
(2011) 10 RAJ CK 0029

In the Rajasthan High Court

Case No : Civil Revision Petition No. 162 of 2007

Managing Committee, SPR Sahariya Sr. Secondary School

APPELLANT

Vs

Ram Gopal Verma and Others

RESPONDENT

Date of Decision : 22-10-2011

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 58, 115, 38, 41, 47
Payment of Gratuity Act, 1972 — Section 4(2)

Citation : (2012) 3 RLW 2252

Hon'ble Judges : Prem Shanker Asopa, J

Bench : Single Bench

Advocate : Ram Rakh Sharma, for the Appellant; D.P. Sharma, for the Respondent

Final Decision : Dismissed

Judgement

Hon"ble Prem Shanker Asopa, J.—Heard learned counsel for the parties. All the aforesaid revision petitions have been filed against the common order dated 16th August, 2007 passed by Civil Judge (Jr. Div.) Chomu, District Jaipur (hereinafter referred to as "the executing court") in the execution petitions filed by the non-petitioners under Sections 38, 41 and 47 and Order 21 Rule 58 C.P.C. Arising out of the common judgment dated 7th April, 2008 passed by the Rajasthan Non-Government Educational Tribunal, Jaipur (hereafter referred to as "the Education Tribunal") therefore, all the above mentioned revision petitions have been heard together and the same are being decided by this common order.

2. As per the facts mentioned in the common judgment of the Tribunal dated 7th April, 2000 and one of the execution petition, during execution of the decree before the executing court after making payment of the undisputed amount, the judgment debtor raised three objections regarding remaining amount. The first objection was regarding calculation of the gratuity amount claimed by the decree holders being monthly rated employees as per explanation to Section 4(2) of the Payment of Gratuity Act, 1972; the second objection raised by the judgment

debtor was with regard to applicability of Government of Rajasthan's Circular dated 25.1.1992 for grant of selection scales; and the third objection was with regard to payment of gratuity for the period during which the decree holder remain under reemployment.

3. The executing court after hearing both the sides rejected all the aforesaid objections holding that as per the directions of the Tribunal dated 7th April, 2000, the gratuity is to be paid in accordance with the provisions of the Payment of Gratuity Act, 1972 and in case of a monthly rated employee, the same is to be calculated by dividing the monthly salary by 26 and then multiplying one day salary by 15 days. The second objection was rejected on the ground that the judgment of the Education Tribunal in this case for grant of selection scales as per the Circular dated 25.1.1992 has been upheld by the Division Bench of this Court and the third objection was rejected on the ground that extension of service cannot be treated as part time service but the said is re-employment and has to be treated as part of the employment, therefore, the same period has to be counted for payment of gratuity.

4. Counsel for the judgment debtor submits that the executing court has gone beyond the decree in rejecting the objections regarding grant of selection scale and payment of gratuity and deciding the same in favour of the decree holders.

5. Counsel for the decree holders submits that the executing court has rightly rejected the said objections as calculation of the gratuity is to be made as per Explanation to Section 4(2) of the Payment of Gratuity Act, 1972 for which the direction has been issued by the Educational Tribunal for making payment of gratuity as per the provisions of the Payment of Gratuity Act, 1972. The issue regarding grant of selection scales has already been decided by the Educational Tribunal and it was specifically directed that the payment of selection scales will be as per the circular dated 25.1.1992. As regards the third objection, counsel submits that it is a well settled law that reemployment is the extended term of employment and the employee is entitled for gratuity. To support his submissions, learned counsel places reliance on Division Bench judgment of this Court in the case of Managing Committee, Panabi Ramnath Poddar Senior Secondary School vs. State of Rajasthan & Ors. (2010(1) RLW 402).

6. Before proceeding further it would be relevant to reproduce the relevant portion of the order of the Educational Tribunal, which according to Section 27A of the Rajasthan Non-Government Educational Institutions Act, 1989 shall be deemed to a "decree" of the lowest Court. Explanation to Section 4(2) of the Payment of Gratuity Act and paras 4 and 5 of the judgment in the case of Managing Committee (supra) which are as under:-

4. Payment of gratuity.(1) Gratuity shall..

(2) For every completed year....

Explanation- In the case of a monthly rated employee, the fifteen days" wages

shall be calculated by dividing the monthly rate of wages last drawn by him by twenty six and multiplying the quotient by fifteen.

7. Paras 4 and 5 of the judgment in the case of Managing Committee (*supra*)

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 up to 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 "reemployment" 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.

8. I have gone through the record of the revision petition as well as of the execution petition and further given my thoughtful consideration to the rival submissions.

9. A bare perusal of the relevant portion of the judgment of the Educational Tribunal reproduced hereinabove, which shall be a decree of the lowest civil court, I am of the view that while executing the same the executing court has not gone beyond the decree and has rightly held that gratuity is to be calculated as per explanation to Section 4(2) of the Payment of Gratuity Act, 1972 as directed by the Educational Tribunal and further there is a direction of the Tribunal wherein grant of Selection Scales has to be as per Government of Rajasthan's Circular dated 25.1.1992 which direction has been upheld by the Division Bench of this Court. As regards the issue of reemployment, the judgment of the Division Bench (*supra*) is very clear that the issue of extension of two years" has been mentioned in rule 45 of the Rajasthan Non-Government

Educational Institutions (Recognition, Grant-in-aid and Service conditions etc.) Rules, 1993 relating to age of superannuation therefore, it is squarely applicable and the decree holders are entitled for the payment of gratuity of the said period also. I find no illegality or jurisdictional error in the order of the executing court so as to require any interference in the same while exercising powers vested in me by virtue under Sec. 115 CPC. Consequently, all the revision petitions fail and the same are dismissed.