
(2016) 08 RAJ CK 0059

In the Rajasthan High Court

Case No : Civil Special Appeal (Writ) No.415 of 2014

Ramanand Jha

APPELLANT

Vs

State of Rajasthan

RESPONDENT

Date of Decision : 17-08-2016

Acts Referred:

Rajasthan Non-Government Educational Institutions Act, 1992 — Section 2(q), 43
Rajasthan Non-Government Educational Institutions Rules, 1993 — Rule 91

Citation : (2016) LIC 4093 : (2016) 4 RLW 3282 : (2017) 1 WLC 46

Hon'ble Judges : Govind Mathur and Kailash Chandra Sharma, JJ.

Bench : Division Bench

Advocate : Mr. P.S. Chundawat, Advocate, for the Appellant; Mr. B.K.Bhatnagar, Dr. Pratishtha Dave, Mr. Sajjan Singh Rathore, Advocates, for the Respondents

Final Decision : Allowed

Judgement

Govind Mathur, J.—To question correctness of the judgment dated January 29, 2014, passed by learned Single Bench in SB Civil Writ Petition No.4521/2010, this appeal is preferred.

2. By the judgment impugned, learned Single Bench upheld the order passed by the competent authority of respondent Shri Bhanwar Lal Duggar Ayurved Vishwa Bharati Gandhi Vidya Mandir, Sardarshahar, retiring the appellant petitioner on attaining the age of 58 years. While dismissing the writ petition, learned Single Bench held that the Rajasthan Non-Government Educational Institutions Rules, 1993 (hereinafter referred to as "the Rules of 1993") does not impliedly repeals the Rajasthan Non-Government Ayurvedic, Yunani, Naturopathy, Homeopathy and other Indian Medicinal Recognised Hospitals and Research Institutions (Grant-in-Aid) Rules, 1972 (hereinafter referred to as "the Rules of 1972"). As per learned Single Bench the Rules of 1972 being special law will prevail over general law i.e. the Rules of 1993, as such, the age of retirement for the Teachers of the Ayurved Vishwa Bharati shall be 58 years only.

3. To understand the controversy involved in this appeal, before coming to facts

of the case, it shall be appropriate to introduce the Rules of 1972, the Rajasthan Non-Government Educational Institutions Act, 1989 (hereinafter referred to as "the Act of 1989") and the Rules of 1993.

THE RULES OF 1972

4. The Government of Rajasthan enacted a policy in the name of Grant-in-Aid Rules of 1972 for grant of financial assistance to the Non-Government institutions involved in Ayurvedic, Yunani, Naturopathy, Homeopathy and other Indian Medicinal Institutions and also to provide service conditions to the employees working with such institutions. Rule 11 (dha) of the Rules of 1972 provides that no teacher shall be allowed to remain in service beyond the age of 58 years, as such, the age of superannuation for the employees working with the institutions receiving aid from the Government of Rajasthan under the Rules of 1972 is 58 years. Under these Rules as per Rule 2(kha) "the Director" means Director, Ayurved Rajasthan and "the Competent Officer" as per Rule 2(ga) means the officer or employee appointed by the Director for the purpose of inspection and other works. Pertinent to mention that the policy enacted though termed as rules, is not having statutory force. The Rules of 1972 are admittedly administrative instructions.

THE ACT OF 1989

5. To provide for better organisation and development of education in the Non-Government Educational Institutions in the State of Rajasthan, the Rajasthan State Legislature enacted the Rajasthan Non-Government Educational Institutions Act, 1989. The Act is having application in entire State of Rajasthan and it governs and regulates grant-in-aid for Non-Government aided institutions and other service conditions for their staff.

6. As per Section 2(b) of the Act of 1989 the "aided institutions" means a recognised institution which is receiving aid in the form of maintenance grant from the State Government.

7. Clause (p) of Section 2 of the Act of 1989 defined "Non-Government Educational Institution", according to that any College, School, Training Institute or any other institution by whatever name designated, established and run with the object of imparting education or preparing or training students for obtaining any certificate, degree, diploma or any academic distinction recognised by the State or Central Government or function for the educational, cultural or physical development for the people in the State of Rajasthan and which is neither owned nor managed by the State or Central Government or by any University or local authority or other authority owned or controlled by the State or Central Government, is a Non-Government Educational Institution.

