(2009) 04 RAJ CK 0121

In the Rajasthan High Court

Managing Committee, Panabai Ramnath Poddar Senior Secondary School — APPELLANT

Vs

State of Rajasthan and Others — RESPONDENT

Date of Decision : 16-04-2009

Acts Referred:

Rajasthan Non-Government Educational Institutions (Recognition, Grant-in-aid and Service Conditions etc. Rules, 1993 — Rule 45

Citation : (2010) 1 RLW 402

Hon'ble Judges : K.S. Chaudhari, J;Ashok Parihar, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Ashok Parihar, J.—Respondent No. 4- the concerned employee was appointed as a Teacher in the appellant institution on 19.7.1951. Though he stood retired on reaching the age of superannuation on 4.7.1992, however, as per the terms of contract and relevant rules, he was given further extension of two years and finally retired on 4.7.1994. In the meanwhile, the Rajasthan Non-Government Educational Institutions Act, 1989 and the Rules made thereunder namely; The Rajasthan Non-Government Educational Institutions (Recognition, Grant In Aid and Service Conditions etc.) Rules of 1993 came into force on 1.4.1993. ,

2. Having denied the benefit of Gratuity, the concerned employee approached the Rajasthan Non-Government Educational Institutions Tribunal for claim of the Gratuity. The appeal of the concerned employee was allowed by the Tribunal vide order dated 28.2.1998 thereby directing the appellant to make payment of Gratuity to the concerned employee as per provisions of Payment of Gratuity Act, 1972 as referred in the Rules of 1993 itself with interest. Large number of writ petitions came to be filed before this Court by respective institutions challenging the orders of the Tribunal in regard to the payment of Gratuity. However, the learned Single Judge by a common order dated 15.4.2002 dismissed all the writ petitions including that of the present case also.

3. Learned Counsel for the appellant, while heavily relying on the judgment of the Supreme Court in the case of Ramswaroop Masawan Vs. Municipal Council and Another, as also Secretary, O.N.G.C. Ltd. and Another Vs. V.U. Warrier, has submitted that the concerned employee had already reached the age of superannuation on 4.7.1992 and further two years'' extension was only re-employment, as such, the concerned employee could not have been given benefit of Gratuity as per provisions of the Rules of 1993 which came into force only on 1.4.1993.

4. The age of superannuation has been provided under Rule 45 of the Rules of 1993 and the relevant provisions are reproduced here as under:

45. The age of Superannuation (i) The age of superannuation of teachers and other except Class IVth shall be the last date of the month in which they attain the age of 58 years. In special circumstances, the Government may waive this condition and allow extension in service for a period not exceeding 4 years for such college teachers, who are engaged in post-graduate teaching or research work. Any other employee of the Institution may also be allowed extension in service upto the age of 60 years by the State Government.

(viii) The institutions shall be allowed to receive the usual grant-in-aid in respect of the expenditure incurred for such sanctioned period of extension.

5. A bare reading of the above rule would show that under the law extension of two years could be given to a Teacher and the word "re-employment" has not been mentioned in the above rule. Since the services of the concerned employee were also extended for two years after 4.7.1992 receiving due approval by the State Government, the concerned employee has to be treated as in continuous service till 4.7.1994 when finally he stood retired. Since the Act of 1989 as also the Rules of 1993 had already come into force on 1.4.1993, the concerned employee under the law was entitled for the Gratuity and we find no error or illegality in the orders of the Tribunal and the learned Single Judge. The judgment cited by learned Counsel for the appellant are not applicable in the facts and circumstances of the present case since those cases were of re-employment after retirement whereas in the present case under the statute extension could be given after superannuation.

6. Having considered entire facts and circumstances, we find no ground for any further interference. The appeal is dismissed accordingly as having no merits.

