

IN THE COURT OF MIRZA JAWAD A: BAIG,
DISTRICT & SESSIONS JUDGE,
PRESIDING OFFICER, DISTRICT CONSUMER COURT,
DERA GHAZI KHAN, CAMP AT LAYYAH.

(PHONE: PTCL: 0642474100. FAX: 0642470496).

Mohammad Yousif versus Assistant Agriculture Engineer Field Workshop & 1 other

Complaint/ Case No: 2176 / 97 / 12.
Date of Institution: 06-02-2012.
Date of Decision: 13-03-2012.

COMPLAINT ABOUT FAULTY SERVICES

ORDER:

The claimant is represented by Sardar Abdul Aziz Khan Advocate while the defendants are represented by their representative.

1. The case is at the stage of the arguments. I have heard the arguments and perused the file. I proceed to dispose off the complaint and ancillary application by discussion in the following paragraphs.

2. Briefly stated the claimant has challenged order dated 05-10-2011 passed by defendant No.1 and order dated 19-01-2012 passed by defendant No.2; that the claimant was retired from the service of concerned government department as tractor operator after observing all requirement; that he had handed over complete charge; that he obtained all dues from the government including regular pension; that no diesel was due from him; that the amount of Rs.55111/- is shown to be outstanding against him on account of diesel; that legal notices have not been responded by the defendants. He has requested for cancellation of disputed orders and to restrain the defendants from effecting any recovery from the claimant.

3. The defendants have contested the complaint initially by filing ancillary application to challenge the jurisdiction of this court and also contested the complaint on merits by filing their joint written statement.

4. The version of the defendants is to the effect that the labour laws or consumer law is not applicable to the present dispute because Agriculture department is the department of government of Punjab administered by Punjab Civil Servants Act, 1974 and ancillary laws framed under the service law; that appeal lies before service tribunal against the impugned orders being related to the terms & conditions of service; that it has been clearly directed by Honourable Supreme Court of Pakistan that the Service Tribunal is proper forum for the service matters; that no court can hear the cases in excess of its jurisdiction; that the claimant is liable for false representation due to mentioning of incorrect date of retirement as 06-06-2004 being 30-04-2006; that internal audit was in process at the time of the retirement of the claimant which was completed after office order date 01-02-2011; that misappropriation of the claimant has been proved by the record; that the complaint should be dismissed.

5. It is contended by learned counsel for the claimant that the provisions of the Consumer Act are in addition to and not in derogation of the provisions of any other law for the time being in force as provided by S.3 of PCP Act, 2005 and that the intent of the legislature is deemed to be to the effect that the provisions of Consumer Law should not be DEROGATED by any other law being special law.

6. It is provided in the definition of the 'CONSUMER' in S. 2 (c) of the 'Act' that it means such a person or entity who "Hires any service for a consideration and includes the beneficiary of such services".

7. It is pertinent to note that the relationship of the parties must be of the consumer and manufacturer or the consumer and service provider to justify the institution of the complaint before the consumer court but no such relationship appears to have been created between the parties to the present complaint. It appears to be the service matter relating to the terms & conditions of government service and cannot be entertained by this court under PCP Act, 2005 as amended by PCP (Amendment) Act, 2006 (XI of 2006) read

with PCP Rules 2009 (Notification No. SO(E) 08-35-2009 dated 22nd May 2009 as amended by (Notification No. SO(E) 08-35-2009 dated 19-08-2010.

8. It is decided by Honourable High Court in the ruling cited as 1988 CLC 1718 in Para 22 to the effect that; “It is settled law that once the Legislature has made any special law for a particular purpose prescribing a forum or a Tribunal for decision of any dispute the Courts should not encourage deviation from such course.”

9. It is however observed that it is proper to dispose off the complaint by way of return instead of dismissal of the complaint so that the claimant may seek his remedy before the learned Service Tribunal, if so required.

10. In accordance with above findings, the ancillary application of the defendants is partly accepted and the main complaint is disposed off by way of return.

11. The parties are left to bear their own costs.

12. The file of this complaint is to be consigned to the record room of this court duly page marked with proper index and after due completion and made available for issuance of attested copies and kept under safe custody till the period fixed for destruction in accordance with the Rules & Orders of Honourable Lahore High Court.

Announced:
13-03-2012.

(MIRZA JAWAD A: BAIG)
D. & S. J. / P.O., D.C.C., D.G.K.,
PUNJAB, PAKISTAN,
CAMP AT LAYYAH.