(2025) 02 RAJ CK 0974

In the Rajasthan High Court, Jaipur Bench

Case No : Civil Writ Petition No. 22528 Of 2017, Connected with Civil Writ Petition No. 16605 Of 2019, Civil Writ Petition No. 22529 Of 2017, No. 22564 Of 2017, No. 22565 Of 2017, No. 22566 Of 2017, Civil Writ Petition No. 1883 Of 2018, No. 1888 Of 2018, No. 1889 Of 2018, No. 1893 Of 2018, No. 1894 Of 2018, No. 21423 Of 2018, No. 21433 Of 2018, No. 21437 Of 2018, No. 21445 Of 2018, No. 21447 Of 2018, No. 21536 Of 2018, No. 21539 Of 2018, No. 16603 Of 2019, No. 16604 Of 2019, No. 16610 Of 2019, No. 3046 Of 2020, No. 3050 Of 2020, No. 3059 Of 2020, No. 3066 Of 2020, No. 3134 Of 2020

Managing Committee		APPELLANT
	Vs	
Shri Mangi Lal Sharma And Anr		RESPONDENT

Date of Decision : 21-02-2025

Acts Referred:
Income Tax Act, 1961 — Section 148, 69(A), 69(C), 271(D), 271(E), 271(1)(C)

Citation : (2025) 02 RAJ CK 0974

Hon'ble Judges : Avneesh Jhingan, J;Shubha Mehta, J

Bench : Single Bench

Advocate : Siddharth Ranka, Rohan Chatter, Satwika Jha, Apeksha Bapna, Muzaffar Iqbal, Saurabh Harsh, Siddharth Bapna, Sarvesh Jain, Meyhul Mittal, Rahul Kumar

Final Decision : Allowed

Judgement

Anoop Kumar Dhand, J

1. Since common questions of facts and law are involved in all these writ petitions, hence, with the consent of counsel for the parties, these matters are taken up together for final disposal and are being decided by this common order.

2. For the sake of convenience, the prayer mentioned in SB Civil Writ Petition No.22528/2017 has been taken into consideration, which reads as under:-

"It is therefore humbly prayed that this Hon'ble Court be pleased to call for the relevant record from the Tribunal, examine the same and quash and set aside the judgment and award arrived at vide Annexure-1.

Any other relief which this Hon'ble Court may deem just and proper in the facts and circumstances of the case as also in the interest of justice be also passed in favour of the petitioner.

Cost of this writ petition so also before the Tribunal be also allowed in favour of the petitioner."

3. Learned counsel for the petitioner submits that the respondent-employees were working on different posts with the petitioner-institution, prior to the enforcement of the Rajasthan Voluntary Rural Education Service Rules, 2010 (hereinafter referred to as "the Rules of 2010") and, thereafter, their services were absorbed in the Government services and all the respondents were relieved on 30.06.2011. Learned counsel submits that the respondents approached the Rajasthan Non-Government Educational Institution Tribunal, Jaipur (hereinafter referred to as "the Tribunal") by way of filing an application under Section 21 of the Rajasthan Non-Government Educational Institution Act, 1989 (hereinafter referred to as "the Act of 1989") with multiple prayers; e.g. for grant of payment of leave encashment, gratuity, due salary, etc. Learned counsel submits that no specific affidavit with regard to the exact amount was furnished by the respondents and, in absence thereof, the petitioner could not get any opportunity to cross-examine the respondents. Learned counsel submits that without following the due procedure, contained under the Code of Civil Procedure, the order impugned has been passed by which the petitioner-institution has been directed to pay the aforesaid amount under different heads to the respondents. Learned counsel submits that the respondents are still in service and an employee whether working in a private institution or Government institution is entitled to get encashment of total 300 Privilege Leaves at the time of retirement. Learned counsel submits that unless and until the respondents retire from service, their Privilege Leaves cannot be counted and the respondents cannot claim the benefit of 300 paid leaves from the petitioner as well as the State. Learned counsel further submits that the gratuity amount is always payable to an employee after his retirement and till date, the respondents are serving with the Government and as such their gratuity amount cannot be calculated. Lastly, he argued that the gratuity amount has not been calculated by the Tribunal because no specific affidavit has been submitted by the petitioner-institution in this regard and consequently, no such affidavit was submitted by the respondents, hence the petitioner has been deprived of the opportunity to cross-examine the respondents.

4. Lastly, he argued that as per the provisions contained under Section 21 of the Act of 1989, whenever there is a dispute between the management and its employees with respect to any service condition, an application can be submitted in the "prescribed manner" to the Tribunal for adjudication of the same. Learned counsel submits that no application in the prescribed manner was submitted by the respondents, therefore, under these circumstances, the application submitted

by the respondents was not maintainable. Hence, under these circumstances, the order impugned passed by the Tribunal is legally not sustainable in the eye of law and is liable to be quashed and set aside. In support of his submissions, he has placed reliance upon the judgment passed by the Hon'ble Apex Court in the case of Tagore Bal Niketan Madhyamik Vidyalaya versus State of Rajasthan reported in 2018 (1) WLC Raj. 19; Ayaaubkhan Noorkhan Pathan Vs. The State of Maharashtra and Ors. reported in AIR 2013 SC 58; and Ramswaroop Masawan Vs. Municipal Council and Ors. reported in 1998 (6) SCC 338. Learned counsel submits that in view of the statements made hereinabove, interference of this Court is warranted.

