

(2015) 09 BOM CK 0099

In the Bombay High Court

Case No : Writ Petition No. 9868 of 2014

Chandrakant B. Pandharpatte and Others

APPELLANT

Vs

State Consumer Dispute Redressal Commission and Others

RESPONDENT

Date of Decision : 11-09-2015

Acts Referred:

Constitution of India, 1950 — Article 14

Consumer Protection Act, 1986 — Section 10(1)(a)

Citation : (2015) 09 BOM CK 0099

Hon'ble Judges : Abhay Shreeniwas Oka, J; Revati Mohite Dere, J

Bench : Division Bench

Advocate : Ajit Kenjale i/by Rajesh Lachayya Dharap, for the Appellant; V.S. Gokhale, AGP, Advocates for the Respondent

Final Decision : Disposed off

Judgement

Abhay Shreeniwas Oka, J—The Petitioners were the Presidents of the District Consumer Redressal Forum constituted under the Consumer Protection Act, 1986 (for short "the said Act"). The Petitioners completed two terms of five years as the President of a District Consumer Redressal Forum. The grievance in this Writ Petition is as regards the denial of the benefit of leave encashment to the Petitioners. On 10th July, 2015, this Court issued the notice for final disposal. The learned counsel appearing for the Petitioners submitted that the Government Circular dated 8th August, 2007 shows that the provisions of the Maharashtra Civil Services (Leave) Rules, 1981 were applicable to the Presidents of the District Fora. He invited our attention to the contents of the said circular. He also pointed out that the Government Resolution dated 18th March, 2009 shows that the provisions of the Maharashtra Civil Services (Conduct) Rules, 1979, the Maharashtra Civil Services (Discipline and Appeal) Rules, 1979 and the Maharashtra Civil Services (General Conditions of Service) Rules, 1981 are applicable to the posts of the Members and Presidents of the District Fora constituted under the said Act. He pointed out the Government decision dated 15th October, 2007 (Exhibit-C to the Petition) which shows that the benefit of

leave encashment was granted to Shri R.T. Patil, who was the President of the District Consumer Redressal Forum, Akola. The learned counsel appearing for the Petitioners pointed out that the first Petitioner after completion of his first five year's term as the President was granted the benefit of leave encashment under the government decision dated 3rd May, 2008, a copy of which has been annexed to the Petition. The learned counsel pointed out that the first Petitioner was denied the same benefit after completion of his second tenure. He invited our attention to the stand taken by the State Government in letter dated 11th June, 2014 addressed to the Registrar of the Maharashtra State Consumer Redressal Commission. In the said letter, it was contended that the earlier decisions to grant the benefit of leave encashment to the Presidents of the District Fora were wrong. By the said letter, the Registrar of the State Commission was called upon to produce the policy decision taken with the concurrence of the Finance Ministry of the State Government to permit grant of leave encashment. He invited our attention to Karnataka Consumer Protection Rules, 1988 and submitted that the same are more or less similar to the Maharashtra Consumer Protection Rules, 2000 (for short "the Maharashtra Rules"). He invited our attention to a decision of the learned Single Judge of the Karnataka High Court in Writ Petition No. 18766 of 2010 (P.C. Gopal Vs. Secretary to the Government). He urged that the view taken by the Karnataka High Court deserves to be followed.

2. The learned AGP relied upon the affidavit of Shri Uddhav Dattatraya Walunj, the Deputy Secretary, Food, Civil Supplies & Consumer Protection Department of the Government of Maharashtra. He urged that the Maharashtra Rules do not confer such benefit on a President of a District Forum. He urged that in absence of any specific provision for grant of leave encashment in the Rules, the said benefit cannot be given to the Petitioners.

3. We have given careful consideration to the submissions. The Petitioners were the members of the Bar who were appointed as the Presidents of different District Fora. The qualifications for the appointment to the posts of Presidents have been laid down in Section 10(1)(a) of the said Act which provides that the person who is or has been or is qualified to be a District Judge can be appointed as a President. Thus, the Petitioners who were the members of the Bar were qualified to become District Judges and, therefore, were appointed to the post of Presidents of the District Fora. As far as the conditions of service of the Presidents and Members of the District Forum are concerned, the same are governed by Sub-Rules (1) and (2) of Rule 3 of the Maharashtra Rules which read thus :-

"3. Salaries and other allowances and terms and conditions of the president and other members of the District Forum. -(1) The President of the District Forum shall receive the salary at the minimum stage, of the District Judge appointed in the State Judicial Service, if appointed on whole time basis. However, if on a part time basis, i.e. on a sitting basis the President shall be paid Rs. 200 per day as

honorarium. Such of the President who is appointed after selection from the retired District Judges, shall get his pay fixed as per Rule 157(2) of the Maharashtra Civil Services (Pension) Rules, 1982. Deputation allowance in addition to pay and allowances shall be payable to such of the President who is appointed from the cadre of sitting District Judges. The members of the District Forum, if appointed on whole/time basis, shall be paid a consolidated honorarium offers 4,000 per mensem. For attending sittings of the Forum on per sitting basis a sitting fee of Rs. 200 or such amount as the Government may decide, from time to time, shall be paid.

