

(2013) 05 RAJ CK 0211
In the Rajasthan High Court
Case No : Civil Writ Petition No. 7134 of 2012

Seth G.L. Bihani S.D. Sr. Secondary School

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 17-05-2013

Acts Referred:

Citation : (2013) 4 CDR 2098 : (2014) 3 WLN 130

Hon'ble Judges : Govind Mathur, J

Bench : Single Bench

Advocate : Sanjeet Purohit, for the Appellant; Minu Purohit on behalf of Dr. G.R. Kalla, Government Advocate and Mr. Sudhir Tak, Government Counsel, for the Respondent

Final Decision : Allowed

Judgement

Govind Mathur, J.—By communication dated 8.11.2011 the Principal Secretary to the Government of Rajasthan, Department of School & Sanskrit Education (Group-5), Jaipur issued necessary instructions to the Director, Elementary Education, Bikaner; Director, Secondary Education, Bikaner and the Director, Sanskrit Education, Jaipur relating to pay fixation of the employees working with non-government educational institutions in the pay-scales prescribed under the Rajasthan Civil Services (Revised Pay) Rules, 2008 (hereinafter referred to as the Rules of 2008). The instructions so given are:--

(1) The pay fixation of teaching and non-teaching staff of the non-government educational institutions in the Pay Rules of 2008 be made w.e.f. 01.9.2006 in the same manner as applied to the Rajasthan government servants. The arrears accruing as a consequent to fixation of pay in the Revised Rules of 2008 w.e.f. 2006 shall not be borne by the State Government. The non-government educational institutions shall be liable to make payment of such arrears from their own financial sources.

(2) The pay of the employees of the non-government educational institutions

employed in State service as per the provisions of Rajasthan Voluntary Rural Education Service Rules, 2010 should also be fixed under the Rajasthan Civil Services (Revised Pay) Rules, 2008 w.e.f. 01.9.2006, however, but in view of the undertaking given by them as per Clause (vii) of Rule 5 of the Rajasthan Voluntary Rural Education Service Rules, 2010 no liability to make payment of arrears shall be borne by the State Government-may that he relating to pay, selection grade, career progression or career advancement scheme. The payment of such arrears shall be borne by the non-government educational institutions where the employee concerned was working prior to joining State service.

In view of the instructions referred above, the non-government educational institutions are liable to make payment of arrears of pay, selection grade, career progression or career advancement scheme to their existing employees as well as to the employees who are now in employment of the State Government as a consequent to application of the Rajasthan Voluntary Education Service Rules, 2010. This batch of writ petitions is preferred by the non-government educational institutions to challenge the decision of the State Government referred in the communication dated 8.11.2011.

2. To understand the controversy involved in these petitions, it shall be appropriate to refer to certain relevant provisions and other connected facts.

Rajasthan Non-Government Education Institutions Act, 1989:

To provide for better organization and development of education in non-government educational institutions in the State of Rajasthan, the Rajasthan State Legislature enacted "Rajasthan Non-Government Education Institutions Act, 1989". The Act was brought into force on 01.1.1993.

3. Chapter-III of the Act pertains to aid, accounts and audit relating to non-government educational institutions. As per Sec. 7 of the Act, grant of aid by the State Government is available to the recognized non-government educational institutions. The may cover such part of the expenditure of the institution as may be prescribed. The aid against salary of the employees of an institution cannot be used for any other purpose. The Sanctioning Authority may stop, reduce or suspend aid on breach of any of the terms and conditions prescribed for such grant.

4. Section 16 of the Act provides that the State Government may regulate recruitment and conditions of service including the conditions relating to qualification, pay, gratuity, insurance, age of retirement, entitlement of leave, conduct and discipline of persons appointed as employees of the aided institutions.

5. As per Sec. 29 the scale of pay and allowance except compensatory allowance with regard to the employees of aided institution shall not be less than the staff belonging to similar category in government institutions. For ready reference Secs. 16 and 29 are quoted:--

16. Power of the State Government to regulate the terms and conditions of employment.--(1) The State Government may regulate the 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:

Provided that the rights and benefits accruing to an employee of an existing institution under the grant-in-aid rules in force at the commencement of this Act shall not be varied to the disadvantage of such employee:

Provided further that every such employee shall be entitled to opt for such terms and conditions of service as were applicable to him immediately before the commencement of this Act:

Provided also that, irrespective of the age of retirement prescribed, action may be taken for compulsory retirement of such an employee after completion of 25 years of service or on attainment of the age of 50 years whichever is earlier, in accordance with the procedure as may be prescribed.

