

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.8472 OF 2019

**(Arising out of SLP (Civil) No.26538 of 2019
arising out of Diary No.21745 of 2019)**

MINISTRY OF WATER RESOURCES & ORS.

Appellants

VERSUS

SHREEPAT RAO KAMDE

Respondent

J U D G M E N T

UDAY UMESH LALIT, J.

Delay condoned.

Leave granted.

This appeal challenges the order dated 31.01.2019 passed by the National Consumer Disputes Redressal Commission, New Delhi (for short "the National Commission") dismissing Revision Petition No.3368 of 2018.

The facts relevant for the purpose of present decision as culled out from paragraphs 2 and 3 of the decision of the State Consumer Disputes Redressal Commission (for short the "the State Commission") in the present matter, are:-

"2. In brief a complaint bearing no.709/2011 was filed by Sh. Shreepat Rao Kamde against the Chairman, Central Water Commission and Secretary, Ministry of Water Resources, Govt. of India. Complaint was also directed against the Dy. Controller of Accounts. Complainant had alleged that he retired from Central Water Commission as Director on 31.01.2011. He had given the particulars of his Account number in State Bank of India for the purposes of crediting his pension and retiral benefits. He had submitted his address after retirement as B-132, Mansarover Garden, New Delhi-110015.

3. Grievance of the Complainant was that the OPs had sent retiral and other benefits to an address in Chambal Division, Jaipur instead of sending it to Monitoring & Appraisal Office Jaipur. GPF accumulation was sent by way of a draft of Rs.45,08,673/-. The said draft of Rs.45,08,673/-. The said draft was payable in Jaipur. Amount of General Provident Fund was received by him only on 10.05.2011."

Consumer Complaint No.709 of 2011 was filed by the present respondent before the Consumer Disputes Redressal Forum-VI, District New Delhi, with factual assertions as above and submitting *inter alia* that there was an administrative delay in extending to the respondent the quantum which was payable to him towards General Provident Fund dues. The complaint was thus filed under the provisions of the Consumer Protection Act, 1986 ("the Act" for short) claiming interest for the delayed payment of General Provident Fund dues and for compensation etc.

Upon being noticed, the appellants appeared and submitted *inter alia*:

"11. That the dispute arising between the complainant and the opposite parties does not come within the ambit of Section 12 of Consumer Protection Act, as the present complaint is not related to any goods sold or delivered or agreed to be sold or delivered or any service provided or agreed to be provided, while the disputes is related to service matter and as such the Hon'ble Forum has not jurisdiction to try and entertain the present complaint."

The matter was considered by the District Forum and vide its order dated 01.10.2012, the claim petition was accepted and it was directed:

"In view of this complainant is entitled to interest on delay for a period of two months on Rs.45 lakh, as deficiency owing to administrative delay, and to be compensated as per rules. The amount roughly works out Rs.63,750/-. We award a total compensation of Rs.90,000/- inclusive of this amount, harassment and litigation expenses."

The matter was carried in appeal by the appellants by filing First Appeal No.494/2014/8659/2013 before the State Commission. In Appeal Memo, a submission was squarely raised that considering the nature of dispute and particularly when the respondent was an employee of Central Water Commission, the Forum under the provisions of the Act did not have any jurisdiction to entertain the dispute. The plea was taken as under:

"D. Because the Hon'ble Forum did not consider the nature of disputes as the respondent was an employee of Central Water Commission and the disputes relate to the interest on delayed payment of retiral dues and as such the Hon'ble Tribunal has no jurisdiction to entertain the aforesaid disputes, being the matter of Central Administrative Tribunal. Section 2(1)(d) (i) & (ii) of Consumer Protection Act states as under:

(d) "Consumer" means any person who-

(i) buys any goods for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment and includes any user of such goods other than the person who buys such goods for consideration paid or promised or partly paid or partly promised, or under any system of deferred payment when such use is made with the approval of such person, but does not include a person who obtains such goods for resale or for any commercial purposes; or

(ii) hires or avails of any services for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment and includes any beneficiary of such services other than the person who hires or avails of the services for consideration paid or promises, or partly paid and partly promises, or under any system of deferred payment, when such services are availed of with the approval of the first mentioned person but does not include a person who avails of such services for any commercial purposes."

The State Commission however affirmed the view taken by the District Forum and dismissed said First Appeal. Being aggrieved, the appellants carried the matter further by filing revision before the National Commission. The Revision was however delayed by 121 days and the National Commission refused to condone delay and consequently the revision was dismissed.

That order of the National Commission is now under appeal before us.

While issuing notice, this Court had directed the appellants to deposit a sum of Rs.90,000/- before the District Forum giving liberty to the respondent to withdraw the sum upon furnishing sufficient security.

Since the respondent chose not to enter any appearance, by subsequent order dated 04.10.2019, this Court had requested Dr. Manish Singhvi, learned Senior Counsel to assist the Court as Amicus Curiae.

Ms. Madhavi Divan, learned ASG appearing in support of the appeal relied upon the decisions of this Court in *Jagmittar Sain Bhagat & Others v. Director, Health Services, Haryana & Others*, (2013) 10 SCC 136, and, *Secretary, Board of Secondary Education, Orissa v. Santosh Kumar Sahoo*, (2010) 8 SCC 353.

