

BEFORE THE DISTRICT CONSUMER DISPUTES
REDRESSAL COMMISSION, MYSORE-570023

CONSUMER COMPLAINT No.143/2022
DATED ON THIS THE 22nd December, 2023

- Present:** 1) Smt.A.K. Naveen Kumari.,
B.Sc., LL.M., - PRESIDENT
2) Smt.M.K. Lalitha.,
M.A., BAL, LL.B., -MEMBER
3) Sri. Maruthi Vaddar
BA., LLB., (Spl) - MEMBER

COMPLAINANT/S

Smt. Visalakshi M.R.
D/o Rangaswamy K.
Aged about 39 Years,
Residing at No.4826, Third
Cross, Pension Block
Rajendranagar Mysuru-
570007.

(Rep.by.Adv.Sri P.P. Baburaj.)

V/S

OPPOSITE PARTY/S

Sharp Watch Investigation
& security (SWISS), # 17,
First Floor, Fifth Main 8th
Cross, Kamakshi Hospital
Road Mysuru-570009.

(Rep.by.Adv.K.Sanjay.,)

Nature of complaint	:	Deficiency in service
Date of filing of complaint	:	31.05.2022
Date of Issue notice	:	06.06.2022
Date of order	:	22.12.2023
Duration of Proceeding	:	1 YEAR 6 MONTHS 15 DAYS

**SMT.A.K. NAVEEN KUMARI.
PRESIDENT**

The complainant has filed complaint against the opposite party for issue of direction to the opposite party to pay the outstanding salary amount of Rs.6,41,439/- to the complainant with interest @18% per annum. To pay compensation of Rs.2,00,000/- for mental agony of the complainant towards to the rejection of her claim. To impose penalty on the opposite party for the deficiency of service. And grant such other reliefs as this Honourable commission deems fit to grant in the interest of justice and equity.

2.The complaint in brief avers as follows:-

That the complainant was working as outsourced staff deputed to the District Child Protection Unit (DCPU), Mysuru as Counselor in Government Observation Home since 2015 till 2021. The opposite party is a human resource agency selected by the District Child Protection Unit, (DCPU) Mysuru as an outsourcing agency through e-tender data 17.06.2015 to supply

required personnel to its unit and other Child care institutions under its supervision in the district. Accordingly, the opposite party received an order to that effect dated 29.07.2015 from the District Child Protection Unit (DCPU), Mysuru. In the said order, the opposite party was asked to supply 13 personnel for various outsourcing posts with their approved monthly salary. The details were given in the said order such as salary to be paid to the said staff after deduction, details of deduction for EPF, ESI, GST, and service charges of opposite party.

3. It is contended that the opposite party was regularly paid the amount by the District Child Protection Unit in terms of paying the outsourcing personnel on a monthly basis. Accordingly, the monthly salary of these persons supplied by the opposite party to these institutions is being paid by opposite party regularly after deducting EPF, ESI, GST and the opposite party's service charges. The complainant is a post graduate in Clinical Psychology and was working as Counselor on contract in the Government Observation Home for Boys at Mysuru since 2012. As per the change of policy and norms in the government, the District Child Protection Unit, (DCPU) decided to outsource all its staffs including Counselor for the Observation Home. Accordingly, the opposite party was selected as outsourcing agency in tender process and consequently, appointed the complainant as outsourcing Counselor in Government Observation Home for Boys in Mysuru in the years 2015.

4. As per the above said order dated 29.07.2015, the monthly salary for the post of Counselor was fixed as Rs.17,500/-and after deduction for PF, PT, ESI, GST and service charges of opposite party, the gross amount to be paid to the Counselor was fixed as Rs.13,713/-. But the opposite party did not pay the said amount to the complainant at any point of time during her service period from 2015 to 2021 under opposite party. On every month, the opposite party paid to the complainant only lesser amount than what she deserved every month as per the above said order. So, as per the calculation of the complainant, the opposite party is liable to pay the balance of Rs.5,58,577/- during her service as Counselor from her joining date i.e. from 08.09.2015 to 13.07.2021 (date of her resignation) towards her salary as fixed by the above mentioned order dated 29.07.2015. That the opposite party deducted the above said mount over six years without the knowledge or information of the complainant and exploited her innocence.
5. That the opposite party has deducted the employee's share of EPF and ESI from her salary amount as mandatory deduction. The opposite party has also deducted the employer's share from her salary, which amounts to a clear violation of law. Both the share of employer and employee was deducted from her salary in the name of EPF and ESI during her service under opposite party. For PF, opposite party had deducted every month Rs.933.66 towards employer's share and for ESI, Rs.233.42 towards employer's share. Though the government department has paid money to the opposite party for both the shares, the

