(2011) 07 NCDRC CK 0019

In the National Consumer Disputes Redressal Commission

PREM SINGH APPELLANT

Vs

Sarabjit Singh RESPONDENT

Date of Decision : 28-07-2011

Acts Referred:

Citation : 2011 0 NCDRC 516 : 2011 3 CPJ 317

Hon'ble Judges : Ashok Bhan , Vineeta Rai J.

Final Decision : Accordingly dismissed

Judgement

1. THE present revision petition has been filed by one Prem Singh (hereinafter referred to as the "Petitioner") being aggrieved by the order of the State Consumer Disputes Redressal Commission, Punjab (hereinafter referred to as the "State Commission") in favour of Sarabjit Singh, Manager, Gurdaspur Central Coop. Bank Ltd. and Others (hereinafter referred to as the "Respondents").

2. THE facts according to the Petitioner, who was the original complainant before the District Forum, are that he was working as an Assistant Manager with the Respondent/Bank from where he retired on 31.03.2006. A cheque in respect of his Provident Fund was issued by the Commissioner, Provident Fund, Amritsar for Rs.4,54,305/- dated 04.05.2006 drawn on State Bank of India, Amritsar. This cheque was sent by the Respondent/bank for clearance to the Central Co-operative Bank, Amritsar on 13.05.2006 and after clearance of the above cheque, a D.D. of the said amount was prepared on 19.05.2006 by the Central Co-operative Bank, Amritsar which was collected by the Respondent/bank on 22.05.2006. Petitioner, thereafter, approached the Respondent/Bank to credit this amount to his account several times which the Respondent failed to do. Aggrieved by this and on grounds of deficiency in service, Petitioner filed a complaint before the District Forum requesting that the Respondent be directed to pay him Rs.4,54,305/- as his dues and Rs.1,00,000/- on account of mental agony and harassment. The Respondent denied the above contentions and stated that the Petitioner had been suspended and disciplinary action was initiated against him on charges of defalcation, irregularities in recommending/sanctioning

etc. loans to various persons including his sons amounting to over Rs.4 lakhs. After receipt of the show-cause notice Petitioner had filed an affidavit that if the persons for whom he had stood surety in granting loans did not make the required payments, then the amounts due from them could, at the time of his retirement, be adjusted against his retiral and other dues. It was under these circumstances that the Provident Fund amount was not paid to him.

The District Forum after hearing both parties allowed the complaint on the grounds that the opposite parties have not served any notice upon the person for whom he stood surety in order to know whether they have refused to make the payment of the loan amount or not, that it was incumbent on them to do so and in the absence of the same, it cannot be presumed that the persons for whom the surety was given have refused to make the payment of their loan. The District Forum, therefore, directed the Respondents that as and when the Petitioner furnishes the surety of Rs.5 lakhs undertaking that he would pay loan amount taken by him from the Respondents and also the loan amount in which he stood surety, then Petitioner be allowed to operate his Provident Fund account.

3. AGGRIEVED by this order, Respondents filed an appeal before the State Commission which allowed the same by setting aside the order of the District Forum. The operative part of the order of the State Commission reads as follows: "Complainant has, during the course of disciplinary proceedings, given an affidavit that up to date outstanding amount under Cash Credit Limit of Rs.2.15 lacs and Rs.2.60 lacs against his sons, Sh.Rajiv Singh and Sh.Paramjit Singh in favour of the appellant " bank could be deducted from his retiral dues and other amounts standing in his name as he had stood guarantor for them. It was only after such an affidavit was filed before the disciplinary authority that the order of his reinstatement came to be passed on 29.03.2006 in which the terms of the affidavit were incorporated. The bank was only to comply with the terms and conditions of the affidavit and the order of the disciplinary authority dated 29.03.2006. In these circumstances, the complainant could not be said to be a consumer or the bank could be said to be rendering any service to the complainant""""""We also do not agree with the learned District Forum when it is said that the amount of the complainant could only be adjusted/appropriated if the persons who had taken cash credit limit had refused to own their commitment. Once the complainant had given an undertaking in the shape of an affidavit, which was followed by a judicial order by the disciplinary authority, the bank could appropriate the amount towards the cash credit limit of those persons who had been mentioned by the complainant in the affidavit."

