
(2002) 05 RAJ CK 0027

In the Rajasthan High Court

Case No : Civil Writ Petition No. 2565 of 1999

S.R. Higher Secondary School

APPELLANT

Vs

Rajasthan Non Government Educational Institutions Tribunal
and Others

RESPONDENT

Date of Decision : 28-05-2002

Acts Referred:

Constitution of India, 1950 — Article 45
Rajasthan Non-Government Educational Institutions (Recognition, Grant-in-aid and Service Conditions etc. Rules, 1993 — Rule 34
Rajasthan Non-Government Educational Institutions Act, 1989 — Section 29

Citation : (2003) 1 RLW 530 : (2002) 3 WLC 586 : (2002) 5 WLN 3

Hon'ble Judges : Arun Kumar Mishra, C.J;P.P. Naolekar, J;H.R. Panwar, J

Bench : Full Bench

Advocate : M.S. Singhvi, D.K. Parihar, R.N. Upadhyaya, S.G. Ojha and Manoj Bhandari, for the Appellant; C.L. Saini, M. Mridul P.R. Singh, M.K. Kala and B.M. Bhora, for the Respondent

Final Decision : Dismissed

Judgement

Naolekar, J.—The writ petitions are placed before the Full Bench on a reference made by the Division Bench of this Court vide order dated 20.2.2001. The question arose before the Division Bench as to-

whether the teachers of Non Government Educational Institutions (for short "NGEIs") who are receiving grant-in-aid under the Rajasthan Non Government Educational Institutions Act 1989 (for short "the Act") read with the rules framed thereunder, namely the Rajasthan Non Government Educational Institutions (Recognition, Grant-in-aid and Service Conditions etc.) Rules 1993 (for short "the Rules"), are entitled to selection scale as given to the employee/teachers serving in government education institutions by virtue of the circular/order dated 25.1.1992,

whether the government is bound to give grant-in-aid for selection scale of the

teachers of NGEIs receiving aid, and

whether the teachers of NGEIs receiving aid are entitled for leave encashment benefits after retirement under the Act and the Rules framed thereunder

and it was thought proper by the Division Bench to place writ petitions before the Full Bench for determination of the question involved in these writ petitions.

In all these petitions, petitioners are recognized private educational institutions, which are run by various educational societies, receiving aid from the government. Respondents, who are the working/retired teachers of the petitioner educational institutions, had approached the Non Government Educational Institutions Tribunal u/s 21 of the Act for redressal of their grievances regarding grant of selection scale and benefit of leave encashment. The Tribunal allowed their applications which resulted in filing of these petitions by the educational institution who were respondents therein. The Division Bench referred the matter to Larger Bench.

2. The Government of Rajasthan vide circular issued on 23.1.1985, has given selection scale on completion of fifteen years of satisfactory service after regular appointment on a post to the Government servants in the ministerial and subordinate services including isolated posts drawing pay in Rajasthan Civil Services (Revised Pay Scales) Rules, 1983. Similarly, vide circular dated 25.1.1992 the State of Rajasthan has provided selection scales to the employees in class IV, ministerial and subordinate services and those holding isolated posts and drawing pay in revised pay scales after completion of nine, eighteen and twenty-seven years of service on a post from the date of their initial appointment and whose record of service is satisfactory.

After issuance of the circular by the government on 25.1.1992 the question arose as to whether the teachers of NGEIs are entitled to claim the benefit under the aforesaid circular issued, therefore, the government issued another circular issued, therefore, the government issued another circular dated 17.11.1997 clarifying that selection scale will not be available to the teachers of NGEIs.

3. The counsel for petitioners submitted that the grant of selection scale is a substitute for promotion and the Teachers of NGEIs being not entitled for any promotion as there are no promotional avenues available to them, they are not entitled to selection scale. It is further contended that no record is maintained for appraisal of their calibre in service and, therefore, the test laid in the Circular that the government servant will only be entitled for selection scale on completion of 9, 18 and 27 years of satisfactory service, cannot be applied in their cases, it indicates that the circular has no application to the cases of these teachers nor they can claim any benefit under the circular.

4. Before we consider the legal submissions made by the counsel for petitioners we would like to refer to certain decisions of the Apex Court to find out as to how the right to education has been taken note of and as to what is the status of

teachers in NGEIs vis-a-vis the teachers of government schools in the matter of parity of pay scales and other allowances.