opposite party has misled the complainant and deducted both the share from her meager salary. Hence, opposite party is liable to reimburse Rs.66,289.86/- towards PF deduction and Rs.16,572.82/- towards ESI deduction, totaling Rs.82,862.68/-. Opposite party has done a deliberate attempt with full knowledge to deceive the complainant and misappropriate her salary amount. By doing so opposite party has committed deficiency of services.

6. It is contended that the opposite party has violated the norms of the order issued by the DCPU and the opposite party has continuously deceived the complainant and exploited her innocence. The opposite party has demonstrated a corrupt practice by not maintaining proper payment to its employees. The complainant is a victim of opposite party's unfair practice and deficiency of service. Hence opposite party is liable for the deficiency of service in this matter. The complainant got issued a legal notice to the opposite party through advocate her on 05.05.2022 demanding the payment in all Rs,6,41,439/-. For which the opposite party has sent reply denying all the claims of the complainant. Hence this complaint.

7. After filing of the complaint notice was issued to the opposite party. The opposite party appeared through counsel and filed version, which avers as follows:-

It is contended that the opposite party was the successful bidder since 2015 and after the receipt of necessary order in this regard from the said department from time to time, the opposite party in terms of the tender agreement and order has

provided required human resources to the DCPU and its other offices. Among other persons so provided, the complainant was one of the person so provided and she was working as Counselor in the Government Observation Home for Boys, Mysuru and the complainant resigned from the said service on 21-06-2021. That the opposite party was making payment only in terms of the tender agreement and the order issued by the said department from time to time, after making necessary deductions such as P.F.,E.S.L., G.S.T and service charges.

8. It is contended that the complainant was working as Counselor in Government Observation Home for Boys and the total enumeration fixed in the said order for the said service by the said Department was Rs.10,000/- and after all the deductions the complainant was entitled for Rs.7,241.90/- and the opposite party was making payment of the same to the complainant regularly. Since the opposite party has paid the entire remuneration amount to the complainant in terms of the order issued by the department as stated supra, the opposite party is not due any amount to the complainant, much less a sum of Rs.5,58,577/- as contended by the complainant. It is denied that the complainant served till 13.07.2021, as contended by the complainant. But, she has resigned from service on 21.06.2021. It is contended that the opposite has made all the deductions only in terms of the said order. As per the said order the deductions from both the side, i.e., employee and employer were to be deducted from the employee's salary only and accordingly the opposite party has acted.

9. It is denied that this opposite party has deducted Rs.933.66/- towards PF and Rs.233.42 towards ESI every month. That the opposite party has supplied only the required manpower to the department in terms of the tender notification and at no point of time the complainant has rendered service to the opposite party and hence the contention of the complainant that the opposite party has committed deficiency of service carries no water. It is contended that if at all the complainant is aggrieved on any of the grounds as alleged above, then she ought to have sought the relief from the department where she has rendered service and not against the opposite party. Since the opposite party has made payment to the complainant till the last day of her service in terms of the order by the competent authority. So, it is not liable to make any payment to the complainant as demanded. Hence prays to dismiss the complaint with cost.
10. The complainant has filed affidavit in lieu of evidence and got marked documents as Ex. P1 to P.11.
The opposite party has filed affidavit in lieu of evidence and produced documents.
11. Heard arguments of the learned counsel for both the parties.
The opposite party has filed written arguments also.
12. Now the points that arise for the consideration of this commission are:-
1. Whether the complainant has proved the deficiency in service by the opposite party?
 2. Whether the complainant is entitle for the relief sought?

