
(2007) 09 NCDRC CK 0034

In the National Consumer Disputes Redressal Commission

VYAVASAYA SEVA SAHAKARA BANK LIMITED

APPELLANT

Vs

K R DANESHWARAPPA

RESPONDENT

Date of Decision : 14-09-2007

Acts Referred:

Citation : 2008 2 CPJ 396

Hon'ble Judges : Chandrashekhar , Rama Ananth J.

Final Decision : Appeal dismissed

Judgement

1. THIS appeal is by the appellants/opposite parties (for short, "o. Ps. ") Nos. 1 and 2 challenging the Order dated 16. 1. 2006 passed by the District Consumer Forum, Shimoga, in Complaint No. 94/2006, by which the District Forum has allowed the complaint of the respondents 1 (a) to 1 (d)/complainants.

2. LATE Daneshwarappa, i. e. , the husband of complainant No. 1 (a) (for short, "deceased employee") was working as a Secretary in O. P.-1 Bank, which is registered as a Society under the Karnataka Co-operative Societies Act. He retired from service on attaining the age of superannuation on 7. 3. 2005. After retirement the deceased employee became entitled for terminal benefits, such as Gratuity , Provident Fund, Encashment of Leave. According to the complainants, the deceased employee after his retirement was not paid the retiral benefits. In this regard, the complainants have also issued a legal notice to O. P. 1 Bank. But there was no reply to the said Notice. Therefore, the complainants filed the complaint before the District Forum alleging "deficiency in Service" on the part of the O. P.-1 Bank. O. P.-1 Bank on service of Notice issued by the District Forum filed its version stating that whatever retiral benefits that became payable to the deceased employee have already been paid and, therefore, no amount is payable. The further case of O. P. No.-1 Bank is that since the matter relates to service condition of the deceased employee, the same does not come within the purview of the provisions of the Consumer Protection Act, 1986 and, therefore, the complaint is liable to be dismissed as not maintainable.

The District Forum considering the evidence adduced by both the parties has

allowed the complaint of the complainants with a direction to O. P.-1 Bank to pay Rs. 3,25,566 to the complainants with interest, recording a finding that the retirement benefits have not been paid to the deceased employee on his retirement. This order is under challenge by O. P.-1 Bank in this appeal.

3. THE learned Counsel appearing for O. P.-1 Bank submitted that since the relationship between the deceased employee and O. P.-1 Bank is that of "employer and employee", the complaint filed by the complainants under the Consumer Protection Act is not maintainable. In support of this contention, he relied upon the decision of the Supreme Court in the case of Kishori Lal v. ESI Corporation, reported in II (2007) CPJ 25 (SC)=air 2007 SCW 3032. In our view, the said decision is not applicable to the case on hand. The facts in this case are different. In the instant case, it is not in dispute that the deceased employee was an employee of O. P.-1 Bank. It is also not in dispute that the deceased employee on his superannuation became entitled for retiral benefits. Retiral benefits are paid to an employee in recognition of the service rendered by him. Admittedly, the deceased employee was an employee of O. P.-1 Bank. The deceased employee on retirement from service on attaining the age of superannuation was entitled for retiral benefits, especially when there are no complaints whatsoever against him. Retiral benefits are payable by the employer for having availed the services of the employee. Non-payment of retiral benefits amounts to "deficiency in Service". In this view of the matter, the complainants can maintain a complaint under the Consumer Protection Act, if they establish that the employer having availed the services of the deceased employee has not performed his part of the duty. Hence, in our view, the contention urged by O. P.-1 Bank regarding maintainability of the complaint is liable to be rejected and, accordingly, it is rejected.

4. O. P.-1 Bank in its version has stated that as per the Statement of Accounts, O. P.-1 Bank has remitted a sum of Rs. 13,43,000 to the account of the deceased employee which includes retiral benefits payable by O. P.-1 Bank to the deceased employee. No doubt, there is an entry that a sum of Rs. 13,43,509. 60 was available in the account of the deceased employee as on 13. 12. 2005. But O. P.-1 Bank has not produced any evidence before the District Forum to show that the amount available in the account of the deceased employee includes the retiral benefits paid by O. P.-1 Bank to the deceased employee. In the absence of such evidence and since the deceased employee was entitled for retiral benefits as per the Rules regulating his service conditions, the District Forum is right in allowing the complaint of the complainants. Hence, we find no reason to interfere with the impugned order. In the result, we pass the following Order: (1) The Appeal is dismissed. (2) O. P.-1 Bank has deposited a sum of Rs. 1,62,783 in this Appeal before this Commission. Office is directed to transfer the said amount to the District Forum with a direction to the District Forum to pay the same to the complainants after due notice to them.

Appeal dismissed.