

(2008) 01 NCDRC CK 0025

In the National Consumer Disputes Redressal Commission

Punjab National Bank

APPELLANT

Vs

SUNIL KUMAR PODDAR

RESPONDENT

Date of Decision : 21-01-2008

Acts Referred:

Citation : 2008 2 CPJ 325

Hon'ble Judges : J.D.Kapoor , Rumnita Mittal J.

Final Decision : Appeal dismissed

Judgement

1. VIDE impugned order dated 20. 9. 2007 passed by the District Forum, the appellant has been directed to release payment of Rs. 3,85,427 with interest @ 8% towards provident fund of the respondent and also to pay Rs. 5,000 as compensation and Rs. 2,000 as cost of litigation.

2. THROUGH this appeal the impugned order has been assailed mainly on the ground that the respondent being the employee of the appellant was not the consumer qua the appellant inasmuch as that the provident fund was being maintained by the appellant and was not governed by the P. F. Act and secondly that Rule 15 (1) of Hindustan Commercial Bank Limited Employees Provident Fund (Rules and Regulations) empowers it to forfeit the entire amount of the loss suffered by it due to misconduct of the employee, resulting in his dismissal. Relevant facts leading to the impugned order in brief are that the respondent was the employee of Hindustan Commercial Bank which was amalgamated with Punjab National Bank on 18. 12. 1986, by the order of Central Government. The erstwhile management of Hindustan Commercial Bank issued charge-sheet in respect of sanction of loan to the tune of Rs. 6. 49 lakh. Therefore the respondent was dismissed from service on 23. 12. 1985. The dismissal was challenged and the matter was settled by Hon"ble High Court of Delhi, against the respondent. The instant complaint is in respect of provident fund contributions. Respondent No. 2 is the statutory authority to manage the provident fund contributions. The respondent No. 1 asked the appellant to pay a sum of Rs. 3,85,427. 44 as provident fund contribution. But the appellant

refused to pay the amount on the strength of Rule 15 of Hindustan Commercial Bank Rules. The respondent No. 1 pleaded that respondent No. 2 is also liable to the wrongful act of the appellant i. e. forfeiture of entitlement of provident fund. The respondent No. 1 prayed for directions to appellant and respondent No. 2 to pay a sum of Rs. 3,85,427. 44 with interest @ 18% per annum from March 2005 together with cost and compensation.

We have perused the impugned order closely and found that on facts the District Forum has returned a finding that the appellant failed to produce any evidence that due to alleged misconduct of the respondent loss of Rs. 6. 49 lacs was caused. In this regard the order dated 23. 12. 1985 was passed by the Personal Manager. Feeling aggrieved the respondent No. 1 filed appeal before Appellate Authority. The appellate authority upheld the order with the following observations: " The contention of Mr. Poddar that none of the overdrawn accounts had become sticky is factually incorrect inasmuch as some of the accounts stated in the charge-sheet are still reflecting outstanding and are providing difficult of recovery. "

3. ANOTHER aspect discussed by the District Forum is that the respondent was dismissed from the service on the basis of order dated 23. 12. 1985 but the credit balance in the provident fund account was carried till the year 2005, which clearly shows that the act of the appellant in denying the benefit of the provident fund was an afterthought and was pleaded with the sole motive to deprive the respondent No. 1 from the lawful dues. There are two provisions on which the appellant is banking upon. One is Rule 15 of Hindustan Commercial Bank Limited Employees Provident Fund (Rules and Regulations) and another is Section 10 of the Act. Rule 15, provides as under: the amount due to a member shall be absolutely forfeited and recovered by the Employee if any member is dismissed for misconduct causing financial loss to the employer, limited to the extent of financial loss only.

4. SECTION 10 of the Act provides that amount of provident fund is protected against any attachment As is apparent Rule of the Banks were formulated in the year 1944 by the erstwhile bank. The said bank has no statutory authority to frame these rules. There were administrative instructions that have no force of law. Since the Provident Fund Act was brought on the statute book in the year 1952 therefore all other rules, regulations framed by any other bank administratively or otherwise were superseded and became extinct. Section 10 debars all the authorities including bank from attaching the provident fund of the employee be it for any reason whatsoever and rightly because this is the money contributed by the employee. At the most the bank could have attached, forfeited the part of its contribution but could not in any event withhold the contribution made by the employee.

