NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION
NEW DELHI

REVISION PETITION NO. 1248 OF 2018

(Against the Order dated 26/02/2018 in Appeal No. 76/2015 of the State Commission Tamil Nadu)

1. P. NARAYANASAMY
S/O. PERUMALCHETTIAR, 84, ANDALPURAM, SATTUR TALUK,
DISTRICT-VIRUDHUNAGAR
TAMIL NADU-626203 .....Petitioner(s)

Versus

1. COMMISSIONER, THE EMPLOYEE PROVIDENT FUND ORGANIZATION & ANR.
REGIONAL OFFICE, MADURAI-2, TAMIL NADU SATATE-625002
2. THE SPECIAL OFFICER, VIRUDHUNAGAR DISTRICT CENTRAL
COOPERATIVE BANK,
VIRUDHUNAGAR-626001
TAMIL NADU .....Respondent(s)

BEFORE:
HON'BLE MR. BINOY KUMAR,PRESIDING MEMBER
HON'BLE MR. JUSTICE SUDIP AHLUWALIA,MEMBER

For the Petitioner : **NEMO**
For the Respondent : Ms. Geeta Handa Khanuja, Advocate.

Dated : 18 Jan 2023

ORDER

JUSTICE SUDIP AHLUWALIA, MEMBER

This Revision Petition has been preferred by the Petitioner/Complainant against the Impugned Order dated 26.2.2018 passed by the Circuit Bench of Tamil Nadu State Consumer Disputes Redressal Commission, at Madurai, in First Appeal No. 76 of 2015 which was filed by the Respondent No. 1/Opposite Party No. 1. Vide such Order, the State Commission had allowed the Appeal by setting aside the Order dated 9.7.2015 of the District Forum, Virdhunagar, at Srivilliputur, passed in Complaint Case No. 40 of 2012 filed by the Complainant against the Opposite Party Nos. 1 & 2, vide which the complaint was allowed directing the Opposite Party No. 1 to pay the "Early Pension" to the Complainant within one month from the date of the Order alongwith 6% interest. The Opposite Party No. 1 was further directed to pay to the Complainant Rs. 20,000/- as compensation towards mental agony and Rs. 5,000/- as litigation costs. Vide such Order of the District Forum, the Opposite Party No. 2 was directed to take appropriate steps to pay the "Early Pension" as well as the pending amount to the Complainant.

2. Brief facts of the case are that the Complainant was a Bank employee of the then undivided Ramanathapuram District Central Cooperative Bank, and was working at Maniparai from 9.1.1976 onwards and at various bank till 15.7.1993. Thereafter, the Complainant was continuing his service in Virudhunagar District Central Cooperative Bank till 16.7.1993. The Complainant was terminated from service on 12.9.2003. As stated in the complaint, the Complainant was working in the Bank for 10 years and 03 months, therefore, he was

entitled for pension under "Employees' Pension Scheme-1995". The Complainant filed an application for paying pension to the Opposite Party No. 1 through Opposite Party No. 2 on 17.3.2011. Such application was rejected vide order dated 13.2.2012 by the Opposite Party No. 1 stating that the Complainant is not entitled for pension as the service rendered by him was below 10 years. Again, the Complainant made an application dated 24.2.2012 to the Opposite Party No. 1 to reconsider his claim. But, no action was taken to reconsider the same. Due to inaction of the Opposite Party No. 1, the Complainant was put in mental and physical agony. Therefore, he filed the Consumer Complaint before the District Forum against the Opposite Party No. 1 and Opposite Party No. 2.

3. The said complaint was resisted by the Opposite Parties by filing their Counter Statement contending that the Complainant had not put in the minimum service of 10 years to become eligible to get early pension. It was stated that the Complainant's claim had been rejected legally as there was no deficiency in service on its part, and that the complaint was liable to be dismissed.