5. Per contra, learned counsel for the private respondents submits that the issue raised by learned counsel for the petitioner has already been set at rest by the Division Bench of this Court in the case of Managing Committee, K.D. Jain Shikshan Parishad & Another Versus Smt. Mamta Gangwal & Ors. vide order dated 21.05.2019 while deciding D.B. Civil Special Appeal (Writ) No.430/2019 and by the Hon'ble Apex Court in the case of Jagdish Prasad Saini & Others Versus The State of Rajasthan & Others reported in 2022 INSC 1023. Learned counsel submits that it has been held by the Division Bench of this Court as well as the Hon'ble Apex Court that management is liable to pay the amount of the Privilege Leaves as well as gratuity. Learned counsel submits that as per the provisions contained under Section 4 of the Payment of Gratuity Act, 1972 (hereinafter referred to as "the Act of 1972"), the gratuity shall be payable to an employee on the termination of his employment, after he has rendered continuous service and Section 7 of the Act of 1972 deals with the provision for determination of the amount of gratuity. Learned Counsel submits that a complete mechanism has been provided under Section 7 of the Act of 1972 and the petitioner-institution was supposed to determine the total due amount of gratuity of the respondents. Learned counsel submits that considering all the above factual aspects of the matter, the Tribunal has passed a reasoned and cogent order, which requires no interference of this court and the instant writ petitions are liable to be rejected.

6. Learned counsel for the State-respondent submits that the amount of grant-in-aid has already been given to the petitioner-management, hence, the State is only liable to the extent of ensuring that the order passed by the Tribunal is complied with by the petitioner. Learned counsel submits that, under these circumstances, interference of this Court is not warranted and the instant writ petitions are liable to be rejected.

7. In rejoinder to the above arguments, learned counsel for the petitioner-institution submits that the respondents are still in service and their services have not been terminated, hence, the arguments raised by the counsel for the respondents are not applicable in the facts and circumstances of the present case. Learned counsel submits that subsequent to enforcement of the Rules of 2010, a circular has been issued by the State with regard to recovery of the

excess amount paid to the employees, under the head of Leave Encashment. Hence, the respondent-employees are not entitled to get the amount towards Leave Encashment.

8. Heard and considered the submissions made at Bar and perused the material available on the record.

9. The issue arises for determination in the present bunch of writ petitions is "whether the petitioner, an aided educational institution, is obliged by law to pay the respondent-employees, the amount of gratuity and encashment of privilege leaves, after they have ceased to be in the petitioner-institution's service on account of their appointment with the State Government, under the Rules of 2010?

10. Before proceeding further to decide the issue on its merits, it would be gainful to reproduce the relevant provisions contained under Rules 4 & 5 of the Rules of 2010 and Section 2(q), 2(r), Sections 4(1) & 4(5) & 7 of the Act of 1972, as these provisions are relevant for deciding the issue involved in these writ petitions. These provisions are reproduced as under:-

"4. Procedure of appointment in government service.-

(l) Such regularly appointed employees in the Non-Government Aided Educational Institutions who are working against sanctioned and aided post on the date of commencement of these rules and who desire to be appointed under the Rajasthan Voluntary Rural Education Service Rules, 2010, in accordance with the terms and conditions mentioned in these rules, shall submit within 15 days from the date of publication of these rules in the official gazette an application in Form-I, to the Secretary of the concerned institution mentioning therein his/her service particulars with an advance copy to the concerned appointing authority.

(2) The Secretary of the institution shall, after verifying the service particulars, forward the applications to the concerned appointing authority along with complete service record of the employee within 10 days from the last date of receipt of applications. The Secretary of the institution shall append a certificate to the effect that the service particulars mentioned by the employees are correct.

(3) The suitability of employees of various Non-Government Aided Educational Institutions for appointment on the various posts under these rules shall be adjudged by the screening committee comprising of:-

(a) in the case of post within the purview of the Commission-

(i) Chairman of the Commission or his nominee –Chairman

(ii) Principal Secretary, Department of Personnel or his nominee not below the rank of Dy. Secretary -Member

(iii) Principal Secretary of the concerned Department or his nominee not below the rank of Dy. Secretary -Member

(iv) Director of the concerned Department -Member Secretary

(b) in case of post not within the of the Commission-

(i) Director of the concerned Department or his nominee -Chairman

(ii) Concerned appointing authority -Member Secretary

(4) The committee after adjudging the suitability of the candidates shall forward the name(s) of the suitable candidate(s) to the concerned appointing authority for appointment.

5. Terms and Conditions for appointment of employees in Government Service.-

The regularly appointed existing employees in the Non-Government Aided Educational Institutions who are working against sanctioned aided post on the date of commencement of these rules shall be appointed under the Rajasthan Voluntary Rural Education Service on the following terms and conditions, namely:-

(i) The employee should possess the requisite educational and professional qualification for the respective posts as per the relevant service rules applicable to the Government servant of similar cadre.

(ii) The posts on which the employees shall be appointed in the Government shall constitute a separate dying cadre for each category of employees.

(iii) The appointed employees shall be posted only in the colleges/schools, as the case may be, in the rural areas on the equivalent posts specified in column number 2 of the Schedule. However, in case there is no such equivalent post in the government, they shall be appointed on other posts carrying the same pay scale of aided posts:

[Provided further that in the case of non- teaching staff, screened for appointment on Non- teaching posts in College Education Section and posts for posting in rural areas are not available, such person shall be appointed on any equivalent post in rural areas in any other department governed by these rules. Such person shall be deemed to be appointed in the new department from the date of joining in the Directorate of College Education.]

