
(2007) 07 RAJ CK 0059
In the Rajasthan High Court

Mahila Mandal

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 18-07-2007

Acts Referred:

Payment of Gratuity Act, 1972 — Section 2

Citation : (2007) 07 RAJ CK 0059

Hon'ble Judges : Dinesh Maheshwari, J

Bench : Single Bench

Judgement

Dinesh Maheshwari, J.—For the common questions involved and for the submissions made in consensus by learned Counsel for the parties, these three writ petitions are taken up for disposal by this common order.

2. The petitioner society has filed these writ petitions with the submissions that the petitioner is running various educational institutions and is receiving 90% grand-in-aid from the Government of Rajasthan. The private respondent in each of these writ petitions had served in the petitioner-institution and upon retirement claimed payment of gratuity and then filed respective applications u/s 21 of the Rajasthan Non-Government Educational Institutions Act, 1989. The applications so filed by the private respondents were allowed on different dates by the Tribunal. The private respondents thereafter filed applications u/s 27-A of the Act of 1989 for execution of the order passed in their favour. In such execution applications, the petitioner took an objection that the private respondents did not answer to the definition of "employee" u/s 2(e) of the Payment of Gratuity Act, 1972; and that the execution applications were not maintainable for want of a decree of civil court.

3. By similar nature orders dated 19.02.2005 passed in relation to each of the execution case, the learned executing court has proceeded to reject the objections submitted by the petitioner and has accepted the prayer for execution of the order passed by the Tribunal but has directed the private respondents to verify and produce specific computation of the amount due and payable. The

orders dated 19.02.2005 passed by the Civil Judge (Jr. Division) Udaipur City (South) Udaipur have been challenged in these writ petitions. This Court issued show cause notice in each of the petitions on 14.03.2005 and by way of interim order stayed effect and operation of the impugned order dated 19.02.2005 on the condition of the petitioner making payment of 10% of the amount of gratuity to the respondent No. 6 in each writ petition.

4. On the matter being taken up for consideration after appearance of the respondents, learned Counsel for the respondents submitted that the matter in issue in these writ petitions about the liability of making payment of the amount of gratuity by the Non-government Educational Institutions stands concluded by a decision of the Hon"ble Supreme Court in the case of Rajasthan Welfare Society v. State of Rajasthan 2005 SCC 524. By the decision aforesaid, the Hon"ble Supreme Court has specifically held that the gratuity within the meaning of the Act and Rules cannot form part of recurring grant and the communication of the Government to the effect that the Rules do not provide for grant-in-aid on the amount of gratuity has been upheld without prejudice to the rights of the employees to get the gratuity from the institution concerned. However, the Hon"ble Supreme Court observed that if any representations are made by the aided institutions, the Government would sympathetically consider the question of gratuity amount payable to the employees for the purpose of computing the amount of grant-in-aid but pending consideration of such representation, the payment of gratuity to the employees is not to be delayed. The Hon"ble Supreme Court observed and held thus:

16. In view of the aforesaid, the gratuity within the meaning of the Act and the Rules cannot form part of recurring grant. It is not includable as part of approved expenditure for the purposes of computing the amount of grant payable to the appellant. In this view, communication dated 26.5.1994 of the Government of Rajasthan to the effect that the Rules do not provide for grant-in-aid on amount of gratuity, the same being not included in the approved expenditures, cannot be held to be illegal. This will, however, not affect the rights of the employees to get the gratuity from the institution concerned.

17. Before parting, we wish to note that if representations are made by aided non-government educational institutions, the State Government would consider sympathetically the question of the gratuity amount payable to the employees being taken into consideration for the purpose of computing the amount of grant-in-aid. We, however, clarify that pending making of such representation and its consideration, the payment of gratuity to the employees shall not be delayed.

5. In view of the aforesaid observations made by the Hon"ble Supreme Court, learned Counsel for the petitioner Mr. Sanadhya sought some time to complete his instructions and today submitted that in the balance of equities, the petitioner is at present ready to make payment of 50% of the amount of gratuity payable to each of the private respondents but simultaneously seeks to make representation to the Government; and further submitted that such

representation may be considered on merits by the Government and till disposal of such representation, further recovery from the petitioner may be kept in abeyance else the petitioner institution shall suffer serious set back in its functioning causing injury to the other employees and students also.

6. Learned Counsel Mr. R.S. Saluja appearing for the private respondents and learned Dy. G.A. Mr. B.L. Tiwari in equal fairness consented to such proposition and agreed that on the petitioner's making payment of 50% of the amount of gratuity and making representation within 30 days from today, the Government shall consider and decide upon such representation within 3 months.

7. Having regard to the overall facts and circumstances of the case, this Court is satisfied that the propositions so stated in consensus by learned Counsel for the parties are reasonable and are in the balance of equities; and deserve to be accepted.

8. Therefore, while not interfering with the order dated 19.02.2005 passed by the executing court in each of these cases, these writ petitions succeed to the extent that within 30 days from today, upon the petitioner's making payment of 50% of the amount of gratuity, of course after adjusting the amount already paid, to each of the private respondents (respondent No. 6 in each writ petition) and making representation to the State Government, the Government would consider sympathetically the question of gratuity amount payable to the employees being taken into consideration for the purpose of computing the amount of grant-in-aid and pass speaking order on such representation within 3 months of making of the same. On the petitioner's complying with the aforesaid requirements of making payment and making representation, both within 30 days from today, and furnishing a proof thereof to the executing court, the execution proceedings shall be kept in abeyance maximum to a period of four months from today. There shall be no order as to costs of these petitions.