
(1998) 11 NCDRC CK 0054

In the National Consumer Disputes Redressal Commission

SECRETARY, BOARD OF SCHOOL, KANGRA

APPELLANT

Vs

MEENA TEMPTA

RESPONDENT

Date of Decision : 06-11-1998

Acts Referred:

Citation : 1998 2 CLT 440 : 1998 2 CPC 702 : 1998 3 CPJ 591 : 1998 3 CPR 445

Hon'ble Judges : P.N.Nag , I.D.Bali , Krishana Tandon J.

Final Decision : Appeal accepted

Judgement

1. THIS appeal is directed against the order of the District Forum, Shimla, dated 31st March, 1998, whereby the District Forum has awarded damages of Rs. 50,000/- as compensation alongwith cost of Rs. 2,000/- against the appellant (hereinafter to be referred to as the Board of School Education).

2. THE facts which are not in dispute are that the respondent Ms. Meena Tempta (hereinafter to be referred to as the complainant) got admission in J.B.T. Training School, Solan, in June, 1988 and completed her two years" training course. THE complainant appeared in her J.B.T. Part-1 examination from J.B.T. Training School, Solan in June, 1989 and was placed under re-appearance in certain subjects. THEREafter she appeared as a private candidate and availed chances of re- appearance in December, 1989, June, 1990 and December, 1990 and passed J.B.T. Part-1 examination in December, 1990 after clearing all the subjects in which she was required to appear. In spite of having cleared J.B.T. Part-1 examination in December, 1990 unfortunately by alleged mistake/oversight she was issued re-appear card under Roll No. 1855 till June, 1992 by the School Board of Education. It appears, the mistake was detected and she was informed by Education Board vide letter dated 5.6.1992 that the complainant had already passed her J.B.T. Part- 1 examination in December, 1990 and that she was required to send re-appear card etc., which the complainant complied with. In the meantime, the complainant had also appeared in J.B.T. Part-II examination in June, 1990 as a regular candidate but her result in J.B.T. Part-II examination was not declared as according to the rules of Education Board, in order to be eligible

to sit for the J.B.T. Part-II examination, the candidate must have previously passed the J.B.T. Part-I examination of the Board. According to the Board of School Education since she was declared passed in J.B.T. Part-I examination in December, 1990, she obviously was not eligible to sit for the J.B.T. Part-II examination in June, 1990 as at the relevant time she had not passed the J.B.T. Part-I examination and the result of the complainant as such could not be declared and it automatically stood cancelled.

The complainant is aggrieved against non-declaration of her result of J.B.T. course and the consequent damage she has suffered because of resultant non-employment for two years, and mental agony and harassment.

3. THE Counsel for the appellant raised a preliminary objection that this Forum had no jurisdiction to try the present complaint, which objection has also been taken in the reply by School Board of Education. The principal question that requires consideration is whether a Candidate who appears in the examination conducted by the Board of School Education can be regarded as a person who had hired or availed of the services of the Board of School Education and come within the purview of a consumer under Section 2(1)(o) of the Consumer Protection Act, 1986. In this context, we may notice that there was divergence of opinion of the State Commissions earlier and certain State Commissions, for example, Haryana State Commission held a view that imparting of education by the State is not one of its sovereign regal functions and is a service and that imparting of education by the State comes within the concept of service under Clause (o). Sub-section (1) of Section 2 of the Act and inevitably the conduct of the Matriculation and Primary examinations by the School Board for a prescribed fee is a "service" and such candidate is a consumer. The contrary view was taken by the Maharashtra State Commission and Kerala State Commission and it was held that the candidate could not be held to be a consumer.

4. IN *Chairman, Board of Examinations, Madras v. Mohideen Abdul Kader*, reported as II (1997) CPJ 49 (NC), the National Commission has precisely considered this question in depth particularly in paras 11 & 12 of the Judgment and after consideration of the whole matter came to the conclusion that a candidate who appears for the examination held by the Board of School Education cannot be regarded as a person who has hired or availed of the services of the Board of School Education for consideration and cannot be a consumer and the Consumer FORA has no jurisdiction in the matter. IN this context the finding of the National Commission in para-13 may be reproduced below: "We must make it clear that in this case or in the earlier cases this Commission did not consider the general question whether the imparting of education for consideration would come or not within the ambit of the service under the Act. Whether a University or an institution affiliated to it imparting education is within the arena of consumer jurisdiction is a question which this Commission will consider and decide when it directly arises before it. What this Commission has decided in earlier cases is that a University or the Board in

conducting public examination, evaluating answer papers, announcing the results thereof and thereafter conducting re-checking of the marks of any candidate on the application made by the concerned candidate is not performing any service for hire and there is no arrangement of hiring of any service involved in such a situation as contemplated by Section 2(1)(o) of the Act. A candidate who appears for the examination cannot be regarded as a person who had hired or availed of the service of the University or Board for consideration."

We may also further notice the observations of the National Commission in the aforementioned case (*supra*) which may be reproduced below: "This Commission has taken the view that the Consumer Disputes Redressal Forums are quasi judicial authorities and are thus governed by the well-established principles of the binding nature of its own earlier decisions. The State Commissions and the District Forums are subordinate to this Commission and are bound to follow the decisions of the superior Forums. It is sufficient for invoking rule of *Stare Decises* that a certain decision was arrived at on a question irrespective of the grounds or reasons of its decision. The doctrine of precedent depends on uniformity in the decision on a question of law. That doctrine is not concerned with concrete issues of facts between the parties. Its effect is to declare law not the facts and to declare it so as to be binding upon all consumers or opposite parties as well as all FORA of inferior jurisdiction and in case of same jurisdiction. Were it to be otherwise, the situation in the well ordered field of a legal system governed by precedent would be rendered chaotic."

In view of the aforementioned decision of the National Commission which is binding on us, there is no option left to us except to hold that a candidate who appears for the examination cannot be regarded as a person who had hired or availed of the services of the University or Board for consideration and he cannot be held as a consumer. The complaint, therefore, necessarily has to be dismissed on the question of jurisdiction. It is not necessary to decide whether or not the School Board of Education is entitled to cancel the result as the complainant was not eligible to appear in J.B.T. Part-II examination in June, 1990 as she has passed the J.B.T. Part-II examination only in December, 1990 and that she is entitled to any compensation.

5. IN view of what is discussed above, the appeal is accepted and the order of the District Forum is set aside and the complaint thereby is dismissed.

6. THERE is no orders as to costs. Appeal accepted.