

RESERVED

**State Consumer Disputes Redressal Commission
U.P., Lucknow.**

Revision No.122 of 2013

- 1- Zila Panchayat Raj Adhikari,
Fatehgarh District Farrukhabad.
- 2- Block Development Officer,
District Farrukhabad presently
District Kannauj.
- 3- Director, Panchayat Raj Uttar Pradesh,
Lucknow. Revisionists.

Versus

Aparna Shankar Mishra,
S/o Shri Karuna Shankar Mishra,
R/o New Colony, Bholepur,
District Farrukhabad.Opp. Party.

Present:-

- 1- Hon'ble Sri A.K. Bose, Presiding Member.
- 2- Hon'ble Sri R.P. Singh, Member.

Sri J.P. Saxena, Ld. counsel for the Revisionists.
Sri Aparna Shankar Mishra, OP, himself.

Date 27.1.2014

JUDGMENT

Sri A.K. Bose, Member.- Aggrieved by the order dated 25.7.2013 passed by the Ld. DCDRF, Farrukhabad in Execution Case No.28 of 2000 arising out the Complaint Case No.414 of 1994, the revisionists Zila Panchayat Raj Adhikari, Fatehgarh District Farrukhabad and two others have preferred the instant revision under Section 17(1)(b) of the Consumer Protection Act, 1986 (Act No.68 of 1986) on the ground that the impugned order dated 25.7.2013 was passed in an illegal and arbitrary manner


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without jurisdiction and application of mind. The Forum below failed to exercise jurisdiction vested in it and delivered the order on the basis of surmises and conjectures and, therefore, it has been prayed that the same may be set aside in the interest of justice and fair play.

We have heard the parties at length and have gone through the impugned order passed in execution petition no.28 of 2000 and also judgment and order passed in complaint case no.414 of 1994.

From perusal of the records, it transpires that the OP/ complainant Aparna Shankar Mishra s/o Shri Karuna Shankar Mishra served under the revisionists as Gram Panchayat Adhikari and was superannuated on 28.2.1993. Thereafter, he moved petitions for release of his retiral benefits but the revisionists did not pay any heed to the same. Consequently, he had to file the complaint case bearing no.414 of 1994 before the Ld. DCDRF, Farrukhabad which was allowed on 25.8.1999 and the following order was passed:

"उपभोक्ता याचिका संख्या- 414/94 स्वीकार की जाती है और निर्णय के अंतिम प्रस्तर में दिये गये निर्देशानुसार स्वीकार की जाती है। परिवादी द्वारा आवश्यक औपचारिकतायें जैसे दिये गये प्रारूप पर विभिन्न भुगतानों हेतु प्रार्थनापत्र देने के उपरान्त विपक्षीगण देय भुगतानों के सम्बन्ध में भुगतान आदेश नियमानुसार पारित कर भुगतान करें। विपक्षी इस आदेश का अनुपालन एक माह के अन्तर्गत करें। परिस्थितियों में उभयपक्ष में अपना-अपना वाद व्यय स्वयं वाहन करेंगे।"


25.8.1999



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Thereafter, the OP/complainant filed Execution Petition no.28 of 2000 which was also allowed by the Forum below on 25.7.2013 and the following order was passed:

"तदनुसार निष्पादक का निष्पादन प्रार्थना-पत्र स्वीकार किया जाता है। विपक्षीगण को आदेशित किया जाता है कि वे इस मंच के आदेश दिनांकित 26.8.1999 के अनुपालन में विवादित धनराशि 2,35,166.60 को देय होने की दिनांक से दिनांक 9.7.2003 तक 18 प्रतिशत ब्याज सहित एवं दिनांक 10.7.2003 से दिनांक 9.7.2003 तक मूल धनराशि व उस पर देय ब्याज की धनराशि के योग में से 12,545/- धटाकर अवशेष धनराशि पर 18 प्रतिशत वार्षिक ब्याज दिनांक 10.9.2003 तक गणना करके उसमें से 22,225/- समायोजित करके अवशेष धनराशि पर ब्याज दिनांक 6.2.2004 तक गणना करके मुल धनराशि में से 5;519/- समायोजित करके अवशेष धनराशि पर 18 प्रतिशत वार्षिक ब्याज की गणना दिनांक 7.5.2013 तक करके उक्त कुल धनराशि में से 14;883/- समायोजित करके अवशेष धनराशि पर भुगतान करने की दिनांक तक 18 प्रतिशत वार्षिक ब्याज की गणना करके कुल धनराशि का भुगतान 22.8.2013 तक अवश्य कर दें; यदि विपक्षीगण द्वारा निष्पादक को उक्त भुगतान उक्त नियत दिनांक तक नहीं किया गया; तो विपक्षीगण के विरुद्ध धारा 25 व 27 उपभोक्ता संरक्षण अधिनियम; 1986 के अन्तर्गत दण्डात्मक कार्यवाही किये जाने के आदेश पारित किये जावेंगे।"

