

**NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION
NEW DELHI**

REVISION PETITION NO. 71 OF 2013

(Against the Order dated 18/10/2012 in Appeal No. 1098/2010 of the State Commission Andhra Pradesh)

1. KONDAREDDYGARI ADINARAYANAREDDY

H.NO -24-2-2159 MAGNUTA LAYOUT

NELLORE - 524 003

A.PPetitioner(s)

Versus

1. STATE BANK OF HYDERABAD & ANR.

DEPUTY GENERAL MANAGER, (ACCOUNTS &
SERVICES), PPG DEPARTMENT, STATE BANK OF
HYDERABAD H.O GUNFOUNDRY

HYDERABAD - 500 001

A.P

2. THE MANAGING DIRECTOR, STATE BANK OF
HYDERABAD,

H.O., GUNFOUNDRY,
HYDERABAD - 001

A.PRespondent(s)

BEFORE:

HON'BLE MR. DINESH SINGH, PRESIDING MEMBER

HON'BLE MR. JUSTICE KARUNA NAND BAJPAYEE, MEMBER

For the Petitioner : : Mr. Abhishek Chaudhary, Amicus Curiae
with Mr. Amit Singh, Advocate

For the Respondent : Mr. Ritesh Khare, Advocate,
Mr. Siddharth Sangal, Advocate &
Mr. Pawan Kumar Ray, Advocate

Dated : 20 Jul 2022

ORDER

1. This revision petition has been filed under section 21(b) of The Consumer Protection Act, 1986 in challenge to the Order dated 18.10.2012 of the State Commission in appeal no. 1098 of 2010 arising out of the Order dated 29.08.2008 of the District Commission in complaint no. 335 of 2008.

2. On the last occasion this case was taken up i.e. on 03.06.2022, enough time was spent in hearing the complainant in person who was simply unable to render any meaningful assistance. He also submitted that because of his pecuniary condition he was unable to afford the fee of an advocate and beseeched that legal aid may be provided to him. Having regard to the facts and specificities of the matter and the implications involved, Mr. Abhishek Chaudhary, learned advocate was requested to appear as *amicus curiae* to represent the complainant.

3. We have heard the learned *amicus curiae* for the complainant (the petitioner herein) and the learned counsel for the bank (the respondents herein). We have also perused the record including *inter alia* the Order dated 29.08.2008 of the District Commission, the impugned Order dated 18.10.2012 of the State Commission and the petition.

4. Briefly, on 06.07.2005 the complainant was dismissed by the bank from the post of clerk on being imposed penalty of dismissal consequent to departmental proceedings as his initial appointment on a post under the reserved category was found to have been obtained by submitting a false caste certificate. His grievance relates to the bank withholding portion of the terminal benefits i.e. 'provident fund (bank contribution)' and 'gratuity' on dismissing him from service. (Regarding provident fund, his own contribution to the fund has been released to him.)

5. We note that in the first para itself of the written version filed by the bank before the District Commission a preliminary objection was made that the complainant was not a 'consumer' as per the Consumer Protection Act as he was seeking relief of payment of provident fund (bank contribution) and gratuity together with interest.

The District Commission vide its Order dated 29.08.2008 ignored the preliminary objection and entered into the merits of the case. Holding that the complainant was not entitled to the benefits being claimed, it dismissed the complaint observing *inter alia* thus "If the complainant is not entitled for provident fund contribution which was paid by the bank and gratuity from the bank, the question of deficiency in service on the part of the opposite parties does not arise - - -. In the result, the complaint is dismissed."

In appeal the State Commission vide its impugned Order dated 18.10.2012 also ignored the preliminary objection and entered into the facts of the case. Holding that the matter involved adjudication of disputed questions of fact, it deemed it appropriate to return the complaint to the complainant with liberty to approach the competent civil court for adjudication of the matter. It proceeded to observe, "In the result, the appeal is allowed setting aside the order of the District Forum. The matter is remitted back to the District Forum. The District Forum is directed to return the complaint to the appellant. The appellant is at liberty to approach proper court for redressal of his grievance."

6. Learned *amicus curiae inter alia* refers to **(2000) 1 SCC 98 Regional Provident Fund Commissioner vs. Shiv Kumar Joshi**, **(2013) 10 SCC 136 Jagmittar Sain Bhagat & Ors. vs. Director Health Services Haryana & Ors.**, **(2019) SCC online SC 1780 Ministry of Water Resources & Ors. vs. Shreepat Rao Kamde**, **(2008) 7 SCC 111 Regional Provident Fund Commissioner vs. Bhavani**, **(2014) 2 SCC 715 Bank of Baroda vs. S K. Kool (Dead) Through Legal Representative & Anr.** and **(2019) 4 SCC 479 Senior Divisional Manager, Life Insurance Corporation of India & Ors. vs. Shree Lal Meena** and submits that it is a settled position of law that the employees' provident fund scheme is a 'service' within the meaning of

section 2(1)(o) and an employee-member of the employees' provident fund scheme is a 'consumer' within the meaning of section 2(1)(d)(ii) of The Consumer Protection Act, 1986. However the case here does not involve the employees' provident fund scheme but relates to the bank's i.e. a public sector enterprise's provident fund scheme. It is also settled that a government / public sector employee cannot raise any dispute regarding his service conditions or for payment of general provident fund or gratuity or any other terminal benefits before any forum under The Consumer Protection Act, 1986 since a government / public sector servant does not fall under the definition of 'consumer' as defined under section 2(1)(d)(ii) of the Act, a government / public sector servant being entitled to claim his terminal benefits strictly in accordance with his service conditions and regulations or statutory rules framed for that purpose.