(2) Every recognized institution shall constitute a provident fund for the benefit of its employees in such manner and subject to such conditions as may be prescribed and contribute to such fund and pay interest on the deposited amount at such rate as may be prescribed from time to time.

29. Pay and allowance of employees.--(1) The scales of pay and allowances except compensatory allowances with respect to all the employees of an aided institution shall not be less than those prescribed for the staff belonging to similar categories in Govt. institutions.

(2) Notwithstanding any contract to the contrary, the salary of an employee of a recognized institution, for any period after the commencement of this Act, shall be paid to him by the management before the expiry of the fifteenth day or such earlier day, as the State Govt. may, by general or special order appoint, of the month next following the month in respect of which or part of which it is payable:

Provided that if at any time the State Government deems it fit, it may prescribe a different procedure for payment of salary & allowances.

(3) The salary shall be paid without deductions of and kind except those authorized by the rules made under this Act or by any other law for the time being in force.

The Rajasthan Non Government Educational Institutions (Recognition, Grant-in-aid and Service Conditions etc.) Rules, 1993:

6. Section 43 of the Act empowers the State Government to frame Rules for the purpose of carrying into effect the provisions of the Act, accordingly, The Rajasthan Non Government Educational Institutions (Recognition, Grant-in-aid and Service Conditions etc.) Rules, 1993 (hereinafter referred to as "the Rules of 1993") were framed. Rule 34 of the Rules of 1993 provides that the scales of pay

and allowances of the staff of the aided educational institutions shall not be less than those prescribed by the Government for the staff of similar category in the Government educational institutions. The term "Allowance" include Dearness Allowance, House Rent Allowance and City Compensatory Allowance.

7. In view of the provisions referred above, parity is required to be maintained among the employees of government institutions and the non-government educational institutions relating to the scale of pay and allowances.

Government of Rajasthan notification dtd. 25.1.1992

The Government of Rajasthan under a notification dated 25.1.1992 prescribed selection grades for its employees in the cadre of Class-IV, ministerial and subordinate service. The selection grades under the notification aforesaid were prescribed to remove stagnation in service due to less opportunity for promotion. As per the notification dated 25.1.1992 the employees concerned were required to be awarded selection grade on completion of 9, 18 and 27 years of service. Suffice to mention that on application of the Act of 1989 and the Rules framed thereunder pay-scales of all the teaching and non-teaching staff of the non-government educational institutions came at par with the similar category of employees working with Government institutions.

Judgment given by Full Bench in S.R. Higher Secondary School & Others case:

The decision of the Government of Rajasthan notified under the order dated 25.1.1992 was not applied by the non-government educational institutions for their employees, hence, several employees approached the Non-Government Educational Tribunal to have a direction for the grant of selection grades as per the notification dated 25.1.1992. The applications so preferred came to be accepted, thus, the aided institutions preferred petitions for writ before this Court to challenge the order passed by the Tribunal.

8. The issue so agitated came to be resolved by a Full Bench decision of this Court in S.R. Higher Secondary School Vs. Rajasthan Non Government Educational Institutions Tribunal and Others, The Hon'ble Full Bench in the case of S.R. Higher Secondary School (supra) declared the employees of non-government educational institutions entitled to selection scales as given to the employees/Teachers serving in Government institutions. While declaring the entitlement of the employees for grant of selection grades as per the notification dated 25.1.1992, it was also held by the Full Bench that the selection scale being salary and once the State Government has decided to grant aid to a non-government educational institution it will form a part of grant of aid and, thus, the State Government in the eventuality of sanctioning grant will pay the same in accordance with the percentage prescribed to the category in which the non-government educational institutions is placed.

9. In light of Full Bench judgment referred above, the Government of Rajasthan granted aid to the non-government educational institutions against the selection

grades allowed to their employees.

Rajasthan Voluntary Rural Education Service Rules, 2010.