In *Mohini Jain v. State of Karnataka* (1)-

"The right to life" is the compendious expression for all those rights which the courts must enforce because they are basic to the dignified enjoyment of life. It extends to the full range of conduct which the individual is free to pursue. The right to education flows directly from right to life. The right to life under Article 21 and the dignity of an individual cannot be assured unless it is accompanied by the right to education. The State Govt. is under an obligation to make endeavour to provide educational facilities at all levels to its citizens."

The need to provide free education to the children until they complete the age of 14 years as a matter of compulsory obligation of the state and to endeavour to secure the right to education thereafter to its citizens subject to financial resources available to it, is envisaged under Article 45 of the Constitution of India.

5. In *State of Kerala v. N.M. Thomas* (2), the apex court expressed.

"...there appears to be a complete unanimity of judicial opinion of this Court that the directive principles and the fundamental rights should be construed in harmony with each other and every attempt should be made by the Court, to resolve apparent inconsistency. The directive principles contained in Part IV constitute the stairs to climb the high edifice of a socialist State and the fundamental rights are the means through which one can reach the top of the edifice."

6. In *Unni Krishnan, J.P. and Ors. v. State of Andhra Pradesh and Ors.* (3), it was observed-

"The right to education which is implicit in the right to life and personal liberty guaranteed by Article 21 must be construed in the light of the Constitution. So far as the right to education is concerned, there are several articles in Part IV which expressly speak of it. Article 41 says that the "State shall, within the limits of its economic capacity and development, make effective provision for securing the right to work, to education and to public assistance in cases of unemployment, old age, sickness and disablement, and in other cases of undeserved want". Article 45 says that "the State shall endeavour to provide, within a period of ten years from the commencement of this Constitution, for free and compulsory education for all children until they complete the age of fourteen years."... A true democracy is one where education is universal, where people understand what is good for them and nation and know how to govern themselves. The three Articles 45, 46 and 41 are designed to achieve the said goal among others. It is in the light of these Articles that the content and parameters of the right to education have to be determined. Right to education, understood in the context of Articles 45 and 41, means; (a) every Child/citizen of

this country has a right to free education until he completes the age of fourteen years and (b) after a child/citizen completes 14 years, his right to education is circumscribed by the limits of the economic capacity of the State and its development. We may deal with both these limbs separately."

"The citizens have a fundamental right to education. The said right flows from Article 21. This right is, however, not an absolute right. Its content and parameters have to be determined in the light of Articles 45 and 41. In other words, every child/citizen of this country has a right to free education until he completes the age of fourteen years. Thereafter, his right to education is subject to the limits of economic capacity and development of the State..."

7. In *Haryana State Adhyapak Sangh and Ors. v. State of Haryana and Ors.* (4), RS Pathak CJ., as he then was, speaking for the court held-

"...In our opinion, the teachers of aided schools must be paid the same pay scale and dearness allowance as teachers in government schools for the entire period claimed by the petitioners...."

8. In *Haryana State Adhyapak Sangh v. State of Haryana* (5), the apex court observed in para 10.

"The judgment of this Court dated 28.7.1988 also accepts the principle of partly in the matter of salaries and dearness allowance of teachers employed in aided schools and those employed in government schools and there is nothing in the judgment which indicates that the said principle of parity is to be applied up to 31.12.1985 only, and not thereafter. In the circumstances we are of the view that the direction of this Court in the judgment dated 28.7.1988 must be construed to mean that the respondents are required to maintain such parity and to revise, from time to time, the pay scales and dearness allowance of the teachers employed in aided schools as and when the pay scales and dearness allowance of teachers employed in government schools are revised. It is, therefore, incumbent upon respondents to revise the pay scales of teachers employed in the aided schools so as to bring the same at par with the pay scales of the teachers employed in government schools with effect from 1.1.1986 and fix the salaries of the teachers employed in aided schools in the revised pay scales with effect from 1.1.1986 and pay the salaries and dearness allowance to these teachers on that basis."

9. In *State of H.P. v. H.P. State Recognised & Aided Schools Managing Committees and Ors.* (6), it is held that the teachers of the aided schools teach the same syllabus and curriculum, prescribed the books and courses as per Government directions and prepare the students for same examinations for which the students studying in government schools are prepared. The qualifications of the teachers are prescribed by the State Government and the appointments are made with the approval of the State Government. It is obvious that the State Government has a deep and pervasive control on the aided schools. The government schools and the aided schools specially after the

Kothari Commission Report-have always been treated on a par. It is further observed that it is too late in the day to say that the teachers in the aided schools are not entitled to parity in the matter of salary, allowances etc. with their counterparts in the government schools.

