

(2011) 04 RAJ CK 0088
In the Rajasthan High Court
Case No : Civil Writ Petition No. 12896 of 2009

Director Piramal Education Trust and Others	APPELLANT
Vs	
Rajasthan Non-Govt. Educational Institutions Tribunal and Ors	RESPONDENT

Date of Decision : 19-04-2011

Acts Referred:

Payment of Gratuity Act, 1972 — Section 7(7)
Rajasthan Non-Government Educational Institutions Act, 1989 — Section 18, 21, 43

Citation : (2011) 4 RLW 3388

Hon'ble Judges : Ajay Rastogi, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Hon'ble Rastogi, J.—Instant petition is directed against order dt. 17.8.2009 passed by Rajasthan Non-Government Educational Institutions Tribunal ("Tribunal") disposing of application filed by respondent-employee holding that the applicant is entitled for payment of gratuity & leave encashment in terms of R.82 of Rajasthan Non-Govt. Educational Institutions (Recognition, Grant-in-aid & Service Conditions etc.) Rules, 1993 ("Rules, 1993"), alongwith interest @ 7% per annum from the date it became due till payment.

2. Facts relevant for adjudication are that respondent-2 was initially appointed as Lecturer (Political Science) on 01.9.1955 and retired from service on attaining age of superannuation w.e.f. 31.12.1995. However, after his retirement when his retiral dues were not paid in full, to which he was entitled for under Rajasthan Non-Government Educational Institutions Act, 1989 ("Act, 1989") & Rules, 1993, application was filed by him U/s 21 of Act, 1989, seeking payment of gratuity & leave encashment, being arbitrarily withheld by management of the Institution (petitioner).

3. It is relevant to observe that in terms of R.82 of Rules, 1993, employee/teachers of the Aided educational institutions (Non-Govt.) are entitled for

payment of gratuity; however, its computation is required to be made as provided under Payment of Gratuity Act, 1972 ("Gratuity Act").

4. It has come on record that a sum of Rs.52,800/- towards gratuity was paid by petitioner-institution on 24.3.1998 and no payment was made toward leave encashment, to which respondent-2 (employee) was entitled for. Since payment towards gratuity of Rs. 52,800/- was not computed in accordance with computation as provided under Gratuity Act, respondent-2 (employee) alleged before the Tribunal that earlier he requested to the petitioner-institution, to which no heed was given; as such registered notice dt.01.1.2000 was sent through Counsel (Mr. Kartar Singh) - pursuant to which, the petitioner-institution called respondent-2 (employee) and was assured for payment towards gratuity, to which also, there was no heed being paid later and all in vain, and when no communication was received, respondent-2 (employee) again sent application dt.16.10.2006 for payment of gratuity & leave encashment (copy whereof was filed as Ann.4 along with application) and thereafter approached the Tribunal by filing application U/s 21 of Act, 1989, to which petitioner-institution filed reply along with material to justify that amount of gratuity to which applicant employee was entitled for, after its due computation as admissible under the law has been paid and what has been claimed by the applicant towards gratuity is not admissible in terms of computation as provided under the law.

5. However, ultimate fact remained was that entitlement of payment towards gratuity and leave encashment was not under challenge before the Tribunal; however, only defense taken by employer (petitioner-institution) before the Tribunal was that after due computation, payment of gratuity has been paid to applicant (employee), and not as claimed by him; but obviously that could have been in accordance with R.82 of Rules, 1993, which clearly provides that the computation be made towards gratuity in terms of procedure provided under Gratuity Act. In additional plea raised in the reply before the Tribunal, preliminary objection raised was that the application U/s 21 has been filed with inordinate delay which, itself, entails the employee in claiming retiral dues under Act, 1989 & Rules, 1993.

6. The learned Tribunal, after taking note of material on record, finally observed that what has been paid to the applicant (employee) towards gratuity is not in accordance with computation provided under Gratuity Act as required U/r 82 of Rules, 1993; and as regards leave encashment, no controversy was raised by the petitioner institution before the Tribunal; and taking note whereof, vide order dt. 17.8.2009, petitioner-institution was directed to make payment of gratuity after its due computation under Gratuity Act & adjusting amount of gratuity already paid, and so also of leave encashment within two months alongwith interest thereon @ 7% per annum from the date it became due and payable.