The Governor of Rajasthan while exercising powers conferred by proviso to Article 309 of the Constitution of India framed "Rajasthan Voluntary Rural Education Service Rules, 2010" for regulating appointment and other service conditions of persons appointed in the Rajasthan Voluntary Rural Education Service. Rule 4 of the Rules of 2010 provides procedure for appointment in government service and Rule 5 prescribes terms and conditions for appointment of employees in Government service. The relevant portion of Rule 4 and Rule 5 referred above reads as follows:

4. Procedure of appointment in government service.--(1) 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 of the concerned appointing authority.

5. Terms and condition 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.

(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 Service (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 Scale for Government College Teachers including Librarian and PTI Rules, 2009 and Rajasthan Civil Services Revised Pay Scales for Government Polytechnic College Teachers, Librarians and Physical Training Instructors rules, 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.

(emphasis supplied)

(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 not be eligible for pension scheme. 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. They may either continue to be members of the Contributory Provident Fund or they may opt for the Rajasthan Civil Service (Contributory Pension) Rules 2005. Employer's contribution towards Contributory Provident Fund shall be paid by the Government for the period they are in government service.

(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.

10. The controversy involved in these petitions:

Several employees of the petitioner-Institutions opted for appointment to Rajasthan Voluntary Rural Education Service created under the Rules of 2010. On application of the Rajasthan Civil Services (Revised Pay) Rules, 2008 the pay of such employees was required to be fixed in the reused pay scales. The Rules of 2008 were made applicable w.e.f. 01.9.2006, as such, fixation of pay was required to be made from the date aforesaid. The fixation in the revised pay-scales w.e.f. 01.9.2006 resulted into accrual of arrears of pay for the employees who were inducted to Rajasthan Voluntary Rural Education Service and also to other employees of the non-government educational institutions. The arrears of pay due to revision of pay-scales were required to be paid by the Government of Rajasthan in the form of grant-in-aid to the non-government educational institutions, but under the impugned communication dated 8.11.2011 such liability was transferred to the non-government educational institutions. Such transfer of liability was made in view of Clause (vii) of Rule 5 of the Rules of 2010, which prescribes that:--

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.

11. The petitioner Institutions have given challenge to transfer of such liability on the count that till appointment of employees of the non-government educational institutions to Rajasthan Voluntary Rural Education Service, the State was liable to provide grant against salary and other allowances including selection grades, as such, the arrears accruing to the employees as a consequent to fixation of their pay in the revised pay-scales should be borne by the State only.

12. As per learned counsel for the petitioners in the case of S.R. Higher Secondary School (supra), a Full Bench of this Court after examining all relevant provisions held that once the aid is sanctioned to a non-government educational institution, the Sanctioning Authority is under an obligation to allow proportionate grant of salary and the salary includes selection grade and other allowances. In view of it, the non-disbursal of aid on fixation of pay of the employees in the revised pay-scales w.e.f. 01.9.2006 shall be in violation of the law laid down by Full Bench by taking into consideration all the relevant provisions of the Act of 1989 and the Rules framed thereunder.

13. On the other hand, it is contended by Ms. Minu Purohit, learned counsel for the State that the respondents neither violated the law laid down by this Court in S.R. Higher Secondary School nor have transferred their liability to the petitioner under the communication dated 8.11.2011. As a matter of fact, the decision referred in the communication aforesaid is in consonance with the provisions of Clause (viii) of Rule 5 of the Rules of 2010 that provides for no payment of

arrears on any account whatsoever shall be paid to the employees by the State Government for the period prior to the date of their joining the Rajasthan Voluntary Rural Education Service.

In view of the rival contentions, the issue that deserves adjudication in this petition for writ is:--

Whether the State Government was liable to extend aid to the non-government educational institutions against salary including selection grades, revision of pay-scales etc., relating to the employees of such institutions prior to coming into effect of the Rules of 2010?

14. If yes, then whether "the State Government in light of Clause (vii) of Rule 5 of the Rules of 2010 is right in absolving itself from its liability to grant aid to the non-government educational institutions as notified under the communication dated 8.11.2011, issued by the Principal Secretary to the Government of Rajasthan, Department of School & Sanskrit Education (Group-5), Jaipur".

