

(2014) 02 NCDRC CK 0058

In the National Consumer Disputes Redressal Commission

Krishan Kumar Batra

APPELLANT

Vs

PUNJAB NATIONAL BANK

RESPONDENT

Date of Decision : 21-02-2014

Acts Referred:

Citation : 2014 0 NCDRC 111 : 2014 1 CPJ 467

Hon'ble Judges : V.B.GUPTA , Rekha Gupta J.

Judgement

1. REVISION petition no. 806 of 2013 has been filed against the order dated 17.01.2013 of the Punjab State Consumer Disputes Redressal Commission, Chandigarh ("the State Commission ") in First Appeal no. 163 of 2012. The brief facts of the case are that the petitioner/ complainant was an employee of Punjab National Bank (PNB) and he remained posted at Lawrence Road Branch, Amritsar of the aforesaid Bank. Smt Madhu Batra wife of the petitioner was also an employee of PNB and the petitioner and his wife had jointly obtained a housing loan of Rs.6,00,000/- from their employer, i.e., PNB which was repayable in equal monthly instalment of Rs.5850/- per month.

2. THE respondent Bank started deducting monthly instalments from the salary of the petitioner. However, due to certain disputes between the petitioner and the employer, the enquiry of which is pending, the bank officials stopped the salary of the petitioner and due to this reason, the housing loan instalments was also stopped. Since the very inception of the petitioner in the service of the Bank, provident fund was being deducted from the salary of the petitioner and the petitioner has the right to get regular statements from the bank to know about the amount outstanding to his credit on amount of provident fund. The petitioner on 24.02.2007 demanded statement of account of provident fund from the bank but it was not provided to him and it was on the direction of Central Information Commissioner that the respondent - Bank provided the statement of account in respect of provident fund to the petitioner on 04.07.2009 and to his utter surprise, the petitioner found from the statement of account came to know that the amount of Rs.5,81,334.74 has already been paid by the petitioner and that

the respondent has illegally and unlawfully deducted Rs.5,81,334.74 from the provident fund account of the petitioner despite the fact that the petitioner has not withdrawn even a single penny from his provident fund account.

3. THEREAFTER the petitioner made enquiries from the respondent bank and came to know that the respondent itself has withdrawn the aforesaid amount of Rs.5,81,334.74 from the provident fund account no. 48097 of the petitioner in two instalments, i.e., Rs.5,81,334.74 paisa and Rs.24,038.40 paisa and credited the same in the joint housing loan account of the petitioner and his wife.

4. THE provident fund amount is the property, social security for old age of the employee (petitioner) and the respondent has no right to deduct any amount from the provident fund account of the petitioner and to adjust the same towards the housing loan account in the name of the petitioner and his wife. The respondent has neither given any notice or intimation to the petitioner before withdrawing the amount from the provident fund account of the petitioner and adjusting the same towards the loan account of the petitioner and his wife nor any opportunity was given to the petitioner nor the explanation of the petitioner was sought before withdrawing the amount from his P F account much less written consent of the petitioner was obtained for such purpose. As submitted above, the housing loan was jointly obtained by the petitioner and his wife from the respondent Bank at the maximum, the respondent could deduct monthly instalment of loan from the salary of the wife of the petitioner who is a co - loanee and her liability was joint and several with the petitioner or at the most can recover from the petitioner due course of law if so required. It was, therefore, prayed as under: * The respondent may kindly be directed to transfer the amount of Rs.5,81,334.74 paisa and Rs.24,038.40 paisa to the provident fund account of the petitioner with interest @ 18% per annum from the date of withdrawal till its transfer. * The cost of the complaint and counsel fee may also be awarded to the complainant. * Compensation of Rs.1,00,000/- be also awarded to the petitioner. * Any other relief to which the petitioner is found entitled under the law and equity may also be awarded to him.

