

(2011) 11 JH CK 0102
In the Jharkhand High Court
Case No : Writ Petition (C) No. 4075 of 2003

The State of Jharkhand

APPELLANT

Vs

The District Consumer Forum, Palamau and Another

RESPONDENT

Date of Decision : 17-11-2011

Acts Referred:

Consumer Protection Act, 1986 — Section 2(1)
Employees Provident Funds and Miscellaneous Provisions Act, 1952 — Section 2(1)
Government of India Act, 1935 — Section 241

Citation : (2011) 11 JH CK 0102

Hon'ble Judges : P.P. Bhatt, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

1. The respondent-applicant, before the District Consumer Forum, Palamau was beneficiary under the Bihar General Provident Fund Rules, 1948 framed in exercise of powers conferred by clause (b) of sub-section (2) of section 241 of the Government of India Act, 1935 as adopted by the India (Provisional Constitution) Order 1947. The petitioner submitted an application before the District Consumer Forum, Palamau at Daltonganj, claiming, he has been paid less payment of Provident Fund, whereupon, the case No. 112 of 2002 was registered. The petitioner's application was allowed vide order dated 27th August, 2002 and the said order has been challenged by filing this writ application.

2. The learned counsel for the petitioner submitted that the respondent employee was a government servant and being a government servant he was required compulsorily to contribute towards the General Provident Fund as per Section 4 of the Rules of 1948. This beneficial Scheme has been framed by the State Government for its employees but without charging any amount for the benefit given to the employees under Rules of 1948. Not only this, no service charges are recovered from the employees nor they are required to pay the

administrative charges for running and maintaining the fund created under the Rules of 1948.

3. The Hon"ble Supreme Court in the Case of State of Orissa Vs. Divisional Manager, LIC and another, held that in a case where respondent was a Government servant and was bound by the Service conditions and the State was rendering services free of charge to such employee then he is not a Consumer under the definition of Section 2 (1) (o) of the Consumer Protection Act, 1986. Therefore the impugned order passed by the Consumer Forum is wholly without jurisdiction.

4. Learned counsel for the respondent-employee submitted that the judgment of the Hon"ble Supreme Court in the case of State of Orissa (Supra) has been considered by the Supreme Court in a subsequent judgment in the case of Regional Provident Fund Commissioner Vs. Shiv Kumar Joshi, . The Hon"ble Supreme Court after considering the provisions of the Section 2 (1) (d) and 2 (1) (o) as also the provisions of Employees" Provident Funds and Miscellaneous Provisions Act, 1952 held that under the said provision even when a fund was managed by the authority of the State even then employee is getting the services rendered on payment, though, he himself was not paying any consideration for the services but is paid by the State Government and the Act nowhere provides that for falling in the definition of "Service for consideration" one is required to pay the contribution himself and it cannot be through the employer. Since in said case which was under the Employees Provident Funds and Miscellaneous Provisions Act, 1952 wherein employees were required to pay the service charges for the scheme, either directly or through employer, in view of the above reasons, the judgment of the Hon"ble Apex Court in the Case of Regional Provident Fund Commissioner Vs. Shiv Kumar Joshi (supra) fully covers the case of the respondent- employee.

5. We have considered the submission of the learned counsels for the parties and perused the facts of the case. We also perused the Rules of 1948. It will be worthwhile to mention here that there is a Provident Fund Act, 1925, but the Rules of 1948 are not framed under the Act of 1925 but have been framed under the provision of Government of India Act, 1935 as adopted by the India (Provisional Constitution) Order, 1947. We find from the judgment of the Hon"ble Supreme Court delivered in the Case of Regional Provident Fund Commissioner Vs. Shiv Kumar Joshi (Supra) that it was a matter under the provisions of Employees" Provident Funds and Miscellaneous Provisions Act, 1952, which was a special Act and was for specific purposes to give the benefit to the workers working in the establishment as defined in the Act. u/s 30 of the Act of 1952, specific provision has been made with respect to contribution and also for administrative charges and as per sub-Section (2) of Section 30 the employee is liable to pay not only his contribution but also is liable to pay administrative charges for the scheme and the right has been given to the employee to pay such charges directly or through the contractor and right has been given to

contractor to recover the administrative charges from the employee and therefore, the Hon''ble Supreme Court in paragraph 7 held as under: -

Obviously, it appears that as the payment of the contribution includes the payment of administrative charges, the scheme appears to be for consideration,

6. On this count, the services of those employees covered under the Act of 1952 appears to have been found to be for consideration.

7. There was yet another issue raised in the case of Regional Provident Fund Commissioner Vs. Shiv Kumar Joshi (supra) and that was that, the Regional Provident Fund Commissioner being Central Government, cannot be held to be rendering service within the meaning and scheme of the Act and the Regional Provident Fund Commissioner, under the Act and the Scheme discharges statutory functions for running the scheme. Considering this plea the Hon''ble Supreme Court held that by the authority of the Provident Fund Commissioner, no sovereign powers of the State are being discharged. The Hon''ble Supreme Court held that the Commissioner is a separate and distinct entity and it cannot legally claim that the facilities provided by the scheme were not service or that the benefits under the scheme being provided were free of charge. Therefore, in that case it was held that the Regional Provident Fund Commissioner has not been delegated with the sovereign power of the State, so as to hold it as a Central Government. Whereas, here in this case, it has been argued by the learned counsel for the State that in the Rules of 1948, no separate authority has been constituted but the State through its own officer, is discharging duties and therefore, it is the State functioning and not of rendering services for consideration.

8. In sum and substance, the contention of (he learned counsel for the State is that the State employees, even if they are the beneficiaries of the Bihar General Provident Fund Rules, 1948, yet they are not getting any "service for consideration" from the Accounts Officers or any oilier authority or independent or separate legal entity. Therefore, neither it is service for consideration u/s 2 (1) (o) of the Act, nor it can he said that the function discharged by any Officer of the State without creating any legal entity, is not a State functionary.

9. Learned counsel for the Respondents has cited an order dated-18.11.2010, passed by this Court in W.P. (S) No. 3144 of 2003 (The State of Jharkhand through the District Provident Fund Officer, Palamau-versus-The District Consumer Forum, Palamau and others, wherein, relying upon the judgment of the Hon''ble Apex Court in the case of Regional Provident Fund Commissioner Vs. Shiv Kumar Joshi (Supra), the Division Bench of this Court dismissed the writ petition of the State.

10. We called the record of the said W.P. (S) No. 3144 of 2003 at the request of the learned counsel for the parties and it is admitted case that the W.P. (S) No. 3144 of 2003 was also a case of an employee, who was also beneficiary under the Rules of 1948.

11. In view of the above reasons, we deem it proper to refer the following question to a larger Bench for its consideration : -

Whether employee of the State, who is beneficiary of the Bihar General Provident Fund Rules, 1948 (as adopted by the State of Jharkhand), is getting the service for consideration and which service falls in the definition of Section 2 (1) (o) of the Consumer Protection Act, 1986.

12. Let the matter be placed before Hon''ble the Chief Justice for placing it before an appropriate Bench.