15. Heard learned counsel for the parties.

In *S.R. Higher Secondary School & Ors. vs. Rajasthan Non-Government Educational Institutions Tribunal & Ors.* (supra), a Full Bench of this Court by taking into consideration relevant provisions of the Act of 1989 and the Rules framed thereunder examined the question that whether grant of selection scale to government servants as per the circular dated 25.1.1992 is a promotion to higher post or a higher pay-scale in the same post, and if it is pay-scale, then whether the Teachers of non-government educational institutions would also be entitled for the same at par with the employees of the Government institutions? The Full Bench also examined the question that as to whether the State is obliged to contribute grant-in-aid for the selection scale provided under the circular dated 25.1.1992.

16. The Full Bench after taking into consideration the provisions of Sec. 29 of the Act of 1989 and Rule 34 of the Rules of 1993 arrived at a definite conclusion that the employees of aided educational institutions must be paid the same pay-scale and allowances as the employees in Government institutions are getting. The selection grade provided under the notification dated 25.1.1992 is not a promotion to higher post but a higher pay-scale on the same post, therefore, it shall also be payable to the employees of non-government educational institutions.

17. The question that is having much significance in the present controversy is regarding liability of the State Government to provide aid to the non-government educational institutions against salary. The Full Bench examined this issue in lucid and held as under:--

19. Now, it brings us to the question as to whether the State is obliged to contribute grant-in-aid for the selection scale provided under the circular dated 25.1.1992. The Act of 1989 has been enacted to provide for better organization

and development of education in the Non-Government educational institution in the State of Rajasthan Sec. 7 of the Act provides for grant of aid. Only a recognized institution run by a Society registered under the Societies Registration Act would be given the grant in aid, subject to such terms as may be prescribed. The sanctioning authority may sanction and distribute aid to a recognized institution from time to time in accordance with the procedure as may be prescribed. In exercise of the powers conferred by Rule 43 of the Rules, the State Government framed Rules regulating recognition, grant of aid and service conditions etc. of the NGEIs. Rule 10 of the Rules provide for general conditions governing grant-in-aid. Rule 11 deals with procedure, for grant-in-aid. Rule 12 is for finalization of maintenance or recurring grant. Rule 13 is in regard to assessment of annual recurring grant on the basis of estimated expenditure of the current year and will be subject to adjustment of grant payable in the next year Rule 14 deals with approved expenditures. Rule 15 is for payment of recurring grant. Rule 16 deals with non recurring grant. Sec. 7 of the Act reads as under:--

Grant of aid to recognized institutions.-(1) No aid shall be claimed by an institution as a matter of right.

(2) Unrecognized institutions shall not be eligible to receive any aid.

(3) Subject to such terms and conditions as may be prescribed, the sanctioning authority may sanction and distribute aid to recognized institutions from time to time in accordance with the procedure as may be prescribed.

(4) The aid may cover such part of the expenditure of the institution as may be prescribed.

(5) No amount out of aid given for salary of the employees of an institution shall be used for any other purpose.

(6) The sanctioning authority may stop, reduce or suspend aid on breach of any of the terms and conditions prescribed in this behalf.

(7) The amount of aid may normally be paid to the secretary of the managing committee of an institution but, in special circumstances and for reasons to be recorded in writing, such amount may be paid to any person authorized by the Director of Education or by any other officer empowered by him in this behalf.

On the basis of Sec. 7 it is contended by the counsel for State that no aid can be claimed as a matter of right. It is for the government to decided not only whether the grant-in-aid is to be given to recognized institution but also as to how much and under what heads the grant is to be sanctioned to the NGEIs. In counter it is submitted by the counsel for petitioners that once educational institution is registered, it is entitled to grant-in-aid from government as a matter of right and for this proposition reliance was placed on the decision of State of Maharashtra vs. Manubhai Pragali Vashi (11) This case, in our opinion, does not assist the petitioners in contending that they are entitled as a matter of right to

get the grant-in-aid from the State. It was a case in which the Govt. of Maharashtra denied grant-in-aid to the recognized private law colleges while the same was extended to other faculties of the private colleges. The Court emphasized upon the necessity of giving legal education and to fulfil the obligation under Article 390A of the Constitution of providing free legal aid and held that the faculty of law in the matter of (sic) grant-in-aid run by private recognized colleges cannot be discriminated on the ground of being a professional course falling upon the economic resources. The Court emphasizing upon the necessity of maintaining status of legal education held that these aspects necessarily flowing from Articles 21 and 39A of the Constitution were totally lost sight of by the Government when it denied the grant-in-aid to the recognized private law colleges as was afforded to other faculties. The State has abdicated the duty enjoined on it by the relevant provisions of the Constitution as aforesaid. Accordingly, the Court directed the Government to extend grant-in-aid scheme to Govt. recognized private law colleges on the same criteria on which such grants were given to other faculties viz. Arts, Science, Commerce, Engineering and Medicine from the Academic Year 1995.