10. The aforesaid decisions of the apex court clearly lay down that the teachers of aided schools must be paid the same pay scale as teachers in Government schools and there is a parity between the teachers working in the Government schools or in the aided schools for the purposes of pay scale and other service benefits. The court has also noticed the need to provide free education to the children until they complete the age of 14 years as a matter of compulsory educational and the State to endeavour to secure the right to education thereafter to its citizens subject to financial resources available to it as envisaged under Article 45 of the Constitution of India. We would be required to consider the question of payment of selection scale to the teachers of the private schools under the circular and the State's responsibility to share the financial burden in the shape of government grants to private educational institutions, in the light of aforesaid principles enunciated by the highest court of the land.

11. There is no manner of doubt that the circular dated 23.1.1985 issued by the State Government is applicable to the government servants, as is clear from the circular itself wherein it is mentioned that previous orders do not provide any relief to the employees who were recruited directly to a post which is not the lowest in the cadre and also does not deal with the problem of stagnation in many cadres due to absence or limited opportunity of promotion. This has been engaging the attention of the Government for some time past. The matter has been considered and in supersession of all orders issued in this regard in the past, the Governor has been pleased to order that the Government servants of the categories mentioned in the circular dated 25.1.1992 and who are drawing pay in the pay scales prescribed under the Rajasthan Civil Services (Revised Pay Scales) Rules, 1989 may be granted selection grades as per the circular dated 25.1.1992. It is only by virtue of Section 29 of the Act read with Rule 34 of the Rules, the benefits under the aforesaid circulars are being claimed by the teachers of NGEIs. It would be appropriate to quote the provisions of the Act and the Rules in this regard at the threshold itself.

Section 29 of the Act

"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 recognised 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 authorised by the rules made under this Act or by any other law for the time being in force.

Rule 34 of the Rules

Pay and allowance- The scales of pay and allowance 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 service of all such temporary teachers appointed before 1st January against leave vacancies or by Authorities not competent to make such appointments and of all temporarily teachers after 31st December shall be terminated on the last working day of the session.

Explanation -Allowances mean and include Dearness- Allowance; House Rent Allowance, and City Compensatory Allowance."

Mandate of Section 29 is that the scale of pay 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 Government institutions. Therefore, the scale of pay and allowances of employees of aided institutions shall have parity with the employees of government. The scale of pay of the teachers in NGEIs shall, therefore, be similar to that of the servants/teachers in government institutions. Under Rule 34 also the scale 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.

12. The real question which requires adjudication by this court is whether the grant of selection scale to the government servants as per the aforesaid circular is a promotion to the higher post or a higher pay scale in the same post. If it is pay scale then the teachers of NGEIs would also be entitled for the same in accordance with Section 29 of the Act read with Rule 34 of the Rules. But, if grant of selection scale is a promotion then it is difficult to comprehend that the teachers of NGEIs would also be entitled for the same. Much of the debate that took place before us, set around this aspect which has assumed all importance in the context of various authorities which were cited by both sides in support of respective contentions on the subject. We may briefly refer to them to the extent they are relevant for our purpose.

13. In the case of *Lalit Mohan Dev and Ors. v. Union of India and Ors.* (7), the Supreme Court while considering the position of the Assistants in old pay scale of

civil secretariat as against the position of Assistants in selection grade, has held that the administration can provide two scales of pay in the same category of posts. Provision of a selection grade in the same category of posts is not a new thing. The object is for providing incentive to the employees who have no outlets or very limited outlets for promotion to the higher posts and it has been observed in para 7.

"...It is well recognised that a promotion post is a higher post with a higher pay. A selection grade has higher pay but in the same post. A selection grade is intended to ensure that capable employees who may not get a chance of promotion on account of limited outlets of promotions should at least be placed in the selection grade to prevent stagnation on the maximum of the scale. Selection grades are, therefore, created in the interest of greater efficiency."

14. In *Dayaram Asanand Gursahani v. State of Maharashtra and Ors.* (8), the apex court was required to consider inter alia the position of District Judge in the selection grade in the cadre of District Judge in the State of Maharashtra and held that the selection grade post did not constitute a separate cadre from that of the District Judge, nor was it a post to which promotion had to be made, nor did it involve an element of selection.

