(2010) 04 NCDRC CK 0011

In the National Consumer Disputes Redressal Commission

State Bank of India APPELLANT

Vs

SURINDER JAIN RESPONDENT

Date of Decision : 20-04-2010

Acts Referred:

Citation : 2010 3 CPJ 270

Hon'ble Judges : B.N.P.Singh , S.K.Naik J.

Advocate : A.V.Rangam , Y.P.Bhan

Judgement

1. THE respondent joined her service with petitioner - Bank sometimes in the year 1965 and was in service till 17.12.2000 in different capacity. It is not in dispute that she was not in service of the Bank on 18.12.2000. Both, Bank and respondent have a different version, as while Bank alleges forgery and misconduct on her part for which a disciplinary proceeding was initiated by the Bank and eventually she was driven out of the job. Respondent, however, states to have taken voluntary retirement from the job. Respondent after getting out of the job, sought payment of her terminal dues and in addition to the gratuity that were payable to her, she claiming payment of Rs. 7,57,589 lying in her Provident Fund Account with the Bank authority. The issue thereafter, however, became debatable as the Bank on strength of attachment of restrain orders passed by different societies, defeating claim of respondent held that unless she would secure vacation order from authority concerned which issued attachment orders, Provident Fund amount shall not be released to her.

2. AGGRIEVED with denial of her claim by Bank, the employee took refuge to Consumer Fora filing complaint with District Forum. District Forum on consideration of the issue involved, accepting complaint, directed Bank to pay Rs. 7,57,589/- with interest @ 9% per annum from 18.12.2000. Compensation of Rs. 5,000 along with litigation cost of Rs. 3,000 was also awarded by District Forum. Appeal preferred by Bank did not find favour with State Commission and though material issue about maintainability of complaint filed by respondent against Bank was also raised, State Commission on examining various provisions

of Consumer Protection Act, negating the issue raised on behalf of Bank, held respondent a ''consumer''.

3. ISSUES that were raised before Fora below are sought to be reiterated before us also. Obviously, rival contentions were raised by parties about maintainability of complaint before Consumer Fora. Learned Counsel for Bank states that regard being had to relation of respondent-employee with employer-Bank, the former was not covered within the purview of ''Consumer'' as defined in Section 2(1)(d) of the Consumer Protection Act, 1986 and that part, in terms of Section 2(1)(e), the Act, the issue involved in the present context would not come within the meaning of consumer dispute and even holding that respondent was a consumer, action resorted to by Bank in withholding GPF accumulation of respondent for valid reasons would not constitute deficiency in service of the petitioner. Stretching contentions, learned Counsel states that intra-relationship between Bank and respondent was a contract of personal service and in that view of the matter also, services rendered by respondent would not attract, Section 2(d) of Consumer Protection Act, 1986.

4. REGARD being to nature of service rendered by employees to the State Government and Union Government, that has been held to be not ''service'' within the meaning of the Act. Application of this ratio however as for case under consideration need to be noticed. The respondent rendered her service to Bank which is not a sovereign body, and that apart, we are told that both respondent and employer had been contributing to Provident Fund which accumulated in the account of respondent. An employee of a State Government or Central Government cannot raise consumer dispute in the matter of payment of Provident Fund as the State Government or the Central Government are not contributing to the Provident Fund of their employees, in equal proportion. Almost in similar circumstances, in the case of Regional Provident Fund Commissioner v. Shiv Kumar Joshi, III (1999) CPJ 36 (SC)=X (1999) SLT 395, Hon''ble Apex Court, in the backdrop of contribution of Provident Fund by the employer, held that services rendered by employee is considered to be in service as defined under Section 2(1)(d) of the Act. Services of Provident Fund Commissioner in running scheme was deemed to be availed of for consideration by Central Government for benefit of employees treating them as beneficiary within the meaning of the word used in definition of consumer. The Hon''ble Apex Court while interpreting the word ''consumer'' as defined under the Act, noticed that: "4. Consumer under the Act has been defined as any person who- (i) buys any goods for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment and includes any user of such goods other than the person who buys such goods for consideration paid or promised or partly paid or partly promised, or under any system of deferred payment when such use is made with the approval of such person, but does not include a person who obtains such goods for resale or for any commercial purpose; or (ii) hires or avails of any services for a consideration which has been paid or promised or partly paid and partly promised, or under any system of

