

(1998) 03 RAJ CK 0071

In the Rajasthan High Court

Case No : Civil Writ Petition No's. 5479, 2681, 4147, 3084, 2103, 2167, 3619, 4957, 6469, 6470, 6470, 6471, 6472 of 1996

Rajasthan Welfare Society

APPELLANT

Vs

Director Primary and Secondary Education and Others

RESPONDENT

Date of Decision : 03-03-1998

Acts Referred:

Payment of Gratuity Act, 1972 — Section 1, 2, 3

Citation : (1998) 2 RLW 1364 : (1998) 1 WLN 256

Hon'ble Judges : N.L. Tibrewal, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

N.L. Tibrewal, J.—This batch of writ petitions can be conveniently disposed of jointly by a common judgment since the questions raised in these are common. Challenge in the petitions is laid to the orders of Non-Government Educational Institutions Tribunal. Rajasthan, Jaipur (for short the Tribunal), whereby direction has been given to the Management of the aided educational institutions to pay gratuity to their employees as admissible under the payment of Gratuity Act, 1972 Learned Counsel appearing for the petitioners, in the course of their arguments, made following submissions to challenge the impugned orders:

(1) The Tribunal had no jurisdiction to decide the dispute relating to gratuity and if employees of the institutions were aggrieved for non-payment of gratuity by their respective Management, the remedy available to them was under the Payment of Gratuity Act to approach the Controlling Authority for deciding their disputes.

(ii) The teachers of educational institutions are not entitled to claim gratuity under the Payment of Gratuity Act in absence of notification of the Central Government under Section-1(3)(c) of the Act. Further, a teacher does not fall within the definition of an "employee" contained in Section 2(e) of the Act.

(iii) In case, it is held that employees of the aided educational institutions are entitled to get gratuity by virtue of Rule-82 of the Rajasthan Non-Government Educational Institutions (Recognition, Grant-in-aid and Service Conditions Etc.) Rules, 1993 (for short the Rules of 1993). then too, the employees would be entitled to get gratuity for the period commencing from the date of enforcement of the Rules. In other words, Rule 82 can be given prospective effect and period of service rendered by an employee prior to enforcement of the Rules cannot be taken into consideration for assessing the amount of gratuity payable to him.

(iv) The Tribunal had no jurisdiction to award interest while directing the Management to pay the amount of gratuity to the employees.

2. The factual aspect in all these petitions are common and undisputed. Relationship of employer and employee and the fact that Management of every educational institution is getting aid from the State Government are not disputed. Before enforcement of the Rajasthan Non-Government Educational Institutions Act. 1989 (for short the Act of 1989), which came into force wef 1.1.1993 and the Rules of 1993, the educational institutions were getting grant-in-aid under the Grant-in-Aid Rules for Educational and Cultural Institutions in Rajasthan, 1963 though these rules were of administrative nature. After the Act of 1989 and the Rules framed thereunder, grants-in-aid to the aided educational institutions are assessed and given according to the provisions contained in them. Employees of the petitioners, on their retirement, were paid retirement benefits except the amount of gratuity. Hence, they approached to the Tribunal by filing applications u/s 21 of the Act of 1989 in respect of non-payment of gratuity. The Tribunal has held that by virtue of Rule 82, the amount of gratuity is payable to the employees and liability of the management of aided educational institutions to pay gratuity to their employees after enforcement of the Rules 1993 has to be assessed as per the period of their service rendered by them. The Tribunal, therefore, allowed applications of the employees with direction to the Management to pay gratuity. In some matters directions to pay interest @ 12% per annum from the date given in the order has also been given.

3. Payment of gratuity is as a measure of social security like other retrial benefits. It is intended to safe-guard the employees who served the employer for long period from penury in their declining years of old age and the helpless dependents of the employees in the event of their death. The amount of gratuity is assessed as one time payment and the quantum bears relation to the length of service and emoluments drawn by the employee. Once gratuity was being treated in the nature of a gracious gift by an employer, its payment could not be compelled by an employee. This concept is no more applicable if gratuity is payable under some Scheme or statutory provision either under the Payment of Gratuity Act or any other law. If gratuity is payable to an employee as a condition of service or a statutory obligation, then, it is neither a bounty nor a matter of grace payable depending upon the sweet will of the employer and the employer can be compelled to make payment of gratuity as per entitlement of the

employee.

4. To impart education to the citizens is a State function. Various provisions of the Constitution of India now make it obligatory for the State to provide education for the citizens and every citizen has a right to get education. Since huge financial lay out was involved in extending the benefit of education to the citizens, the State Government has been discharging its obligation through State owned or State recognised educational institutions. By granting recognition to private educational institutions, the State Government creates an agency to fulfil its obligation under the Constitution. The State Government exercises its powers to regulate private institutions by granting recognition to them, State can, inter-alia, regulate conditions of employment including disciplinary proceedings, in order to protect interest of the teachers employed in private schools or colleges.

