

(2009) 03 RAJ CK 0022
In the Rajasthan High Court

I.K. Goyal

APPELLANT

Vs

Rajasthan Non-Government Educational Institutions Tribunal
and Others

RESPONDENT

Date of Decision : 02-03-2009

Acts Referred:

Limitation Act, 1963 — Article 137
Non-Government Educational Institutions (Recognition, Grant-in-aid and Service
Conditions, etc.) Rules, 1993 — Rule 34
Rajasthan Non-Government Educational Institutions Act, 1989 — Section 29

Citation : (2010) 4 SLR 340 : (2009) 2 WLN 167

Hon'ble Judges : Mohammad Rafiq, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Mohammad Rafiq, J.—Both these writ petitions challenge the orders passed by the Tribunal. In SBCWP No. 6132/2002, Tribunal to the extent denied that benefit of selection scale to the petitioner the period of three years as provided in Article 137 of the Limitation Act, 1963. Learned Counsel for the petitioner has argued that judgment of the Tribunal has thus restricted claim of the petitioner only for the period of three years from the date of filing of the application whereas Tribunal started functioning in the year 1995 and the application in SBCWP No. 6132/2002 was filed in 1998 and in SBCWP No. 4437/2002 in 1999. Learned Counsel for petitioner submitted that even if the Government for its employees issued circular dt. 25.01.1992 providing for grant of selection scale on completion of 9 years for its inability to grant them promotion and with a view to remove the stagnation however, Non-Government Educational Institutions did not grant such benefits not only to petitioners but also other employees working in different Institutions. When Government was approached by the institution as well as effected employees, Government vide its circular dt. 17.11.1997 clarified that selection grade will not be available to the teachers available in the Non-Government Educational Institutions. Petitioner had to then file application

before the Tribunal. This matter ultimately was referred to the Full Bench of this Court owing to conflict opinion as per reference made by the Division Bench. Full Bench of this Court in *S.R. Higher Secondary School and Anr. v. Raj. Non-Government Educational Institutions Tribunal, Jaipur and 23 Ors.* 2002 (3) WLC (Raj.)586 held that as per Section 29 of the Rajasthan Non-Government Educational Institutions, Act, 1989 and Rule 34 of the Non-Government Educational Institutions (Recognition, Grant-in-aid and Service Conditions, etc.) Rules, 1993, the teachers working even in the government institutions would also be entitled to selection scale as was payable to the teachers working in the government schools. State Government approached the Supreme Court by way of Special Leave to Petition in which proceedings, Non-Government Educational Institutions were also represented. Supreme Court in *State of Rajasthan and Anr. v. Senior Higher Secondary School, Lachhmangarh and Ors.* (2005) 10 SCC 346 upheld the Division Bench judgment but in so far as claim of the non-government educational institutions for grant-in-aid against payment of selection grade is concerned, it was directed that it could not be claimed as a matter of right but opportunity was given to such Institutions to represent the government. Learned Counsel cited the judgment of this Court in *The Managing Committee, S.P.R. Saharia Senior Secondary School, Kaladera v. Shri Ganga Singh Shekhawat and Ors.* No. 4697/2000 decided on 15.04.2002 and argued that co-ordinate bench of this Court in the aforesaid judgment has taken the view that even if Section 21 of the Act of 1989 does not provide for time limit for filing application before the Tribunal, there can be no 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 ascertained 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 can not 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.

2. Shri Rajesh Jain and Shri Deepak Asopa, learned Counsel for the respondents have opposed the writ petitions and submitted that the Tribunal was perfectly justified in restraining the claim of the petitioner in conformity with the provisions of the Limitation Act, 1963 because a party approaching Court or the Tribunal has to be vigilant about his right and he has to approach within the period prescribed therefor. It was argued that petitioner has initiated execution proceedings to the extent of relief granted by the Tribunal. Learned Counsel submitted that merely because Section 21 of the Act of 1989 does not itself prescribe for time limit, it cannot be said that there was no limitation for approaching the Tribunal. The view taken by the Tribunal cannot be faulted and therefore this writ petition may be dismissed.