7. Shri Suresh Pareek, Senior Counsel appearing on behalf of petitioner submits that respondent-2 had retired from service in December, 1995 while application was filed U/s 21 of Act, 1989 in the year 2006 and no reasonable explanation has

come forward for approaching the Tribunal after such inordinate delay and looking to the fact that what has been his entitlement under law towards gratuity was paid way back in March, 1998, to the tune of Rs.52,800/-; as such, application, being not maintainable was not required to be examined on merits.

8. Counsel further submits that under Gratuity Act, remedy of appeal has been provided U/s 7(7) to be preferred within 60 days by a person who is aggrieved and if the authority is satisfied that person aggrieved was prevented by sufficient cause from preferring the appeal within sixty days, the authority may extend the period by a further sixty days; but it could have been preferred within 120 days even after extension of the period, that too could be condoned after satisfactory explanation being come forward. Counsel submits that no doubt, applicant employee has not, approached under Gratuity Act but has filed application U/s 21 of Act, 1989, which in the facts of the case is barred by limitation and objection raised by petitioner-institution has not been examined by learned Tribunal in the light of judgment of Supreme Court; as such, finding recorded under order impugned in the facts of the case is not legally sustainable and deserves to be quashed; In support, Counsel placed reliance upon decisions of Apex Court in Union of India vs. Tarsem Singh (2008 (8) SCC 648 : 2008 (4) RLR 3167 (SC) , Chairman, U.P. Jal Nigam and Another Vs. Jaswant Singh and Another, and of Madhya Pradesh High Court in Western Coalfields Ltd vs. Controlling Authority 2000 LLR 881 and of Kerala High Court in Commanding Officer, Naval Base vs. Appellate Authority Under Payment of Gratuity Act 2004 LLR 1044.

9. Per contra, Counsel for respondent-2 while supporting order of the Tribunal submits that the alleged delay has been properly explained by applicant employee while filing application U/s 21 before the Tribunal, and specifically averred in paras 4 & 5 whereof, which too were not denied by the petitioner institution in its reply; and once the delay was satisfactorily explained, and taken note of by the learned tribunal, no error has been committed in examining the dispute on merits. Counsel further submits that Gratuity Act has no application in the facts of the case; and entitlement of claim towards payment of gratuity & leave encashment has been raised by employee/teacher of the Aided Educational institution under the provisions of Act, 1989 & Rules, 1993; and not under the Gratuity Act.

10. Counsel further submits that teacher/ employee of the Aided Educational Institutions (Non-Govt.) if aggrieved by any action of management could file application U/s 21 of Act, 1989, for which legislature in its wisdom has not provided any period of limitation; but at the same time, management or employee, if aggrieved by an order passed U/s 18 of the Act, 1989, an appeal u/s 19 could be filed by a person aggrieved, for which period of limitation has been provided; and in such circumstances, in absence of any period of limitation being provided for approaching the Tribunal U/s 21, applicant employee has to give reasonable explanation for alleged delay caused in filing application, which has been taken note of and examined on merits; and after being satisfied, finally the

Tribunal observed that applicant employee was entitled for computation of gratuity as provided under Gratuity Act, and while arriving at the conclusion, no error has been committed by learned tribunal in granting relief as prayed for, which may warrant interference by this Court.

11. In support, Counsel for respondent-2 has placed reliance upon judgments of this Court in Managing Committee SPR Saharia Sr. Sec. School, Kaladera vs. Ganga Singh Shekhawat CWP No. 4697/2000 decided vide judgment dt. 15.4.2002, Smt. Pawan Bhagava vs. State 2002 WLC (Raj.) 765, and IK Goyal vs. Raj. Non-Govt. Edu. Inst. Tribunal 2010 (2) WLC Raj. 188.

12. This Court has considered rival contentions advanced by Counsel for parties and with their assistance, examined material on record. Service conditions of Employee/ Teachers employed in non-Govt. Educational Aided institutions are protected by Rajasthan Non-Government Educational Institutions Act, 1989 having come into force w.e.f. 01.1.1993 and their conditions Of service are governed in terms of Chapter V of the Act, 1989 and S.29 envisages that scales of pay & allowances except compensatory allowances with respect to employees of an aided institution shall not be less than those prescribed for the staff belonging to similarly categories in Government Institutions. The State Government in exercise of powers U/s 43 of the Act, 1989 framed the Rajasthan Non-Govt. Educational Institutions (Recognition, Grant-in-aid & Service Conditions etc.) Rules, 1993 which came into force w.e.f. 01.4.93. Admissibility of leave has been provided under Chapter VI, while Chapter VIII deals with retiral dues which employee/ teachers of the Aided institutions are entitled for.