deferred payment and includes any beneficiary of such services other than the person who hires or avails of the services for consideration paid or promised, or partly paid and partly promised, or under any system of deferred payment, when such services are availed of with the approval of the first mentioned person." and "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, 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."

5. AS held by Hon''ble Apex Court, the definition of ''consumer'' is wide and covers in its ambit not only the goods but also services, bought or hired, for consideration. The reference to the definition of ''service'' unambiguously indicates that the definition is not restrictive and includes within its ambit such services as well which are specified therein. However, services hired or availed, which are free of charge, or under a contract of personal service, have specifically been excluded. In backdrop of the scheme which required employer Bank to contribute to the Provident Fund, services rendered by employee has to be considered ''service'' within the meaning of Section 2(1)(o) and the employee to be a ''consumer'' within the meaning of Section 2(1)(d) of the Act. The contention raised on behalf of the employer that services under the scheme were rendered free of charge and therefore, it does not come within the purview of the Act, were summarily rejected by Hon''ble Apex Court. Irresistible conclusion can, therefore, be drawn, regard being had to relationship between the employee and employer Bank and both of them contributing towards Provident Fund under the scheme, would be that respondent was a consumer and the dispute raised by her was a consumer dispute.

6. THE accumulation of Provident Fund was withheld by Bank for various attachment orders having been received against loan raised by respondent with Cooperative Societies. Respondent had been persistently perusing with petitioner Bank and had been reiterating that if there be any restrain orders issued by competent Court of Law against release of her GPF accommodation, her retiral amount be released after adjustment of the aforesaid dues. Petitioner Bank had not put on record precise details of whatever the total amount sought to be attached in pursuance of the attachment order from various agencies. The Bank, despite such details sought by respondent, had not been responsive. Alleging hostility, respondent urges that only to defeat her genuine claim, there had been initiation of departmental proceedings by petitioner authority and respondent had been driven out from the job. These accusations are, however, not germane to the issue as for entitlement of respondent to receive her Provident Fund accumulation.

7. THE authority of Bank in having lien over fixed deposits of the customer against loan lent by them cannot possibly be disputed. However, retiral benefits

including Pension and Provident Funds are on a different footing than deposits. Though these retiral benefits cannot be attached in proceedings, but shortly after it comes to the hand of the employee, it does not retain its character of ''retiral benefits'' and inspiration can be drawn from decision of Hon''ble Apex Court in the case of Union of India v. Jyoti Chit Fund and Ors., reporting in 1976 (3) SCC 607. Hon''ble Apex Court against threat of attachment of retiral benefits of an employee held that Provident Fund Account, Pensions and any other compulsory deposits covered by provisions retain its character until it reaches in hands of the employee. Looking from this angle too, we are of the view that Provident Fund accumulation of respondent cannot be withheld by employer Bank against loan raised by her against various Cooperative Societies. In case the loan raised by her remained unliquidated, it was open to Cooperative Societies to initiate recovery proceedings against her instead of asking Bank to withhold her claim as if they had lien over Provident Fund accumulations.

8. RESPONDENT is out of job since 22.3.2006 and since more than 3 and 1/2 years she had been making entities before employer for release of Provident Fund accumulation, which were defeated on untenable grounds, we accordingly, do not feel inclined to interfere with the order of State Commission. We accordingly direct that the award be complied by petitioner Bank, within a period of three months. The revision in the circumstances is dismissed, but with no order as to cost. Revision Petition dismissed.