4. The District Forum after hearing the parties and perusing all the documents on record, finally allowed the complaint vide Order dated 9.7.2015, and directions were given to the Opposite Party Nos. 1& 2, as mentioned in Para 1 above.

5. Being aggrieved by such Order of the District Forum, the Opposite Party No. 1 had filed an Appeal before the State Commission. By the Impugned Order dated 26.2.2018, the State Commission while allowing the Appeal had dismissed the complaint by setting aside the order of the District Forum, and after holding that the Complainant had not put in minimum required eligible service of 10 years so as to be sanctioned early pension as per para 12(1)(b) of the Employees' Pension Scheme, 1995, and that there was no deficiency on the part of the Opposite Parties.

6. Hence, the Revision Petition has been filed by the Petitioner/Complainant praying for setting aside the Order dated 26.2.2018 passed by the Circuit Bench of the State Commission, Madurai, and to direct the Respondent No. 1/Opposite Party No. 1 to sanction the pension.

7. The Respondent No. 1 has filed its Written Statement to resist the present Revision Petition praying for dismissal of the same.

8. Written Synopsis have also been filed by the Parties supporting their averments with various judgements.

9. This Court has heard the Petitioner in person on 16.11.2022 and the arguments of the Ld. Counsel for the Opposite Party were heard on 27.12.2022, after which the matter was reserved for Orders. Perused the material available on record.

10. It needs to be noted first of all that the Complainant/Respondent had made out a case of being eligible for pension on the basis of Circular No. Pen/A&C/1/2000/PIC/Vol.VI dated 5.11.2009. It has been mentioned *inter alia* therein-

> "***Central Government has approved and notified (GSR-594(E) dated 21.8.2009) the amendment and substituted explanation below Para 9 (b) effective from the date of notification. The said notification has been circulated earlier and also available in EPFO website. Accordingly aggregate of past service and actual service for less than six months shall be ignored and six months and above shall be rounded off to a year.***
>
> ***The date of implementation of above amendment would be based on the date of commencement of pension. To be more clear all monthly member pension cases where date of commencement of pension is before 21.08.2009, member would not be eligible for combined rounding off of aggregate of actual service and past service."***

11. Even though, the Circular itself specified that it would apply in those cases where the date of commencement would be after 21.8.2009, the District Forum nevertheless held the Complainant eligible for the

benefit of pension by observing *inter alia* –

> ***"25. The Employee Family Pension Scheme, 1995 is a "Welfare Legislation" and the same was enacted for the purpose to provide pension to the person who rendered service for many years. While reading the contents of the provisions mentioned in the "Pension Scheme" that "Purposive Interpretation" should be given to the same. While considering Section 9 of the Employee Family Pension Scheme, 1995 that provision has been given in that section as if new entrant type a worker rendered his service for more than 6 months that the same should be rounded off as 1 year and there is enabling provision that if "Seasonal Employee" has rendered service for more than 6 months that the same should be Rounded Off as 1 year……***
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> ***28. <u>Issue No. 3</u>:-***
>
> ***The confusion found in Explanation 9 of "The Employee Family Pension Scheme 1995" has been rectified by way of amendment dated 21.08.2009 and it should be considered as "Retrospective Effect" given to that provision. Even though it is not mentioned in that section as "Retrospective Effect" is given to that section that as per the principle of 'Rule of Beneficial Construction' this Forum has decided as the above amendment dated 21.08.2009 is having 'Retrospective Effect'."***

The District Forum, therefore, took the view that The Employee Family Pension Scheme being a 'Welfare Legislation' was intended to give benefit to an employee, and therefore the benefit of the amendment vide the above said Circular dated 5.11.2019 ought to be given by treating the same as have been operational with a 'Retrospective Effect'.