15. In *Union of India and Anr. v. S.S. Ranade* (9), the apex court was called upon to decide whether a Commandant (selection grade) can be considered as holding a rank higher than that of a Commandant for the purposes of Rule 9 of the Border Security Force (Seniority, Promotion and Superannuation of Officers) Rules 1978. The question arose whether a person holding the post of Commandant (selection grade) would retire on attaining the age of fifty-eight years or at the age of fifty five years. Rule 9 of the Rules of 1978 provides that the retirement age of officers holding a rank higher than that of Commandant shall be fifty-eight years; and for officers of the other rank it shall be fifty five years. The contention of petitioner was that since he was holding the post of Commandant (selection grade) it is higher in-rank than that of a Commandant and, therefore, he could be superannuated only after attaining the age of fifty-eight years. While considering the case on those facts the apex court has held that undoubtedly, a Commandant who becomes a Commandant (Selection Grade) secures a promotion to a higher pay scale. But it is a higher pay scale in the same post. Promotion can be either to a higher pay scale or to a higher post. Under the relevant rules providing of selection grade is only a promotion to a higher pay scale in the same post and thus cannot be held to be rank higher than Commandant.

16. Strong reliance has been placed by the petitioners on the decision rendered by apex court in *State of Rajasthan v. Fateh Chand Soni* (10), wherein it has been held-

"...appointment to the Selection Scale of an officer in the Senior Scale in the Service constitutes promotion and seniority in the Selection Scale has to be fixed

in accordance with Rule 33 of the Rules on the basis of the date of selection."

In our opinion the judgment turns on the interpretation of the Rule as is clear from para 10 wherein it is said by the court.

"The Rule governing appointment to the Selection Scale in the service also envisage that such appointment constitutes promotion. The relevant provision is contained in Rule 28(A) of the Rules which prescribes the criteria, eligibility and procedure for promotion to Junior, Senior and other posts encadared in the Service, Under Sub-rule (5) of the Rule 28(A) promotion from the lowest post or category of post in the Service to the next higher post or category of post in the Service is required to be made strictly on the basis of seniority-cum-merit. Sub-rule (6) of Rule 28(A) provides that selection for promotion to all other higher posts or higher categories of posts in the Service shall be made on the basis of merit and on the basis of seniority-cum-merit in the proportion of 50:50..."

In para 11 of the judgment it is held.

"The said provision (especially Clause (b) of the proviso) would show that the Rules contemplate that appointment to the post in the Selection Scale is by way of promotion and the High Court was in error in holding that appointment on the Selection Scale does not constitute promotion under the Rules."

No such rule is brought to the notice of this Court whereby grant of a selection scale can be construed to be a promotion and not higher pay scale on the same post.

17. The Apex Court while laying down the principles on consideration of the question of right to education expressed that in the matter of providing sole and spirit to fundamental rights conferred on the individuals, the directive principles of the State policy to achieve the goal of the Constitution for building the egalitarian society free from exploration were laid in Part IV. Article 41 in the context of the present controversy invites attention which says that the State shall within the limits of its economic capacity and development, make effective provision for securing the right to work, to education and to public assistance in cases of unemployment, old age, sickness and disablement and in other cases of underserved want. The need to provide free education to the children until they complete the age of fourteen years, as matter of compulsory obligation of the State and to endeavour to secure the right to education thereafter to its citizens subject to financial resources available to it as envisaged under Article 45 of the Constitution of India. With this constitutional scheme, we find that the teachers of aided educational institutions must be paid the same pay scale and allowances as that of the teachers in government educational institutions. We are, therefore, of the view, after reading it, along Section 29 of the Act and Rule 34 of the Rules, and circular dated 25.1.1992, that selection scale is not a promotion to higher post but a higher pay scale in the same post. Once it is held that the aforesaid circular provides pay scales to the teachers of government educational institutions, by virtue of the statutory provisions, it shall also be payable to

teachers of NGEIs.

18. It is submitted by the counsel for petitioners that in the NGEIs as there is no promotional post available, the circular giving selection scale cannot be applied on them and further the selection scale cannot automatically be claimed on completion of 9, 18 and 27 years of service, it depends upon satisfactory performance of the employee, which cannot be ascertained in the cases of teachers in NGEIs and, therefore, they are not entitled for selection scale. Considering the entire scheme of the Act and the Rules framed thereunder, and the circular issued by the government on 25.1.1992, it is for the government to adjudicate upon the extent of grant of selection scale to an individual teacher working in NGEIs. Clause 5 of the circular/order dated 25.1.1992 reads thus-

"In case there is no post for first, second or third promotion, as the case may be, in the same service/cadre or the employees does not possess academic qualification prescribed for promotion and in respect of the isolated posts, the Selection Grades shall be as specified below.

s.No.