Aggrieved by this order, the revisionists have filed the instant revision with a prayer that the order dated


22.11.2013



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25.7.2013, being totally illegal and arbitrary, needs to be set aside in the interest of justice and fair play. It has been contended that Government Servants cannot raise any dispute regarding their service conditions or for payment of Gratuity, GPF or any other retiral benefits before the Consumer Fora as they are not consumers vis-à-vis the Department concerned. Such Government Servants are entitled to claim their retiral benefits strictly in accordance with their service conditions and regulations or statutory rules framed for this purpose. On the other hand, it has been argued on behalf of the OP/complainant that such legal issues cannot be raised at the stage of execution. This argument has no force in view of the settled principle of law that the finding of a Court or Tribunal becomes irrelevant and unenforceable/inexecutable once the Forum is found to have no jurisdiction as held in **III(2013) CPJ 22 (SC)**. ~~Supra~~

Admittedly, the revisionists, in compliance of the order passed by the Ld. DCDRF, directed the OP/complainant to complete all formalities which were required for payment of all retiral benefits as per rules. He was given a number of reminders for completion of the statutory formalities including reminders. Thereafter, on 11.2.2000, 15.3.2000, 1.8.2000, 2.9.2000, 18.11.2000, 15.1.2001, 15.2.2001, 20.2.2001, 10.8.2001, 26.8.2001, 22.12.2001, 19.6.2002, 9.8.2002, 20.9.2002, 9.10.2002, 2.11.2002, 18.11.2002, 19.6.2003, 20.11.2003, 4.3.2006, 15.11.2006 and 27.9.2007 but he did not comply with the


28.1.2014



same. This factum has not been challenged by the OP/complainant.

From the record, it further transpires that the retiral benefits claimed by the OP/complainant was much more than what was actually due to him.

It may be noted here that the Hon'ble Supreme Court was pleased to hold in **Jagmittar Sain Bhagat (Dr.) Vs. Director, Health Services, Haryana and Ors., III(2013) CPJ 22 (SC)**, at para 16 that:

"It is evident that by no stretch of imagination a Government servant can 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 his grievance, may be the State Administrative Tribunal, if any, or Civil Court but certainly not a Forum under the Act."

It may also be noted here that it is a settled legal position that conferment of jurisdiction is a legislative function and it can neither be conferred with the consent of the parties nor by a superior Court, and if the Court passes a decree having no jurisdiction over the matter, it

N. A. S.
20.11.2014

(Signature)

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would amount to nullity, as the matter goes to the roots of the cause. Such an issue can be raised at any stage of the proceedings. The finding of a Court or Tribunal becomes irrelevant and unenforceable/inexecutable once the Forum is found to have no jurisdiction. Similarly, if a Court/Tribunal inherently lacks jurisdiction, acquiescence of party equally should not be permitted to perpetuate and perpetrate, defeating the legislative animation. The Court cannot derive jurisdiction apart from the Statute. In such eventuality, the doctrine of waiver also does not apply, as held in AIR 1951 SC 230, AIR 1978 SC 22, AIR 1981 SC 537, AIR 1999 SC 2213 and Jagmitter Sain Bhagat (Dr. Vs. Director, Health Services Haryana & Ors., III (2013) CPJ 22 (SC) at para 7.

Since subject matter in hand relates to payment of retiral benefits including arrears of salary, LTC, GPF, gratuity and encashment of a Government servant, therefore, in view of the rulings laid down in Krishna Kumar Gupta Vs. Bank of India and another, I (2003) CPJ 152 (NC), Regional Provident Fund Commissioner Vs. Shiv Kumar Joshi, Civil Appeal No.411 of 1997 decided on 14.12.1999 by the Hon'ble Apex Court and Jagmittar Sain Bhagat (Dr.) Vs. Director, Health Services, Haryana and Ors., III(2013) CPJ 22 (SC), we are of the considered view that the Forum below lacked initial jurisdiction to deal with the matter. The OP/complainant was not a consumer as defined under Section 2(1)(d)(ii) of the Act. The


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impugned order dated 25.7.2013 passed in Execution Case No.28 of 2000 by the Ld. DCDRF, Farrukhabad being bad in the eye of law and without jurisdiction cannot be allowed to sustain. Consequently, the revision is liable to be allowed.

ORDER

The revision is allowed. The order dated 25.7.2013 passed by the Forum below in execution petition no.28 of 2000 is set aside.

No order as to costs. Copy of this order be provided to the parties as per rules.


(A.K. Bose) 28.1.2014.

Presiding Member


(R.P. Singh)
Member

Jafri
ST G-1
Court No.4