Under sub-sec. (1) of Sec. 7, educational institutions cannot claim grant-in-aid from the government as a matter of right i.e. to say on an application moved by an NGEI for grant of aid, it is not incumbent on the government to grant aid to such an institution if reasonable ground exists for not granting aid to such an institution. However, the government cannot refuse grant arbitrarily or without there being any justifiable reason. In the present case all the petitioners have been allocated grant-in-aid. The question really is whether once the aid is sanctioned, the sanctioning authority has a power to fix it exercising its own discretion or the grant has to be made as provided under Sub-secs. (3) and (4) of Sec. 7 of the Act read with the Rules and in the matter of quantum of grant in aid no discretion is left with the sanctioning authority.

It is an admitted fact that the petitioners are enjoying grant-in-aid from the government. From the scheme of the Rules, it appear that the assessment of annual recurring grant would be sanctioned on the basis of estimated expenditure of the current year, and the institutions shall be categorized under advice of the grant-in-aid Committee and would be allowed grant-in-aid. 20. Rule 13(2) speaks of Approved expenditure to be arrived at according to these Rules and such other instructions that may be issued from time to time. Rule 13(3) speaks of categorizations of the institutions under advice of the grant-in-aid Committee and to be allowed grant-in-aid as:--

Rule 14(a) includes actual salary, and provident fund contribution not exceeding 8.33% in respect of teaching and non-teaching staff, apart from the other approved expenditures as laid down in Rule 14. "Salary" is defined in Sec. 2(r) of the Act which means the aggregate of the emoluments of an employee including dearness allowance or any other allowance or relief for the time being payable to him, but does not include compensatory allowance. The extended definition of

salary provides for aggregate of emoluments received by the teacher which also includes all allowances excluding the compensatory allowance and also extended to the relief for the time being payable to the teacher. The selection scale given to the teacher shall certainly fall within the four corners of the definition of "Salary". Although Sec. 7 of the Act provides that no aid shall be claimed by an institution as a matter of right, once it is decided to grant aid under Sec. 7(3) of the Act, the sanctioning authority is to sanction and distribute to a recognized institution aid from time to time in accordance with the procedure as may be prescribed. Sec. 7(4) of the Act provides that the aid may cover such part of the expenditure of the institution as may be prescribed. Sec. 7(3) read with Sec. 7(4) makes it clear that the aid which has to be granted to a recognized institution shall cover the estimated expenditure of the current year and the approved expenditure as provided under Rule 14 of the Rules. Once it is decided by the Government to provide grant-in-aid in accordance with Secs. 7(3) and 7(4) of the Act, it leaves no room for the sanctioning authority to exercise its discretion to grant or not to grant the aid in regard to the items covered under Sec. 7(3) and 7(4) of the Act. Selection scale being salary, once the State Government had decided to grant aid to an NGEI, it will form the part of the grant-in-aid and thus the State Government in the eventuality of sanctioning the grant will pay for the same in accordance with the percentage prescribed to the category in which the NGEIs is placed.

18. As per law laid down by Full Bench in the case aforesaid, the selection grade being salary, shall form part of grant-in-aid and the State Government in the eventuality of awarding grant is required to pay the same in accordance with the percentage prescribed. The State Government, thus, was settled with a liability to sanction and award proportionate aid for grant of salary to the non-government educational institutions receiving aid.