(iv) The employees appointed under these rules shall not be entitled for any promotion till they attain the age of superannuation. However, they shall be allowed benefit of Assured Career Progression/Career Advancement Scheme as allowed to other employees of the State Government. The period from the date of their appointment on the sanctioned and aided posts would be counted for the purpose of grant of Assured Career Progression/Career Advancement Scheme.

(v) The posts shall be automatically abolished as and when the posts become vacant for any reason

whatsoever i.e. on account of superannuation/voluntary retirement/termination of service/death while in service/resignation of the employee etc.

(vi) The salary of all the appointed employees shall be fixed on the basis of the salary as drawn at the time of appointment as per the Sixth Pay Commission with effect from the date they join in the government under these rules. Those who are drawing salary in Rajasthan Civil Services (Revised Pay Scale) Rules, 1998, Rajasthan Civil Services (Revised Pay Scales for Government College Teachers including Librarian and PTI Rules, 1999 and Rajasthan Civil Services Revised Pay Scales for Government Polytechnic College Teachers, Librarians and Physical Training Instructors Rules,

2001) shall be allowed benefit of Rajasthan Civil Services (Revised Pay) Rules, 2008, Rajasthan Civil Services (Revised Pay Scales for Government College Teachers including Librarian and PTI Rules, 2009 and Rajasthan Civil Services Revised Pay Scales for Government Polytechnic College Teachers, Librarian and Physical Training Instructors Ru1es, 2010) respectively with effect from the date they join in the Government after appointment under these rules.

(vii) No arrears on any account whatsoever, (including arrears of salary, selection scale, Assured Career Progression or Career Advancement Scheme) shall be paid by the State Government for

the period prior to the date of their joining in the Government after appointment under these rules.

(viii) Carry forward of the balance of Privilege Leave shall not be allowed. Employees shall be free to get payment of encashment of balance of P.L. from the respective grant-in-aid educational institutions.

(ix) The persons who are appointed in the government service under these rules shall be governed by the provisions of the Rajasthan Civil Services (Contributory Pension) Rules, 2005 and the provisions of the Rajasthan Civil Services (Pension) Rules, 1996 shall not be applicable to them. Contributory Provident Fund contribution, if not deposited by the Non- Government Aided Educational Institutions for the period prior to the date of their joining in the government after appointment under these rules, shall not be paid by the State Government.

(x) The period of service in the aided institutions shall not be counted for payment of gratuity. The employees shall be free to obtain payment of gratuity from the respective grant in aid educational institution.

(xi) Each employee shall be required to execute an undertaking, in Form-II, that he/she voluntarily accepts all the terms and conditions of service prescribed under these rules and agrees to serve in the government educational institutions situated in the rural areas till attaining the age of superannuation in the service of Government.”

Now the relevant provisions of the Act of 1972, as mentioned above are extracted as under:-

“2. Definitions.-

In this Act, unless the context

otherwise requires,-

(a) to (p) xxx xxx xxx

(q) "retirement" means termination of the service of an employee otherwise than on superannuation;

(r) "superannuation", in relation to an employee, means the attainment by the employee of such age as is fixed in the contract or conditions of service at the age on the attainment of which the employee shall vacate the employment;

(s) xxx

4. Payment of gratuity.-

(1) Gratuity shall be payable to an employee on the termination of his employment after he has rendered continuous service for not less than five years,-

(a) on his superannuation, or

(b) on his retirement or resignation, or

(c) on his death or disablement due to accident or disease:

Provided that the completion of continuous service of five years shall not be necessary where the termination of the employment of any employee is due to death or disablement:

[Provided further that in the case of death of the employee, gratuity payable to him shall be paid to his nominee or, if no nomination has been made, to his heirs, and where any such nominees or heirs is a minor, the share of such minor, shall be deposited with the controlling authority who shall invest the same for the benefit of such minor in such bank or other financial institution, as may be prescribed, until such minor attains majority.]

Explanation.-For the purposes of this section, disablement means such disablement as incapacitates an employee for the work which he was capable of performing before the accident or disease resulting in such disablement.

(2) xxx xxx xxx

(3) xxx xxx xxx

(4) xxx xxx xxx

(5) Nothing in this section shall affect the right of an employee to receive better terms of gratuity under any award or agreement or contract with the employer.

(6) xxx”

7. Determination of the amount of gratuity.

(1) A person who is eligible for payment of gratuity under this Act or any person authorised, in writing, to act on his behalf shall send a written application to the employer, within such time and in such form, as may be prescribed, for payment of such gratuity.

(2) As soon as gratuity becomes payable, the employer shall, whether an application referred to in sub-section

(1) has been made or not, determine the amount of gratuity and give notice in writing to the person to whom the gratuity is payable and also to the controlling authority specifying the amount gratuity so determined.

(3) The employer shall arrange to pay the amount of gratuity within thirty days from the date it becomes payable to the person to whom the gratuity is payable.

(3A) If the amount of gratuity payable under sub-section (3) is not paid by the employer within the period specified in sub-section (3), the employer shall pay, from the date on which the gratuity becomes payable to the date on which it is paid, simple interest at such rate, not exceeding the rate notified by the Central Government from time to time for repayment of long-term deposits, as that Government may, by notification specify:

Provided that no such interest shall be payable if the delay in the payment is due to the fault of the employee and the employer has obtained permission in writing from the controlling authority for the delayed payment on this ground.

