

(2003) 08 KL CK 0073
In the High Court Of Kerala
Case No : O.P. No. 34088 of 2000

Kerala State Co-op. Employees" Pension Board	APPELLANT
Vs	
Consumer Disputes Redressal Forum	RESPONDENT

Date of Decision : 20-08-2003

Acts Referred:

Consumer Protection Act, 1986 — Section 2(1)

Citation : AIR 2004 Ker 57 : (2003) 3 ILR (Ker) 564 : (2004) 1 KLT 111

Hon'ble Judges : A.K. Basheer, J

Bench : Single Bench

Advocate : T.R. Ramachandran Nair, for the Appellant; T.K. Latheef, Government Leader and V.M. Kurien, for the Respondent

Final Decision : Dismissed

Judgement

A.K. Basheer, J.—Does the Kerala State Co-operative Employees Pension Board come within the purview of the Consumer Protection Act, 1986? This is the short question that has been raised in this Original Petition.

2. Respondent No. 2 was an employee of a Co-operative Bank. He retired from service on 30.11.1995. He applied for grant of pension and submitted necessary particulars before the Pension Board. However, there was inordinate delay in processing his application. Ultimately, respondent No. 2 was granted pension in the year 1999. He preferred Ext. P1 complaint before the Consumer Disputes Redressal Forum (for short, "the Forum") claiming a compensation of Rs. one lakh in addition to interest for delayed payment of pension by the Board. Detailed reference is not being made to the contents of the complaint, since it is not necessary for the disposal of this case.

3. The Forum received the complaint on file and issued Ext. P2 notice to the petitioner to appear and answer the contentions raised against it". The question raised by the petitioner is whether the Consumer Disputes Redressal Forum has jurisdiction to entertain Ext. P1 complaint against the Pension Board constituted

by the Government.

4. The Kerala State Go-operative Employees Pension Board (for short "the Board") has been constituted by the Government of Kerala under Clause 4 of the Kerala Co-operative Societies Employees Self Financing Pension Scheme, 1994, for the administration of the Pension Scheme implemented u/s 80A of the Kerala Co-operative Societies Act. The Pension Fund has been established for payment of pension to the employees of Co-operative Societies. Monthly contribution at the rate of 8.33% of the pay of each of its employees has" to be credited by the society to the Fund. The Pension Fund shall vest in and be administered by a Board to be constituted by the Government by notification in the Gazette. The Gazette notification was issued on 14.3.1995. However, the scheme is deemed to have come into force on the 3rd day of June 1993.

5. Clause 4 of the Pension Scheme empowers the Government to constitute the Pension Board. The Board shall consist of the following members namely:-

(a) The Secretary (Co-operation) or an officer nominated by him, Ex officio;

(b) The Registrar of Co-operative Societies, Ex officio;

(c) Seven Members nominated by the Government of whom three shall be representative of the employees and four shall be representatives of the Co-operative institutions.

It is further provided in Clause 4 that one of the members of the Board shall be appointed by the Government to be its Chairman and that the Board shall be a body corporate by the name aforesaid having perpetual succession and a common seal and shall, by the said name, sue and be sued. The Scheme inter-alia defines, employee, pay, qualifying service, superannuation pension, etc. Chapter III of the Scheme deals with pension. Clause 18 in Chapter III enumerates the category of employees who are eligible for pension and Clause 19 to 21 deal with qualifying service, superannuation pension, retiring pension, invalid pension, etc. Commutation of the amount of pension, family pension and the rate thereof, etc. are also provided for in Chapter III of the Scheme. Clause 27 provides that an employee shall submit his formal application for superannuation pension in the prescribed form at least one year in advance from the date of his anticipatory retirement. Pension under the Scheme shall be payable per mensem which shall commence, in the case of superannuation pension, from the beginning of the month succeeding the month in which the employee retires from the service of a society. Similarly, commencement of payment of retiring pension and family pension are also provided for in Clause 29. Clause 34 stipulates that all expenses for the administration of the Pension Fund shall be met from that Fund.