13. It is relevant to observe that as regards entitlement of payment towards leave encashment, no grievance has been raised by petitioner institution obviously for the reason that Apex Court in State of Rajasthan vs. S.R. Senior Secondary School Lachhmangarh 2005 (10) SCC 346 : RLW 2005 (4) SC 3040 settled the law on the point of entitlement of leave encashment in favour of employees/teachers of the Aided institutions ad infra:

15. A critical examination of Rules 47 to 53 in Chapter VI prescribing various categories of leave admissible to an employee also indicates that benefit of leave encashment is nothing but payment of salary for the leave earned and credited but not availed by an employee "privilege leave" admissible to an employee belonging to non-teaching or teaching staff is 15 days in every calendar year. The unavailed portion of privilege leave is 15 days in every calendar year. The unavailed portion of privilege leave is carried to the next year upto a maximum limit of 300 days. Under Rule 51 an employee is entitled to leave salary for unavailed privilege leave and half pay leave....

16. From the aforesaid Rules, regulating leave, it is clear that benefit of encashment of leave is nothing but payment of salary for the leave not availed by an employee and which is to his credit.

17. For the aforesaid additional reason, the conclusion reached by the High Court

is supportable that leave encashment is part of "salary" and covered in the wider expression "scales of pay and allowances" used in Section 29 of the Act which has to be read and understood with the definition of the word "salary" contained in Section 2(r) of the Act.

Thus, it stands settled that employees of Aided educational institution are entitled for leave encashment being one of their retiral dues payable under Rules, 1993.

14. The dispute raised by petitioner institution is confined regarding gratuity and the claim being raised by applicant employee belatedly before the Tribunal, which is barred by limitation. R.82 of the Rules, 1993 in particular provides gratuity & insurance ad infra:

82. Gratuity and Insurance -

(1) The employees of the Aided educational institutions shall be entitled to Gratuity as admissible under Payment of Gratuity Act, 1972 as amended from time to time.

(2) The managing committee shall arrange for Group Insurance of its employees under the respective Scheme of Life Insurance Corporation of India.

The Act, 1989 & its Rules, 1993 being a complete Code in itself and provides a mechanism for right of appeal U/r 19 or filing of application U/s 21, if aggrieved by action of the management committee of the educational-institutions. R.82 of Rules, 1993 provides that employees of the Aided educational institutions are entitled for gratuity but admissibility regarding computation of gratuity shall be in terms of procedure provided under Gratuity Act. Thus, entitlement of employees of Aided educational institution towards payment of gratuity is in terms of R. 82 of Rules, 1993. However, the Gratuity Act has to be invoked only for a limited purpose for computation in regard to gratuity being entitled for and admissible to employees of Aided educational institutions U/r 82 of Rules, 1993.

15. However, U/s 19 of Act, 1989, an appeal could be preferred before the Tribunal if either party is aggrieved by an order passed U/s 18 within 90 days from the date of receipt of such order. S.18 deals with action being taken regarding removal, dismissal or reduction in rank of employees; and the Management committee, if aggrieved from order of refusal made by the authority U/s 18, could prefer appeal to the Tribunal within 90 days.

16. However, all other disputes between management of recognized institution and its employees regarding service conditions, remedy lies by filing application in prescribed manner before the Tribunal u/s 21 of the Act. Thus, in case of disputes between management of recognized institutions and its employees other than what has been covered U/s 18 of the Act, 1989, for which the legislature in its wisdom provided period of limitation of 90 days to prefer appeal U/s 19, whereas no such period of limitation has been provided in regard to filing of application U/s 21 of the Act, 1989. In fact, the legislature was consciously not

inclined to curtail right of filing application, if employee is aggrieved by action of the management effecting his service conditions and indisputably in case of employee (respondent-2), payment of gratuity in full & leave encashment was not paid resulting in adversely affecting conditions of service and being aggrieved thereof, application was filed by him U/s 21 of the Act, 1989 before the Tribunal.

