

(2015) 12 NCDRC CK 0010

In the National Consumer Disputes Redressal Commission

Case No : 3192 of 2013

COMMISSIONER, EMPLOYEES PROVIDENT FUND
ORGANISATION REGIONAL OFFICE

APPELLANT

Vs

LAXMI CHAND JAIN & ANR.

RESPONDENT

Date of Decision : 09-12-2015

Acts Referred:

Employees Provident Funds and Miscellaneous Provisions Act, 1952, Section 7A, Section 7A -
Determination of moneys due from employers

Citation : 2016 1 CPR 246

Hon'ble Judges : Ajit Bharihoke

Advocate : A.P. Sinha, Amit Agarwal, Tejaswita

Judgement

1. The consumer complaints are cryptic and do not detail the facts clearly. The facts as culled out from the record are that in order to develop cooperative movement in the State of Rajasthan particularly in respect of the advancement of loan to the agriculturist as also providing inputs, a three tier system was developed. The highest level was known as apex society, which was Rajasthan State Cooperative Bank. The next tier was at the District level, namely, Bharatpur Central Cooperative Bank and thirdly the Primary Agriculture Cooperative Society (for short, "PACS") at the village level. The above three tiers were governed by Rajasthan Cooperative Societies Act. And the rules framed thereunder.

2. All the complainants of the respective complaints were employed as Manager/ Vyavasthapak at the lowest level i.e. PACS as per the rules framed in the year 1966. In the year 1969 another set of rules was framed, known as Rajasthan Cooperative Society Rules, 1969 and those rules were further replaced by new rules framed in the year 1977 known as Recruitment and Service Conditions of Managers of Agriculture Cooperative Society Rules, 1977 (in short, "Rules of 1977"). Under these Rules, Cooperative Credit Institution Cadre Authority was created and the Managers of PACS were considered to be employees of the cadre

authority.

3. The aforesaid Rules of 1977 were challenged in the High Court of Judicature of Rajasthan at Jodhpur and the Rajasthan High Court vide its order dated 9.5.1991 quashed those rules without clarifying as to whose employees the complainants were.

4. In the year 1997 the petitioner organization issued a notice for recovery under Section 7A of the EPF and M.P.P Act, 1952 to the respondent, namely, M/s Bharatpur Central Cooperative Bank Ltd. Being aggrieved of the notice under Section 7A, the respondent Bank filed writ petition No.4654/1997 before the High Court of Rajasthan. On 24.4.1998 High Court of Rajasthan passed following order: - "Meanwhile the operation of the impugned order dated 27.6.97 Annex.9 to the writ petition passed by respondent No.1 and recover order in pursuant thereto dated 31.3.98 shall remain stayed till further order provided the petitioner deposits Rs.9,00,000/- of the amount determined by respondent No.1 within one month from today. It is made clear that if the petitioner succeeds he will be entitled for refund of the amount with interest at the rate of 10% per annum."

5. The writ petition was ultimately dismissed vide order dated 22 nd September, 2006.

6. On 14.8.2006 the petitioner again issued notice for initiating proceedings under Section 7A of EPF & MP Act, 1952 for recovery of the provident fund and other allied contributions from the respondent bank which culminated into a recovery notice for recovery of Rs.1,60,26,011/- from the respondent bank against the contribution for each of the respective employees which included the complainants. The said amount was ultimately recovered by the provident fund organization in June, 2009. Thereafter, the respondent bank allegedly filed the annual return i.e. contribution of each member in the provident fund and on receiving the details of contribution as also form for settlement of pension, the pension orders were issued in February, 2012.

7. The respective complainants being aggrieved of non-release of their pension filed a consumer complaint in the District Forum, Bahraich in the year 2008-09 alleging that on account of failure of the petitioner to implement the provisions of EPF & MP Act, 1952 the complainants have deprived of their old age pension as also the provident fund amount. Thus they prayed for compensation of Rs.50,000/- for financial loss and mental trauma besides Rs.5,000/- compensation in their respective complaints.

8. The petitioner organization in reply to the consumer complaint took the plea that there was no negligence or slackness on the part of the petitioner organization to initiate the proceedings for recovery of the provident fund contributions of the complainants. The delay has actually been caused because of the filing of the writ petition by the respondent bank and the stay order granted by the High Court. Thus, it was pleaded that there was no negligence on the part

of the petitioner/opposite party.

9. Respondent bank also resisted the complaint.

10. The District Forum, Bharatpur vide its orders allowed the complaints taking note of the fact that after the dismissal of the writ petition filed by the respondent bank, by the High Court in the year 2008 the petitioner organization had recovered a sum of Rs.1,60,26,011/- from the respondent bank by initiating proceedings under Section 7A of the EPF & MP Act, 1952 in June, 2009. The District Forum directed the petitioner organization to pay penal interest @ 12% for the period w.e.f. 1.6.2008 till the date when actual payment of premium was made to the respective complainants.

