REGIONAL PROVIDENT FUND COMMISSIONER A

vs.

BHAVANI

(Civil Appeal No. 6447 of 2001 etc.)

APRIL 22, 2008 B

[ALTAMAS KABIR AND V.S. SIRPURKAR, JJ.]

Employee's Provident Fund and Miscellaneous Provisions Act, 1952 – Employee's Pension Scheme, 1995 – Pension under – Denial of – On the ground that the worker was not entitled since according to her date of birth in the records of the Commission, she retired in 1992 – According to date of birth of the worker in the records of the employer, she retired in 1995 – Worker was also member of Employees' Provident Fund and Family Pension Scheme, 1971 – Provident Fund Commission receiving the worker's contribution upto 1995 – Courts below allowing the claim of the worker holding her date of retirement as per the record of employer – On appeal, held : The date of birth of the worker recorded with the employer is the correct date of birth – In the facts of the case, the worker was entitled to the benefit of 1995 Scheme – Pension. C D E

Consumer Protection Act, 1986 – s.2(1) (d) (ii) and 2 (1) (o) – Applicability of the Act – To the claim of pension made under Employees' Provident Fund Act – Held : Applicable – The Authority under the Provident Fund Act responsible for the working of the Pension Scheme, is a 'service giver' within meaning of s.2 (1)(o) – The relation of the 'service giver' and the claimant would come within the concept of 'master and servant' – The claimant is a 'consumer' – Employees' Provident Fund and Miscellaneous Provisions Act, 1952 – Employees Pension Scheme, 1995. F G

Respondent was a member of the Employees' Provident Fund and Family Pension Scheme, 1971 and

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A was making contribution as per the Scheme. Her date of birth as in the records of the employer-company was 31.12.1935. She retired from service on 31.12.1995 on attaining 60 years of age. She claimed pension as per Employees' Pension scheme, 1995 Appellant-
B Commissioner denied the same. She filed application before Consumer Disputes Redressal Forum seeking release of her pensionary benefits. Application was contested on the ground that consumer Protection Act is not applicable to the claim made under the Employees'
C Provident Fund, as the claimant was not a 'consumer' within the meaning of Section 2(d) of the Provident Fund Act; that she was entitled to the benefit under Employees' Pension Scheme, 1995 because she retired in 1992 i.e. before the cut off date for applicability of the Scheme,
D and that according to the records of the Commission, her date of birth was 24.9.1932. District Forum, gave the finding that her date of birth was 31-12-1935 and therefore, she was eligible for the benefits of the 1995 Scheme and denial of the same amounted to deficiency in service attracting provisions of Consumer Protection
E Act, 1986; and that the services rendered by the appellant to the respondent came within the ambit of Section 2 (1)(d)(ii) of Consumer Protection Act. The order of District Forum were unsuccessfully challenged before State Commission as well as National Commission.

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In appeal to this Court, appellant, in addition to the contentions raised before District forum, contended that the practice of the employees approaching the management at the fag end of their careers asking for
G altering their dates of birth to their advantage, had been deprecated by this court, and hence it is not permissible in the present case as well. Other appeals also involved same question.

Dismissing the appeals, the Court

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HELD: 1.1 The dates of birth of the respondents as recorded in their service records with the company are the correct dates of birth of the employees and not the dates of birth as entered in the records of the appellant. The reasoning given by the District Forum in accepting the entries in the company's record while rejecting those in the records of the appellant/Regional Provident Fund Commissioner are based on sound logic and the materials on record. There was no denial on the part of the appellant that the respondent continued to contribute to the fund till the year 1995. No explanation is forthcoming as to why and how such contributions were received, even though according to the records of the appellant, the respondent had retired on 31.12.1992. [Para 19] [776-A-D]

1.2 It is not correct to say that the cases of the respondents should not be considered as they had applied at the fag end of their careers for correction of their dates of birth in the appellant's records. The aforesaid principle cannot apply to the case of the respondents as their dates of birth had been correctly recorded in the records of the company, including the respondents' service records, on the basis whereof they had retired from the company's services. [Para 23] [777-E-F]

2. Consumer Protection Act is applicable to the case of the respondent on account of the fact that the Regional Provident Fund Commissioner, who is the person responsible for the working of the 1995 Pension Scheme, must be held to be a 'service giver' within the meaning of Section 2(1)(o) of the Consumer Protection Act. This is not a case of rendering of free service or rendering of service under a contract of personal service so as to bring the relationship between the appellant and respondent within the concept of 'master and servant'. The respondent comes squarely within the definition of 'consumer' within

A **the meaning of Section 2(1)(d)(li), inasmuch as, by becoming a member of the Employees' Family Pension Scheme, 1971, and contributing to the same, she was availing of the services rendered by the appellant for implementation of the Scheme. The same is the case in**
B **the other appeals as well. [Para 20] [776-E-G]**

Regional Provident Fund Commissioner vs. Shiv Kumar Joshi **2000 (1) SCC 98 – relied on.**

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 6447
C of 2001.