(4) (a) If there is any dispute as to the amount of gratuity payable to an employee under this Act or as to the admissibility of any claim of, or in relation to, an employee for payment of gratuity, or as to the person entitled to receive the gratuity, the employer shall deposit with the controlling authority such amount as he admits to be payable by him as gratuity.

(b) Where there is a dispute with regard to any matter or matters specified in clause (a), the employer or employee or any other person raising the dispute may make an application to the controlling authority for deciding the dispute.

(c) The controlling authority shall, after due inquiry and after giving the parties to the dispute a reasonable opportunity of being heard, determine the matter or matters in dispute and if, as a result of such inquiry any amount is found to be payable to the employee, the controlling authority shall direct the employer to pay such amount or, as the case may be, such amount as reduced by the amount already deposited by the employer.

(d) The controlling authority shall pay the amount deposited, including the excess amount, if any, deposited by the employer, to the person entitled thereto.

(e)As soon as may be after a deposit is made under clause (a), the controlling authority shall pay the amount of the deposit -

(i) to the applicant where he is the employee; or

(ii) where the applicant is not the employee, to the nominee or, as the case may be, the guardian of such nominee or heir of the employee if the

controlling authority is satisfied that there is no dispute as to the right of the applicant to receive the amount of gratuity.

(5) For the purpose of conducting an inquiry under sub-section (4), the controlling authority shall have the same powers as are vested in a court, while trying a suit, under the Code of Civil Procedure, 1908 (5 of

1908), in respect of the following matters, namely :

(a) enforcing the attendance of any person or examining him on oath;

(b) requiring the discovery and production of documents,

(c) receiving evidence on affidavits;

(d) issuing commissions for the examination of witnesses.

(6) Any inquiry under this section shall be a judicial proceeding within the meaning of sections 193 and 228, and for the purpose of section 196, of the Indian Penal Code, 1860 (45 of 1860).

(7) Any person aggrieved by an order under sub-section

(4) may, within sixty days from the date of the receipt of the order, prefer an appeal to the appropriate Government or such other authority as may be specified by the appropriate Government in this behalf:

Provided that the appropriate Government or the appellate authority, as the case may be, may, if it is satisfied that the appellant was prevented by sufficient cause from preferring the appeal within the said period of sixty days, extend the said period by a further period of sixty days.

Provided further that no appeal by an employer shall be admitted unless at the time of preferring the appeal, the appellant either produces a certificate of the controlling authority to the effect that the appellant has deposited with him an amount equal to the amount of gratuity required to be deposited under subsection (4), or deposits with the appellate authority such amount.

(8) The appropriate Government or the appellate authority, as the case may be, may, after giving the parties to the appeal a reasonable opportunity of being heard, confirm, modify or reverse the decision of the controlling authority."

11. It would be seen from the afore-extracted Rule 5 of the Rules of 2010 that a complete scheme has been provided detailing out the terms and conditions for appointment of the Teachers working in Non-Government Aided Educational Institutions, against sanctioned/aided posts on the date of commencement of the Rules of 2010. Rule 4 of the Rules of 2010 requires such employees to submit an

application in Form-I within 15 days from the date of publication of the Rules in the official gazette, to the Secretary of the concerned institution mentioning therein his/her service particulars, with an advance copy to the concerned appointing authority. Rule 5 of the Rules of 2010 contains the terms and conditions of such appointment. It provides that the regularly appointed existing employees in the Non-Government Aided Educational Institutions, who are working against sanctioned aided posts, on the date of commencement of the Rules of 2010, shall be appointed under the Rajasthan Voluntary Rural Education Service on the terms and conditions enumerated in clauses (i) to (xi), which inter-alia provided that (i) the employee should possess the requisite educational and professional qualification for the respective posts as per the relevant service Rules applicable to the Government servant of similar cadre; (ii) the posts on which the employees shall be appointed in the Government shall constitute a separate dying cadre for each category of employees;

(iii) the appointed employees shall be posted only in the colleges/ schools, as the case may be, in the rural areas only; (iv) the employees so appointed shall not be entitled for any promotion till they attain the age of superannuation. However, they shall be allowed benefit of Assured Career Progression/Career Advancement Scheme at par with their counter-parts in the Government and for this purpose, the period of service rendered by them with the Non-Government Aided Educational Institution on sanctioned aided posts would be counted; (v) the posts on which they are appointed shall stand abolished upon their

superannuation/voluntary retirement/termination /death /resignation; (vi) their salary shall be fixed as drawn at the time of appointment. Clause (vii), in particular, provides that no arrears on any account whatsoever, which may include the arrears of salary, selection scale, Assured Career Progression or Career Advancement Scheme, shall be paid by the State Government for the period prior to the date of their appointment with the Government. We are however in the present case mainly concerned with Clauses (viii), (x) and (xi). Clause (viii) which inter alia provides that "Carry forward of the balance of Privilege Leave shall not be allowed. Employees shall be free to get payment of encashment of balance of P. L. from the respective grant-in-aid educational institutions". Clause (x) provides that "The period of service in the aided institutions shall not be counted for payment of gratuity, and the employees shall be free to obtain payment of gratuity from the respective grant in aid educational institution". Most significantly, clause (xi) provides that "Each employee shall be required to execute an undertaking in Form-II, that he/she voluntarily accepts all the terms and conditions of service, prescribed under these Rules and agrees to serve in the government educational institutions situated in the rural areas till he/ she attains the age of superannuation in the service of Government."