5. The Rajasthan Non-government Educational institutions Act. 1989 (for short the Act of 1989) has been enacted by the State Government to provide for better organization and development of education in non-governmental educational institutions in the State of Rajasthan. Prior to this enactment, there was a consistent demand from various employees' unions and other quarters to enact law to organise and control functioning of the private educational institutions where thousands of teachers are employed. Protection of the interest of the teachers was felt since long as there were complaints that several unscrupulous managements adopted different methods to exploit them by imposing on them unjust conditions of service. Different schools adopted different conditions of service. The Act of 1989 and the Rules framed thereunder now provide uniform scales of pay and other service conditions to the employees of the recognised and aided educational institutions.

6. Before 1 advert to the contentions agitated in the petitions some relevant provisions of the Act of 1989 and the Rules framed thereunder may be taken note of. The Act has come into force wef 1.1.1993. "Aided institution" has been defined u/s 2(b) to mean a recognised institution which is receiving aid in the form of maintenance grant from the State Government. The expression "employee" includes a teacher and every other employee working in a recognised institution as per Clause (i).

7. Section 3 empowers the State Government to prescribe terms and conditions for the grant of recognition to a non-government educational institution. Chapter-III deals with grants-in-aid to recognised institutions. Then, Chapter-VI contains conditions of service and constitution of Tribunal. Section 16 empowers the State Government to regulate recruitment and conditions of service including conditions relating to qualifications, pay, gratuity, insurance, age of retirement, entitlement of leave, conduct and discipline of persons appointed as employees of aided institutions in the State. Section 29, inter-alia, states that the scales of pay and allowances except compensatory allowance with respect to the employees of an aided institution shall not be less than those prescribed for the

staff belonging to same categories in Government institutions. Section 22 provides constitution of the Tribunal by the State Government for the purposes of this Act. Sub-section (2) provides that the Tribunal shall have jurisdiction over the whole of the State or such area as may be specified in the notification and as per Sub-section (3), a Judicial Officer of the rank of District Judge is to constitute the Tribunal. Section 2(1) provides, "where there is any dispute between the management of a recognised institution and any of its employees with respect to the conditions of service, the management of the employee may make an application in the prescribed manner to the Tribunal and the decision of the Tribunal thereon shall be final."

8. By virtue of Section 25, the Tribunal has been vested with the same powers as are vested in a Civil Court under the Code of Civil Procedure, 1908. Then Section 43 empowers the State Government to make rules for the purpose of carrying into effect the provisions of the Act. Sub-section (3), then lays down that all rules made under this Act shall be laid, as soon as may be after they are so made, before the House of the State Legislature. The Rules of 1993 have been made by the State Government in exercise of powers conferred by Section 43 of the Act of 1989 to regulate recognition. Grant-in-aid and service conditions etc. of the Non-government Educational Institutions. Rule-82, which is very much relevant for decision of the writ petitions, reads as under:

82. Gratuity and Insurance: (1) The employees of the Aided educational institutions shall be entitled to Gratuity as admissible under Payment of Gratuity Act, 1972 as amended from time to time.

(2) The managing committee shall arrange for Group Insurance of its employees under the respective scheme of Life Insurance Corporation of India.

9. The provisions of the Act of 1989 shall have over-riding effect as Section 40 says, notwithstanding anything inconsistent contained in any instrument having effect by virtue of any law.

10. In back ground of the factual position and provisions of the Act and Rules, the contentions raised on behalf of the Schools may now be examined:

11. Rule-82, has a statutory force and imposes an obligation on the management of a private aided educational institution to pay gratuity to its employees. Like wise, it also creates a legal right/entitlement to the employee to receive gratuity from his employer to be calculated as admissible under the Payment of Gratuity Act, 1972 as amended from time to time. In other words, the right of an employee to get gratuity and obligation of the employer to make payment of gratuity are created by Rule-82, though the amount has to be determined as admissible under the Payment of Gratuity Act. Hence, after Rule 82 came into force, the gratuity is payable to the employee of the aided educational institutions on the termination of their employment after rendering continuous service for not less than five years. Termination of employment may be on account of superannuation or retirement or resignation or death or disablement

due to accident or disease. By this Rule, an employee of an aided educational institution whose employment stands terminated after the date of coming into force of the Rules becomes entitled to get gratuity from his employer if he had rendered continuous service for not less than five years prior to his termination. He shall be entitled to payment of gratuity to be computed on the basis of his period of service rendered by him prior to enforcement of Rule 82.