17. Scope of filing application U/s 21 of the Act, 1989 has been examined by this Court (Per Hon. PP Naolekar, as he then was) in Managing Committee, SPR Saharia School vs. Ganga S. Shekhawat CWP-4697/2000 decided on 15.4.2002 and taking note of Scope of S.21, it has been observed that here was no time limit provided in exercise of powers under the Act, 1989 but it has always to be exercised within reasonable time and what should be reasonable time has to be ascertained by the courts in the given facts & circumstances of a case; and merely because, application has been filed after an inordinate delay, that itself, cannot be a ground for refusal unless it is established that the period taken by a party before approaching Tribunal was unreasonable or without any just cause. The Court observed *ad infra*:

Lastly, it is argued that, the Tribunal has committed an error in granting relief to some of the teachers of educational institutions though they have approached the court after much delay and has placed reliance on the decisions in Mohamad Kavi Mohamad Amin Vs. Fatmabai Ibrahim, Ram Chand and Others Vs. Union of India (UOI) and Others, , and State of Gujarat vs. Patel Raghav Natha & Ors (AIR 1969 1297, wherein it has been held that where there is no time limit prescribed for exercise of the powers under a statute it has to be exercised within a reasonable time. Where no time limit is provided it does not mean that it can be exercised at any time. Such power has to be exercised within a reasonable time. S.21 of the Act of 1989 provides for application to the Tribunal for redressal of grievance, where there is any dispute between the management or a recognized institution and any of its employees with respect to conditions of service, in a prescribed manner. "S.21 does not provide for any time limit for reference of dispute to the Tribunal. However, there cannot be any manner of doubt that the application has to be moved by an employee who is aggrieved by any act of the employer relating to service conditions within reasonable time. What shall be the reasonable time has to be ascertain by the courts in the given facts and circumstances of a case. Unless and until the facts and circumstances are alleged by the party who has raised the question of limitation, that question cannot be gone into because the reasonableness of time will depend upon the factual matrix of each and every case. Simply because the application has been moved after a long delay that itself cannot be a ground for refusal unless it is established that the period taken by the party before approaching the court was unreasonable or without any just cause.

18. It has been considered by co-ordinate Bench in Smt.Pawan Bhargava vs. State (*supra*), and observed that claim of the petitioner could not have been dismissed on the ground of limitation since it is well settled that the cause of

action for the retiral benefits is recurring and the provisions contained in the Limitation Act are not applicable to such cases.

19. Taking note of the judgments (*supra*), it has been laid by the Court that even if there is no limitation provided to exercise powers under the Act, it has to be exercised within a reasonable time which has to be examined in the facts of each case.

20. In instant case, in the application filed U/s 21 of the Act, 1989, respondent-2 (employee) specifically averred that after retirement from service in December, 1995, towards gratuity, only a sum of Rs.52,800/- was paid by 24.3.1998 as informed by counsel for petitioner; while the claim regarding gratuity was to be computed based on his last basic salary with dearness allowance and as he had rendered 40 years of service, gratuity has to be accordingly computed in terms of procedure for computation provided under Gratuity Act; and since gratuity was not paid in full, he continuously requested the management of institution (petitioner) but no heed was paid; so, registered notice was sent through counsel and after notice was duly served, he was called upon and given assurance for making payment of gratuity; and since he rendered service for four decade, did not consider it proper to take immediate action and when no efforts were being made by management of institution (petitioner), again legal notice was served for making payment of gratuity in full and leave encashment on 16.10.2006, which was duly served upon petitioner institution but the same also remained unheeded, hence he approached the Tribunal by way of application U/s 21 of the Act, 1989.

21. In reply to the application U/s 21, efforts having been made & specifically averred by respondent applicant in paras 3, 4 & 5, as regards alleged delay in filing application, has remained uncontroverted by the petitioner-institution, and what has been averred in the reply is that what has been claimed towards full gratuity is not admissible under the law and according to his entitlement, gratuity was paid way back in March, 1998, and in para 13 of the reply, averment has been made that application has been filed after 11 years and since PL encashment and gratuity has already paid by petitioner institution as admissible under law; no relief as claimed for is admissible.

22. After having gone through the material and pleadings on record (*supra*), this Court finds that the alleged delay has been satisfactorily explained by applicant employee (respondent-2) which certainly makes him entitled for approaching the Tribunal by way of filing application U/s 21 of the Act and in getting the same examined on merits.

23. The Tribunal in its order impugned dt. 17.8.2009 has directed the petitioner institution to make payment of gratuity after due computation based on last salary drawn by the employee and after due adjustment of amount already paid, balance payment towards gratuity shall be paid alongwith interest @7% per annum.