12. The intention of the rule making authority in the said provision is thus clear that as far as encashment of Privilege Leave and payment of gratuity are concerned, services rendered by an employee with the grant-in-aid educational

institution have been delinked from the services with the Government and the employee concerned would be entitled to obtain such amount of leave encashment and gratuity directly from the respective grant-in-aid educational institution when his employment comes to an end. This Court has to, therefore, place purposive as also contextual interpretation on the language of Section 4 of the Act of 1972 and Sections 7 and 8 of the Act of 1972. Evidently, Rule 5 of the Rules of 2010, provides a conditional scheme for appointment of the employees of Non-Government Aided Educational Institutions upon furnishing a specific undertaking (in Form-II) by submitting an application (in Form-I), within 15 days of the date of publication of the Rules of 2010 in the gazette. The Government has thus accepted them in employment on all the aforementioned conditions including the condition that the period which they had spent with the Non-Government Aided Educational Institutions shall not be counted for the purpose of gratuity, with the service which they would render with the Government and that they shall be free to obtain payment of gratuity for that service from the respective Non-Government Aided Educational Institutions.

13. This Court finds no substance in the argument of the petitioner-institution that services rendered by respondent-employees with them, would make such employees entitled to much more amount of gratuity then the permissible statutory limit. Answer to this would be found in Section 4(5) of the Act of 1972 which inter alia provides that "Nothing in this section shall affect the right of an employee to receive better terms of gratuity under any award or agreement or contract with the employer." Appointment of the respondent-employees with the Government under the statutory scheme, it goes without saying, has been made with the consent of the petitioner-institution. As per Rule 4 of the Rules of 2010, application of the employee for appointment with the Government is required to be submitted within 15 days of publication of the Rules in the first part of Form-I, appended to the said Rules to the Secretary of the concerned institution. The Secretary of the concerned institution is then required to verify the service particulars of the employee on second part of the same Form-I and forward such application along with a certificate about their correctness to the appointing authority of the Government.

14. The Hon'ble Supreme Court in the case of Senior Superintendent of Post Offices Vs. Gursewak Singh and Others while deciding Civil Appeal No.3150/2019, on 15.03.2019 dealt with a case where the respondent was engaged as Gramin Dak Sewak, i.e., an Extra-Departmental Agent, to work on part-time basis in the Postal Department and resigned from the said part-time job in 2014. He then approached the Controlling Authority-cum-Assistant Labour Commissioner (Central) seeking gratuity under the Payment of Gratuity Act, 1972. The stand of the Department was that he was not entitled to ex-gratia gratuity under the Gramin Dak Sewak (Conduct & Engagement) Rules, 2011 (hereinafter referred to as "the Rules of 2011") as he had voluntarily resigned from the job. The Rules of 2011 have separate provision for Payment of Gratuity to the Extra-Departmental Agent, and, therefore, he is not an employee under

the Act of 1972. The Controlling Authority-cum-Assistant Labour Commissioner allowed his claim. The department filed an appeal under Section 7(7) of the Act of 1972 before the Deputy Chief Labour Commissioner (Central), Chandigarh. The appellate authority dismissed the appeal. The writ petition filed by the Department against the aforesaid orders before the High Court, was also dismissed by the Single Bench and the intra court appeal, preferred thereagainst, was also dismissed by the Division Bench. The Hon'ble Supreme Court, in the backdrop of these facts held that Rule 6(13) of the said Rules provides that no gratuity is payable if an Extra-Departmental Agent quits the agency by way of resignation on his own, except on medical ground, and since the respondent tendered resignation in 2014 and appellant has accepted his resignation on 28.04.2014 and passed an order under Rule 6(13) permitting him to quit the service, as a consequence, he became disentitled to payment of gratuity under the Statutory Rules of 2011. The Hon'ble Supreme Court considered the provisions of Section 4 of the Act of 1972 which states that "Gratuity shall be payable to an employee" and further considered the provisions of Section 2(e) of the Act of 1972, which specifically excludes persons who are governed by any Act, or Rules providing for payment of Gratuity.

15. In so far as the present case is concerned, the payment of gratuity to the respondent-employees for the period subsequent to the period of their appointment with the Government, would be conditioned by the prescription made in Rule 5(x), which inter alia stipulates that the period of service which they spent in the aided institutions shall not be counted as period of service with the Government service, for payment of gratuity and the employee shall be free to obtain payment of gratuity from the respective grant-in-aid educational institution at the time of his appointment with the Government and not when he retires on superannuation from government service.

16. This issue can be approached even from another angle. Section 4 of the Act of 1972 inter alia provides that the gratuity shall be payable to an employee on termination of his employment, after he has rendered continuous service for not less than five years; (a) on his superannuation, or (b) on his retirement or resignation, or (c) on his death or disablement due to disability or disease. Section 4 thus postulates that gratuity shall become payable only on termination of employment, after completion of five years of service and the termination could be brought about by any of the modes given in Clauses (a) to (c), namely, superannuation; retirement or resignation; or death or disablement due to accident or disease. Superannuation in relation to an employee has been defined in Section 2(r) of the Act that means "the attainment by the employee of such age as is fixed in the contract or conditions of service as the age on the attainment of which the employer shall vacate the employment." However the term "retirement" has been defined in Section 2(q) of the Act as "termination of the service of an employee otherwise than on superannuation". Thus apparently, though the 'termination' has not been defined in the Act of 1972 but the term 'termination' has also been described as a mode of "retirement" of an employee.

