(2007) 04 NCDRC CK 0011

In the National Consumer Disputes Redressal Commission

EMPLOYEES PROVIDENT FUND ORGANIZATION — APPELLANT

Vs

NARINDER SINGH — RESPONDENT

Date of Decision : 30-04-2007

Acts Referred:

Citation : 2008 1 CPJ 7

Hon'ble Judges : G.D.Sharma , Khalid Hussain J.

Final Decision : Appeal dismissed

Judgement

1. ORDER dated 10. 1. 2006 passed by the learned Divisional Forum, Jammu (hereinafter to be referred to as the Forum) has been taken in appeal by the appellant. There is a delay of 39 days in filing the appeal. Application has been made for the condonation of delay on the sole ground that delay was not intentional but caused on account of impersonal machinery and inherited bureautic methodology imbued with note-making, file pushing and passing on the buck ethos. At the outset, Mr. Karan Veer Singh Advocate for the non-applicant/respondent has submitted that a large number of depositors who had been working in factories and other establishments and business to which, the Jandk Employees Provident Fund Act, 1961 applies or is applied under Sub-section (3) or Sub-section (4) of Section 1 or Section 4 thereof including the employees of the respondent''s Department (JDA) had become depositors under the Employees Provident Fund Scheme, 1961 and like the respondent herein some of them also have been denied the incomes accrued by way of interest on their hard earned deposits. He is projecting that such lawful unpaid dues run into crores of rupees. When substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred for the other side cannot claim to have vested right in injustice being done because of a non-deliberate delay. Hence, application is accepted and delay in filing the appeal is condoned. Brief facts of the case are that respondent who is a Khilafwarzi Offier in Jandk Development Authority before October 1996; along with other employees of that Department who were holding their respective posts which were non-pensionable and under law were governed by provisions of the Jandk

Employees Provident Act of 1961 and the Employees Provident Fund Scheme, 1961 (hereinafter to be referred to as the scheme). In the month of October 1996, the service of the employees of Jammu Development Authority (hereinafter to be referred as JDA) were made pensionable and thereafter they ceased to be governed by the scheme. Respondent had been allotted C. P. Fund Account No. : JK/j/257/135 and till October 1996; he had contributed his share of the contributions to the tune of Rs. 29,823 whereas, employer (State through JDA) had contributed their share to the extent of Rs. 26,845. The case of the respondent is that the appellant transferred the C. P. Fund Accounts of only those employees who had access with the latter and that respondent''s C. P. Fund Account was not transferred despite the fact that he had made many requests at different times but they had fallen flat into the deaf ears. Finally, on 13. 6. 2005, the appellant transferred his amount of the C. P. fund account number which had a credit of accumulated amount of Rs. 56,665 which was the same as in the month of October 1996. According to him, he has suffered a loss of Rs. 35,000 because that would have been his income by way of earnings of interest on Rs. 56,665 from October 1996 to 13. 6. 2005. The Forum had directed the appellant to calculate the interest on the amount of Rs. 56,665 w. e. f. October 1996 to June 2005 and pay the same in the manner in which payments have been made to other similarly situated employees.

2. IN its objections to the complaint; the appellant herein had pleaded before the Forum that respondent had failed to submit a duly filled form in the office of the appellant for the transfer of his Contributory Provident Fund account into GPF account and at such an indolent conduct of the respondent, the appellant had to act suo motu and accordingly on 8. 6. 2005, an amount of Rs. 56,665 was transferred under refund No. 43-737. It was emphatically pleaded that after the issuance of SRO 23 dated 1. 2. 2005; the respondent herein is not entitled to the payment of any interest beyond three years from the date of ceasing of the subscription. Heard the arguments.

Miss Anita Tickoo, the learned Counsel appearing for the appellant has contended that impugned order is bad in the eyes of law because in the presence of SRO 23 dated 1. 2. 2005 no direction could be given to the appellant to calculate and pay interest on Rs. 56,668 (actual Rs. 56,665) w. e. f. October 1996 to June 2005. The argument has been rebutted by the opposite side on the plea that retention of the deposited amount beyond three years period in terms of SRO 23 amounts to deficiency in service because it is the statutory duty of the appellant to transfer every amount of a depositor after the cease of his subscription. That respondent herein had approached the appellant many a times but every time his request was being turned down for ulterior motives. That the appellant after October 1996 till June 2005 had misused the amounts in question for his personal benefit and like the respondent there are many other unfortunate depositors under the scheme who too have been denied their due shares on the earnings of the interest on respective deposits. For the determination of the controversy in question, we reproduce para 59 of the scheme which deals with interest and it reads: " (1) The Commissioner shall credit to the account of each member interest at such rate as may be determined by the Government in consultation with the Board. (2) Interest for the period of currency of the card shall be credited with effect from the last day of the period on the opening balance at the credit of the member on the first day thereof: (Provided that when the amount standing to the credit of the member becomes payable, interest thereon shall be credited under the sub-para up to the end of the month preceding the date of retirement/tender of the payment): (Provided further that the payment of interest shall be restricted to three years from the date of ceasing of the subscription): provided further that the rate of interest to be allowed on claims for refund for the broken currency period shall be the rate fixed for the financial year in which the refund becomes payable. (3) The aggregate amount of interest credited to the accounts of the members shall be debited to "intererst Suspense Account". (4) In determining the rate of interest, the Government shall satisfy itself that there is no overdrawal on the interest suspense account as a result of the debit thereto of the interest credited to the account of members. "