19. A deviation from the obligation to provide aid to the non-government educational institutions against salary of the employees is sought to be made under the impugned communication dated 8.11.2011. Suffice to mention that the deviation sought to be made refers for payment of arrears from 01.9.2006 onwards. The deviation is founded on Clause (vii) of Rule 5 of the Rules of 2010. If the Rules of 2010 would have not been introduced, the State Government would have released the grant including arrears of salary for the period commencing from 01.9.2006 onwards. Clause (vii) of Rule 5 of the Rules of 2010 as already stated mentions that 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 joining by the employee concern to the State Government Voluntary Education Service. The provision as a matter of fact is a condition for appointment of employees to the service created under the Rules of 2010. The Rules clearly indicates the purpose and object i.e. to absorb employees of non-government educational institutions working against aided and sanctioned posts in Government employment. The service so created is having only one mode of

appointment, that is taking over of employees from non-government educational institutions working against the sanctioned and aided posts and further the entire cadre created is a dying one. While giving appointment to the service, an undertaking was also sought from teach of the employees in consonance to Clause (vii) of Rule 5 of the Rules of 2010. Clause (vii) that restricts him to claim arrears from Government of Rajasthan. It, however, does not bar the employees to claim the same from the educational institutions where they were working prior to appointment under the Rules of 2010. The resultant is that Clause (vii) transfers liability of the State Government to the institution concern to pay complete salary to such employees from 01.9.2006 onwards. This liability otherwise was of the State Government by force of the provisions of the Act of 1989 as discussed and interpreted by Full Court in S.R. Higher Secondary School (supra). As a matter of fact, by Clause (vii) of Rule 5 of the Rules of 2010 a mode is adopted by the State Government to escape itself from its statutory liability to award grant to the non-government educational institutions while making payment of arrears of salary to the employees.

20. As already stated, Clause (vii) of Rule 5 is a condition for employees for not claiming arrears from the State Government and that is having no concern with the non-government educational institutions, where the employees concern were earlier working. This condition puts a restriction upon the employees for not claiming arrears of pay from the State Government but it in no manner prohibits them to claim the same from the non-government educational institutions, meaning thereby, the non-government educational institutions where the employees concern were earlier working are required to pay all arrears to such employees. The non-government educational institutions, however, as a matter of fact in view of the provisions of the Act of 1989 and the Rules framed thereunder and also in view of the law laid down by Full Bench of this Court in the case of S.R. Higher Secondary School (supra) had a right to receive aid against salary of the employees working against sanctioned and aided posts till absorption/appointment of such employees to a service created under the Rules of 2010. In the event of claim, such arrears by the employees, the non-government educational institutions, thus, can certainly claim for grant of aid from the State Government. Pertinent to note that the Clause (vii) of Rule 5 of the Rules of 2010 nowhere restricts the non-government educational institutions to have such aid for making payment of salary to its employees, who were subsequently taken on State roll under the Rajasthan Voluntary Rural Education Service created under the Rules of 2010. The Government of Rajasthan by its decision circulated under the impugned communication dated 8.11.2011, as a matter of fact, has intended to strip non-government educational institutions from their valuable right to have grant-in-aid. No such administrative decision could have been taken to take off the rights already accrued. It is well settled that even by application of Rule with retrospective effect the rights already vested/accrued cannot be taken away. Hon''ble the Supreme Court in State of Gujarat vs. Raman Lal Keshav Lal Soni, reported in 1983 Lab. I.C. 391 while

dealing with an eventuality where a vested right was taken away by making amendment in Rules with retrospective effect held as under:--

Now in 1978 before the Amending Act was passed thanks to the provisions of the principle Act of 1961 the ex-municipal employees who had been allocated to the panchayat service as Secretaries Officer and servants of Gram and Nagar Panchayats, had achieved the status of government servants. Their status as government servants could not be extinguished so long as the posts were not abolished and their services were not terminated in accordance with the provisions of Article 311 of the Constitution. Nor was it permissible to single them out for differential treatment. That would offend Article 14 of the Constitution. An attempt was made to justify the purported differentiation on the basis of history and ancestry as it were. It was said that Talatis and Kotwals who became secretaries, officers and servants of Gram and Nagar Panchayats were government servants, even to start with, while municipal employees who became such secretaries, officers and servants of Gram and Nagar Panchayats were not. Each carried the mark or the "brand" of his origin and a classification on the basis of the source from which they came into the service, it was claimed, was permissible. We are clear that it is not. Once they had joined the common stream of service to perform the same duties, it is clearly not permissible to make any classification on the basis of their origin. Such a classification would be unreasonable and entirely irrelevant to the object sought to be achieved. It is to navigate around these two obstacles of Article 311 and Article 14 that the Amending Act is sought to be made retrospective, to bring about an artificial situation as if the erstwhile municipal employees never became members of a service under the State. Can a law be made to destroy today's accrued constitutional rights by artificially reverting to a situation which existed 17 years ago? No.

