(2011) 11 RAJ CK 0085

In the Rajasthan High Court

Case No : Civil Writ Petition No. 5118 of 2008

Gordhan Mal Singhvi APPELLANT

Vs

The State of Rajasthan and Others RESPONDENT

Date of Decision : 17-11-2011

Acts Referred:

Rajasthan Non-Government Educational Institutions Act, 1989 — Section 29

Citation : (2011) 11 RAJ CK 0085

Hon'ble Judges : Dinesh Maheshwari, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Dinesh Maheshwari, J.—The petitioner, who joined the services with the respondent No.3, a Non-Government Educational Institution and who retired on 30.04.2007 from the post of Senior Teacher (Teacher Gr.II), has filed this writ petition stating the grievance against denial of benefit of Revised Pay Scale Rules and of payment towards selection grades, leave encashment, and gratuity.

2. It is submitted that the respondent No. 3 is receiving aid from the State Government under the provisions of the Rajasthan Non-Government Educational Institutions Act, 1989 (''the Act of 1989'') and the Rajasthan Non-Government Educational Institutions (Recognition, Grand-in-Aid and Service Conditions etc.) Rules, 1993 (''the Rules of 1993''). It is further submitted that in terms of Section 29 of the Act of 1989, the employees of the Non-Government Educational Institutions are entitled to the same scales of pay and allowances to which the staff belonging to the similar categories in the Government Institutions are entitled to. The petitioner contends that his salary was revised in accordance with the Pay Scale Rules applicable to the employees of the Government but he was not granted the arrears as a result of such revision; and the benefit of selection grades upon completion of 9, 18 and 27 years of service were also not extended to him. According to the petitioner, he approached the respondents a number of times after retirement and requested them to grant the aforesaid

benefits and also served a notice on 23.04.2008 but in vain.

3. It is submitted that as per the decision of Court in the case of S.R. Higher Secondary School Vs. Rajasthan Non Government Educational Institutions Tribunal and Others, it is the settled position of law that benefit of selection grades and leave encashment is admissible to the employees of the Non-Government Educational Institution; and that the question of payment of gratuity to the teachers of Non-Government Educational Institution has also been decided in favour of teachers by the Hon''ble Supreme Court in the case of Rajasthan Welfare Society Vs. State of Rajasthan, . The petitioner contends that omission on the part of the respondents runs contrary to the provisions of the Act of 1989 and the law declared by the Courts.

4. The respondents Nos.1 and 2 have filed a reply contending, inter alia, that the petitioner had the efficacious alternative remedy of filing an appeal. It is further submitted that essentially the responsibility of making payment of the claimed amount remains with the respondent No.3 Institution and the answering respondents were only required to extend the grant-in-aid as per law.

5. The issue at hand does not appear open for further dispute and debate in view of the consistent decisions of this Court; and in the given set of facts and circumstances, availability of alternative remedy cannot be considered operating as bar against the petitioner in maintaining this writ petition, which has already been admitted after notice.

6. In S.R. Higher Secondary School (supra), the Larger Bench of this Court has held that the employees of the Non-Government Educational Institutions receiving grant-in-aid under the Rules of 1993 are entitled to the selections grade as admissible to the employees of the State Government. The Larger Bench has further held that leave encashment is an allowance and the teachers of Non-Government Educational Institutions are entitled to claim the same allowance at parity with the teachers of Government Educational Institutions.

7. Further, in the batch of petitions led by CWP No. 2473/2006: Mahila Mandal Vs. The State of Rajasthan & Ors., decided on 25.10.2007, a co-ordinate Bench of this Court considered the prayer made by the respective Non-Government Educational Institutions for directions against the Government for release of salary, dearness allowance, selections grades and leave encashment as paid/ payable to the employees; and has allowed the writ petitions directing the respondents to accord approval and to release the grant-in-aid to the petitioner-institutions in respect of the said items of payment to the employees. It is also pointed that the intra-court appeals taken against the order dated 25.10.2007 have since been dismissed.

8. The issue of payment of gratuity also stands decided in terms of the decision of the Hon''ble Supreme Court in Rajasthan Welfare Society (supra).

9. Thus and in view of the above, this writ petition deserves to be allowed with

necessary directions to the respondent No.3 for making the requisite payments to the petitioner; and to the respondents Nos.1 and 2 for releasing the grant-in-aid to the respondent No.3.

10. A reasonable provision for interest also deserves to be made in favour of the petitioner as he has unnecessarily been deprived of his legitimate dues. This Court is of opinion that the petitioner ought to be allowed interest @ 12% per annum on the arrears from the date of filing this writ petition, i.e., 23.07.2008.

11. Accordingly, this writ petition is allowed with the following directions:-

(1) Within 60 days from today, the respondent No.3 shall make payment of the amount to the petitioner towards arrears of salary as a result of fixation under the Revised Pay Scale Rules; towards selection grades upon completion of 9, 18 and 27 years of service; towards leave encashment; and towards gratuity and provident fund alongwith interest @ 12% per annum from 23.07.2008 until the date of payment.

(2) The respondents Nos. 1 and 2 shall grant approval and release the grant-in-aid within 60 days from the date of the respondent No.3 submitting in its claim in accordance with the provisions of the Rules of 1993 and the applicable decisions.

12. No costs.