12. The State Commission, however, was of the view that it was not within the authority of the Consumer Fora to treat the amendment which specified 21.8.2019 as the cut-off date, to be Retrospective in nature. The relevant extracts from the impugned Order of the State Commission are set out as below-

> ***"11. It is not in dispute that by way of amendment vide G.S.R. 594 (E) dated 21.08.2009, the explanation under section 9 (b) was substituted with the following Explanation; - For the purpose of this sub-paragraph, the aggregate of actual service and past service for less than six months shall be ignored and six months and above shall be rounded off to a year".***
>
> ***12. The complainant would urge that by virtue of amendment to the provision of the said Scheme by substituting the explanation to para 9 (b) rounding could be done only after arriving at the aggregate service of the member and if so done the past service of the complainant namely 2 years three months and 29 days has to be added to the actual service namely 7 years 8 months 25 days and if so done, the aggregated service would work out to 10 years and 24 days after deducting the alleged period of break in service namely one month and one day as alleged by the appellant/Ist opposite party.***
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> ***13. Per contra, the appellant/ Ist opposite party would simply at the same time strenuously contend that the amendment came into effect on and from 21.08.2009 only and this amendment was not given retrospective effect and as such the complainant having ceased to be an employee on and from 13.09.2003 is not entitled to invoke the substituted explanation brought into the scheme pursuant to the amendment on 21.08.2009. In spite of this, the learned District Forum had dealt with at length and finally recorded a finding that the employees' pension scheme 1995 being a welfare piece of legislation, the authorities should give purposive interpretation of the scheme and not literal interpretation and consequently held that the amendment made on 21.08.2009 should be held to have retrospective effect and by holding so, the learned District Forum had concluded that by virtue of the substituted explanation to para 9 (b) of the Employees Pension Scheme 1995, the complainant had put in more than 10 years of eligible service and hence the complainant had become eligible to get early pension as per para 10(1)(b) of the said Scheme.***
>
> ***13. But we are unable to affix our seal of approval to the said finding recorded by the learned District Forum on the sole ground that such interpretation can be resorted to by the courts only and***

more particularly the constitutional courts namely the Hon'ble High Court and Hon'ble Supreme Court and Statutory Authority like District Forum and this State Commission cannot interpret any statute which is within the domain of the Courts.

14. Further, the purposive interpretation can be adopted only in a situation wherein wording of a particular provision of law gives room for ambiguity and anomaly. But, it is not the case in our complaint. In our case, the original explanation in para 9(b) of the said scheme provided for rounding of total past service i.e, the past service less than six months should be ignored and more than 6 months should be rounded to one full year. As this new explanation was found to be an impediment for number of employees/members who were in the border line of eligible period of service and could not get early pension and hence the Government of India though it fit to substitute the said explanation with a new explanation with effect from 21.08.2009 which provided for rounding of the aggregate of actual and past service and not the past service alone. If the Government of India wanted to help its Employees/Members who retired prior to the amendment dated 21.08.2009 with border line eligible service then the Central Government could have expressly made it with retrospective effect. Unfortunately, that was not done by the Government of India and if the amendment made on 21.08.2009 is read in the light of the circular issued by the head office namely, the Employees Provident Fund Organisation (Ministry of Labour, Government of India, New Delhi) under Ex B4 to the Officer in charge of the Regional Office it would show that the date of implementation of the above amendment would be based on the date of commencing of pension and to be more clear that if the date of commencement of pension was before 21.08.2009, the member/employee would not be eligible for the benefit of the newly substituted explanation. Hence, the circular under Ex B4 is in the nature of clarification as to whether the substituted explanation would have retrospective effect or not and the clarification given is to the effect that it would not have retrospective effect thereby those members/ employees who retired prior to 21.08.2009 and ceased to be in employment prior to 21.08.2009 are not eligible to invoke the benefit of the substituted explanation.

15. Hence, we are of the considered opinion that unless the circular under Ex B4 is challenged by the complainant or anybody similarly placed like the complainant and quashed by the competent court the subordinate officers like the Ist opposite party are bound by the circular under Ex B4 issued by the Head of the Office. Accordingly, the Ist opposite party had, left with no other option, rejected the claim of the complainant for early pension on the ground that the complainant had not put in minimum required eligible service of 10 years.