6. Learned counsel for the petitioner lays stress on the "statutory complexion" of the Board and contends that it does not render any "service" in the strict sense of the term. In other words, the argument is that the Forum does not have

jurisdiction to entertain Ext. P1 complaint against the petitioner/Pension Board constituted under the Pension Scheme. Respondent No. 2 is not a "consumer" as defined under the Act. The service rendered by the Pension Board is free of any charge. No consideration is being received by the Pension Board either "from the employer societies or the member employees". It is further contended that the statutory function of the Pension Board is only to administer the Pension Fund. Contributions to this Fund are to be made by the employer societies. It is pointed out that respondent No. 2 has not claimed that he is a consumer and that the Pension Board has received any consideration from him for providing the service of disbursing the pension under the Scheme.

7. Section 2(1)(o) of the Consumer Protection Act defines "service" as under:

"2(1)(o) "Service" means service of any description which is made available to potential users and includes the provision of facilities in connection with banking, financing, insurance, transport, processing, supply of electrical or other energy, board or lodging or both, housing construction, entertainment, amusement or the purveying of news or other information, but does not include the rendering of any service free of charge or under a contract of personal service".

"Consumer" as defined under the Act includes any person who hires or avails of any services for consideration and also includes any beneficiary of such services other than the person who hires or avails of the services for consideration.

8. It is contended by learned counsel for the petitioner that service as defined u/s 2(1)(o) does not include rendering of any service free of charge. It is pointed out that the Secretary (Co-operation) in the Government of Kerala or an officer nominated by him and the Registrar of Co-operative Societies are ex officio members of the Pension Board. The Board consists of 7 members nominated by the Government, of whom three shall be representatives of the employees and four shall be representatives of the co-operative institutions. The Board is a body corporate under the control of the Government. The administration of the Pension Fund is governed by the clauses contained in the Pension Scheme, 1994. The Board is not rendering any service to an employee like respondent No. 2. as defined under the Consumer Protection Act. It is further contended by the learned counsel that the Government is vested with the power to give general directions to be followed by the Board. It implies that the Government is the sole authority and responsibility of all powers to regulate the functions of the Board under the Scheme.

9. The above contentions are stoutly resisted by respondent No. 2. It is submitted by Shri. V.M. Kurian, learned counsel for respondent No. 2 that the petitioner/Pension Board is rendering "service" within the meaning of the Consumer Protection Act, 1986.

Learned counsel invites my attention to the decision of the Supreme Court in Regional Provident Fund Commissioner Vs. Shiv Kumar Joshi, . In the case before the Supreme Court, an employee who was a member of the Provident Fund

Scheme under the Employees Provident Fund and Miscellaneous Provisions Act, applied to the Regional Provident Fund Commissioner for payment of his Provident Fund dues. There was some delay in settling the claim. The employee approached the Consumer Disputes Redressal Forum claiming damages to the tune of Rs. 65,000/-along with interest for the alleged delay in disbursing the Provident Fund. The Forum directed the Provident Fund Commissioner to pay interest at the rate of 18% for the delayed payment and also cost of Rs. 1,000/-. Having failed to get the order of the Forum reserved before the State Commission and also the National Commission, the Regional Provident Fund Commissioner approached the Supreme Court.

10. It was contended that the Scheme could not be held to be a "service" within the meaning of S, 2(l)(o). The employee was not a "consumer" as defined u/s 2(1)(d) of the Act, 1986. It was further urged by the Commissioner that the employees did not pay any part of the administrative charges to the Central Board of Trustees. The charges were payable by the employers. No "consideration" was received by the Board from the employees. The Board rendered the service free of charge.

11. However, the above contentions of the Provident Fund Commissioner were repelled by the Supreme Court. It was held that the facilities provided by the Scheme under the Provident Fund Act were "service". It was further held that even if the administrative charges for running the Scheme are "paid by the Central Government and no part of it is paid by the employee, the services of the Provident Fund Commissioner in running the Scheme shall be deemed to, have been availed of for consideration by the Central Government for the benefit of employees who would be treated as beneficiaries within the meaning of that word used in the definition of consumer". After considering the entire Scheme as provided under the Employees Provident Fund Act, the Supreme Court held that "it is a service within the meaning of Section 2(1)(o) of the Consumer Protection Act. It was further held that the member of the Scheme is a consumer within the meaning of Section 2(1)(d) of the Act.

12. It is submitted by learned counsel for respondent No. 2 that even assuming the Government have the power to constitute the Pension Board and to regulate its functions, it is evident that the service rendered by the Pension Board would squarely come within the purview of the Act. Learned counsel submits that the dictum laid down by the Supreme Court in Regional Provident Fund Commissioner's case settles the issue against the petitioner.