He further submits that in this case, however, prejudice has been caused to the complainant by the District Commission as it ignored the preliminary objection re jurisdiction and entered into the merits while dismissing the complaint. He emphasizes that an underlying vein of the District Commission's Order is that just because the complainant was tainted with stain of dismissal from service he had no case on merits in respect of his terminal benefits. For his misconduct he has already been awarded the penalty of dismissal, the question before the District Commission was not his misconduct or the penalty awarded but whether the provident fund (bank contribution) and gratuity ought or ought not to have been legitimately paid by the bank on his dismissal from service and the same had to be adjudged in the facts as per rules and it should not have been brushed aside under the taint of dismissal. He further submits that whether or not the terminal benefits were due would include examining the relevant rules and regulations and the judicious scrutiny may also go so far as to require the examination of their *vires* itself, which is patently lacking in the District Commission's Order.

He further submits that the State Commission also ignored the preliminary issue of maintainability and hastened to enter into the facts of the case. The State Commission ought to have examined the question of jurisdiction first and if the same was lacking it should have restrained itself from entering into the facts. He submits that the State Commission has also prejudiced the complainant by its observation that the facts were such that they required adjudication in a regular suit before a civil court and cannot be fairly decided in *quasi-judicial* proceedings before a tribunal. Such a sweeping remark may go to untowardly influence even a services tribunal having the competence.

The submission is that the preliminary issue re maintainability needed to be decided first, if the complaint was found to be not maintainable the same ought not to have been further adjudicated on merits or upon the nature of the facts as to whether they could or could not be or should or should not be adjudged in regular proceedings in a civil court.

7. The learned counsel for the bank submits that the District Commission dismissed the complaint on merit. However the State Commission found that the case involved disputed questions of fact and returned the complaint to the complainant with liberty to take his case before a civil court. The submission is that the bank has not challenged the impugned Order of the State Commission and the same need not be disturbed.

8. After our thoughtful consideration to the submissions made, we are of the opinion that both the fora below ought to have addressed the preliminary issue of jurisdiction first, dealt with it with reasons given and should have passed speaking orders on the issue before proceeding further into the case.

In so far as the question of jurisdiction is concerned, the time-honoured remedial measure adopted by government or public sector employees having any grievance in regard to a service matter has been to seek redressal of such service matters before the competent services tribunal or civil court. In the present case, the complainant's grievance is relating to the withholding of the provident fund (bank contribution) and the gratuity.

As far as gratuity is concerned, it is undisputedly a service matter and as such it is not within the purview of The Consumer Protection Act, 1986.

As far as provident fund (bank contribution) is concerned, though it is settled that an employee-member of the employees' provident fund scheme is a 'consumer' within the meaning of Section 2(1)(d)(ii) of the Act, 1986 the same cannot be said of the bank's provident fund scheme. We also take note of the learned *amicus curiae*'s submission that in a given case examination of the provident fund (bank contribution) may *inter alia* include examination of the *vires* of the relevant rules and regulations that govern the bank's provident fund scheme. Also, the pristine rule in vogue is that the issues relating to the entire gamut of terminal benefits as a whole, including provident fund (bank contribution) and gratuity, has been the subject-matter of adjudication by the competent services tribunal or civil court. Selectively segregating one particular benefit and taking it to the consumer protection fora is neither desirable nor tenable or sustainable.

9. Sequel to the above discussion, the revision petition is disposed of with directions / observations as below:

(i) The Order dated 29.08.2008 of the District Commission is set aside, as the District Commission did not examine the preliminary objection re jurisdiction and entered into the merits of the case.

(ii) The Order dated 18.10.2012 of the State Commission is set aside, as the State Commission did not examine the preliminary issue re jurisdiction and entered into the facts of the case.

(iii) The complaint is dismissed as not maintainable before the District Commission, as the terminal benefits like provident fund (bank's contribution) and gratuity not being granted on dismissal from service is the subject-matter of the competent services tribunal or civil court. The complaint is returned un-adjudicated, the merits or the nature of the facts remain unexamined by the consumer protection fora. The complainant shall be at liberty to approach the competent services tribunal or civil court to seek remedy as per the law. Section 14 of The Limitation Act, 1963 shall be relevant in respect of the period spent in litigation before the consumer protection fora.

10. Before parting we feel persuaded to observe that the ability with which the learned *amicus curiae* has researched his brief and rendered his assistance, the dispassionate manner of placing the facts and law both before the bench, the perspicacity, and the fairness of approach displayed has set up an example worthy of imitation by his peers. He truly deserves our approbation as he has acted as a true officer of the court in assisting us to arrive at a just and lawful decision.

11. The Registry is requested to send a copy each of this Order to the parties in the petition, to the learned *amicus curiae* for the complainant and the learned counsel for the bank immediately. The stenographer is also requested to upload this Order on the website of this Commission immediately.

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DINESH SINGH
PRESIDING MEMBER
.....J
KARUNA NAND BAJPAYEE
MEMBER



LEGALERA
BY THE PEOPLE. FOR THE PEOPLE. OF THE PEOPLE