3. What order?

13. Our findings on the aforesaid points are as follows:-

Point No.1:- In the affirmative.

Point No.2:- Partly in the affirmative.

Point No.3 :- As per the final order for the following:-

:: R E A S O N S ::

14. Point No.1:- The evidence of the complainant discloses that she was working as a outsource staff deputed to the District Child Protection Unit (DCPU) Mysuru as Counselor in the Government observation home since 2015 till 2021. Her evidence discloses that the opposite party is the human resource agency selected by the DCPU, Mysore as an outsourcing agency through e-tender dated 17.06.2015. She has produced the copy of the proceedings of DCPU marked as Ex. P1. This document discloses that the opposite party received order on 29.07.2015 from the DCPU and in the said order the opposite party was asked to supply 13 personnel for various outsourcing posts with their approved monthly salary. In the said order the salary to be paid to the staffs after the deductions, details of deduction for EPF, ESI, GST and service charges of the opposite party is shown.

15. As per the evidence of the complainant the opposite party has regularly paid the total amount to the DCPU in terms of paying the outsourcing personnel on a monthly basis. Accordingly the monthly salary of these persons supplied by the opposite party to these institutions is being paid by the opposite party after deducting EPF, ESI, and GST and the opposite party's service charges. The

complainant has stated that she is a post graduate in Clinical Psychology and was working as Counselor on contract in the Government Observation Home for Boys at Mysuru since 2012. Then as per the change of policy and norms in the government, the DCPU decided to outsource all its staffs including Counselor for the Observation Home. Accordingly as per the order dated 29.07.2015 the monthly salary for the post of Counselor was fixed at Rs.17,500/- .After deduction for PT, ESI, GST and service charges of opposite party, the gross amount to be paid to the Counselor was fixed at Rs.13,713/-, but the opposite party did not pay the said amount to the complainant at any point of time. The proceedings of DCPU marked as Ex.P1 discloses the salary of the Counselor as Rs.17,500/-. And as rightly contended by the complainant after deducting the PT, ESI, PF, GST and service charges and the amount payable to the counselor is shown as Rs.13,713/-.

16. The invoice dated 15.03.2016 marked as Ex.P2 and in this the payment of Counselor is shown as Rs.17,500/-. Ex.P3 is the pay slip of the complainant which discloses that the complainant was paid only Rs.7,182/- after deducting the EPF, ESI and professional tax. Ex.P4 is the copy of the Mysore Electronic Challan Cum Return (ECR) for the wage month of April-2016 to return month May-2016. In this EPF wages of the complainant is shown as Rs.12,718/-. The EPF contribution is shown as Rs.1,526/-, EPS contribution is shown as Rs.1,059/- difference EPF and EPS contribution (ES is shown as 467/-). Ex P.5 is the monthly contribution details for the month of April-2016, in this the monthly wages of the complainant is shown as Rs.12,718/- and the EP contribution is shown as Rs.223/-. Ex P.6 is the tax invoice/service invoice, in this the basic pay of the Counselor is shown as Rs.17,500/-for the month of August 2020. The EPF 12% is shown as Rs.2,100/-, ESC 7.5% shown as Rs.132/-, PT is shown

as Rs.200/-, EPF 13% is shown as Rs.2,275/- and ESI 3.25 shown as Rs.569/-, service charges 1.98% shown as Rs.347/- the total amount is shown as Rs.20,690/-.

17. Ex.P6 is the document addressed to the Government Observation Home for Boys by the opposite party on 01.08.2020. In the salary sheet of one Ambhika D.G who is the Counselor, in this the salary for the month of August 2020, the basic salary is shown as Rs.17,500/- and gross salary is also shown as Rs.17,500/-. Exhibit P.7 is the letter by the information officer addressed to the advocate furnishing the meeting proceedings of the Karnataka Government. In this it is shown that the honorarium of the Counselor is enhanced to Rs.17,500/- from Rs.10,000/-. This document dated 18.05.2016 and further this document discloses that already the honorarium has been hiked to Rs.17,500/-. In this document also the salary of the counselor is shown as Rs.17,500/-. Ex.P9 is the statement of account of the complainant for the period from 01.08.2015 to 31.08.2021. In this the amount credited to the account of the complainant on 08.09.2015 from Swiss salary for the month of August to October 2015 is shown as Rs.11,011/- and in the month of January-2016 the deposit is shown as Rs.10930/- by Swiss salary for the month of December 2015.