From the Judgment and Order dated 21.9.2000 passed by the National Consumer Disputes Redressal Commission, New Delhi, in Review Retition No. 1292 of 2000.

D WITH

Civil Appeal Nos.-2916-2919 of 2008 and 2629 of 2006.

Dr. R.G. Padia, M. Asha G. Nair, M.P.S. Tomar, Savitri pandey, Subhash Kaushik, D.S. Mahra, Varuna Bhandari Gugnani, B.V. Balaram Das, Anil Katiyar, B. Krishna Prasad, V.
E Prabhakar, Ramjee Prasad, Revathy Raghavan, Shabu Sreedharan, Noor Mohammed, M.K. Michael, K.R. Sasiprabhu, Bindu K. Nair, M/S. Lawyer's Knit & Co., G. Prakash, Haris Beeran, R.S. Jena, S. Marsook and R. Sasiprabhu for the appearing parties.
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The Judgment of the Court was delivered by

ALTAMAS KABIR, J. 1. Civil Appeal No.6447 of 2001 has been taken up for hearing along with five other matters, namely, Special Leave Petition (C) No.15469 of 2005, Special
G Leave Petition (C) No.16573 of 2006, Special Leave Petition (C) No. 20260 of 2004, Special Leave Petition (C) No.8661 of 2004 and Civil Appeal No.2629 of 2006. All the said matters are directed against orders passed by the National Consumer Disputes Redressal Commission on Revision Petitions filed
H from orders passed by the State Commission, Kerala, in appeal

from orders passed by the District Forum. All of them involve a common question of law and fact and have thus been taken up together for hearing and final disposal. A

2. Of the five matters, Special Leave Petition (C) Nos. 20260 of 2004 and Special Leave Petition (C) No. 8661 of 2004 have been filed against order dated 30.7.2002 passed by the National Consumer Disputes Redressal Commission (hereinafter referred to as 'the National Commission') dismissing the Revision Petitions filed by the Regional Provident Fund Commissioner for condonation of delay in filing the Review Petition. Both the Revision Petitions were dismissed on the ground that the delay had not been sufficiently explained. Though in these two Special Leave Petitions it is the order rejecting the Revision Petitions on ground of delay that is involved, ultimately, it is the order of the State Commission allowing the claim of the respondents concerned which is the subject matter of all these five matters. Furthermore, the effect of the orders passed by the National Commission in all these five matters is the same in respect of the different petitioners before the District Forum and it is their claim which has been upheld right through up to the National Commission. B C D E

3. Leave is accordingly granted in the Special Leave Petitions and all the appeals are taken up for hearing together.

4. For the sake of convenience the facts relating to Civil Appeal No.6447/2001 are taken into for consideration in order to decide the common issues in these matters. F

5. The respondent Bhavani was a worker in Cashew Factory No.III (Naduvathoor) owned and managed by the Kerala State Cashew Development Corporation Limited, Kollam and according to her she retired from service on 31.12.1995 on attaining 60 years of age. Bhavani was a member of the Employees' Provident Fund and Family Pension Scheme, 1971, and was making contribution to the Scheme. In her service records maintained by the company her date of birth was shown as 31.12.1935 and though she was eligible for pension, the G H

A same was not ordered by the Regional Provident Fund Commissioner, the appellant herein in all these appeals. Aggrieved by the failure and/or the refusal of the Regional Provident Fund Authorities to release pension to her, Bhavani filed an application before the Consumer Disputes Redressal B Forum (hereinafter referred to as 'the District Forum') Kollom, praying for a direction upon the appellant herein to release her pensionary benefits from the date of her retirement from service i.e. 31.12.1995. Bhavani's claim was contested by the appellant herein before the District Forum by filing a counter affidavit wherein it was contended that the Consumer Protection Act, C 1986, would have no application to a claim made under the Employees' Provident Funds and Misc. Provisions Act, 1952 (hereinafter referred to as 'the 1952 Act'), inasmuch as, Bhavani, the respondent herein, was not a "consumer" within the meaning of Section 2(d) of the Act.

