

(2008) 04 NCDRC CK 0007

In the National Consumer Disputes Redressal Commission

UCO BANK

APPELLANT

Vs

R P DHANDA

RESPONDENT

Date of Decision : 17-04-2008

Acts Referred:

Citation : 2008 3 CPJ 24

Hon'ble Judges : S.N.Kapoor , B.K.Taimni J.

Final Decision : Appeal disposed of

Judgement

1. THE appellant was the opposite party before the State Commission, where the respondent/complainant had filed a complaint on 16. 12. 2002 alleging deficiency in service on the part of the appellant.

2. UNDISPUTED facts of the case are that the complainant Mr. R. P. Dhanda was an employee of the appellant Bank and retired on 31. 5. 2000. His terminal benefits like gratuity, Provident Fund, Commuted Pension and arrears pension amount was not being paid. Upon which a legal notice was issued by the complainant. When no satisfactory response was forthcoming from the appellant, a complaint was filed before the State Commission praying for a direction to the appellant to release the due amount to him "along with" interest. The case was contested by the appellant and the main ground for delay in the payment was that the complainant has not vacated the premises allotted to him as an employee of the Bank. The State Commission after hearing the parties and perusal of material on record, passed the following order: "1. Complaint is partly allowed. 2. OP shall pay interest @ 6. 5% p. a. on the amount of Rs. 5,54,082 from 1. 6. 2000 till 28. 8. 2002. 3. OP shall pay interest @ 18% p. a. on the amount of commuted pension of Rs. 2,07,305 from 1. 6. 2000 to 31. 12. 2001 as per prayer clause (b) para 15 of the complaint. 4. OPs shall pay interest @18% p. a. on the amount of Rs. 1,36,975. 31ps from 1. 6. 2000 to 31. 12. 2001 as prayed in prayer clause (c) of para 15 of the complaint. 5. OP shall pay Rs. 25,000 to the complainant by way of compensation. 6. OP shall pay Rs. 2,000 to the complainant as costs of the proceedings. 7. OPs are directed to comply the

directions within 30 days from the date of receipt of the order. 8. Pronounced and dictated in the open Court. 9. Copies of the order herein be furnished to the parties. "

It may be pertinent to note that the complainant had also filed a complaint before the District Forum in the year 2003, praying for similar relief which was dismissed by the District Forum vide order dated 24. 11. 2004. Against this, the respondent/complainant filed an appeal before the State Commission, which was also dismissed on the same date comprising the same Bench.

3. WE have a very queer situation before us. We have two orders by the same Bench of the State Commission, authors of the order being different, i. e. one written by the President of the State Commission and the other by the Member of the State Commission, on the same date - one order contradicting the other. It is admitted position that against the complaint filed before the District Forum, the complainant filed an appeal before the State Commission which was dismissed and no revision was filed by the complainant before National Commission, hence that order has become final. But our predicament is that the State Commission passed an order in the original complaint filed by the same complainant, on the same date by the same Bench, allowing the complaint in terms reproduced earlier. We are somewhat pained to point out that the respondent/complainant has not come out very clean on this point as to why in what circumstances he decided to file two separate complaints - one before the District Forum in the year 2003 and one complaint had already been filed by him before the State Commission in the year 2002, without telling, any one of them, that a complaint has already been filed before the other Fora. Even though, it is the case of the complainant that complaint before the District Forum was for different set of reliefs, then the complaint filed before the State Commission, but having gone through the material on record, we see no merit of this plea of the complainant.

4. BE that as it may, in order to avoid further litigation and resolve the issue, we find that undisputedly, the complainant retired on 31. 5. 2000 and the amount of Provident Fund was released on 28. 8. 2002. The commuted pension amount was paid on 15. 1. 2002. The appellant paid arrears of pension after deducting the income tax at source, but with a delay, i. e. , upto 31. 12. 2001. It is admitted position that Provident Fund amount has been paid along with interest of 11. 5% p. a. and no interest has been paid despite delay in payments on the commuted pension as well as on the delayed pension amount. After hearing the parties, we are of the view that the State Commission was not justified in grant of interest @ 18% p. a. for the simple reason that from the year 2001 onwards the rate of interest had come down considerably and secondly the judgment of the Hon'ble Supreme Court relied upon by the State Commission will not help the complainant for the simple reason that in the cited judgment it was not the case of the appellant that the employer had withheld the payment, because of non-vacation of the premises allotted by the employee during its service reflecting in

the poor conduct of the employee. Hence, in our view, that judgment will not apply at all in the present case. In the interest of equity and justice, we consider it appropriate to award interest @ 12% p. a. which inter alia will mean that: (1) Appellant shall pay additional interest @ 0. 5% p. a. on the amount of Rs. 5,54,082 from 1. 6. 2000 till 28. 8. 2002. (2) Appellant shall pay interest @ 12% p. a. on the amount of commuted pension of Rs. 2,07,305 from 1. 6. 2000 to 31. 12. 2001. (3) The appellant shall pay interest @ 12% on the amount of Rs. 1,20,975. 31ps. from 1. 6. 2000 to 31. 12. 2001. In our view, the State Commission erred in granting relief under sub-para 4 of the operative para by calculating the amount of arrears of pension at Rs. 1,36,175. 31ps. wherein they themselves observed at page 3 of the order that amount of Rs. 16,000 had to be adjusted on account of income tax deduction at source, therefore, what complainant is entitled to Rs. 1,20,975. 31ps. (4) The appellant shall pay Rs. 2,000 to the complainant as cost of proceedings.

The above payment shall be made within 2 weeks of the surrender of the house allotted by the appellant to the complainant, when the latter was in the employment of the appellant.

5. THE complainant is directed to surrender the premises to the appellant within 4 weeks from the date of passing of this order so as to make him eligible to receive the above amount.

6. WE are constrained to observe that appellant has neither come with clean hands before us as already observed earlier and is in continuous illegal occupation of the accommodation which he should have vacated within 2 months of his retirement, i. e. , by 31. 7. 2000. These facts do not help the case of the complainant. However, in the interest of equity and justice we have decided to pass the above order. The appeal stands disposed of in above terms. Appeal disposed of.