12. No doubt. Payment of Gratuity Act, 1972 is a complete Code containing detailed provisions on all aspects for payment of gratuity. It creates the right of payment of gratuity, undertakes when the right will accrue and lays down the principles for quantification of the gratuity. But, in the present matters, the employees are of the aided educational institutions and their right to get gratuity is created with corresponding obligation of the Management by virtue of Rule 82 from the date it came into force. The term as admissible under the Payment of Gratuity Act, 1972 as amended from time to time, only clarifies that quantification of gratuity shall be on the principles laid down under the Payment of Gratuity Act. The right to get gratuity and quantification of the amount of gratuity are two different aspects. Enforcement of the right or an obligation created under any Act has to be made as per the machinery and forum provided in the Act itself. In the present matters, the right of the employees to get gratuity and corresponding, obligation of the management are creation of the statutory Rules of 1993 framed under the Act of 1989 which are regulated as terms and conditions of employment by virtue of Section 16 of the Act which includes gratuity in its ambit. Section 21 of the Act provides special Tribunal constituted u/s 22 as a special forum for decision in relation to any dispute between the management of a recognised institution and any of its employees with respect to conditions of service. When a special forum is created under the Act for enforcement of a right or obligation, the remedy available to the suitor is to get adjudication from the forum provided under the Act.

13. In *The Premier Automobiles Ltd. Vs. Kamlekar Shantaram Wadke of Bombay and Others*, , it has been held:

(3) If the industrial dispute relates to the enforcement of a right or an obligation created under the Act, then the only remedy available to the suitor is to get an adjudication under the Act.

14. It would also be fruitful to refer paragraph-10 of the judgment;

In *Doe v. Bridges* 1831 1 B & Ad. 847 at page 859 are the famous and oft quoted words of Lord Tenterden. C.J. saying;

Where an Act creates an obligation and enforces the performance in a specified manner, we take it to be general rule that performance cannot be enforced in any other manner."

This passage was cited with approval by the Earl of Halsbury L.. C. in *Pasmore v. The Oswaldtwisle Urban District Council* 1898 AC 387 and by Lord Simonds at P.

407 in the case of *Cutler v. Wandsworth Statidum Ltd.* 1949 AC 398. Classic enunciation of the law and classification of the cases in three classes was done by Willes J. "With the precision which distinguished the utterances of that most accomplished lawyer, in the case of *Wolverhampton New Waterworks Co. v. Hawkesford*" 1859 6 C.B. (N.S.) 336 (vide the speech of Viscount Haldane at page 391, in the case of *Neville v. London "Express" Newspaper, Ltd.* 1919 AC 368 (HL). The classes are enumerated thus:

There are three classes of cases in which a liability may be established by statute. There is that class where there is a liability existing at common law, and which is only re-enacted by the statute with a special form of remedy, there, unless the statute contains words necessarily excluding the common law remedy, the plaintiff has his election of proceeding either under the statute or at common law, then there is a second class which consists of those cases in which a statute has created a liability, but has given no special remedy for it; there the party may adopt an action of that or other remedy at common law to enforce it. The third class is where the statute creates a liability not existing at common law and gives also a particular remedy for enforcing it...." with respect to that class it has always been held that the party must adopt the form of remedy given by the statute.

15. In view as stated and discussed above, the first three contentions agitated by the learned Counsel for the petitioners can be rejected conveniently. At the cost of repetition it may be stated that Rule 82 of the Rules of 1993 confers right to the employees of the aided educational institutions to-get gratuity from their employer to be determined in terms of the Payment of Gratuity Act and also a corresponding obligation of the respective management to make payment of the gratuity. This right is enforceable by the employee as a condition of service by virtue of Section 16 of the Act of 1989 for which a special Tribunal is constituted in case there is any dispute for non-payment between him and the Management. Rule-82 confers a right to the employee to get gratuity as admissible under Payment of Gratuity Act, 1972. As such, determination of the amount towards gratuity is to be made in terms of the provisions contained under the Payment of Gratuity Act. For calculating the amount of gratuity, the entire period of service rendered by an employee has to be taken into consideration (See the *Royal Boot House and Others Vs. State of Jammu & Kashmir and Others*, As such, contention No. 3 can also be rejected conveniently.

16. The term "employee" under Rule 82 has to be read as per definition of employee given under the Act of 1989 or the rules framed thereunder. Definition of the "employee" under the Payment of Gratuity Act, 1972 is not relevant in these matters.

17. Contention No. 4 can also be rejected for two reasons. Firstly, payment of gratuity being a legal right of the employee cannot be retained by the employer without any just cause. If such payment is retained by the employer without just cause, interest can be claimed by the employee by way of damages. Secondly,

Payment of Gratuity Act also provides interest if the amount of gratuity is not paid by the employer within specified period.

18. Consequently, I do not find any merit in all these petitions and they are hereby dismissed with no order as to costs.