3. MISS Anita Tickoo, Advocate is urging to absolve the appellant from the liability of paying the interest beyond three years from the ceasing of contributions by placing reliance on SRO 23 dated 1. 2. 2005. It has to be borne in mind that the said SRO which has been incorporated in 2nd proviso of Sub-para (2) of above stated para 59 was issued on 1. 2. 2005 whereas, the ceasing of contributions towards the fund started from October 1996. The said SRO 23 has not been made applicable retrospectively. In the absence of any express intention its operation has always to be deemed prospectively. The adjustment of the accumulated contributions i. e. , Rs. 56,665 was made in the month of June 2005. Para 52 of the scheme deals with investment of money belonging to Jammu and Kashmir Employees Provident Fund and it says that all money shall be deposited in the Jammu and Kashmir Bank or any such other Scheduled Banks as may be approved by the Government from time-to-time or shall be invested, subject to such directions as the Government may from time-to-time give in the securities mentioned or referred to in Clauses (a) to (c) of Section 20 of the Trusts Act of Svt. 1977. All expenses incurred in respect of and loss, if any arising from any investment shall be charged to the fund. Para 39 of the scheme deals with fixation of administrative charges. Para 38 deals with mode of payment of contributions. The Apex Court in the case of Regional Provident Fund Commissioner v. Shiv Kumar Joshi, III (1999) CPJ 36 (SC)=x (1999) SLT 395= (2000) 1 SCC 98, has laid down that an employee member of the scheme is a "consumer" and the duty performed by the Regional Provident Fund Commissioner under the scheme is "service". Member employee avails of services of Employees Provident Fund Commissioner under the scheme for "consideration" payment of administrative charges along with the member employee''s contribution by employer under para 30 of the scheme therein and under paras 38 and 39 herein amounts to payment of "consideration" of the

employee, irrespective of whether such charges are actually deducted from the wages of the employee or paid by the employer in respect of such employee. The Commissioner under the Act herein and the scheme discharges statutory functions for running the scheme. It has not in any way been delegated with the sovereign powers of the State so as to hold it as State Government being not the authority rendering the "service" under the Act. The Commissioner is a separate and distinct entity. It cannot legally claim that the facilities provided by the "scheme" were not "service" or that the benefit under the scheme being provided were free of charge. The definition of "consumer" under the Act includes not only the person who hires the "services" for consideration but also the beneficiary, for whose benefit such services are hired. A perusal of the scheme clearly and unambiguously indicates that it is a "service" within the meaning of Section 2 (1) (o) and the member a "consumer" within the meaning of Section 2 (1) (d) of the Act. Be that as it may, a perusal of para 54 of the scheme makes it clear that all expenses relating to the administration of the fund shall be met from the fund. Para 74 inter alia provides that in case of mass retrenchment, the payment of the accumulations in the funds shall be made immediately and in case of individual retrenchement payment shall be made if the member has not been employed in any factory or other establishment. It also provides that in the event of a member becoming entitled to subscribe to the G. P. Fund his accumulations in the C. P. Fund shall be transferred to his G. P. Fund account. Para 77 of the scheme prescribes that when the amount standing to the credit of a member or the balance thereof after any deductions under paragraphs 74 and 76 becomes payable, it shall be the duty of the Commissioner to make prompt payment as provided in this scheme. He shall close the account of the member and give notice in writing to the person to whom the amount is payable specifying the amount and tendering payment thereof. From the above made discussion it is held with no manner of doubt that the Commissioner under the scheme has acted in an arbitrary and despotic manner and unauthorisedly is with-holding the accumulated contributions of the respondent "consumer" from October 1996 to June 2005. He has given a go-by to the directions contained in paragraphs 74, 76 and 77 of the scheme as indicated above and rendered himself liable to explain his conduct to his superiors under the Act and the scheme. We, therefore, find no force in this appeal which is dismissed. It is accordingly held that the appellant shall within two months from today, make the payment of the interest from October 1996 to June 2005 at the permissible rate of interest as envisaged under paragraph 59 of the scheme. After June 2005 till final realisation the rate of interest shall be 9% per annum. The liability of the appellant Commissioner and the State shall be joint and several. Since it is found that there is flagrant violations of the mandates to paragraphs 74, 76 and 77 of the scheme so it also becomes doubtful whether investment of the money was also made according to the spirit of paragraph 52 of the scheme or not. As per the spirit of the scheme, the deposit of Rs. 56,665 should also have earned interest from October 1996 to June 2005 when it was repaid. In case, the interest has been misappropriated then there is the commission of cognizable offence of criminal breach of trust as defined under RPC. Prima facie, it looks to be a case of mis-conduct of the concerned public servant and it requires inquiry so that truth may come out. In this view of the matter, when there is found gross inculpable deficiency in rendering "service" to "consumer" we while dismissing the appeal impose composite costs of litigation and damages to the tune of rupees thirty thousands payable by the appellant and the State jointly and severally and also order holding of administrative inquiry by the Government to find out the delinquent hand and ultimately recover the amount of payable interest and costs from his earnings. A copy of the order be sent to the Chief Secretary of the Government of Jandk State, at Srinagar for necessary action. Appeal dismissed.