3. It is clearly borne out from the facts narrated above that while the Tribunal started functioning in the year 1995, the Government issued the circular dt. 25.01.1992 for granting benefit of selection scale to its employees on completion of 9, 18 and 27 years of service. Such benefits would be admissible to government servants from 25.01.2002 only if they have already completed 9, 18 and 27 years of service and have not been promoted till such time. Circular obviously is prospective. Petitioner approached the Tribunal in the year 1998-99 and the reasons assigned by the petitioner are that the issue as to the applicability of the Government circular dt. 25.01.1992 into non-government educational institutions pending examination and the government vide circular dt. 17.11.1997 clarified that selection scale will not be available to such Institutions. This issue was agitated before the various Courts at the instance of number of similarly situated employees and the petitioners therefore approached the Tribunal in 1998 and 1999. Ultimately it was settled by the judgment of this Court in S.R. Higher Secondary School supra in the year 2002 holding that the teachers working in the institutions would be entitled to benefit of selection scale in terms of Section 29 of the Act and Rule 34 of the Rules at par with the teachers of the government schools.

4. Having heard learned Counsel for the parties and perused the material on record, I find that as per ratio of the judgment of this Court in Managing Committee, S.P.R. Saharia Senior Secondary School supra, the question whether there was any delay on the part of the petitioners in approaching the Tribunal, would have to be decided on the basis of facts and circumstances of each case depending on factual matrix of each and every case. The facts as narrated above clearly show that there was no delay on the part of the petitioners as can be said to be unreasonable or excessive. The view that there was no limitation provided u/s 21 of the Act of 1989 for approaching the Tribunal was not only approved of by the co-ordinate Bench of this Court in The Managing Committee, S.P.R. Saharia Senior Secondary School, Kaladera but also in Smt. Paul supra holding that application application for limitation would not be applicable to the Tribunal u/s 21 of the Act of 1989 and such a view expressed by still another Bench in M.I. Beg v. Praveen Kumar.

5. I may refer in this connection the judgment of Full Bench of this Court in Chiman Lal Vs. State of Rajasthan and Others, That judgment was although rendered in the context of Section 27-A of the Rajasthan Panchayat Act, 1953 which confers powers of revision upon the State Government. It was held that wherever the statute omits to fix any period of limitation, Court cannot prescribe any period of limitation. It shall however, be depended on facts of each case. Even when there is no time limit prescribed, the litigant has to approach the Court within a reasonable time.

6. Supreme Court in yet another judgment in Consolidated Engg. Enterprises Vs. Principal Secy. Irrigation Deptt. and Others, while considering the argument whether Limitation Act prescribing limitation in Court proceedings would be

applicable to the Tribunal or quasi-judicial body or not held that where the special or local law prescribed for any appeal or application, a period of limitation different from the period prescribed by the Schedule to the Limitation Act, then the provisions of Section 29(2) will be attracted only to the Tribunal or quasi-judicial authority. This very view was also expressed by the Supreme Court in Birla Cement Works Vs. G.M., Western Railways, and another, It was held by the Supreme Court in the aforesaid judgment in para 3 of the report, as under:

Section 17(1)(c) of the Limitation Act, 1963 would apply only to a suit instituted or an application made in that behalf in the civil suit. The Tribunal is the creature of the statute. Therefore, it is not a civil Court nor the Limitation Act has application, even though it may be held that the petitioner discovered the mistake committed in paying "overcharges" and the limitation is not saved by operation of Section 17(1)(c) of the Limitation Act.

7. It was held that the Railways Claims Tribunal is creature of the statute and therefore it is not a civil Court and therefore the Limitation Act would have no application to its proceedings.

In the light of the aforesaid discussion, both the writ petitions are allowed. The impugned judgment of the Tribunal dt. 19.03.2002 to the extent it has denied the benefit of Selection Scale to the petitioners for the period earlier than those years and the view taken by the Tribunal that the Limitation Act applies in the proceedings before the Tribunal u/s 21 is held to be illegal and the petitioners are held entitled to benefit of Selection Scale for the period which become due from 25.01.1992. The order of the Tribunal stands modified accordingly.