5. IN their written statement, the respondent/ opposite party have stated that the petitioner is guilty of suppression of material facts as well as actual state of affairs from the Hon "ble Forum, as such the petitioner having not come to the Hon "ble Forum with clean hands and was not entitled to any relief and the complaint was liable to be dismissed. The real facts and the actual state of affairs were as follows:

6. THE petitioner - Clerk of the respondent approached the respondent Bank at its Branch at Hansale Bazar Amritsar for financial assistance by way of housing loan to the extent of Rs.2,70,000/- for construction of new house vide application for loan under the scheme for housing loan to Members of Staff in form PNB 560 - 726 (10) dated 08.01.1996. Smt Madhu Batra wife of Krishan Kumar Batra executed and signed a letter of undertaking dated 08.01.1996 giving letter of undertaking as ""I have no objection to construct building on plot

which is in my name and for mortgage of plot for loan in the name of my husband Krishan Batra. I will stand guarantor in any facility to loan to Shri Krishan Batra.

7. IN response to the aforesaid loan application executed and signed by the petitioner and the aforesaid letter of undertaking executed and signed by Smt Madhu Batra wife of Krishan Kumar Batra, the respondent - Bank allowed, sanctioned and granted the aforesaid loaning facility to the petitioner at its Branch at Hansali Bazar, Amritsar.

8. IN pursuance to the sanction and grant of housing loan for construction for Rs.2,50,000/- to the petitioner by the respondent at its Branch at Hansali Bazar, Amritsar on 18.01.1996, the petitioner executed and signed letter dated 18.01.1996 addressed to the Trustee, Punjab National Bank, Employees Provident Fund Trust, New Delhi authorising the trust to pay the amount of gratuity provident fund etc., and all other dues what so ever, payable to him on ceasing to be in the employment of the bank, due to retirement, termination of service, dismissal or any other reason what so ever to the bank, to be utilised towards payment of outstanding and the interest accruing due to the above loan and this authority irrevocable until the loan mentioned above with interest thereon is paid in full and handed over the same to the respondent. The fresh housing loan of Rs.50,000/- was granted to the petitioner at its Branch Hansali Branch, Amritsar on 08.07.1998.

9. THE petitioner while posted at Punjab National Bank, Lawrence Road Branch, Amritsar again applied for sanction of Housing Loan of Rs.3,00,000/- for making additions to the existing house built with the bank finance, which was sanctioned on 24.03.2000 by the incumbent in -charge of the Punjab National Bank, Lawrence Road Branch, Amritsar.

10. IN pursuance to and in consideration of the sanction and grant of the aforesaid loaning facility, the petitioner executed and signed letter dated 27.03.2000 addressed to the Trustee Punjab National Bank Employees Provident Fund Trust, New Delhi regarding loan for Rs.3,00,000/- granted to him under the housing loan scheme to the effect ""whereas I agree and authorise the Bank to utilise the amount of gratuity, provident fund and bonus and also other dues whatsoever, payable to him on my ceasing to be in the employment of the bank or at the time of any payment of such gratuity, PF, bonus and other dues, towards payment of the amount due on the aforesaid loan. The service of the petitioner was terminated by the Bank on 10.04.2006 and he ceased to be in the employment of the respondent, the bank.

11. THE amounts received by the respondent from Punjab National Bank Employees Provident Fund Trust, New Delhi were credited to the loan account of the petitioner.

12. THE provident fund was deducted from the salary of the petitioner and deposited with the Punjab National Bank Employees Provident Fund Trust, New

