

(2021) 02 RAJ CK 0131
In the Rajasthan High Court
Case No : Civil Writ Petition No. 288 Of 2021

Chairman, Pilibanga Shikshan Samiti, Pilibanga And Ors	APPELLANT
Vs	
Controlling Authority, Under Payment Of Gratuity Act, Hanumangarh District Hanumangarh (Raj.) And Ors	RESPONDENT

Date of Decision : 23-02-2021

Acts Referred:

Rajasthan Non-Governmental Educational Institutions Act, 1989 — Section 19, 21, 21(2), 40
Payment of Gratuity Act, 1972 — Section 2(s), 14
Rajasthan Non-Governmental Educational Institutions Rules, 1993 — Rule 82

Citation : (2021) 02 RAJ CK 0131

Hon'ble Judges : Dinesh Mehta, J

Bench : Single Bench

Advocate : H.S. Sidhu, Sanjeet Purohit

Judgement

1. By way of the present writ petition, petitioner has challenged the order dated 07.12.2020, passed by the Controlling Authority under the Payment of

Gratuity Act (hereinafter referred to as 'the Competent Authority').

2. Mr. Sidhu, learned counsel for the petitioner, attacked the order impugned, essentially on following four grounds:-

(i) The respondent-employee had efficacious remedy in the form of Section 21 of the Rajasthan Non-Governmental Educational Institutions Act, 1989 (hereinafter referred to as 'the

Governmental Educational Institutions Act, 1989 (hereinafter referred to as 'the Act of 1989');

(ii) in light of Rule 82 of the Rajasthan Non-Governmental Educational Institutions Rules, 1993 (hereinafter referred to as 'the Rules of 1993'), the respondent- employee, who has served the present petitioner, (a non-aided

educational institution), is not entitled for gratuity;

(iii) Section 40 of the Act of 1989, gives over-riding effect to the provisions of the Act over all other laws, hence the respondent-employee cannot be

held entitled for gratuity as Rule 82 of the Rules of 1993, confines right of getting gratuity only upon employees of aided educational institutions; and

(iv) assailing the merits of the order, learned counsel would contend that the competent authority has erred in calculating the amount of gratuity

payable to the respondent - it has reckoned the figure of last monthly wages to be Rs.49,112/-, which includes a sum of Rs.3,136/- per month paid to

the respondent-employee as House Rent Allowance (HRA). Inviting Court's attention towards the definition of expression ""wages"", given under

Section 2(s) of the Payment of Gratuity Act, 1972 (hereinafter referred to as 'the Act of 1972'), it is argued that HRA is required to be excluded from

wages while determining the amount of gratuity.

3. Mr. Sanjeet Purohit, learned counsel appearing for respondent-employee, submitted that the petitioner's first argument that the exercise of power by

the competent authority was without jurisdiction, is not tenable inasmuch as, Section 21 of the Act of 1989, if read purposively, does not create an

absolute bar on entertaining an application by the competent authority.

4. Inviting Court's attention towards sub-section (2) of Section 21 of the Act of 1989, he highlighted that the said provision is only a transitory provision

and that too confined to matters relating to provisions of Section 19 of the Act of 1989 and since respondent-employee's case was not that of

termination, it cannot be said as a matter of rule that an employee can approach the Tribunal, constituted under Section 21 of the Act of 1989 only for

the purpose other than those ancillary to termination.

5. He further submitted that the argument of petitioner is a double edged sword. In case the first argument of the petitioner institution is accepted and

the respondent is asked to prefer an appeal under Section 21 of the Act of 1989, the institute would rely upon Rule 82 of the Rules of 1993 and ask the

Tribunal to non-suit the respondent-employee. Then, in that case, the respondent perhaps, cannot claim payment of gratuity in the face of Rule 82 of

the Rules of 1993, which confers right of gratuity only upon employees of aided educational institutions.

6. In relation to petitioner's third argument, flowing from Section 40 of the Act of

1989, Mr. Purohit argued that Section 40 of the Act of 1989 has been given over-riding effect only to the extent of anything inconsistent contained in any instrument, having effect of any law.

7. Underscoring the expression used, namely ""instrument"", he submitted that non-obstante clause used in Section 40 of the Act of 1989, will not come

in the way as the provisions of Act of 1989 are overriding to any instrument and not 'Act' of Parliament. He emphasized that in light of Section 14 of

the Act of 1972, which too begins with a non-obstante clause, petitioners' argument deserves to be rejected.

8. Having heard rival contentions, this Court is of the view that the matter requires a rather detailed hearing on the questions of law, which have been canvassed by rival counsel.

9. Admit. Issue notice.

10. Mr. Sanjeet Purohit, learned counsel, accepts notice on behalf of respondent-employee.

11. In prima facie opinion of this Court, since a competent authority, constituted under the Act of 1972, has determined the rights of the respondent in

relation to gratuity, considering the provision of welfare legislation, namely, the Payment of Gratuity Act, 1972, staying the effect and operation of the

order impugned would amount to depriving the respondent from his legit claim. That apart, as it is a claim in terms of money, the petitioners can be

recompensated appropriately, if they ultimately succeed.

12. This being the position, the stay application stands disposed of in the manner that the petitioner shall deposit a sum of Rs.5 lakhs, with the

competent authority within a period of six weeks from today. This amount would take care of the petitioners' contention regarding wrongful inclusion

of HRA in the amount of gratuity calculated by the competent authority.

13. On depositing the amount, the competent authority shall disburse the amount to the respondent - employee, however, after obtaining an undertaking

along with an affidavit that in case writ petition is allowed and the order dated 07.12.2020, is altered or modified, he will restitute the petitioner-

institution in the manner provided by this Court, while disposing of the present writ petition.