16. In the light of the discussion held above, we hold that the complainant had not put in minimum required eligible service of 10 years so as to be sanctioned early pension as per para 12(1)(b) of the Employees Pension Scheme 1995 and this point is answered accordingly."

13. The Petitioner/Complainant has assailed the decision of the State Commission by submitting that such amendment in question has to be treated as 'Retrospective in nature' in view of the decision of the Bombay High Court in ***"Second Appeal No. 566 of 2011 and connected matter- Shri Badrinarayan Shankar Bhandari and Ors. Vs. Omprakash Shankar Bhandari, decided on 14th August, 2014"***; and that of the Hon'ble Supreme Court of India in "***Civil Appeal Nos. 188-189 of 2018, Danamma @ Suman Surpur & Anr. Vs. Amar & Ors., decided on Ist February, 2018"***. In the case of ***Shri Badrinarayan Shankar Bhandari*** (supra), the full Bench of the Bombay High Court had set aside the decision of its Division Bench which had held that the Section 6 (3) of the Hindu Succession Act which curtails and restricted, entitlement of daughters born prior to 9.9.2005, (i.e. prior to amendment of 2005) was not permissible in view of the decision of the Supreme Court in ***"G. Shekhar Vs. Geeta".***

14. In "***Danamma @ Suman Surpur & Anr. Vs. Amar & Ors."*** (supra), the Hon'ble Supreme Court in deciding about the entitlement of daughters in coparcenary property by virtue of the amendment in Section 6 of the Hindu Succession Act had observed *inter alia* –

"26) Hence, it is clear that the right to partition has not been abrogated. The right is inherent and can be availed of by any coparcener, now even a daughter who is a coparcener.

27) In the present case, no doubt, suit for partition was filed in the year 2002. However, during the pendency of this suit, Section 6 of the Act was amended as the decree was passed by the trial court only in the year 2007. Thus, the rights of the appellants got crystallised in the year 2005 and this event should have been kept in mind by the trial court as well as by the High Court. This Court in '*Ganduri Koteshwaramma & Anr. V. Chakiri Yanadi & Anr.****', held that the rights of daughters in coparcenary property as per the amended S.6 are not lost merely because a preliminary decree has been passed in a partition suit. So far as partition suits are concerned, the partition becomes final only on the passing of a final decree. Where such situation arises, the preliminary decree would have to be amended taking into account the change in the law by the amendment of 2005."***

15. In this way, the Apex Court was considering the date of operation of the amended Section 5 of the Hindi Succession Act as inconsequential qua the daughters who had been born before the said date for their right to the share in the Hindu Coparcenary property.

16. In "***Vinita Sharma Vs. Rakesh Sharma & Ors., Civil Appeal No. Diary No. 32601 of 2018 With SLP No. 684 of 2016 and other connected cases, decided on 11.8.2020";*** similarly the Apex Court observed –

"***130. We understand that on this question, suits/appeals are pending before different High Courts and subordinate courts. The matters have already been delayed due to legal imbroglio caused by conflicting decisions. The daughters cannot be deprived of their right of equality conferred upon them by Section 6. Hence, we request that the pending matters be decided, as far as possible, within six months.***

In view of the aforesaid discussion and answer, we overrule the views to the contrary expressed in "*Prakash Vs. Phulavati"* and *"Mangammal V. T.B. Raju * Ors.".* **The opinion expressed in "****Danamma @ Suman Surpur & Anr. V. Amar* ***is partly overruled to the extent it is contrary to this decision……..."***