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6. It was also contended on behalf of the appellant herein that Bhavani was a member of the Employees' Provident Fund and Family Pension Scheme 1971 and according to the records of the appellant she had attained the age of 60 years in 1992 E before the Employees' Pension Scheme Act, 1995, came into operation. Before the District Forum it was the case of the appellant herein that the said Employees' Pension Scheme, 1995, contained a cut-off date, namely, 1st April, 1993 and those members of the Scheme who had attained the age of 60 years prior to the cut-off date were not entitled to the benefits thereof. F It was the further case of the appellant before the District Forum that according to the records maintained by the office of the appellant, the date of birth of Bhavani had been shown as 24.9.1932. It was submitted that Form 2 which was required to be filled up and filed by the concerned employee while applying G for membership of the Family Pension Fund Scheme, 1971, showed her date of birth as 24.9.1932. It was contended that according to the information provided by Bhavani herself she had attained the age of 60 years on 24.9.1992 and was not, therefore, entitled to the benefits of the 1995 Employees' H Pension Scheme.

7. The District Forum rejected the case made out on behalf of the appellant herein on a scrutiny of the various documents submitted on behalf of Bhavani to establish that her date of birth in the records of the company was 31.12.1935. The District Forum came to a finding that since Bhavani was eligible for the benefits of the 1995 Scheme, denial of the same amounted to deficiency of service which would attract the provisions of the Consumer Protection Act, 1986. The District Forum on considering the provisions of Section 2(1)(d) (ii) of the Consumer Protection Act, 1986, observed that the definition of "consumer" therein was not exhaustive and Section 2(1)(o) exempts only such services as are rendered free of charge or under a contract of personal service.

8. The District Forum also rejected the said contention of the appellant herein upon holding that the service rendered by the appellant herein did not fall within the exempted categories. The District Forum categorically found that the services rendered by the appellant herein to Bhavani came within the ambit of Section 2(1)(d)(ii) of the Consumer Protection Act.

9. On the question of the recording of the respondent's date of birth in the records of the appellant herein, the District Forum came to a definite finding that the respondent retired from service only on 31.12.1995 and was, therefore, entitled to the benefits of the 1995 Employees' Pension Scheme which became operative from 1st April, 1993.

10. As indicated hereinbefore, the said order of the District Forum was challenged by the appellant herein unsuccessfully both before the State Commission as also the National Commission.

11. The question involved in the other matters taken up along with this appeal is identical and have been allowed by the District Forum and thereafter by the State and National Commissions.

12. Dr. R.G. Padia, learned senior advocate appearing in support of the appeal, repeated the same submissions that had

A been advanced before the District Forum and the State commission. He contended that, inasmuch as, the respondent was not a 'consumer' within the meaning of Section 2(1)(o) of the Consumer Protection Act, 1986, the said Act would have no application particularly when from the definition itself it would B be evident that no service was being rendered to the respondent free of charge. Dr. Padia also urged that when a master and servant relationship existed, the Consumer Protection Act would not apply to either of them.

13. Dr. Padia also urged that the 1995 Scheme had no C relation to the question of payment of the respondent's provident fund dues.

14. Dr. Padia then went on to submit that the order of the National Commission under challenge was very cryptic and did not indicate reasons for negating the claim of the respondents D in the appeals and deserved to be remanded to enable the National Commission to pass a properly reasoned order. It was then urged that, in any event, this Court had deprecated the practice of employees approaching the management at the fag end of their careers asking that their dates of birth be altered to E their advantage. Dr. Padia submitted that this was not permissible and this Court had said so in different judgments. It was submitted that such a claim after the attainment of superannuation was all the more inadmissible and the order passed by the District Forum, which was upheld up to the F National Commission to direct the appellant herein to correct its records relating to the date of birth of the respondent, was erroneous and could not be sustained.

15. In this regard, various decisions of this Court were referred to by Dr. Padia in support of his contention that contract G of personal service or a service rendered free of charge would not attract the provisions of the Consumer Protection Act, 1986. Dr. Padia urged that the services rendered by the appellant to the respondent amounted to personal service which was of a free nature and would not, therefore, attract the provisions of H the Consumer Protection Act on both counts. According to Dr.