24. However, it is not the case set up by petitioner-institution that computation of amount of gratuity paid to the respondent applicant was computed and paid on the basis of last salary drawn which is the requirement for computation of gratuity under Gratuity Act; and the gratuity is payable to an employee of the aided institution being entitled for U/r 82 of Rules, 1993.

25. In the opinion of this Court, as it manifests from the material on record, the alleged delay being properly explained by respondent-2 (employee), and learned Tribunal has not committed any error in entertaining the application U/s 21 of the Act, 1989 and in examining the claim of applicant employee on merits while passing order impugned.

26. Submission made by Counsel for petitioner-institution that the remedy was available for respondent-2 to file appeal u/S. 7(7) of Gratuity Act, since having not been availed of, present application that too being filed after a period of limitation and without assigning reasonable cause for the delay, was not maintainable, is of no substance for the reason that the Gratuity Act is applicable to such persons covered u/S. 2(e) which defines "employee" under the Act and that apart, a duty has been casted upon employer to determine amount of gratuity, whether person eligible for payment of gratuity under Gratuity Act has applied for or not, and thus as soon as gratuity becomes payable, the employer has to give notice in writing to the person to whom the gratuity is payable and also to the controlling authority specifying amount of gratuity so determined. Further, employer u/S. 7(3) is supposed to pay amount of gratuity within 30 days from the date it becomes payable to the person eligible for payment of gratuity; and if there is any dispute to the amount of gratuity payable to an employee under Gratuity Act or as to the admissibility of any claim, the controlling authority is supposed to examine after due inquiry and affording opportunity of hearing to the parties decide the dispute in accordance with law; and any person if aggrieved by order of controlling authority, may prefer appeal u/S. 7(7) within sixty days and if sufficient cause is shown, such period of sixty days can be extended for further sixty days. But it is the order of controlling authority which is appealable u/S. 7(7) of the Gratuity Act.

27. Here in instant case, there was no order passed by the controlling authority and in fact, entitlement of employee (respondent-2) regarding gratuity was not claimed under Gratuity Act but was claimed U/r 82 of Rules, 1993; and provisions of Gratuity Act are to be invoked only for limited purpose in regard to computation of gratuity amount. Thus, remedy available for applicant employee of the Aided institution was to approach the Tribunal u/S. 21 of the Act, 1989 and not under the Gratuity Act.

28. Judgment on which the Counsel has placed reliance in *Western Coalfields Ltd vs. Controlling Authority* (supra) related to the controversy as to whether appeal, if preferred u/S. 7(7) of Gratuity Act after a period of 120 days, is maintainable obviously are of no assistance to the petitioner having no application in the facts of instant case when the applicant has availed the remedy u/S. 21 of the Act,

1989 where no period of limitation has been provided.

29. Judgment of Apex Court relied by Counsel for petitioner in UP Jal Nigam vs. Jaswant Singh (supra) is not even remotely co-relate to the issue for consideration herein. The question before Apex Court in Jaswant Singh's case was as to whether employees who did not wake up to challenge their retirement and accepted the same, and had collected their post retirement benefits, could still be given relief in the light of subsequent decision delivered by Apex Court in Harwindra Kumar Vs. Chief Engineer, Karmik and Others, hence is also of no assistance.

30. In other judgment cited by Counsel in Union of India vs. Tarsem Singh (supra), what has been examined by Apex Court is as to whether once army personnel was declared invalid from army service, and was held to be entitled for disability pension, granting of arrears could be restricted for a period of three years prior to filing of writ petition.

31. However, in the instant case, question is not in regard to the entitlement and there is no case of recurring/successive wrongs and entitlement of arrears payable to the employee. What is being paid to the respondent -employee in instant case will be his gratuity, to which he is entitled for on the date of retirement, and once it has been held that he was entitled to be paid, inasmuch as nothing has been pleaded, which could substantiate as to what has been paid by petitioner towards gratuity is in conformity with procedure provided for computation under Gratuity Act, 1972; and if that has not been paid to the employee, certainly makes an employee entitled to actual gratuity payable under the law with interest. It is not the case, of petitioner that it could not have been paid because of fault attributable to respondent employee - in absence whereof, in the opinion of this Court, the Tribunal has not committed any error in passing order impugned, warranting interference.

Consequently, writ petition fails and is hereby dismissed.