
(2009) 12 RAJ CK 0015
In the Rajasthan High Court

Chandra Lekha and Another

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 08-12-2009

Acts Referred:

Rajasthan Non-Government Educational Institutions Act, 1989 — Section 43

Citation : (2010) 2 RLW 1138 : (2009) 8 SLR 286

Hon'ble Judges : P.C. Tatia, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Prakash Tatia, J.—The petitioners are teachers appointed in the respondent-Guru Nanak Public School run by the respondent Guru Nanak Education Society, which is a society registered under the Societies Registration Act. The petitioners' schools are unaided educational schools and the Rajasthan Non-Government Educational Institutions Act, 1989 (for short the Act of 1989") is applicable upon the respondent-educational institutions and consequentially the Rules framed thereunder the Rajasthan Non-Government Educational Institutions (Recognition, Grant-in-aid) Rules, 1993 (for short the Rules of 1993) are also applicable. According to the learned Counsel for the petitioners, the State is empowered to frame rules u/s 43 of the Act of 1989 and the Rule 45 provides and empowers the State Government to frame rules with respect to age of superannuation of the teachers and the employees of the educational institutions. The educational institutions, whether aided or unaided, both are governed by the Rules framed by the State Government. Both the educational institutions, aided or unaided, are required to obtain recognition of the institution and the educational institution Under Rule 5 of the Rules of 1993 and both types of institutions are required to submit an application in prescribed form to the competent authority as specified in Appendix-III, which provides that the institution fulfills all the terms and conditions as laid down by the Government from time to time. On furnishing of this undertaking only, the educational institution can be recognised, as stated above, aided as well as unaided. The respondent-educational institutions in their

Constitution itself very specifically provided in Clause 13, which is prescribing age of superannuation of the employees of the society and undertook to abide by any decision taken by the State Government. According to the petitioners, the teachers are also employees of the society and educational institution and condition No. 13 of the Society's Constitution very specifically provided as under:

The society will follow the Rajasthan Non-Government Educational Institutions Act, 1989 and the Rules of 1993 in its letter and spirit for all the employees of the institutions under the Society.

2. Therefore, as per the Constitution of the Society, as per the law and as per the undertaking given by the respondents, the respondent-educational institution is bound to follow the rules framed by the State Government with respect to the age of superannuation of its employees including teachers.

3. The State Government, by exercising powers u/s 43 of the Act of 1989, framed the Rules of 1993 and Under Rule 45, prescribed the age of superannuation for the teachers and the employees of the educational institution as 58 years. This Rule 45 has been amended by Notification dated 30.6.2004. By this amendment, the age of superannuation of teachers and other employees of the educational institution have been increased to 60 years from 58 years, yet the respondents are following the old Rules and passed the order for petitioners' retirement on attaining age of 58 years. The learned Counsel for the petitioners submitted that the appeals were preferred before the Rajasthan Non-Government Educational Institution Tribunal, Jaipur, wherein this issue was raised wherein the Tribunal allowed the appeals on 24.1.2005 and directed the educational institutions to follow the amendment made in Rule 45 by the State Government vide order dated 30.6.2004 and should retire the employees-teachers only on attaining the age of 60 years. This matter came before this Court in S.B. Civil Writ Petition No. 1719/07-Guru Nanak Education Society, Udaipur and Anr. v. Rajasthan Non-Government Education Institutions Tribunal Jaipur and Ors. and this Court set aside the judgment of the Tribunal dated 24.1.2005 and thereby quashed the directions of the Tribunal to retire the teachers and employees on attaining age of 60 years in place of retiring them at the age of 58 years, but the Division Bench of this Court in D.B. Civil Special Appeal (Writ) No. 1993/08- Managing Committee, Shri Khandelwal Vaish Kendriya Senior Secondary School v. Rajasthan Non-Government Educational Institutions Tribunal and Ors. decided on 15.12.2008, after considering the Government's order dated 30.6.2004, clearly held that after the Notification dated 30.6.2004, the teachers can be retired, not on attaining the age of 58 years but can be retired on attaining age of 60 years.