The legislation is pure and simple self deceptive if we may use such an expression with reference to a legislature made law. The legislature is undoubtedly competent to legislate with retrospective effect to take away or impair any vested right acquired under existing laws but since the laws are made under a written Constitution and have to conform to the dos and don'ts of the Constitution, neither prospective nor retrospective laws can be made so to contravene fundamental rights. The law must satisfy the requirements of the Constitution today taking into account the accrued or acquired rights of the parties today. The law cannot say 20 years ago the parties had no rights, therefore, the requirements of the Constitution will be satisfied if the law is dated back by 20 years. We are concerned with today's rights and not yesterday's. A legislature cannot legislate today with reference to a situation that obtained 20 years ago and ignore the march of events and the constitutional rights accrued in the course of the 20 years. That would be most arbitrary, unreasonable and a negation of history.....Today's equals cannot be made unequal by saying that they were unequal 20 years ago and we will restore that position by making a law today and making it retrospective. Constitutional rights, constitutional

obligations and constitutional consequences cannot be tampered with that way. A law which if made today would be plainly invalid as offending constitutional provisions in the context of the existing situation cannot become valid by being made retrospective. Past virtue (constitutional) cannot be made to wipe out present vice (constitutional) by making retrospective laws. We are, therefore, firmly of the view that the Gujarat Panchayats (Third Amendment) Act, 1978 is unconstitutional as it offends Articles 311 and 14 and is arbitrary and unreasonable.

21. In the case of R.S. Ajara and Others Vs. State of Gujarat and Others, and in Ex-Capt. K.C. Arora and Another Vs. State of Haryana and Others, the Hon'ble Apex Court reiterated the law laid down in the case of State of Gujarat vs. Raman Lal Keshav Lal Soni (supra) by holding that a benefit that has accrued could not have been taken away by introducing amendment in the Rules retrospectively. The mandate of the judgments referred is that no statutory rule or administrative order can whittle down or destroy any right which has become crystallized and that effects or impairs vested rights.

22. In the case in hand, as already stated earlier Clause (vii) of Rule 5 of the Rules of 2010 is not having application upon the non-government educational institutions like the petitioners and only by an administrative decision, circulated under the communication dated 8.11.2011 a valuable right of receiving proportionate aid under the Act of 1989, the Rules framed thereunder and as per the law laid down in the case of S.R. Higher Secondary School (supra) has been taken away. Such withdrawal of accrued right is apparently bad in view of the discussion made above.

23. For the sake of arguments even it is assumed that by necessary implication the Clause (vii) of Rule 5 of the Rules of 2010 restricts the non-government educational institutions like the petitioners to have aid against salary, then such restriction too is not valid in view of the authoritative pronouncement of the Hon'ble Supreme Court in the cases referred above. The Rule concerned, therefore, is required to be read in consonance with the settled proposition of law, as such, irrespective of Clause (vii) of Rule 5 of the Rules of 2010 the Government of Rajasthan is statutorily abide to sanction and award aid to the petitioner institutions against the salary including revision of pay-scale, grant of selection grades etc., w.e.f. 01.9.2006 onwards till the date of appointment of the employee concern to Rajasthan Voluntary Rural Education Service created under the Rules of 2010. The petitions for writ, therefore, deserves acceptance. Accordingly, the same are allowed. The decision of the Government of Rajasthan under the communication dated 8.11.2011 for transferring liability to make payment of arrears relating to payment of pay, revision of pay, grant of selection grade, career progression or career advancement scheme solely upon the non-government educational institutions is declared illegal. The Government of Rajasthan is directed to sanction and award aid to the petitioners non-government educational institutions to make payment of arrears to their

employees accruing as a consequent to fixation of their pay in the revised pay-scales under the Pay-Scale Rules, 2008 w.e.f. 01.9.2006 onwards till the date of their appointment to Rajasthan Voluntary Rural Education Service created under the Rules of 2010.

No order to cost.