5. THUS we do not find any infirmity of any kind whatsoever so far as the finding of fact is concerned.

6. AS regards the contention that the respondent No. 1 was not the consumer, the learned Counsel for the appellant has placed reliance upon the following two judgments: (i) Regional Provident Fund Commissioner v. Shiv Kumar Joshi, III (1999) CPJ 36 (SC)=x (1999) SLT 395= (2000) Lab. IC 232. (ii) Regional Provident Fund Commissioner, Faridabad v. Shiv Kumar Joshi, I (1996) CPJ 199 (NC). We do not feel persuaded to agree with the Counsel for the appellant inasmuch as that any service provided by any person be it employer qua the employee which is used by the potential user including the services of financial facilities comes within the ambit and definition of the word "service" as defined by Section 2 (1) (o) of the Consumer Protection Act. Section 2 (l) (o) of the Act prescribes as under: "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 of 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. "

The expression service of "any description which is made available to potential user has very wide meaning as in this context the word "any" means every and all, it has inclusive character and not exclusive. In this regard the view enunciated by the Hon"ble Supreme Court in a highly deceptive manner in Lucknow Development Authority v. M. K. Gupta, needs to be reproduced and are as under: 4. What is the meaning of the word "service". Does it extend to deficiency in the building of a house or flat? Can a complaint be filed under the Act against the statutory authority or a builder or contractor for any deficiency in respect of such property. The answer to all this shall depend on understanding of the word "service". The term has variety of meanings. It may mean any benefit or any act resulting in promoting interest or happiness. It may be contractual, professional, public, domestic, legal, statutory, etc. The concept of service thus is very wide. How it should be understood and what it means depends on the context in which it has been used in an enactment. Clause (o) of the definition section defines it as under-" "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. "

It is in three parts. The main part is followed by inclusive clause and ends by exclusionary clause. The main clause itself is very wide. It applies to any service made available to potential users. The words "any" and "potential" are significant. Both are of wide amplitude. The word "any" dictionary means "one or some or all". In Black's Law Dictionary it is explained thus, "word "any" has a diversity of meaning and may be employed to indicate "all" or "every" as well as "some" or "one" and its meaning in a given statute depends upon the context

and the subject-matter of the statute". The use of the word "any" in the context it has been used in Clause (o) indicates that it has been used in wider sense extending from one to all. The other word "potential" is again very wide. In Oxford Dictionary it is defined as "capable of coming into being, possibility". In Black's Law Dictionary it is defined as "existing in possibility but not in act. Naturally and probably expected to come into existence at some future time, though not now existing; for example, the future product of grain or trees already planted, or the successive future instalments or payments on a contract or engagement already made. " In other words service which is not only extended to actual users but those who are capable of using it are covered in the definition. The clause is thus very wide and extends to any or all actual or potential users. But the Legislature did not stop there. It expanded the meaning of the word further in modern sense by extending it to even such facilities as are available to a consumer in connection with banking, financing, etc. Each of these are wide-ranging activities in day-to-day life. They are discharged both by statutory and private bodies. In absence of any indication, express or implied, there is no reason to hold that authorities created by the statute are beyond purview of the Act. When banks advance loan or accept deposit or provide facility of locker they undoubtedly render service. A State Bank or nationalised bank renders as much service as private bank. No distinction can be drawn in private and public transport or insurance companies. Even the supply of electricity or gas which throughout the country is being made, mainly, by statutory authorities is included in it. The legislative intent is thus clear to protect a consumer against services rendered even by statutory bodies. The test, therefore, is not if a person against whom complaint is made is a statutory body but whether the nature of the duty and function performed by it is service or even facility.

7. EVEN otherwise, it is universal rule of interpretation having received unvarying judicial unanimity that any beneficiary legislation has to provide a very liberal and beneficial construction and no literal construction. Similarly every statute of provision of beneficiary legislation has to be provided beneficial interpretation and any effort made in this regard to interpret such a statute or term of the contract or regulation or rules framed by the statutory or public authority or by the Government have to be tested on the anvil of beneficial element to the person for whom the law was made. Consumer Protection Act was brought on the statute book for protecting the interests of the consumer at large and whatever effort can be made to protect those interests by even stretching the interpretation of statutory provision or term of contract is always welcome.

8. IT is again universal rule of interpretation that wherever more than two or three interpretations are possible, the interpretation which goes in favour of and protects the interest of the consumer is the only interpretation which has to be acted and relied upon and no other interpretation. Foregoing reasons persuade us to dismiss the appeal being misconceived and misdirection. Bank Guarantee/fdr, if any, furnished by the appellant be returned forthwith.

9. A copy of this order as per the statutory requirements be forwarded to the parties free of charge and also to the concerned District Forum and thereafter the file be consigned to Record Room. Appeal dismissed.