The termination of service has to be therefore treated as termination of contract of service, by whatever mode including retirement in contradiction with superannuation. In the facts of the present case, when a complete scheme of appointment of employees working in the Non-Government Aided Educational Institutions on the conditions listed in Rule 5 of the Rules of 2010 has been envisaged, a contextual interpretation has to be placed on the word "retirement" keeping in view the scheme aforesaid.

17. The Supreme Court in State of Maharashtra and Others Vs. Reliance Industries Limited and Others reported in (2017) 10 SCC 713, while dealing with this basic rule of interpretation of the statutes, has held in para 27 of the report as under:-

"27. Interpretation must depend upon the text and the context. They are the basis of interpretation. One may well say if the test is the texture, context is what gives the colour. Neither can be ignored. Both are important. That interpretation is best which makes the textual interpretation match the contextual. A statute is best interpreted when we know why it was enacted. If the statute is looked at, in the context of its enactment, with the glasses of the statute-maker, provided by such context, its scheme, the sections, clauses, phrases and words may take colour and appear different than the statute is looked at without glasses provided by the context. We must look at the Act as a whole and discover what each section, each clause, each phrase and each word is meant and designed to say as to fit into the scheme of the entire act. No part of a statute or word of a statute can be construed in isolation."

18. Taking contextual interpretation of the word "retirement" as per definition given in Section 2(q) of the Act of 1972 which includes "termination" of service by an employer of an employee otherwise than superannuation, the voluntary acceptable option given by the employees working on the aided sanctioned post in the Non-Government Aided Educational Institutions, obviously along with the consent of the such institution, for being appointed with the Government on the conditions given in Rule 5 of the Rules of 2010, would in that spirit mean termination of service, as far as previous employer viz. Aided Institution is concerned. Such employees will be entitled to receive and such Non-Government Aided Educational Institutions shall be liable to pay at that very stage, the gratuity subject to the condition of such employees having rendered "continuous service for not less than five years" and subject further to two provisos to Section 4(1) of the Act of 1972.

19. The issue involved in these writ petitions has been set at rest in the case of Managing Committee, Shri Raghunath Higher Secondary School, Laxmangarh (Sikar) & Another Vs. Mahesh Kumar Sharma & Another (D.B. Special Appeal Writ No.1758/2017 alongwith other connected appeals) decided on 07.03.2018 wherein it has been held by the Division Bench of this Court as under:-

“So far as claim of gratuity and leave encashment are concerned, we are of the opinion that both are payable at the time of retirement, if it goes strictly in consonance tothe Rules. The directions for payment of gratuity and leave encashment have been given midway. The non-appellant-employees were initially recruited by the appellant-institution but, subsequently, appointed in the State Services under the Rules of 2010. In view of the above, the accumulated amount of gratuity as well as leave encashment was directed to be paid to the State for the period employees worked with the management committee and complete benefit would then be given to the employees by the State on their retirement. The accumulated amount of leave encashment would be only to the extent of unaided portion. To make balance and to remain in consonance to the Rules, the appellant-institution would determine the amount of gratuity and leave encashment for the period non-appellant-employees worked with them. The said amount would be deposited with the State Government or it would be deducted by the State from any amount payable to the appellant-institution pursuant to the directions in the case of Managing Committee, Pananbai Ramnath Poddar Senior Secondary School (supra) and applied to this case. It is, however, clarified that amount towards leave encashment would be accounted by the appellant-institution to the extent of their share in view of grant-in-aid but, for the gratuity, the entire amount would be payable by them, as indicated above.”

20. Subsequently, the Division Bench of this Court in the case of Smt. Mamta Gangwal (supra) has also taken a similar view and has held as under:-

“Taking contextual interpretation of the word"retirement" as its definition given in Section 2(q) which includes"termination" of service by an employer of an employee otherwise than superannuation, the voluntary option given by the employees working on the aided sanctioned post in the Non-Government Aided Educational Institutions, obviously along with the consent of the such institution, for being appointed with the Government on the conditions given in Rule 5 of the Rules of 2010, would in that spirit mean termination of service, as far as previous employer viz. Aided Institution is concerned and would make such employees entitled to receive and such Non-Government Aided Educational Institutions liable to pay at that very stage, the gratuity subject to the condition of such employees having rendered "continuous service for not less than five years" and subject further to two provisos to Section 4(1) of the Act of 1972.”

21. Finally, the Hon’ble Apex Court in the case of Jagdish Prasad Saini (supra) has held in Para 20 to 23 as under:-

“20. Evidently, these Rules were framed to enable the absorption of employees and teachers of non-government aided institutions. What is relevant for the purposes of this case is that by Rule 5(viii), carry forward of existing privilege leave is denied; likewise, the period of service in aided institutions is not to be reckoned for the purpose of gratuity Under Rule 5(ix). Every employee had to furnish an undertaking in the prescribed form to accept the terms and conditions. Ordinarily no public employer can be faulted in imposing pre-conditions before it recruits an employee. However, such conditions cannot be arbitrary, or so onerous as to be unconscionable. In the opinion of this Court, the condition in Clause (viii) of Rule 5 i.e., carry forward of balance privilege leave, is barred and requiring employees to seek encashment from their previous employer, i.e., aided institutions, is an arbitrary and unconscionable condition, which cannot be enforced. Speaking that such conditions are enforceable, this Court, recently, in Pani Ram v. Union of India and Ors. 9 after quoting the observations in Central Inland Water Transport Corporation Limited and Anr. v. Brojo Nath Ganguly and Anr.10 held as follows:

“23. ....Right to Equality guaranteed Under

Article 14 of the Constitution of India would also apply to a man who has no choice or rather no meaningful choice, but to give his assent to a contract or to sign on the dotted line in a prescribed or standard form or to accept a set of Rules as part of the contract, however unfair, unreasonable and unconscionable a Clause in that contract or form or Rules may be.”