Padia, the respondent could at best have asked for pensionary benefits under the 1971 Employees' Family Pension Scheme which had been replaced by the Employees' Pension Scheme, 1995. A

16. Dr. Padia lastly urged that the District Forum had no jurisdiction under the Consumer Protection Act to direct alteration of the date of birth of a member which was recorded in the records of the appellant, and, that too, without holding any inquiry in that regard. B

17. On behalf of the respondents, Mr. Noor Mohammed, learned advocate for the respondent in Special Leave Petition © No.8661 of 2004, submitted that in a similar case involving the same set of facts, being Special Leave Petition © No.9667 of 2005, this Court by order dated 26.3.2007 had dismissed the special leave petition. He, therefore, submitted that the arguments advanced by Dr. Padia were of no consequence in view of the order passed in Special Leave Petition © No.9667 of 2005 wherein one K. Sarojini was the complainant before the District Forum. C D

18. Mr. V. Prabhakar disputed Dr. Padia's contentions and submitted that the entries relating to the date of birth of the respondent in the records of the company and not that recorded in the records of the appellant were relevant for the purpose of determining the date of superannuation of the employee concerned. It was submitted that stress had been erroneously laid on the alleged entry in the records of the appellant to wrongfully deny the benefits of the 1995 Employees' Pension Scheme to the respondent. It was also submitted that various records had been produced on behalf of the respondent, including documentary evidence from the company, in order to establish her claim that her date of birth had been entered in her service records with the company as 31.12.1935. E F G

19. We have carefully considered the submissions made on behalf of the respective parties and the relevant documents which had been produced before the District Forum and we H

A are satisfied that the dates of birth of the respondents as recorded in their service records with the company are the correct dates of birth of the employees and not the dates of birth as entered in the records of the appellant. The reasoning given by the District Forum in accepting the entries in the B company's record while rejecting those in the records of the appellant/Regional P.F. Commissioner are based on sound logic and the materials on record. For instance, there are certificates issued by the company to indicate that the respondent in C.A. No.6447/2001 had continued to work in the company till her C date of superannuation i.e. 31.12.1995 and there was no denial on the part of the appellant that the respondent continued to contribute to the fund till the year 1995. No explanation is forthcoming as to why and how such contributions were received, even though according to the records of the appellant the D respondent had retired on 31.12.1992, so as to make her ineligible for the 1995 Employees' Pension Scheme which came into operation on and from 1st April, 1993.

20. Dr. Padia's submissions regarding the non-applicability of the Consumer Protection Act to the case of the E respondent must also be rejected on account of the fact that the Regional Provident Fund Commissioner, who is the person responsible for the working of the 1995 Pension Scheme, must be held to be a 'service giver' within the meaning of Section 2(1)(o) of the Consumer Protection Act. Nor is this a case of F rendering of free service or rendering of service under a contract of personal service so as to bring the relationship between the appellant and respondent within the concept of 'master and servant'. In our view, the respondent comes squarely within the definition of 'consumer' within the meaning of Section 2(1)(d)(ii), G inasmuch as, by becoming a member of the Employees' Family Pension Scheme, 1971, and contributing to the same, she was availing of the services rendered by the appellant for implementation of the Scheme. The same is the case in the other appeals as well.

H 21. In fact, the same proposition has been explained in

Regional Provident Fund Commissioner vs. Shiv Kumar Joshi [2000 (1) SCC 98], wherein in relation to the operation of the Consumer Protection Act to the Employees' Provident Fund Schemes it was held as follows:

> "A perusal of the Scheme clearly and unambiguously indicates that it is a 'service' within the meaning of Section 2(1)(o) and the member a 'consumer' within the meaning of Section 2(1)(d) of the Act. It is, therefore, without any substance to urge that the services under the Scheme are rendered free of charge and, therefore, the Scheme is not a 'service' under the Act. Both the State as well as the National Commission have dealt with this aspect in detail and rightly come to the conclusion that the Act was applicable in the case of the Scheme on the ground that its member was a 'consumer' under Section 2(1)(d) and the Scheme was a 'service' under Section 2(1)(o)."

22. Several other earlier decisions were also referred to, where a similar view has been expressed.

23. We are not also able to appreciate Dr. Padia's submission that the cases of the respondents should not be considered as they had applied at the fag end of their careers for correction of their dates of birth in the appellant's records, which practice had been strongly discouraged by this Court The aforesaid principle cannot apply to the case of the respondents as their dates of birth had been correctly recorded in the records of the company, including the respondents' service records, on the basis whereof they had retired from the company's services.

24. We, therefore, have no hesitation in upholding the orders passed by the National Commission. All the six appeals filed by the Regional Provident Fund Commissioner are accordingly dismissed.

25. There will, however, be no order as to costs.

K.K.T. Appeals dismissed