The issue whether in respect of retiral dues, the matter could be maintained before the District Forum constituted under the provisions of the Act, squarely arose in the case of *Jagmittar Sain Bhagat*, which is evident from the facts as noted in paragraphs 2 to 4. Said paragraphs are quoted here for facility:

"2. The facts and circumstances giving rise to this appeal are that: the appellant joined the Health Department of the respondent State, as medical officer on 5-6-1953 and took voluntary retirement on 28-10-1985. During the period of service, he stood transferred to another district but he retained the government accommodation i.e. Bungalow No. B-8 from 11-5-1980 to 8-7-1981. The appellant claimed that he had not been paid all his retiral benefits, and penal rent for the said period had also been deducted from his dues of retiral benefits without giving any show-cause notice to him.

3. The appellant made various representations, however, he was not granted any relief by the State authorities. Aggrieved, the appellant preferred a complaint before the District Consumer Disputes Redressal Forum, Faridabad (hereinafter referred to as "the District Forum") on 5-1-1995 and the said forum vide order dated 24-3-2000 dismissed the complaint on merits observing that his outstanding dues i.e. pension, gratuity and provident fund, etc. had correctly been calculated and paid to the appellant by the State authorities.

4 The appellant approached the appellate authority i.e. the State Commission. The State Commission dismissed the appeal vide order dated 31-1-2007 observing that though the complaint was not maintainable as the District Forum did not have jurisdiction to entertain the complaint of the appellant as he was not a "consumer" and the dispute between the parties could not be redressed by the said Forum, but in view of the fact that the opposite party (State) neither raised the issue of jurisdiction before the District Forum nor preferred any appeal, order of the District Forum on the jurisdictional issue attained finality. However, there was no merit in the appeal."

After considering relevant cases on the point, this Court concluded as under:

"20. In view of the above, it is evident that by no stretch of imagination can a government servant raise any dispute regarding his service conditions or for payment of gratuity or GPF or any of his retiral benefits before any of the forum under the Act. The government servant does not fall under the definition of a "consumer" as defined under Section 2(1)(d)(ii) of the Act. Such government servant is entitled to claim his retiral benefits strictly in accordance with his service conditions and regulations or statutory rules framed for that purpose. The appropriate forum, for redressal of any of his grievance, may be the State Administrative Tribunal, if any, or the civil court but certainly not a forum under the Act.

21. In view of the above, we hold that the government servant cannot approach any of the forum under the Act for any of the retiral benefits."

The aforesaid decision also noticed a line of cases decided by this Court where claims under the provisions of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 in respect of employees of establishments covered under the Schedule to said Act had come up before this Court. Those cases were also dealt with and finally the conclusion was arrived at in paragraphs 20 and 21 as stated above.

This Court also considered the case of *Santosh Kumar Sahoo*, which had found that the Act was not intended to cover discharge of statutory function of examining whether a candidate was fit to be declared as having successfully completed a course by passing the examination.

On the point of entitlement of a Government servant in respect of dues as stated and whether such Government servant can maintain any action under the provisions of the Act, the law is thus well settled.

The decision of this Court rendered in *Jagmittar Sain Bhagat* was holding the field when the matter was decided by the State Commission and the National Commission. A plea was squarely raised by the appellants about the inapplicability of the provisions of the Act. However, that plea was not gone into.

In keeping with the principles laid down by this Court in the case of *Jagmittar Sain Bhagat*, we hold that the complaint in the present case was not maintainable before the District Forum under the provisions of the Act.

This Court had directed the appellant to deposit the sum in question in the Registry of the District Forum. That direction has been complied with. Considering the facts and circumstances of the case, where the respondent had initiated the litigation way back in the year 2011, even if we have found that the complaint was not maintainable, it is directed that the respondent shall be entitled to withdraw the deposited sum without furnishing any security. If any security was furnished in terms of the earlier directions, the same shall stand discharged.

In the end, we must express our sincere gratitude for the assistance rendered by Dr. Manish Singhvi, learned Amicus Curiae.

The appeal stands disposed of, in aforesaid terms. No costs.

.....J.
[UDAY UMESH LALIT]

.....J.
[INDU MALHOTRA]

NEW DELHI;
NOVEMBER 06, 2019

ITEM NO.5

COURT NO.7

SECTION XVII-A

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

SPECIAL LEAVE PETITION (CIVIL) Diary No.21745/2019
(Arising out of impugned final judgment and order dated 31-01-2019
in RP No.3368/2018 passed by the National Consumers Disputes
Redressal Commission, New Delhi)

MINISTRY OF WATER RESOURCES & ORS.

Petitioner(s)

VERSUS

SHREEPAT RAO KAMDE

Respondent(s)

(IA No.102353/2019 - FOR CONDONATION OF DELAY IN FILING; and, IA
No.130999/2019 - FOR PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/
ANNEXURES)

Date : 06-11-2019 This matter was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE UDAY UMESH LALIT
HON'BLE MS. JUSTICE INDU MALHOTRA

For Petitioner(s) Ms. Madhavi Divan, ASG
Mr. S. Wasim A. Qadri, Sr. Adv.
Mr. P.V. Yogeshwaran, Adv.
Mr. Amit Sharma, Adv.
Ms. Nidhi Khanna, Adv.
Mr. Arvind Kumar Sharma, AOR

For Respondent(s) Dr. Manish Singhvi, Sr. Adv. (Amicus Curiae)
Mr. D.K. Devesh, Adv.
Mr. Arpit Parkash, Adv.

UPON hearing the counsel the Court made the following
O R D E R

Delay condoned.

Leave granted.

The appeal is disposed of, in terms of the signed order.

Pending application(s), if any, shall stand disposed of.

(MUKESH NASA)
COURT MASTER

(SUMAN JAIN)
BRANCH OFFICER

(Signed Order is placed on the File)