Hence, the present revision petition. Counsel for both parties made oral submissions. Counsel for Petitioner submitted that as per the Provident Fund Act/ Rules, the fund at the credit of a retired public servant is like a compulsory deposit and is not a retiral benefit like pension, gratuity, leave encashment etc. This has been confirmed in a ruling of the Hon"ble Supreme Court in Union of India Vs. Hira Devi & Anr. " AIR 1952 SC 227. He, therefore, contended that while it may have been admissible to adjust other retiral benefits like pension, it could not have included Provident Fund dues as a retiral benefit to be adjusted against the unrealized loans for which the Petitioner had stood surety. The learned State Commission, therefore, erred in including Provident Fund as a retiral benefit. Counsel for Petitioner further stated that the affidavit given by the Petitioner was in fact taken under coercion and therefore, it should not be used against the Petitioner for withholding his legitimate Provident Fund dues payable to him.

4. COUNSEL for Respondents on the other hand brought to our notice the affidavit filed by the Petitioner and which has been referred to by the Fora below wherein the Petitioner had categorically stated that he was agreeable to not only his retiral benefits but also "other dues" being adjusted against the loans. In view of this specific undertaking in the form of an affidavit, the Respondent/bank was fully justified in appropriating the amount towards cash credit limits of those persons who had been sanctioned loans/for which Petitioner had stood surety and which have not been paid back by the due date. Under the circumstances, there was no deficiency in service on the part of the Respondent/Bank and the order of the State Commission being fair and just and based on correct interpretation of law deserves to be upheld. We have heard learned Counsel for both parties and have gone through the evidence on record. The affidavit in question given by the Petitioner reads as under: "That up to date outstanding amount under Cash Credit Traders Limits of Rs.2.15 lacs and Rs.2.60 lacs against my sons Sh.Rajiv Singh and Sh.Paramjit Singh in favour of the Gurdaspur Central Cooperative Bank Ltd. Branch Narot Jaimal Singh be deducted from my retiral dues and other amounts standing in my name as I have given guarantee for them. That amount of the Non-Farm Sector Loan which was taken by Sh.Mangat Ram under M/s. Mangat Ram Shuttering Store, Village Bamyal, the up to date outstanding amount if he himself or his guarantor does not repay the amount to the bank in spite of my efforts, then I will be responsible to pay the same after 31.03.2007. This amount be deposited in the suspense account from my retiral dues and other dues and I will have no objection. Thereafter, this amount be adjusted towards loan."

From a perusal of the above affidavit, it is clear beyond doubt that the Petitioner himself had offered that in case the loan amounts were not paid by the stipulated dated i.e. 31.03.2007, he would pay the same and that he would have no objection if not only his retiral dues but also "other dues" would be adjusted against the said loans. While we agree that Provident Fund is not a retiral benefit but in the instant case in view of the fact that the Petitioner himself through an affidavit authorized that apart from the retiral benefits, other dues (in this case, Provident Fund) could also be withheld, justifies withholding of the Provident Fund by the Respondents as a part of "other dues" being other dues as well. Regarding the Petitioner"s contention that the affidavit was taken from him under coercion, we note that no evidence whatsoever has been produced by the Petitioner to prove or support this contention. We also note that it was only after considering this affidavit that the disciplinary authority passed a speaking order which has been reproduced in the order of the State Commission and after which the Petitioner"s suspension was revoked and he was reinstated in service. In view of the above facts, we find no merit in the revision petition and uphold the order of the State Commission.

5. THE revision petition is accordingly dismissed with no order as to costs.