Explanation :-(1) Whenever the President attends the work of the Forum, it shall be treated as a sitting,

(2) When a member is present and attends the work of the Forum like giving dates, admitting cases, etc., it shall be treated as a sitting.

(2) The President and the members of the District Forum shall be entitled for such conveyance allowance and daily allowance, on official tour at such rate, as may be specified by the State Government, from time to time:

Provided that, the members of the District Forum, except the members of the Mumbai District Forum, shall be entitled to conveyance allowance at the rate that Government decides from time to time."

4. It will be necessary to make a reference to the Government circular dated 8th August, 2007 which is a part of Exhibit -B to the Petition. The said Government circular issued by Food, Civil Supplies and Consumer Department of Government of Maharashtra specifically records that the provisions of the Maharashtra Civil Services (Leave) Rules, 1981 are applicable to the Presidents of the District Fora. Moreover, the Government Resolution dated 18th March, 2009 (page 25 of the Petition) issued by the Food, Civil Supplies and Consumer Protection Department of the Government of Maharashtra specifically records that the Chairman of the State Consumer Redressal Commission has been appointed as the Head of the Department for the purposes of the Maharashtra Civil Services (Conduct) Rules, 1979, the Maharashtra Civil Services (Discipline and Appeal) Rules, 1979 and the Maharashtra Civil Services (General Conditions of Service) Rules, 1981. Thus, the provisions of the Service Rules which are applicable to the employees of the State Government have been made applicable to the Presidents of District Fora. The stand taken in the affidavit-in-reply is based only on the Maharashtra Rules.

5. The Maharashtra Rules provide that the President of the District Forum shall receive salary at the minimum stage of the District Judge appointed in the State Judicial Service, if appointed on full time basis and will get fixed remuneration per day if appointed on part-time basis.

6. In the case of State of Rajasthan and another Vs. Senior Higher Secondary School and others (2005) 10 SCC 466, the Apex Court held that the term "salary" includes all allowances. Relying upon the said decision, the Karnataka

High Court held that as the Petitioner before it who was appointed as the President of a District Forum was extended the benefit of monthly salary, he is also entitled to leave encashment. In paragraph 5 of the Karnataka High Court decision it is held thus : -

"5. It is not in dispute that a District Judge appointed as President of the Consumer Forum is entitled for the benefit of leave encashment. There is no justification for denial of this leave encashment benefit to an Advocate who is appointed as President of Consumer Forum. This is nothing but discrimination and violative of Article 14 of Constitution of India. Section 10(1)(A) specifies that an Advocate who is qualified to be appointed as District Judge is eligible to be appointed as President of Consumer Forum. In the circumstances, denial of leave encashment benefit to the petitioner is bad in law."

(underline supplied)

7. Even in the State of Maharashtra, a District Judge who is appointed as a President of a District Forum is entitled to benefit of leave encashment. We agree with the view of the Karnataka High Court.

8. As pointed out earlier, on completion of the first tenure of five years of the first Petitioner, under a Government Resolution dated 3rd May, 2008, the benefit of encashment of earned leave was granted by the State Government. Even to one Shri R.T. Patil, who was also an ex-Chairman, the said benefit was granted under the Government Resolution dated 15th October, 2007. In the affidavit-in-reply of Shri Uddhav Dattatraya Walunj, who is a Deputy Secretary of the concerned department, in paragraph 4, he has stated that it was a mistake of the Government. The stand taken by the Deputy Secretary cannot be accepted. He has not disclosed his authority to take such a stand that an earlier Government Decision was wrong. If it was a mistake of the Government, some higher officer who is empowered to issue the Government Resolution ought to have filed an affidavit. As the Petitioners at the relevant time possessed qualifications to become a District Judge, they were appointed as the Presidents of the District Fora. Once the State Government applies all the relevant Service Rules applicable to its employees to the Presidents of the District Fora, the benefit of leave encashment to the Petitioners cannot be denied. The decision of the State Government denying the benefit of leave encashment of the earned leave to the Petitioners is arbitrary and illegal. Therefore, the Petition must succeed and we pass the following order :-

ORDER

(i) We hold that the Petitioners are entitled to the benefit of leave encashment of the earned leave. Therefore, letter dated 11th June, 2014 has no legal effect;

(ii) We direct the State Government to release the benefit of leave encashment to the Petitioners within a period of three months from today. On failure to release the amounts within a period of three months from today, the same will

carry interest @ 9% per annum from the date of filing of this Petition till the payment of requisite amounts;

(iii) The Petition is disposed of on above terms with no order as to costs.