4. learned Counsel for the respondents raised preliminary objection that the writ petition of the petitioner deserves to be dismissed in view of availability of alternative remedy of appeal before the Rajasthan Non-Government Educational Institutions Tribunal, Jaipur, but I do not find any reason to dismiss the writ petition of the petitioners on this ground because of the reason that the Tribunal

has already taken a view and thereafter the matter came up before this Court and the Tribunal's order has already been set aside and the petitioner's contention in this petition is based on another Division Bench judgment dated 15.12.2008 and, therefore, it will be appropriate to decide the writ petition on merit as the learned Counsel for the parties have already argued the petition on merit.

5. The Single Bench of this Court had occasion to consider the issue in detail in Guru Nanak Educational Society's case (supra) wherein various provisions under the Act of 1989 have been considered in detail and I do not find that the points raised by the petitioners have not already been considered in Guru Nanak Educational Society's case (supra). In the said judgment, this Court has already taken note of Section 16(1) of the Act of 1989, which clearly provides that the State Government may regulate the recruitment and conditions of service, including conditions relating to qualifications, pay, gratuity, insurance, age of retirement, entitlement of leave, conduct and discipline of persons appointed as employees of aided institutions in the State. In Section 16(1), the provision has been made only for aided institutions and consciously, the words "aided institutions" have been used in place of "educational institutions" which has been used in different sections where it was needed. The Act empowered the State Government to regulate conditions of service including prescribing age of retirement only for aided institutions, then by implication, non-aided educational institutions cannot be included in the language of Section 16(1) of the Act of 1989. It will be worthwhile to again mention here that in the Act itself, at various places, words have been used as educational institution so as to apply other provisions of the Act to the aided and non-aided educational institutions, where it was necessary to do so.

6. learned Counsel for the petitioners" contention is that the respondents have submitted undertaking to abide by the Rules and, therefore, they are bound by the Rule 45 as framed by the State Government wherein the words "teachers and employees" have been used for whom the date of retirement has been increased from 58 years to 60 years. The contention of the learned Counsel for the petitioners may be attractive, but cannot be read in isolation to the power given by the Act to the State Government and cannot be read separately while interpreting Rule 45. When Section 16(1) gave power to the State Government to frame Rules regarding age of superannuation of the employees of aided institutions only then if the words have been used in Rule 45 as teachers and employees, then they are required to be read with source of power and that is Section 16(1) of the Act of 1989 and they certainly means and relates to the persons who are referred in Section 16(1) only.

7. The learned Counsel for the petitioners" further contended that even if the State had no power to frame any rule in relation to prescribing age of superannuation of the employees of un-aided educational institutions and yet if the State has framed the Rules and they have been adopted and accepted by the

respondent-educational institutions, then they are bound by their own adoption and acceptance of the Rules. In this case, the respondent-educational institutions, in its Constitution itself has provided that they will abide by the Rules framed by the State Government in its letter and spirit.

8. It is true that the said provision has been made in the Clause 13 of the Constitution of the respondent-Educational Institution/Society but that only says that it will follow the Rules framed by the State Government and as it is clear from the Rules itself that the rule has been framed for the aided school prescribing the age of superannuation as 60 years for those institutions only and, therefore, there is no force in the above submission.

9. For Division Bench judgment of this Court delivered in the case of Managing Committee, Shri Khandelwal Vaish Kendriya Senior Secondary School (supra), the learned Counsel for the respondents submitted that was a case of aided school, however, that fact is not clear from the copy of the judgment placed on record, but at the same time, there was limited controversy before the Division Bench and it appears that there was no dispute that if the Notification dated 30.6.2004 will govern the employees concerned then the employees could have been superannuated on attaining age of 60 years. Here in this matter, in view of the fact situation, the petitioners' case is entirely different.

10. In view of the above reasons and in view of the detail reasons given in the judgment of Guru Nanak Education Society, there is no merit in the writ petition and hence the writ petition of the petitioners is dismissed. However, since the petitioners continued in service beyond their age of superannuation by virtue of the interim order passed by this Court dated 18.9.09, therefore, it is ordered that the pay already paid to the petitioners for the period upto the date of the judgment shall not be recovered from the petitioners. The interim stay order granted on 18.9.2009 is vacated.