11. Being aggrieved of the respective orders of the District Forum, the petitioner filed appeals in the State Commission, Rajasthan and the State Commission, Rajasthan vide its order dated 19.10.2012 dismissed the appeals. The revision petitions were filed against the order passed in the appeals and since the order of the State Commission was non-speaking order, it was set aside and the matter was remanded back to the State Commission for deciding the appeals on merits after due reference to the facts and the grounds raised in the appeals. Even in the second round the State Commission in utter disregard of the directions of the National Commission, again passed a similar non-speaking order and dismissed the appeals with cost of Rs.10,000/- each. The said orders have given rise to these revision petitions.

12. Learned Shri A.P. Sinha, Advocate for the petitioner has contended that the impugned orders of the State Commission are non-speaking orders, which amounts to violation of principle of natural justice and, therefore, the orders are liable to be set aside. I find merit in this plea of the counsel for the petitioner. Despite of the order dated 16.5.2013 the State Commission has again passed a non-speaking order, which cannot be sustained. Ordinarily I would have remanded the matter back to the State Commission with the direction to decide the appeals on merits but taking note of the fact that these revision petitions originated from the complaints filed in the year 2008-2009, I do not deem it appropriate to remand the matter back, as it would cause further delay and harassment to the parties. I have then heard the parties on merit.

13. Learned counsel for the petitioner has contended that the order of the District Forum which has been confirmed by a non-speaking order, is not sustainable for the reason that the District Forum has failed to appreciate that the delay in release of pension cannot be attributed to the petitioner organization as the petitioner was prevented to release the pension firstly because there was a stay order from the High Court, Rajasthan in the writ petition filed by the respondent bank and secondly that even after the dismissal of writ petition and vacation of stay order, the pension forms duly certified by the employer were not submitted. It is contended that the requisite declaration forms for release of pension were submitted in the year 2010 and the pension was released within

approximately 30 days. In support of this contention, learned counsel has referred to Section 17A of the Employees' Pension Scheme, 1955 which is applicable to all the employees covered under EPF & MP Act, 1952.

14. I do not find merit in the above contention firstly because the plea has been raised for the first time at the revision stage. The above-said plea of learned counsel for the petitioner appears to be an afterthought because no such plea was taken by the petitioner/opposite party in its written statement filed in response to the consumer complaint. Otherwise also the stand of the petitioner/opposite party is that pursuant to the proceedings initiated under Section 7A of EPF & MP Act, 1952, a sum of Rs.1,60,26,011/- was recovered from the respondent bank towards the contribution in respect of the employees, namely, the respondents/complainants for the period w.e.f. March, 1995 to March, 2005. It is obvious that to arrive at a figure of contribution to be paid by the bank the provident fund department must have calculated the respective contributions which were required to be deposited by the respondent bank month by month, meaning thereby that at the time of recovery of said amount the petitioner organization was aware of the respective contributions in respect of the complainants.

15. Section 16A of Employees Pension Scheme, 1995 provides thus: - [16A Guarantee of pensionary benefits.- None of the pensionary benefits under this Scheme shall be denied to any member or beneficiary for want of compliance of the requirements by the employer under sub-paragraph (1) of paragraph 3 provided, however, that the employer shall not be absolved of his liabilities under the Scheme.]

16. On reading of the above, it is clear that pensionary benefits to an employee cannot be denied for want of compliance by the employer. Despite that even after recovering the complainants' contribution pursuant to proceedings initiated under Section 17A, the petitioner organization did not show any urgency for the release of pension to the respondents in the respective revision petitions and slept over the matter till December, 2011, which amounts to gross negligence particularly when the respondents have already filed consumer complaints. The least expected of the petitioner was that they after the recovery of the amount under Section 17A the petitioner should at least have informed the District Forum and the respondents that they may submit pension declare forms through the employer. The petitioner did not bother to take such steps, which also amounts to deficiency in service. Thus, finding of District Forum holding the petitioner to be deficient in service cannot be faulted.

17. Learned Shri A.P. Sinha, Advocate has contended that even if it is held that there was negligence on the part of the petitioner organization in releasing the pension, then also the District forum order is not sustainable for the reason that the District Forum has awarded penal interest @ 12% p.a. on the delayed payment ignoring the fact that relief claimed by respective respondents was for damages of Rs.50,000/- only. It is argued that it is well settled that a judicial

Fora is not empowered to grant relief more than what is claimed by the complainants. There is merit in this contention. Therefore, the revision petitions are partly allowed and the impugned orders of the District Forum are modified to the extent that the petitioner shall pay to the respective complainants/respondents the compensation of Rs.50,000/- each for the delay in release of their pension because of negligence on the part of the petitioner organization, besides litigation cost of Rs.10,000/- in each case.

18. Revision petitions are disposed of accordingly.

19. A copy of this order be placed in file of each case.