

(2013) 10 RAJ CK 0091

In the Rajasthan High Court

Case No : Civil Special (Writ) Appeal No. 461 of 1998

Khandelwal Vaish Kendriya Sr. S.

APPELLANT

Vs

Radhey Shyam

RESPONDENT

Date of Decision : 15-10-2013

Acts Referred:

Citation : (2013) 10 RAJ CK 0091

Hon'ble Judges : J.K. Ranka, J;Ajay Rastogi, J

Bench : Division Bench

Advocate : B.L. Gupta, for the Appellant; Dinesh Yadav, AAG and Mr. Akhil Simlote, for the Respondent

Final Decision : Allowed

Judgement

1. Instant intra-court appeal has been filed assailing order of learned Single Judge dt. 06.03.1998 directing to pay all retiral dues to the respondent (teacher) who stood retired from service on 31.03.1988 much prior to Rajasthan Non-Government Educational Institutions Act, 1989 ("Act, 1989") came into force w.e.f. 01.01.1993 and the Rules, 1993 framed pursuant thereto came into force w.e.f. 01.04.1993 extending principle of equal pay for equal work enshrined u/ Art. 39(d) of the Constitution. It will be relevant to note that two writ petitions came to be decided by the learned Single Judge vide common order dt. 06.03.1998 and special appeal bearing no. 727/1998 arising from writ petition-566/1988 came to be dismissed as withdrawn vide order dt. 25.01.2008 on the compromise being arrived at between the parties.

2. The facts in brief which are relevant for the present consideration are that the respondent employee joined as a teacher in the aided educational institution on 03.08.1951 & stood retired from service on 31.03.1988 and indisputably at the relevant point of time his service conditions were being regulated by the Rules For Payment Of Grant-In-Aid To Non-Government Educational, Cultural & Physical Education Institutions In Rajasthan, 1963 ("Rules, 1963"). However, after he stood retired from service from the aided educational institution, the State

Government enacted the Act, 1989 which was notified & came into force w.e.f. 01.01.1993 and the Rules, 1993 framed pursuant thereto came into force from 01.04.1993. However, it was not the case of the employee that the service conditions which were being governed by the Rules, 1963 during the period of his service or thereafter, the benefits flowing thereof in any way was withheld by the appellant institution, however, his grievance was that after he stood retired from service prior to the Act,(1989 came into force, still on the basis of the principles of equal pay for equal work, being teacher, he was entitled to all such retiral benefits to which a teacher is entitled for under the scheme of Rules, 1993 which came into force w.e.f. 01.04.1993.

3. However, the learned Single Judge after taking note of the submissions & the material which came on record observed that a teacher constitute a homogeneous class & merely because stood retired from service prior to the Act, 1989 came into force will not make him ineligible and there cannot be a logical distinction between the class of teacher and based on date of retirement on the basis of equal pay for equal work enshrined u/Art. 39(d) of the Constitution of India, he is entitled to the same retiral benefits to which one is entitled for retired after the Act, 1989 & the Rules, 1993 came into force w.e.f. 01.01.1993 & 01.04.1993 respectively.

4. It is further relevant to note that operation of the judgment of learned Single Judge was stayed by this Court on 07.08.1998 and the judgment impugned has not been given effect to any further.

5. The main thrust of submission of counsel for appellant is that the employee who stood retired from service prior to the Act, 1989 came into force being prospective, no retroactive benefits can be claimed by an employee who stood retired from service prior thereto and merely because their nomenclature is of a teacher that may not make a class in itself entitled to be compared/brought on same standards to seek same retiral benefits as contemplated under the scheme of the Act, 1989 and they cannot be held to be entitled to such retiral benefits unless extended by the statute. However, as regards the present respondent-employee, his services were regulated by the administrative instructions, 1963 and it was not the case of the respondent employee before the learned Single Judge that the benefit to which he was entitled for under the scheme of Rules, 1963 was ever withheld and at least such of the employees who stood retired from service prior thereto could not claim parity either in service conditions or thereafter for the benefit flowing thereof and the principles of equal pay for equal work has no application in the facts of the instant case.

6. No-one appeared on behalf of respondent-employee despite service.

7. Mr. Yadav, AAG, appearing for the State supports the submission of the appellant that when the Act, 1989 came into force from 01.01.1993 the employee who stood retired from service prior thereto, could not claim retiral benefits in terms thereof and merely because the respondent was aided

educational institution covered by the Rules, 1963 benefits flowing thereof could not be further extended under the scheme of Act, 1989.

8. We have heard counsel for the parties & also perused the material on record.

9. It is not in dispute that the Act, 1989 came into force w.e.f. 01.01.1993 & the Rules, 1993 framed pursuant thereto w.e.f. 01.04.1993 and the present employee joined service w.e.f. 03.08.1951 and stood retired from service on 31.03.1988 much prior to the Act, 1989 came into force and at the relevant point of time his service conditions were regulated by the Rules, 1963 and the benefits flowing thereof certainly he was entitled for and that was not in dispute but as regards the scheme of the Act, 1989 at least the enactment being prospective no retroactive benefits could be claimed and the principles of equal pay for equal work which was taken note of by the learned Single Judge has no application in the facts of the instant case and the service conditions of employee is always regulated as per relevant rules in force/in vogue at the time of his retirement from service and in our considered view the finding which has been recorded by the learned Single Judge to the extent of service benefit including retiral dues to a teacher/employee on the basis of principle of equal pay for equal work in the facts of the instant case is not legally sustainable & deserves to be quashed. Consequently, the appeal is allowed and the order of learned Single Judge dt. 06.03.1998 stands quashed & set aside. No costs.