8. As per Section 2(q) of the Act of 1989 "recognised institution" means a Non-Government Educational Institution affiliated to any University or recognised by the Board, Director of Education or any officer authorised by the State

Government or the Director Education in this behalf. The Act of 1989 defines "Director of Education" as under :-

"2(f) "Director of Education" means.-

(i)in relation to degree and post-graduate colleges and educational institutions of equal or higher studies other than institutions of Sanskrit and technical education, the Director of College Education, Rajasthan;

(ii)in relation to the institutions of Sanskrit education, the Director of Sanskrit Education, Rajasthan;

(iii)in relation to the institutions of technical education, the Director of Technical Education, Rajasthan;

(iv)in relation to schools and institutions other than those referred in sub-clauses (i), (ii) and (iii) the Director of Primary and Secondary Education, Rajasthan;

Explanation - The Director of Education shall include any other officer authorised by him to perform all or any of the functions of the Director of Education under this Act."

9. The Director of Education or the officer appointed by him as per provisions of the Act of 1989 and the Rules framed thereunder are entitled to recognise a Non-Government Educational Institution, allow grant-in-aid, regulate the process of recruitment and to exercise several other incidental powers.

10. As per Section 16 of the Act of 1989, the State Government may regulate the recruitment and conditions of service including the conditions relating to qualifications, pay, gratuity, insurance, age of retirement, entitlement of leave, conduct and discipline of persons appointed as employees of the aided institutions.

11. Section 40 of the Act of 1989 provides that the provision of the Act of 1989 shall have effect notwithstanding anything inconsistent contained in any instrument having effect by virtue of any law.

12. Section 43 of the Act of 1989 empowers the State Government to make rules for the purpose of carrying into effect the provisions of this Act.

THE RULES OF 1993

13. Exercising powers conferred by Section 43 of the Act of 1989 and all other powers enabling the State Government, the State of Rajasthan framed the Rules of 1993 regulating the recognition, grant-in-aid and service conditions of the staff etc. for the Non-Government Educational Institutions. As per Rule 45 of the Rules of 1993, the age of superannuation of teachers and other except Class-IV employees shall be the last date of the month in which they attain the age of 60 years.

14. Rule 91 of the Rules of 1993 provides that the Rajasthan Grant-in-Aid to

Educational and Cultural Institutions Rules, 1963 (hereinafter referred to as "the Rules of 1963") and any notification issued and orders made under any such Rules to the extent to which they apply to the person/institution to whom the Rules of 1993 applies and so far as they relate to recognition, grant-in-aid, service conditions or confer power to make appointments, grant recognition, sanction grant-in-aid, imposed penalties or entertain appeals, stands repealed. The Rules of 1963 and other Rules of similar nature in light of Rule 91 ibid came to be repealed on 1.4.1993, the day on which the Rules of 1993 came into force.

15. It shall be appropriate to mention here that the rules for Payment of Grant-in-Aid to Non-Government Educational, Cultural and Physical Education Institutions Rules, 1963 were enacted by the Government of Rajasthan to extend grant-in-aid to Non-Government recognised Educational, Cultural and Physical Education Institutions and also to provide service conditions for the employees of such institutions. The Rules of 1963 were also not having any statutory force being administrative instructions.

FACTS GIVING RISE TO THE INSTANT LITIGATION

16. Being a Non-Government recognised educational institution involved in Ayurved Education, Shri Bhanwar Lal Duggar, Ayurved Vishwa Bharati Gandhi Vidya Mandir, Sardarshahar, a deemed University (hereinafter referred to as "the University") is receiving aid from the Government of Rajasthan.

17. The petitioner, Dr. Ramanand Jha, was in employment of the institution as a Teacher. While holding the post of Professor, by the order dated December 5, 2009, the Additional Registrar of the University informed the appellant petitioner that he shall stand retire from service w.e.f. 30.6.2010 on attaining the age of superannuation i.e. 58 years on 15.6.1952. Being aggrieved, Dr. Ramanand Jha preferred a petition for writ that came to be dismissed under the judgment impugned. The case of the appellant petitioner before learned Single Bench was that the Grant-in-Aid Rules of 1972 came to be repealed in light of Rule 91 of the Rules of 1993, therefore, the age of his superannuation from service shall be as per Rule 45 of the Rules of 1993 i.e. 60 years.