18. On 05.02.2016, 04.03.2016, 05.04.2016, 05.05.2016, 04.06.2016 the deposit is shown as 10,964/- salary for the month of October-2016 is shown as Rs.1,562/- and again on the same day Rs.1,562/- on 03.10.2016 the deposit towards salary is shown as Rs.6,263/-. On 05.10.2016 Rs.6,241/-, on 11.11.2016 Rs.6,241/-, on 07.02.2017 the deposit towards salary is shown as Rs.6,241/-, on what basis the opposite party has paid the salary as such is not known. So, the complainant after coming to know about the fact that

the opposite party is paying the lesser amount as honorarium she has issued notice to the opposite party through advocate on 05.05.2022 as per the copy of the notice Ex. P10. Ex.P11 is the reply issued by the opposite party. The opposite party has admitted that he was the successful bidder in the tender invited by the Women and Children welfare department, Mysore district for providing outsource human services for its district child protection unit and other institutions.

19. According to the opposite party he was very regular in making the payments to the human resources. He has denied that the monthly salary for the post of Counsellor is fixed at Rs.17,500/- and after deduction towards PF, PT, ESI, GST and service charges, the gross amount was paid to the counsellor was fixed at Rs.13,713/-. However, he has admitted that the complainant worked from 2015 to 2021 and admitted that the complainant was working in the Government Observation Home for Boys. According to him the total remuneration is fixed in the said service by the said department is Rs.10,000/- and after all the deductions the complainant was entitled for Rs.7,241/-. The opposite party has not produced any documents to show for having fixed the salary at Rs.10,000/-. In fact the opposite party has produced the office proceedings of the DCPU which is dated 31.08.2017. In this the honorarium payable to the counsellor is shown as Rs.17,500/- only and after compulsory deduction the amount payable is shown as Rs.12,272/-. So, as rightly contended by the complainant the opposite party has committed deficiency in service in not paying the prescribed

honorarium to the complainant. Hence, we answer this point in the affirmative.

20. Point No.2:- The complainant has claimed Rs.5,58,577/- towards the outstanding salary and the PF, ESI deductions amounting to Rs.82,862/.68/- in all Rs.6,41,439/-.As rightly contended by the complainant she is entitle for the said amount. The complainant has claimed interest on the said amount at 18% p.a. which is on higher side. The complainant is entitle for interest on the said amount at 6%. The complainant has claimed compensation of Rs.2,00,000/- towards mental agony and sufferings which is also on higher side. The complainant is entitle for compensation of Rs.50,000/- and entitle for cost of Rs.5,000/- towards litigation expenses. Hence, we answer this point partly in the affirmative.

21.Point No.3:- In view of answering points No.1 and 2 as above we proceed to pass the following:-

:: ORDER ::

The complaint is allowed in part.

The opposite party shall pay Rs.6,41,439/- to the complainant within one month from the date of passing of this order along with interest at the rate of 6% p.a. from the date of filing this complaint till the passing of this order.

Failing which the opposite party shall pay interest on the said amount at 9% p.a. from the date of passing of this order till its actual payment.

The opposite party shall pay compensation of Rs.50,000/- to the complainant towards mental agony and deficiency in service and shall pay cost of Rs.5,000/- towards litigation expenses to the complainant within one month from the date of passing of this order.

Failing which the opposite party shall pay interest on the said amount at 9% p.a. from the date of passing of this order till its actual payment.

Furnish free copy of the order to both the parties.

(Dictated to the Stenographer transcribed, typed by her, corrected by us and then pronounced in open Commission on this the 22nd December, 2023)

**(A.K. NAVEEN KUMARI)
PRESIDENT**

**(MARUTHI VADDAR)
MEMBER**

**(M.K.LALITHA)
MEMBER**