21. This Court had categorically ruled, in Senior Higher Secondary School (supra) that leave encashment is part of salary. In the scheme of the 1993 Rules, the assessment of, and determination of the extent of, aid to be granted to any institution, is provided by Rule 13. What forms part of the approved expenditure that would be the content of aid, is provided by Rule 14. In the present case, the management establishment was recipient of 70% aid, in the form of grant. In these circumstances, the State cannot shrug its responsibility to shoulder its part of the responsibility to pay the Appellants the share of leave encashment benefits, and hide behind either Rule 5 (viii) or the undertaking executed by them. The Appellants are held entitled to privilege leave entitlement benefits. Such benefit shall be calculated from the date they entered the service of the establishment till the date of their absorption, by the State, in 2016. The State shall pay the benefits due to the extent of 70%, and the balance 30% shall be payable by the management establishment.

22. On the issue of gratuity, again, the question of liability has been conclusively settled. Although the management relied on a Chhattisgarh High Court decision Ambika Mission Boys Model School (supra), this Court is of the opinion that it cannot be construed as an authority, because the court in that case analysed the provisions of the Payment of Gratuity Act, 1972, as amended in 2009. However, in the present case, the scheme of the 1993 Rules, which contained the conditions of grant, categorically cast the liability to pay gratuity on the employer, i.e., the aided establishment, i.e., the fourth, fifth and sixth Respondents in this case. Furthermore, Rajasthan Welfare Society (supra) is an authority, in that it considered the effect of the 1993 Rules, and held that it is the management of the aided institution which has to

bear the liability towards payment of gratuity:

“7. Rule 10 provides for general conditions governing grant-in-aid. It inter alia, provides that every institution which applies for grant-in-aid shall be deemed to have accepted its obligation to comply with the conditions laid therein, one of it being that the Management shall appoint teachers and other staff and shall follow the conditions of service, as laid down in the Rules. Rule 11 deals with the procedure for grant-in-aid. Rule 13 deals with the assessment of annual recurring grant. In, inter alia, provides that annual recurring grant will be given on the basis of estimated expenditure of the current year and be subject to adjustment from the grant payable in the next year. It also stipulates that the approved expenditure shall be arrived at according to the Rules and such other instructions that may be issued from time to time. Rule 14 deals with approved expenditure and to the extent relevant for the present case reads as under:

Rule 14. Approved Expenditure- Approved expenditure referred to in Rule 13 above, shall related to the following items only- All the items from (a) to (v) mentioned below will form component 'A' of the admissible items of the expenditure.

(a) Actual salary, and provident fund contribution not exceeding 8.33% in respect of teaching and non-teaching staff.

(b) to (v) ....

8. Note 2 appended to Rule 14 is relevant for the present purposes and reads thus:

Note - 2. Charges on account of contribution made by the Institution to a pension fund or a gratuity scheme or on account of the pension or gratuity paid to former teachers are ordinarily not admitted for the purpose of grant-in-aid unless the Rules on the subject are approved by Government;

Provided that in the case of staff obtained on lent services from any State Government or Government of India, pension and leave salary contribution shall be

allowed as approved expenditure.

9. Rule 82 provides that the employees of the aided educational institution shall be entitled to gratuity as payable under the Payment of Gratuity Act, 1972, as

amendedfromtimetotime.

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14. The gratuity cannot be termed to be an emolument for the time being payable to the employees so as to come within the definition of salary defined in Section 2(r) of the Act. Further, Rule 14 uses the word 'actual salary'. Be that as it may, it seems clear the non-recurring payment of this nature cannot be included in the definition of salary. Gratuity is payable at the time of retirement/ termination of the employment. Reliance on the decision of the case of Metal Box Co. of India Limited v. Their Workmen MANU/SC/0120/1968 : (1969) I LLJ

785 (SC) can render little assistance to the Appellant. It is a case under Payment

of Bonus Act. It was only dealing with accountancy principles. Observations were made that an estimated liability under the gratuity schemes even if it amounts to a contingent liability and is not a debt under the Wealth Tax Act, if properly ascertainable and its present value is fairly discounted, is deductible from the gross receipts while preparing the profits and loss account. In trading circles or in Rule or direction in the Bonus Act, there was no prohibition from such a practice. The question in that case was whether while working out the net profits the trader can provide from his gross receipts his liability to pay a certain sum for every additional year of service which he receives from his employees. It was answered in affirmative. If such liability was properly ascertainable, it was possible to arrive at a proper discounted vale. This decision, in our view, is not relevant to determine the point in issue in the present case.

15. Further, gratuity cannot be included in the approved expenditure as Under Rule 9 the State Government can sanction the grants under four Heads provided therein and gratuity does not fall under any one of them. It is not claimed that the gratuity falls under Heads 2 to 4. The Head No. 1 is 'maintenance or recurring grant'. Admittedly a gratuity cannot come under the category of maintenance. It is also not a recurring grant as already noticed hereinbefore. It is, thus, clear that payment of gratuity cannot come under any of the four categories mentioned in Rule 9.