18. Separate replies to the writ petition were filed on behalf of the State Government as well as by the University. As per the State Government the Rules of 1972 are not referred in Rule 91 of the Rules of 1993, therefore, those cannot be treated impliedly repealed, the appellant petitioner, as such was rightly ordered to be superannuated on attaining the age of 58 years. The University was also not recognised by the "Director of Education" as defined under Section 2 (f) of the Act of 1989, hence, this Act and the Rules framed thereunder cannot be applied to it. The University also came forward with the same stand.

19. Learned Single Bench after considering the rival stands held that the Rules of 1972 are special provisions for Ayurvedic Educational Institutions, therefore, shall prevail over the general law i.e. the Act of 1989 and the Rules framed thereunder and further that Rule 91 of the Rules of 1993 does not repeal the

Rules of 1972 impliedly. Learned Single Bench while arriving at such conclusion relied upon a Single Bench judgment of this Court rendered in the case of Smt. Kamla Devi v. State of Rajasthan & Ors., SB Civil Writ Petition No.921/1995, decided on 26.2.2007. In the case of Kamla Devi (supra), it was held that Ayurvedic Institutions were receiving aid under the Rules of 1972 and not under the Act of 1989 or the Rules framed thereunder, therefore, the service conditions for the staff of such institutions shall also be settled as per the Rules of 1972.

ARGUMENT ADVANCED IN APPEAL

20. While questioning correctness of the judgment impugned the argument advanced by learned counsel for the appellant is that learned Single Bench failed to appreciate that Rule 91 of the Rules of 1993 clearly mentions that the Rules of 1963 and any such Rules to the extent to which they apply to the person/institution to whom Rules of 1993 apply, stands repealed. The Rules of 1972 are the rules analogous to the Rules of 1963 and, therefore, the word "such" covers these rules too.

21. It is also submitted that the Act of 1989 is a complete code to regulate and govern Non-Government Educational Institutions and the Ayurvedic Institutions for no justifiable reason could be excluded from the category of the institutions to which this Act apply, therefore, no different standards can be adopted for the staff of such institutions.

22. It is asserted that the law laid down in the case of Kamla Devi (supra) is not a good law as it was never brought in the knowledge of the Court that ?

(1)the Rules of 1972 are not statutory rules but administrative instructions;

(2)the respondent University is nothing but a Non-Government Educational Institution as defined under the Act of 1989;

(3)as per Section 40, the Act of 1989 and the Rules framed thereunder shall prevail over any other set of rules/orders dealing with the issues of grant-inaid and service conditions of Non-Government aided Institutions; and

(4)Rule 91 repeals all the Rules relating to grant-in-aid to the Non-Government recognised Educational Institutions.

23. Per contra, while defending the judgment impugned, it is submitted by learned counsels for the respondents that Rule 91 of the Rules of 1993 refers Rules of 1963 only, therefore, it does not repeal the Rules of 1972. Under the Rules of 1972, the age of superannuation is 58 years, thus, the appellant was retired from service in accordance with law. Learned counsels, however, do not dispute that the Rules of 1972 are nothing but administrative instructions.

24. Heard learned counsels and considered the arguments advanced.

25. As already stated, the Act of 1989 was enacted with an object to provide for better organisation and development of the education in Non-Government

Educational Institutions in the State of Rajasthan. It is not at all in dispute that in relation to degree and post-graduate colleges and educational institutions of the higher studies, the institutions of Sanskrit education, the institutions of technical education and the institutions pertaining to Primary and Secondary education in Rajasthan, are having application of this Act. The definition of aided institution as given under Section 2(b) of the Act refers the institutions which are receiving aid from the State Government in the form of maintenance grant. The term "Non-Government Educational Institution" as introduced under Rule 2(p) also covers the colleges, schools, training institutes, other institutions, by whatever name designated established and run with object of imparting education or preparing or training students for obtaining any certificate, degree, diploma or any academic distinction recognised by the State or Central Government. The institutions functioning for the educational, cultural or physical development of the people in the State and which are not owned or managed by the State or the Central Government or by any University or local authority or other authority owned or controlled by the State or Central Government are also non-Government Educational Institutions. The Non-Government Educational Institutions affiliated to any University or recognised by the Board, Director of Education or any officer authorised by the State or the Director of Education are "recognised institutions" as defined under Section 2(q) of the Act.

26. The respondent University is imparting education in Ayurved. It is receiving aid in the form of maintenance grant from the State Government, as such, it is nothing but a "Non-Government Educational Institution". It is also a recognised institution by the Director of Ayurved, but not by the Director of Education defined under Section 2(f) of the Act of 1989. The argument of the respondents is that the institution being not recognised one by Director of Education is not a recognised institution as per Section 2(f).

