

(2008) 04 RAJ CK 0107
In the Rajasthan High Court

Guru Nanak Education Society and Another	APPELLANT
Vs	
Rajasthan Non-Government Educational Institutions Tribunal and Others	RESPONDENT

Date of Decision : 30-04-2008

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : (2008) 2 RLW 1588

Hon'ble Judges : Govind Mathur, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Govind Mathur, J.—With an object to provide education to inculcate the values of secularism, tolerance, higher learning, creativity and skills in pursuance of national policy of education, the petitioner society is running a school in the name of "Guru Nanak Public School" (hereinafter referred to as "the institute") without getting any aid from the State. The petitioner No. 2 is the Managing Committee of the school and the respondents No. 2 to 9 are in employment of the institute as teachers.

2. On lowering down the age of superannuation from 58 years to 55 years, the respondents No. 2 to 9 (hereinafter referred as "the applicants") preferred an application before the Rajasthan Non-Government Educational Institutions Tribunal, constituted under the Rajasthan Non-Government Educational Institutions Act, 1989 (hereinafter referred to as "the Act of 1989") claiming the relief as follows:

It is therefore, most respectfully prayed that, this Hon'ble Tribunal may graciously be pleased to call for the record, examine the same and accept this Application of the Applicant and the respondents may be directed to not retire the applicant before the age of retirement i.e. 58 years and the so called resolution dated 13.03.2004 may be declared as illegal and the applicant may be provided all consequential benefit.

3. The Tribunal by its judgment dated 24.1.2005, while accepting the application aforesaid, held that being a recognised institution, as per the provisions of Section 2 (q) of the Act of 1989, the institute is under an obligation to adhere the provisions of the Rajasthan Non-Government Educational Institutions (Recognition, Grant-in-Aid and Service Conditions Etc.) Rules, 1993 (hereinafter referred to as "the Act of 1993"), including Rule 45, that provides the age of 60 years as the age of superannuation. The institute was found in error by retiring the applicants before attainment of the age of 60 years, a direction, accordingly was given to continue them in service upto the age of superannuation as prescribed under Rule 45 of the Rules of 1993. To challenge the judgment aforesaid, this petition for writ is preferred.

4. In precise, the question posed by the institute to challenge the judgment dated 24.1.2005, is that "whether the Tribunal is right in applying the Rule 45 of the Rules of 1993 in the case of the petitioner institute, which is not an aided institute?"

5. It is urged that under the Act of 1989 as well as under the Rules of 1993 the terms "aided institution" and "recognised institution" are defined separately and as per Section 16 of the Act of 1989, the State Government is empowered to regulate recruitment and conditions of service for the employees of the aided institutions but not for recognised institutions, as such service conditions of the employees of a non-aided institute cannot be prescribed by the State Government.

6. While meeting with the preposition advanced and defending the judgment impugned, the contention of counsel for the applicants is that the Act of 1989 was enacted to provide for better organisation and development of education in non-government educational institutions, therefore, any further classification among the non-government educational institutions shall be against the objects of the Act of 1989. It is also stated that there being non reference either of the "aided institute" or the "recognised institute" in Rule 45 of the Rules of 1993, it has general application on all the institutions covered by the Act of 1989.

7. To determine the answer to the question posed, this Court is required to examine the scheme propagated under the Act of 1989 and the Rules framed thereunder. In State of Rajasthan also, as elsewhere in the country, three types of educational institutions are in operation and those are (1)run by the government or its own wings and are absolutely funded by the government; (2)the institutions under the private management but are getting financial aid by the government; and (3)the institutions run by the private management without any aid of the government but, are having recognition from the government.

8. The employees of the first category of the institutions are governed by the Rules/Policies enacted by the government and they are under absolute administrative control of the government. The employees of the aided institutions are though under the administrative control of the private management but their

service conditions are regulated by the government. The employees of the third category of the institutions are under the control of the private management and the interference of the government is minimum.

9. As per the applicants and as accepted by the Tribunal, the employees of the second and third set of institutions, after promulgation of the Act of 1989 and the Rules of 1993 form one class and all these employees must be treated at par so far as their service conditions are concerned. According to counsel for the applicants no disparity in service conditions among the employees of the aided institutions and the recognised institutions is permissible under the Act of 1989 and if any discrimination exists, then i.e. in violation of Article 14 of the Constitution of India.

10. Under the Act of 1989 the terms "aided institution" and "recognised institution" are defined as follows:

"Aided Institution" means a recognised institution which is receiving aid in the form of maintenance grant from the State Government.

"Recognised Institution" means a NonGovernment Educational Institution affiliated to any University or recognised by the Board, Director of Education or any officer authorised by the State Government or the Director of Education in this behalf.

