

(2011) 09 NCDRC CK 0079

In the National Consumer Disputes Redressal Commission

Jagannatha N.Suvarna

APPELLANT

Vs

MANAGING DIRECTOR

RESPONDENT

Date of Decision : 06-09-2011

Acts Referred:

Citation : 2011 0 NCDRC 589 : 2011 4 CPJ 189 : 2011 4 CPR 232

Hon'ble Judges : V.B.Gupta , Suresh Chandra J.

Final Decision : Appeal dismissed

Judgement

1. CHALLENGE in this revision petition is to order dated 11.1.2010 passed by the Karnataka State Consumer Disputes Redressal Commission, Bangalore ("State Commission" for short) dismissing the appeal of the petitioner against the order of the District Forum, Udupi in complaint no.72/2009. Petitioner herein is the complainant and respondent is the opposite party.

2. BRIEFLY stated, the case of the petitioner is that he was working as a Manager in the Malpe Branch of Dakshina Kannada and Udupi District Cooperative Fish Marketing Federation Ltd. for the period 2000-2007. Earlier to that, he was working in the Hejamady and Hangarkatta Branches of the respondent Federation. He retired on 30.6.2007 after serving in various capacities in the respondent organization for more than 29 years. According to him, retiral benefits amounting to Rs.4,77,075/- were due to him from the respondent organization. The said amount also included provident fund contributed by the petitioner. According to him, a false allegation was made by the respondent / opposite party against him that he had caused loss to the Federation but the respondent did not explain about the loss alleged to have been caused by him to the Federation. According to him, the allegations made against him were baseless. Even then, when the respondent forfeited his retiral benefits without releasing the same to him on his retirement in spite of repeated requests, the petitioner issued a legal notice dated 15.11.2008 and having failed to get a favourable response from the respondent, filed a consumer complaint before the District Forum against the OP Federation. The OP Federation contested the case

by filing its version. After considering the evidence, the complaint filed by the petitioner came to be dismissed by the District Forum. Aggrieved by the order of the District Forum dismissing his complaint, the petitioner filed an appeal which also was dismissed by the State Commission vide its impugned order and hence the present revision petition. We have heard counsel for the petitioner. He has contended that the provident fund and retiral benefits of the petitioner cannot be forfeited by the employers, i.e., the respondent organization since there was no domestic enquiry. He further submitted that the plea taken by the OP Federation regarding the consent of the petitioner cannot be the basis for withholding his retiral benefits because the signatures of the petitioner were taken forcibly by the OP Federation and hence such a consent was not valid. In support of his submissions, learned counsel has relied on the judgements of this Commission in the case of UCO Bank Vs. K.L. Kapoor [IV (2010) CPJ 261 (NC)] and Punjab National Bank Vs. Sunil Kumar Poddar & Anr. [IV (2008) CPJ 58 (NC)]. Winding up his arguments, learned counsel submitted that in view of the fact that there is legal protection against attachment of amount standing to the credit of the employee in the employee provident fund and also the fact that signatures on the consent paper of the petitioner were taken forcibly, the adjustment of the retiral benefits of the petitioner by the OP Federation cannot be sustained in the eye of law and hence the orders of the fora below are liable to be set aside and complaint of the petitioner deserves to be accepted.

We have carefully considered the submissions made by learned counsel and have also gone through the two judgements referred to by him in support of his arguments. So far as the question of adjustment of the sum of Rs.4,77,075/- due to the petitioner by way of retirement benefits out of the total amount of Rs.8,10,397/- outstanding from him is concerned, it is the defence of the OP Federation that the petitioner himself had agreed and given consent for such adjustment and accordingly he had also been given a demand notice for payment of the balance amount of Rs.3,23,322/- to be paid on or before 9.6.2008. It is further seen that the petitioner had also given a cheque for this balance amount to the OP Federation with the understanding that in case he fails to deposit the balance amount before the specified date of 9.6.2008, the OP Federation could sent the cheque issued by the petitioner for collection. This aspect has been carefully examined in the light of the documents and other evidence by the District Forum and its finding has been upheld by the State Commission. In other words, there is a concurrent finding of facts in this regard against the petitioner returned by both the fora below. The State Commission while dismissing the appeal of the petitioner and upholding the order of the District Forum unsuited the claim of the complainant has made the following observations in the impugned order:- "It has also been clearly observed that the cheques issued by the appellant/complainant in a sum of Rs.3,33,322/- and the same was dishonored on 6.10.2008. Therefore, the respondent got issued a legal notice dated 22.10.2008 under Section 128 of the Negotiable Instrument Act. Since the appellant/complainant has agreed and give consent to adjust the sum of

Rs.4,77,075/- out of Rs.8,10,397/- so the remaining amount of Rs.3,33,322/- was demanded to be paid on or before 9.6.2008 and failure to do so, the cheque issued by the complainant will be sent for collection. This shows the appellant/complainant has not approached the District Forum with clean hands. Therefore, considering the facts and circumstances, we are of the firm opinion that the District Forum has passed the impugned order after thorough appreciation of the evidence placed on record by the parties."

3. IT would be seen from the above that the plea of forcible signatures of the petitioner being taken by the OP Federation is by way of an afterthought to avoid the payment of amounts due from him in favour of the OP Federation. On a query from us, counsel for the petitioner has fairly admitted that he is not aware as to when exactly the "forcible" consent of the petitioner was taken by the OP Federation. So far as the two cases relied upon by the counsel for the petitioner are concerned, there is no change in respect of the legal position as reiterated by this Commission through its judgements in those cases but the facts and circumstances of this case are different and as such the ratio of those two cases would not provide any relief or comfort to the petitioner. Under the circumstances, we do not find any illegality, material irregularity or jurisdictional error in the concurrent finding based on facts of this case as returned by the fora below. There is, therefore, no case for interference with their orders. Consequently, the revision petition stands dismissed with no order as to costs.