(2008) 03 RAJ CK 0088

In the Rajasthan High Court

Managing Committee APPELLANT

Vs

K.R. Sharma and Others RESPONDENT

Date of Decision : 31-03-2008

Acts Referred:

Citation : (2008) 03 RAJ CK 0088

Hon'ble Judges : Ajay Rastogi, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Ajay Rastogi, J.—Instant petition has been filed by petitioner assailing order of Non-Government Educational Tribunal dated 22nd February, 1999 whereby it was directed that respondent who served the institution on his retirement was entitled for encashment towards earned leave in terms of Rule 47 read with Rule 51(1) of Rules, 1993.

2. Respondent No. 1 K.R. Sharma who joined service as Teacher on 7th July,1964 and retired from service on 31st July, 1993. Much before his retirement, Act of 1989 came into force w.e.f. 1st January, 1993 and rules framed thereunder also given effect to w.e.f.1st April, 1993. There is no period of limitation provided u/s 21 of the Act, 1989 for employees/teachers to file application before Tribunal for release of their retiral dues to which they became entitled for under the provisions of the Act, 1989.

3. Respondent No. 1 filed application u/s 21 of the Act, 1989 and made his limited grievance that under Rule 51 he is entitled for payment of encashment of leave which has not been made admissible to him by petitioner to which he is entitled for under the rules in question. Learned Tribunal after adjudication of the dispute and taking note of Rule 51, which has been extensively quoted in the order impugned, directed petitioner to make payment of encashment of leave to respondent under order dated 22nd February, 1999.

4. It appears that pending petition respondent No. 1 has expired and his legal

heirs with the permission of court were brought on record. So far as deceased teacher is concerned, despite there was order of Tribunal in his favour, he was deprived of fruits for which he became entitled for during his life time.

5. Counsel for petitioner submits that the Act came into force from 1st January, 1993 and rules were given effect from 1st April, 1993, as such the period prior to enforcement of Act any dues including leave 0encashment the same cannot be taken note of since the Act has not given retrospective effect and no leave became due to him with regard to period which he had rendered after the Act came into force. As such, he is not entitled for any benefit of leave encashment. Counsel further submits that there was a delay in filing appeal before the Tribunal which too disentitles him.

6. Counsel for respondents has supported the finding recorded by Tribunal and submits that no error has been committed by learned Tribunal while passing order impugned and in support of her submission, she has placed reliance on the judgment of this Court in S.R. Higher Secondary School Vs. Rajasthan Non Government Educational Institutions Tribunal and Others, which has further been affirmed by apex court in State of Rajasthan and Anr. v. Senior Higher Secondary School Lachhmangarh and Ors. (2005) 10 SCC 346.

7. I have heard counsel for parties and with their assistance examined the material on record.

8. So far as entitlement for leave encashment is concerned, it is covered by Section 16 read with Section 29 of the Act, 1989 and the relevant Rule 47 read with Rule 51(1) made employee/teacher entitled for encashment of leave for the period which he has rendered. Even otherwise, after judgment of this Court [supra], entitlement otherwise does not remain res integra to be examined.

9. As regards submission made by counsel for petitioner that retrospective effect has been given effect to, in opinion of this Court, is without substance for the reason that once the Act and the rules came into force and the respondent retired from service, thereafter, certainly made him entitled for benefits which became due to him on retirement and as he retired in July, 1993 benefits of leave encashment of petitioner became due on the date of his retirement that certainly makes him entitle for the period of service which he has rendered in the institution.

10. Submission made with respect to delay is without merit for the reason that legislature in its wisdom has not considered appropriate to put a rider so far as limitation for filing application u/s 21 is concerned. Apart from it, for the retiral dues the petitioner was under an obligation to pay. Since they failed to discharge their duties employee has no other option but to invoke Section 21 of the Act.

11. This Court finds no error in the order passed by the Tribunal which may call for interference.

12. Accordingly, the writ petition stands dismissed. However, as informed to this

Court still in compliance of the order payment has not been made, this Court directs the petitioner to make payment of all dues in terms of Tribunal''s order to the legal representatives of respondent No. 1 within three months from today. No. Order as to costs.