16. In view of the aforesaid, the gratuity within the meaning of the Act and the Rules cannot form part of recurring grant. It is not includable as part of approved expenditure for the purposes of computing the amount of grant payable to the purposes of computing the amount of grant payable to the Appellant. In this view, communication dated 26th May, 1994 of Government of Rajasthan to the effect that the Rules do not provide for grant-in-aid on amount of gratuity, the same being not included in the approved expenditures, cannot be held to be illegal. This will, however, not affect the rights of the employees to get the gratuity from the concerned institution.

17. Before parting, we wish to note that if representations are made by aided Non-Government Educational Institutions, the State Government would consider sympathetically the question of the gratuity amount payable to the employees being taken into consideration for the purpose of computing the amount of grant-in-aid. We, however, clarify that pending making of such representation and its consideration, the payment of gratuity to the employees shall not be delayed.

Neither has Rule 82 changed, nor has any other material been brought to the notice of the court, to say that the management, i.e., Respondent Nos. 3-7 are absolved of their liability to pay gratuity, upon termination of their relationship with the Appellants as their employers. Rule 82 is a condition of grant, which meant that the management establishment was conscious and aware of its liability when it applied and was granted aid, under the 1993 Rules. Therefore, it cannot escape its liability on that score.

23. In view of the above discussion, it is held that with respect to leave encashment, the State and the Respondent Nos. 3 to 7 are liable to pay the Appellants, in the ratio of 70:30 respectively. The Respondent State shall, within four weeks from today, determine the extent of entitlement of each Appellant, and communicate the extent of amount payable by the management establishment (Respondent Nos. 3 to 7), to the Appellants. These amounts shall be paid by all the Respondents, within six weeks from today. The Respondent Nos. 3 to 7 shall also calculate and pay the amount of gratuity, to the Appellants (on the basis of their initial date of entry in the school, till the date of order of absorption, by the Respondent State), within six weeks from today. Since both sets of Respondents contested their liability and denied them to the Appellants, the amounts payable to the Appellants shall also carry interest, at the rate of 10% from the date(s) of their entitlement, till the date of payment."

22. Hence, it is clear that the employees cannot be compelled to wait till the stage of their retirement. The Non-Educational Aided Institution is expected to make the payment of gratuity and leave encashment of Privilege Leave to the respondent-employees for the period during which they remained under the employment of such institutions, after determining the due amount under these heads, and after making payment of the same to its erstwhile employees, a detailed information can be sent by such educational institution to the State for doing the needful at the time of actual retirement of such employees.

23. So far as the apprehension of petitioner-institution that double payments of the gratuity and encashments of Privilege Leaves to the respondents will be made from the Government, is ill founded inasmuch as, the job of the petitioner-institution would be over after calculating and determining the due amount of the respondent-employees under these heads. After making payment of these amounts to them, the petitioner-institution may send the details in this regard to the Government, so that the Government may take care of the fact that certain amount is received by the respondent-employees from the petitioner-institution and the rest of the amount would be paid to them at the time of their retirement, on attaining the age of superannuation. The issue of payment of balance amount would be between the Government and the respondent-employees which would be taken care of by the Government at the appropriate time of their retirement.

24. Now the next question for consideration of this Court is, whether the opportunity of cross-examination was required to be given to the petitioner-institution by the Tribunal before passing the impugned order?

25. The counsel for the petitioner submitted that no opportunity was given to the petitioner to cross-examine the respondent-employees. The applications submitted under Section 21 of the Act of 1989 are generally decided in a summary manner on the basis of the documents, affidavits and counter affidavits submitted by the parties to the litigation and that is why the application in question filed by the respondent-employees was decided in a summary manner by the Tribunal. It is worthy to note here that no prayer was ever made before

the Tribunal by the petitioner-institution that they wanted to cross-examine the respondent-employees or any of the witnesses, thus, there appears no reason for the petitioner-institution to raise this plea now before this court. The principles of natural justice have not been violated because the impugned judgment has been passed by the Tribunal, after giving notice and opportunity of hearing to the petitioner-institution. The judgments relied upon by the counsel for the petitioner-institution in the case of Tagore Bal Niketan Madhyamik Vidyalaya (supra), Ayaaubkhan Noorkhan Pathan (supra) and Ramswaroop Masawan (supra) are not applicable in the facts and circumstances of the present case and the same are distinguishable.

26. The Court finds no force in the submissions of the petitioner-institution that the arrears of pay and selection scale have not been calculated by the Tribunal. There was no occasion before the Tribunal to calculate the arrears of the benefits extended to the respondent. Now, it is between the petitioner-institution and respondent-employees to calculate the arrears as per the length of service of the respondent-employees in accordance with the Rules, and proceed accordingly.

27. In view of the above discussions, this Court finds no error in the impugned order passed by the Tribunal. All these writ petitions are disposed of with the following directions:-

(i) the petitioner-institution would determine the amount of gratuity and leave encashment for the period during which respondent-employees have worked with the petitioner-institution.

(ii) the amount towards gratuity and the leave encashment would be accounted by the petitioner-institution to the extent of their share in view of their grant-in-aid. After calculating the total amount of gratuity and leave encashment, the same would be paid to the respondent-employees and the details of the same would be sent by them to the State for doing the needful at the time of retirement of the respondents.

(iii) the entire gratuity amount due towards the respondents-employees would be paid by petitioner-institution to the extent of the period when the respondents remained under the employment of the petitioner-institution.

(iv) After making the above payment to the respondent-employees, the petitioner-institution would send the details in this regard to the State for doing the needful at the time of retirement of the respondents.

28. Stay application and all pending applications stand disposed of.

29. No order as to costs.