27. True it is, the respondent University is not recognised by any authority termed as "Director of Education" as per Section 2(f) of the Act of 1989, but merely on that count it shall not be appropriate to exclude it from application for the Rules of 1993. The object of the Act of 1989 is to regulate Non-Government Recognised Aided Institutions in the State of Rajasthan, that includes all kind of institutions, may those be operating in the field of general education, physical education, technical education, or even in Sanskrit education etc. The Ayurved education or the other disciplines, to which the Rules of 1972 applies, are not having any independent unique features to treat them differently vis-a-vis the educational institutions for whom the Act of 1989 is having explicit application. The respondent University is also imparting education for higher attainments in the field of Ayurved giving certificates/diplomas/degrees and is receiving grant for maintenance. It is also having teachers and other ancillary staff for better governance of the institution. The salary of the staff is paid as per the Pay Rules prescribed by the Government of Rajasthan. The other service conditions are also same as applicable for the staff of other Non-Government Aided Institutions. As such, for all practical purposes the institutions imparting education in Ayurved

stand on same pedestal with other educational institutions to whom the Act of 1989 is having explicit application. All these aided institutions form a homogeneous group. Some of the aided institutions were getting aid from the State under the Rules of 1963 and some under the Rules of 1972, which are administrative instructions only. These instructions would have been issued at different times or may be having some minor differences too, but those are just for administrative convenience, otherwise both sets of instructions prescribe procedure for grant in aid for maintenance and service conditions for their staff. Both set of instructions prescribe similar kind of service conditions. The age of superannuation under the Rules of 1963 was also 58 years and came to be changed only on application of the Act of 1989. If we permit exclusion of the Non-Government Aided Institutions imparting education in Ayurved from the aided institutions as defined under the Act of 1989, then that shall be nothing but a serious violation of the concept of equality. This would have not been the intention of the legislature while enacting the Act of 1989, with an object to regulate grant in aid to the Non-Government educational institutions. No justifiable explanation is also extended by the respondents as to why the legislature would have excluded the Ayurved institutions while enacting a very broad and effective law to regulate grant in aid for maintenance of aided institutions. Looking to this aspect and to ensure effective workability of the Act of 1989 and also to avoid discrimination among the similarly situated persons, we are of the view that in Section 2(f) of the Act of 1989 the term "Director of Education" is required to be read inclusive of "Director of Ayurved". Worthwhile to mention here that the respondent is a University and, therefore, as per Section 2(q) of the Act of 1989, it is a "recognised institution" irrespective of its recognition by the Director of Education or any officer authorised by the State Government or the Director of Education in this behalf.

28. So far as Rule 91 of the Rules of 1993 is concerned, it clearly mentions about repealing of the Rules of 1993 and any other such Rules, meaning thereby, all Rules or Orders occupying the field of grant in aid stands repealed. The Rules of 1972 are of such nature only. Beside that, Section 40 of the Act of 1989 expressly provides that the provisions of this Act shall have effect notwithstanding anything inconsistent contained in any instrument having effect by virtue of law. The application of the Act of 1989, therefore, qua the respondent University is apparent.

29. So far as the case of Smt. Kamla Devi (supra) is concerned, we are having no doubt in saying that the same does not lay the correct law being passed without taking care of the definitions of the terms "Non-Government Educational Institutions", "Recognised Institutions", "Aided Institutions", the effect of Section 40 of the Act of 1989 and the nature of the Rules of 1972 and 1963. In the case aforesaid the effect of Rule 91 of the Rules of 1993 was also not examined.

30. In conclusion, we determine that the Act of 1989 and the Rules of 1993 are having complete application upon the respondent University.

31. Accordingly, the appeal is allowed. The judgment impugned dated January 29, 2014 is set aside. The writ petition is allowed. It is declared that in Section 2(f) of the Act of 1989 the term "Director of Education" is read to be inclusive of "Director of Ayurved". The decision of the respondent University to retire the appellant on attaining the age of 58 years is declared illegal. The appellant is declared entitled to be retained in service till completion of the age of 60 years. If the appellant has already attained the age of 60 years, he is required to be treated in service till attaining the age of superannuation i.e. 60 years and he shall also be entitled for all consequential benefits flowing in pursuant to the declaration of entitlement as above.

32. No order to costs.