Delhi as per service rules. As stated that in pursuance to the letter of authorisation dated 18.01.1996 and 27.03.2000 executed and signed by the petitioner addressed to the Trustee Punjab National Bank Employees Provident Fund Trust, New Delhi forwarded to the Bank a sum of Rs.5,81,334/- from the Provident Fund of the petitioner and the same was credited to the loan account of the petitioner. District Consumer Disputes Redressal Forum, Amritsar ("the District Forum ") vide order dated 05.01.2012 dismissed the complaint by observing as under: ""From the perusal of the entire record of this case i.e. pleadings of the parties as well as the evidence produced on record by both the parties, we have come to the conclusion that the dispute between the parties is that complainant Krishan Kumar Batra and his wife Madhu Batra, both employees of the opposite party obtained housing loan of Rs.6,00,000/- from their employer Punjab National Bank which was payable in equal monthly installments of Rs.5850/- per month. The provident fund is being deducted from the salary of the complainant and is being deposited with the Punjab National Bank Employees Provident Fund Trust and the complainant has authorized the trustee of the aforesaid trust as well as the manager of the opposite party that in case of default of any kind under whatsoever circumstances and the loan account become irregular, the defaulted amount of the aforesaid loan due, the bank has right to adjust the entire amount from the account of provident fund and bonus, towards the amount due to the aforesaid loan, vide his letters exbt.R -4 and R -6. It is the admitted case of both the parties that amount of the installment of the loan was being deducted from the salary of the complainant. The complainant was dismissed from service vide order dated 10.4.06, copy of which is exbt.R -7. It is also the admitted case of the parties that after dismissal of the complainant from the service, he failed to make the payment of the installments. Resultantly the amount of the loan obtained by the complainant from the opposite party became irregular , thereby complainant has committed default and the opposite party i.e. Punjab National Bank was authorized , competent and entitled to recover the due amount of the loan from the complainant lump sum with penal interest because the complainant had become defaulter in non - payment of installments. But opposite party i.e. Punjab National Bank has not charged any penal interest from the complainant. It has only adjusted the amount of the provident fund due to the complainant towards the loan amount due recoverable from the complainant.

The plea raised by the counsel for the complainant that the installments were to be paid by the complainant and his wife Madhu Batra, who is still employee of the opposite party upto 2017, so the opposite party was not competent to adjust the amount of the provident fund of the complainant towards the loan amount due recoverable from the complainant, is not tenable because when the complainant committed default in payment of installments of the loan regularly, the loan account became irregular, thereby complainant has committed default in non -payment of the loan installments. Resultantly the opposite party was authorized to recover the entire balance amount of the loan from the

complainant in lump sum and they adjusted the provident fund amount due payable to the complainant, towards the loan amount recoverable from the complainant. Rather the opposite party has not charged any penal interest from the complainant. There is no deficiency in service on the part of the opposite party. The complaint is without merit and the same is hereby dismissed with no order as to costs. Copies of the orders be furnished to the parties free of costs. File is ordered to be consigned to the record room "".

13. AGGRIEVED by the order of the District Forum, the petitioner filed an appeal before the State Commission. The State Commission after hearing the arguments of the petitioner in person and counsel for the respondent and perusing the records of the case dismissed the appeal by upholding the order of the District Forum. In coming to the conclusions that there was no deficiency of service on the part of the respondent held that: "" As regard the contention of the complainant that the amount should have been recovered from the salary of his wife, it is contended that the loan was taken by the complainant and not by Madhu Batra. It was therefore to be recovered from the complainant. Madhu Batra never came forward nor applied to the bank to inform them that she was ready to pay the aforesaid amount and the same should be recovered from her salary. In the absence of the request of Madhu Batra, no such order could be passed by the OP bank to recover the amount from her without her consent. In view of the above discussion, we are of the opinion that the District Forum rightly dismissed the complaint. There is no merit in this appeal and the same is accordingly dismissed "".

14. HENCE , the present revision petition. The main grounds for the revision petition are that: * The said housing loan is in the name of Krishan Kumar Batra and his wife Madhu Batra. Both are employees of the same institution, i.e., Punjab National Bank (Respondents). All the documents signed by them are jointly. Both gave letter of authority to deduct instalments from the salary every month. Agreement for Housing Loan Having Title K K Batra and Madhu Batra signed by both jointly and called themselves "the borrowers ". Bank officer witnessed and signed to confirm the said borrowers. Almost 25 -25 signatures by both Madhu Batra and Krishan Batra are present in the loan documents. Loan was disbursed and instalments and given at the signatures of both K K Batra and Madhu Batra. The plot for construction is in the name of Madhu Batra. When the bank stopped paying salary to one co -loanee K K Batra and instalments stopped crediting in the housing loan, bank did not start deducting instalments from the second co -loanee Madhu Batra, employee of the same bank and had given letter of authority to deduct monthly instalments from salary. No instalment missed till the salary being paid to K K Batra.