13, Relying on a decision of the Supreme Court in Morgan Stanley Mutual Fund Vs. Kartick Das, , learned counsel for the petitioner contended that the "service rendered by the Pension Board is not on a commercial basis". It is also contended that there is no contract of personal service between respondent No. 2 and the petitioner and the service rendered by the Board is absolutely free. Specific reference has been made by the learned counsel for the following observations of the Supreme Court in the above case:

"The consumer as the term implies is one who consumes. As per the definition, consumer is the one who purchases goods for private use or consumption. The meaning of the word "consumer" is broadly stated in the above definition so as to include anyone who consumes goods or services at the end of the chain of production. The comprehensive definition aims at covering every man who pays money as the price or cost of goods and services".

14. It is further submitted by the learned counsel that unlike in the Regional Provident Fund Commissioner's case, no administrative charge or any other kind of service charge is being collected by the Board from the Co-operative Societies or the employees. What has been attempted to be achieved is only to bring all the Societies and their pensioners under one umbrella in order to streamline the pension scheme and ensure prompt and regular disbursement of retirement benefits. Therefore, it is contended that Provident Fund Commissioner's case has no application to the facts of this case.

15. Morgan Stanley's case and other subsequent decisions have been considered by the Supreme Court in Regional Provident Fund Commissioner's case mentioned supra. A reading of the definitions of "consumer" and "service" clearly shows that the scope and ambit of the above two terms are wide enough to take within their fold a retired employees like respondent No. 2 and the service rendered by the Pension Board. The word "service" cannot be given a restrictive or narrow meaning. It has to be given a wider connotation. It takes within its fold service of any description which is made available to potential users in the field of banking, financing, etc. It is trite law that retirement benefits are not a bounty from the employer/State to a retired employee. It is an indefeasible right. Any delay in disbursement should be viewed strictly. If there is no justifiable reason for the procrastination, the officers responsible for the laches should not be spared. Unless there is accountability, lethargy and indifference will prevail.

16. In Provident Fund Commissioner (supra), it was contended by the Commissioner that services under the Scheme were being rendered without accepting any fee or service charge. Thus it could not be treated to be a service as defined under the Act. But the Supreme Court held that the services of the Commissioner shall be deemed to have been availed of for consideration by the Central Government for the benefit of the employees who would be treated as beneficiaries within the meaning of the definition of "consumer". It was immaterial whether the service rendered by the Scheme was for any charge paid by the employee or his beneficiary. The Regional Provident Fund Commissioner was discharging statutory functions while running the Scheme. The Supreme Court further took the view that no sovereign powers of the State were delegated to the Scheme so as to hold it as the Central Government. In the above context, their Lordships held that rendering of service by the Commissioner under the Provident Fund Scheme would come within the purview of the Consumer Protection Act.

17. Petitioner cannot also contend that the Pension Board being a statutory body constituted by the Government, it cannot be held liable for any lapse on the part of the member Societies in remitting the contribution. No doubt it is a statutory body constituted by virtue of the powers conferred on the Government u/s 80A of the Co-operative Societies Act. But the Board cannot take shelter under any "statutory immunity" nor can it plead helplessness in administering the Fund. Clause 38 of the Pension Scheme empowers the Board to recover the amount of arrears from the Societies towards the Fund with interest, as arrears of public revenue.

18. The contention of the petitioner that no fee or service charge is being collected for the service rendered by the Board cannot also be accepted. Clause 34 of the Pension Scheme provides that "all expenses of administration of the Pension Fund shall be met from that Fund". Thus, it is clear that the Board is collecting charges from the member Societies. The pensioners being beneficiaries, will therefore come within the ambit of Section 2(1)(d) of Act 1986.

19. In the above facts and circumstances, it is held that the Board constituted under Clause 4 for administration of the Pension Fund under the Kerala Co-operative Societies Employees Self Financing Scheme, 1994 is providing "service" as contemplated under the Consumer Protection Act, 1986. The retired employees of the Co-operative societies who are members of the Pension Scheme 1994 are consumers as defined under the Act. Therefore Ext. P1 complaint is maintainable before the Consumer Disputes Redressal Forum.

In the above circumstances, the Original Petition fails and it is accordingly dismissed. No costs.