11. As per the definitions above, every aided institution is necessarily a recognised institution, but every recognised institution is not necessarily an aided institution. Grant of financial aid makes an apparent distinction among the aided recognised institutions and the non-aided recognised institutions. The legislature under the Act of 1989 has quite consciously taken note of this classification among the recognised institutions.

12. As per Section 16(1) of the Act of 1989 "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". Section 16(2) of the Act of 1989 provides that "every recognised institution shall constitute a provident fund for the benefit of its employees in such manner and subject to such conditions as may be prescribed and contribute to such fund and pay interest on the deposited amount at such rate as may be prescribed from time to time".

13. u/s 16 of the Act of 1989 itself a clear distinction is made between the aided institutions and the recognised institutions. A power is given to the State Government to regulate the recruitment and other conditions of service relating to aided institutions, whereas for all recognised institutions the embargo is to constitute a provident fund for the benefit of the employees.

14. It is true that under the Act of 1989, vast powers are given to the State Government to supervise all recognised educational institutions, but the nature

and intensity of the control for "aided recognised institutes" and non-aided recognised institutes", is quite different and that can be noticed apparently. A need of objective and fair recruitment in all recognised institutions is emphasised u/s 17 of the Act of 1989. As per the provisions of Section 18 of the Act of 1989, certain checks are given for removal, dismissal or reduction in rank for the employees of a recognised institution. Similarly, with a view to maintain discipline, as per Section 28 of the Act of 1989 "every employee of a recognised institution shall be governed by the code of conduct as may be prescribed and on the violation by him of any provision of such code of conduct, the employee shall be liable to a disciplinary action". Section 30 of the Act of 1989 empowers the District Education Officer or any other officer of the Education Department not below the rank of the District Education Officer to inspect any recognised institution or call for such information or records from its management with regard to payment of salaries to the employees.

15. Except the Section 16 of the Act of 1989, all the provisions referred above relate to the recognised institutions. These provisions provide certain supervisory powers to the government relating to all recognised institutions, but do not clothe the government with a power to interfere with a day to day administration and the management of the recognised educational institutions. The powers referred above are just to protect the employees of recognised institutions from arbitrary actions of the management and also to ensure better organisation and development of education through the non-government educational institutions.

16. The aided recognised institutions have quite deep administrative control by the State Government. The power to prescribe service conditions for the employees of aided institutions is with State Government. As per provisions of Section 31 of the Act of 1989, the management of an aided institution is required to disburse the salaries of its employees by account payee cheques and on being failed to pay the salary of its employees, the Director of Education or any other authorised officer is having a right to deduct such salary from the amount payable from the next grand-in-aid. A power is also available to the government authorities to make payment of salary directly to the staff on behalf of the management.

17. The availability of all these powers establishes it well that the legislature made a clear distinction among the aided recognised institutions and non-aided recognised institutions. The aided institutions are having deep and pervasive administrative and financial control by the government, whereas the non-aided recognised institutions are only under supervisory control of the government. Such a distinction is made in view of the fact that the aided institutions are receiving grant from the public money and to ensure optimum use of that, much more control is desirable. The power u/s 16 of the Act of 1989, therefore, is given to the State Government to prescribe service conditions to staff of aided institutes only. Those could not be made applicable for the institutes not receiving aid. The classification of the aided institutions and the non-aided

institutions is quite reasonable. In no way it can be said discriminatory or arbitrary. The employees of the aided recognised institutions and non-aided recognised institutions form two separate classes and, therefore, the Tribunal erred while applying the provisions of Rule 45 of the Rules of 1993 upon the applicants who are in service of a non-aided recognised institution.

18. It is also urged on behalf of the applicants that the recognition was given to the petitioner institute subject to the compliance of the Act of 1989 and the Rules of 1993, therefore, the Rules of 1993 should be made applicable in totality.

19. I do not find any substance in the contention advanced. The recognition is given subject to the compliance of the Rules and not for something i.e. not prescribed in the enactment itself. The power to prescribe age of superannuation is available to the State Government only for the employees of the aided institutions and not for non-aided recognised institution.

20. On basis of the discussions made above, this petition for writ succeeds and, therefore, is allowed. The judgment impugned dated 24.1.2005 passed by the Rajasthan Non-Government Educational Institutions Tribunal, Jaipur is quashed. The application preferred by the applicants u/s 21 of the Act of 1989 is also dismissed.

21. Before parting with the matter, it is pertinent to mention here that the learned Counsel for the petitioners at the outset stated that no employee of the institution shall be retired before attaining the age of 58 years and if, anybody has worked beyond the age of 58 years, in view of the directions given by the Tribunal by the judgment impugned, the pay already paid to him, shall not be recovered.