**(2015) 08 NCDRC CK 0078**

**In the National Consumer Disputes Redressal Commission**

**Case No :** 1805 of 2012

**REGIONAL PROVIDENT FUND COMMISSIONER?(KERALA) Vs R. PORNAM & ANR.**

**Date of Decision :** 21-08-2015

**Acts Referred:**

<a href=3999>Consumer Protection Act, 1986</a>, <a href=3999-24-A>Section 24-A</a>

**Citation :** (2015) 08 NCDRC CK 0078

**Hon'ble Judges :** K.S. Chaudhari

**Advocate :** SHIVANATH MAHANTA, V. Mohan Kumar, Siddhartha Jain

## Judgement

1. This revision petition has been filed by the petitioner against the order dated 25.1.2012 passed by the Kerala State Consumer Disputes Redressal Commission, Thiruvananthapuram (in short, ''the State Commission'') in Appeal No. 139 of 2011 - The Regional Provident Fund Commissioner Vs. R. Ponram & Anr. by which, while dismissing appeal, order of District forum allowing complaint was upheld.

2. Brief facts of the case are that Complainant/respondent no.1was a supervisor in the first opposite party estate and that he was a subscriber to Employees Provident Fund and that after the introduction of the employees'' pension scheme in 1995 he opted for the same and was regularly paying the pension contribution. It was further pleaded that recovery was effected from his salary towards pension from May 1996 till his retirement on 22.8.02 and that consequent to his retirement, though the provident fund amounts were settled, the pensionary benefit was not passed by the second opposite party/petitioner on the ground that he was not a member of the employees'' pension scheme. It is his case that though he has approached the first and second opposite parties/ petitioner many a time they were raising one or other lame excuse and finding that the second opposite party/petitioner was taking an adamant stands in not sanctioning the pension, the complainant prayed for directions to the opposite parties//petitioner to pay the eligible pension and to pay compensation of Rs.75,000/-. OP No. 1 resisted complaint and submitted that complainant was a

subscriber of the Employees Provident Fund and opted for the family pension scheme 1995 in June 1996 and that the contribution of pension was remitted to the Employees'' Pension Scheme every month till his retirement from service on 22.8.02. It was also submitted that the amount remitted by the first opposite party was diverted to provident fund account and the final payment had been made during October 2002 by the second opposite party/petitioner without the knowledge or verification from the first opposite party. It was further submitted that on receiving the representation from the complainant, the opposite party/ Res.No.2 had taken up the matter with the second opposite party/petitioner and it was the second opposite party/petitioner, who had denied the payment of pension to the complainant. Submitting that there was no deficiency in service, prayed for dismissal of complaint. OP No. 2/Petitioner resisted complaint and submitted that complainant was not a member of the employees'' pension scheme 1995. However, it was admitted that the complainant was a subscriber of the Provident Fund with effect from 1.1.59 and the Provident Fund account was settled on 24.10.02, after the retirement of the complainant. It was further submitted that some erroneous payments were made towards the complainant''s account for 6 months from 1.4. 02 to 30.9.02 and since the complainant was not a member of the pension scheme the same was merged with the provident fund account of the complainant and the accounts were settled consequent to the retirement of the complainant. It was further submitted that after retirement, the complainant was not entitled for joining in the scheme as he was not a member for even the family pension fund scheme 1971. Denying any deficiency in service, the second opposite party/petitioner also prayed for dismissal of the complaint. Learned District Forum after hearing both the parties allowed complaint and directed OP No.2 to issue monthly pension to the complainant. Appeal filed by OP No. 2 was dismissed by State Commission and further directed to pay compensation of Rs.10,000/- and cost of Rs. 2,000/- against which, this revision petition has been filed.

3. Heard learned Counsel for the parties and authorized representative of Respondent No. 1 and perused record.

4. Learned Counsel for the petitioner submitted that inspite of complaint being barred by limitation and complainant not being member of family pension scheme, learned District Forum committed error in allowing complaint and learned State Commission further committed error in dismissing appeal; hence, revision petition be allowed and impugned order be set aside and

complaint be dismissed. On the other hand, authorised representative of Respondent No. 1 and learned Counsel for Respondent No. 2 submitted that order passed by learned State Commission is in accordance with law; hence, revision petition be dismissed.

5. It is admitted case of the parties that complainant retired on 22.8.2002 and provident fund payment along with contribution of six months towards pension scheme was made to complainant on 24.10.2002 and complaint was filed in the

 

year 2008. Complainant has neither mentioned in the complaint how complaint was in limitation, nor moved any application under Section 24A for condonation of delay. OP No.1 in its written statement specifically pleaded that complaint was barred by limitation. Learned District forum has not considered this objection and learned State Commission in the impugned order observed that even after remand of matter, OP had not taken up specific contention with regard to question of limitation. It was further observed that as OPs have submitted to the jurisdiction of Forum and have contested the matter on merits. It was also observed that arguments of Counsel for OP that complaint was barred by limitation was only vague in nature. All these observations are prima facie contrary to record because in the written statement filed by OP No. 1, a specific plea was taken that complaint was barred by limitation. When entire payment had been made by OP No. 2 to the complainant on 24.10.2002 including alleged contribution towards pension scheme, complaint ought to have been filed within two years from receipt of payment whereas complaint has been filed after more than 7 years and in such circumstances, complaint was barred by limitation. Authorized representative of Respondent No. 1 could not show that how complaint was within limitation. As complaint was barred by limitation, learned District Forum ought to have dismissed complaint as barred by limitation instead of deciding compliant on merits and learned State Commission further committed error in not considering this objection in right prospective. As complaint was barred by limitation, complaint was liable to be dismissed and impugned is liable to set aside on this count alone.

6. As far merits of the case are concerned, complainant in the complaint pleaded that he opted for pension scheme and to the best of his knowledge; recovery from May, 1996 was affected to the pension fund till his retirement on 22.8.2002 by OP No. 1 and remitted to OP No. 2. OP No. 2 specifically pleaded that complainant had not opted for Family Pension Fund Scheme, 1971 or Employees'' Pension Scheme, 1995 till his resignation or final settlement of Employees Provident Fund Account. It was further pleaded that contribution towards EPS was made from 1.4.2002 to 30.9.2002 which was merged with provident fund at the time of settlement and denied receipt of contribution for six years. There is nothing on record to show that complainant ever filled any form for becoming member of Employees'' Pension Scheme, 1995 before leaving his service. It appears that after retirement complainant moved application for becoming member of Employees'' Pension Scheme, 1995 and OP No.2 vide letter dated 11.12.2002 rejected application as he was not member of EPF. When complainant had not opted for becoming member of the scheme during his service tenure, merely because employer of complainant recovered from time to time amount towards pension scheme and remitted to OP No. 2, complainant does not become entitled to become member of Employees Pension Scheme 1995, particularly when contribution received for six months had already been returned to the complainant while settling provident fund amount. Learned District Forum committed error in allowing complaint and learned State

 

Commission further committed error in dismissing appeal.

7. In the light of aforesaid discussion, revision petition is to be allowed as complaint was time barred.

8. Consequently, revision petition filed by the petitioner is allowed and impugned order dated 25.1.2012 passed by State Commission in Appeal No. 139 of 2011 - The Regional Provident Fund Commissioner Vs. R. Ponram & Anr. and order of District Forum dated 25.11.2010 in CC No. 60/2008 - R. Ponram Vs. The Manager, Periakanal Estate & anr. is set aside and complaint stands dismissed. Parties to bear their own costs.