15. WE have heard the petitioner in person and have also gone through the records of the case carefully. Vide order dated 26.07.2013 the petitioner had been directed to file the certified/ attested copy of the application forms for the loans as well as the terms and conditions of the loans, if filed, before the District

Forum. The documents that he has filed have been obtained by him from RTI on 26.07.2013. There is no indication whether these documents have been filed before the District Forum nor has he filed any application for filing fresh new documents.

16. IT is quite apparent from the facts on record that the petitioner 's service had been terminated by his employer, i.e., Punjab National Bank on 10.04.2006. He had filed his complaint on 30.07.2009 but has mislead this court and concealed this fact as in his complaint. He had stated in paragraph 1 of his complaint that ""he is an employee of the Punjab National Bank "" and he remain posted with the Lawrence Road Branch, Amritsar of the aforesaid Bank and further that ""due to certain disputes between the petitioner and the employer, the enquiry of which is pending, the bank officials stopped the salary of the petitioner and due to this reason, the housing loan installment also stopped "". The loan applications were made by the petitioner. As per the respondent his wife had stood guarantor for the loan has also given an undertaking that she had no objection to construction of building on the plot in her name and the plot being mortgaged.

17. AS per the letter of authority on record the petitioner, authorized the bank to deduct the monthly installment payable towards adjustment of the loan granted under the housing loan scheme, from the salary payable to the borrowing member of staff every month dated 27.03.2000, the petitioner had agreed to repay the loan within the stipulated interest thereon by month to month installments deductible from his salary every month. This is in addition to the security by way of mortgage of my property and right of the Bank to appropriate the amount that may accrue due to me by way of gratuity, provident fund, bonus etc. The petitioner has filed no such authority given by Ms Madhu Batra.

18. IT is an undisputed fact that the petitioner/ complainant availed loan of Rs.6.00 lakh which was being deducted from his monthly salary. After his termination on 10.04.2006, since his salary stopped, repayment of installments also stopped. He paid no further installments and became a defaulter. The bank was compelled to recover the amount due from his terminal benefits as per the undertaking given by him. There is nothing on record to show that the petitioner and his wife had made joint application to the Bank to recover the balance amount from her salary after his termination. There is also no joint complaint against the action of the Bank or prayer to the Consumer Fora from both the petitioner and his wife that the balance amount of loan should be deducted from his wife 's salary. The petitioner has failed to prove deficiency of service against the respondent bank. Hon 'ble Supreme Court in Mrs. Rubi (Chandra) Dutta Vs. M/s United India Insurance Co. Ltd. 2011 (3) Scale 654 has observed; ""Also, it is to be noted that the revisional powers of the National Commission are derived from Section 21 (b) of the Act, under which the said power can be exercised only if there is some prima facie jurisdictional error appearing in the impugned order, and only then, may the same be set aside. In our considered opinion there was

no jurisdictional error or miscarriage of justice, which could have warranted the National Commission to have taken a different view than what was taken by the two Forums. The decision of the National Commission rests not on the basis of some legal principle that was ignored by the Courts below, but on a different (and in our opinion, an erroneous) interpretation of the same set of facts. This is not the manner in which revisional powers should be invoked. In this view of the matter, we are of the considered opinion that the jurisdiction conferred on the National Commission under Section 21 (b) of the Act has been transgressed. It was not a case where such a view could have been taken by setting aside the concurrent findings of two fora. ""

19. THUS , no jurisdictional or legal error has been shown to us to call for interference in the exercise of powers under Section 21 (b) of Act. Since, two Fora below have given detailed and well -reasoned order which does not call for any interference nor they suffer from any infirmity or erroneous exercise of jurisdiction or material irregularity. Thus, present petition is hereby, dismissed with cost of Rs.5,000/- (Rupees five Thousand only).

20. PETITIONER is directed to deposit the cost of Rs.5,000/-, by way of demand draft in the name of "Consumer Legal Aid Account " of this Commission, within four weeks from today. In case, petitioner fails to deposit the said cost within the prescribed period, then it shall also be liable to pay interest @ 9% p.a., till realization. List on 31st March 2014 for compliance.