only of deciding whether the grievances of the respondent against, appellant, fall in the jurisdiction of consumer act and whether the Forum was competent in deciding the complaint against the appellant and levy the fine and compensation upon the appellant.

20. The ratio of the judgment relied by the appellant that the appellant was the employer and mediator rendering the service of forwarding pension papers only. This clearly indicates that this aspect of the service performed by the appellant does not fall in the ambit of the consumer dispute. Though the objection and argument raised as above by the appellant is at the late stage of appeal but still it has a strong base of appropriate decisions of the superior courts. We are therefore inclined to accept the contention of the appellant to that effect only.

21. The respondent No.2 has observed the directions issued by the Forum. The respondent No.1 has received all the arrears and is getting the pension and therefore is not likely to face any loss of his rights.

22. We therefore accept the contention of the appellant and modify the order of the Forum as below.

ORDER

i. The appeal stands allowed.

ii. The impugned order of the Forum dated 12/12/2006 is set aside to the extent it relates to the payment of compensation and cost and in recovery from Shri Arjun Dabhade is concerned that is the direction No 3,4,5 stand deleted related with the appellant.

iii. Rest of the impugned order which is passed against the O.P. No.2/respondent No.2 herein is maintained.

iv. The respondent No.1/original complainant is at liberty to approach the appropriate authority /Court to seek remedy to his grievances against the appellant.

v. The copy of the order be provided to the appellant and respondents.

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