17. Applicability of the aforesaid decisions relied upon by the Petitioner to the facts and circumstances of the present case has however been assailed on behalf of the Opposite Parties by firstly contending that the ratio of the aforesaid decisions in which the birth right created by way of a statute by amendment of The Hindu Succession Act in 2005 cannot be defeated by imposing an artificial date of creation of such right when the daughters who become eligible to their share in the coparcenary property had already been born. The applicability of the aforesaid decisions to the facts and circumstances of the present cast has also been assailed by contending that in any event the notification dated 5.11.2009 itself being by way of delegated authority, cannot be 'Retrospective' when a specific date in the notification itself has been mentioned for the commencement of its operation. Certain decisions of the Supreme Court in this regard have been relied upon by the Opposite Parties.

18. In "***Union of India and Ors. Vs. G.S. Chatha Rice Mills and Ors.",*** the Apex Court held that a notification enhancing tariff on goods originating in or exported from Pakistan, which was issued on 16.2.2019, would be applicable only from that date and not retrospectively. Although, two separate opinions were given by the Members of the Supreme Court Bench, on one side by Hon'ble Justice Dr. Dhananjaya Y Chandrachud (as his Lordship then was), alongwith Hon'ble Justice Mrs. Indu Malhotra, and the other reasoning separately was given by Hon'ble Justice Mr. K.M. Joseph, but in both the Civil Appeals filed on behalf of the Union of India which had contended that the enhanced custom duty by virtue of the notification would be 'Retrospective in nature' and not 'Prospective', were dismissed.

19. This contention was rejected by Hon'ble Justice Mr. K.M. Joseph, who observed *inter alia* –

"……It is one thing to say that the legislature may have the power to make a law with retrospective effect subject to limitations imposed by the Constitution and quite another to contend that delegated

legislation would carry retrospective effect irrespective of power to make such a law conferred by the parent enactment on the delegate……."

20. The same view on the proposition that a Rule or Law cannot be construed as 'Retrospective', unless it expresses a clear or manifest intention to the contrary was also held by the Apex Court in another recent case "***Assistant Excise Commissioner, Kottyam and Ors. Vs. Esthappan Cherian and Ors".***

21. The same principal was followed by the Apex Court in its judgment in "***Employees Provident Fund Organisation Vs. Sunil Kumar and Ors."*** pronounced on 4.11.2022.

22. We can also not be unmindful of the fact that the decisions of the Apex Court relied upon by the Petitioner are with reference to interpretation of the amendment in The Hindu Succession Act which was brought by the Act of Parliament itself, and was not in the nature of "Delegate Legislation".

23. In the present case, however, the amendment by virtue of the Circular dated 5.11.2009 is undoubtedly a "Delegated Legislation" brought about under authority of the Central Government, and not directly by Legislature itself. The same can therefore be not regarded as having any "Retrospective" effect apart from the date of its operation as specifically mentioned therein i.e. 21.8.2019, and is therefore squarely covered by the ratio of the decisions relied upon by the Opposite Parties, especially in "***Assistant Excise Commissioner, Kottyam and Ors. Vs. Esthappan Cherian and Ors"*** (supra) in which it had been categorically noted in relation to notifications of Rules created by way of "Delegated" authority, that the same could not be "Retrospective in nature, unless the same express a clear or manifest intention to the contrary.

24. For the aforesaid reasons, we are in agreement with the opinion of the State Commission that the Petitioner cannot have the benefit of the aforesaid notification with any "Retrospective" effect. As correctly observed by the State Commission, the Consumer Fora are not Constitutional Courts to interpret the legality of either the notification itself, or to record it as being "Retrospective" effect, when the notification itself specifies that it shall come into effect from a particular date i.e. 21.8.2019.

25. For the aforesaid reasons, we find no grounds to interfere with the decision of the State Commission. The Revision Petition is, therefore, dismissed. Parties to bear their own costs.

Pending application, if any, also stands disposed off.

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BINOY KUMAR
PRESIDING MEMBER

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SUDIP AHLUWALIA
MEMBER