Existing pay-scale

Selection Grade

1.

750-940

(1)

775-1025

(2)

2.

775-1025

(2)

800-1250

(3)

3.

800-1250

(3)

825-1350

(4)

4.

825-1430

(4)

950-1680

(6)

5.

940-1520

(5)

975-1720

(7)

6.

950-1680

(6)

1200-2050

(9)

7.

975-1720

(7)

1200-2050

(9)

8.

1025-1800

(8)

1400-2300

(10)

9.

1200-2050

(9)

1400-2600

(12)

10.

1400-2050

(10)

(i) in those cases where next promotion post is in a State Service. 2000-3200

(14)

11.

1400-2360

(11)

12.

1400-2600

(12)

(ii) in other cases-1640-2900

(13)

13.

1640-2900

(13)

2000-2900

(14)

14.

2000 -3200

(14)

2000-3500

(15)

15.

2000-3500

(15)

2200-4000

(16)

Note- If an incumbent of the isolated post or a person not possessing academic qualifications prescribed for promotion has been granted Selection Grade before issue of this order and such Selection Grade is higher than that indicated in this paragraph, he will continue to draw pay in such Selection Grade as personal to

him but the second or third Selection Grade shall be determined with reference to the first or second selection grade which would have been admissible in terms of this paragraph.

It is clear from this that the circular has taken into consideration, and allocate pay scales where there is no post for first, second and third promotion available in the same service or cadre and in respect of isolated posts. Suffice it to say, that the government can take into consideration Clause 5 of the circular while issuing grant-in-aid to the NGEIs. The petitioners are not correct in saying that satisfactory service of the teachers working in the NGEIs cannot be ascertained from the record maintained by the NGEIs. Rule 44 of the Rules specifically provides to maintain service book wherein every step in the employees official life is to be entered. On the basis of service book maintained, satisfactory service of an employee can certainly be ascertained. After all, it is for the government agencies granting aid to NGEIs to consider all these aspects.

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 organisation and development of education in the Non-Government educational institution in the State of Rajasthan Section 7 of the Act provides for grant of aid. Only a recognised 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 recognised 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 finalisation 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. Section 7 of the Act reads as under :-

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

(2) Unrecognised 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 recognised 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 authorised by the Director of Education or by any other officer empowered by him in this behalf."''

On the basis of Section 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 recognised 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 v. 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 recognised private law colleges while the same was extended to other faculties of the private colleges. The court emphasised 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 recognised colleges cannot be discriminated on the ground of being a professional course falling upon the economic resources. The court emphasising upon the necessity of maintaining status of legal education held that these aspects necessarily flowing from Articles 21 and 39-A of the Constitution were totally lost sight of by the Government when it denied the grant-in-aid to the recognised 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. recognised 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-section (1) of Section 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 justiciable 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-sees. (3) and (4)

of Section 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 appears 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 categorised 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 categorisations of the institutions under advice of the grant-in-aid Committee and to be allowed grant-in-aid as

Category A 80% of the approved expenditure of the previous year plus likely annual increment of staff. B 70% C 60% D 50% Special 90% Category -

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 Section 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 Section 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 u/s 7(3) of the Act, the sanctioning authority is to sanction and distribute to a recognised institution aid from time to time in accordance with the procedure as may be prescribed. Section 7(4) of the Act provides that the aid may cover such part of the expenditure of the institution as may be prescribed. Section 7(3) read with Section 7(4) makes it clear that the aid which has to be granted to a recognised 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 Sections 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 u/s 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.

21. It is then submitted by the counsel for petitioners that teachers of NGEIs are not entitled for leave encashment. There is nothing in the Act or the Rules

providing for leave encashment to the teachers on their retirements. The relevant portions of Rule 47(2) of the Rules reads as under-

"2. Teaching staff-

(a) Privilege leave is not admissible to the members of teaching staff, whether temporary or permanent, in respect of duty performed in any calendar year, in which they avail themselves of the full vacation, except to the extent indicated under Clause (b) of this sub-rule.

(b) The teaching staff in schools and colleges shall be entitled to fifteen days/ privilege leave in a calendar year. The leave account shall be credited with fifteen days privilege leave immediately after expiry of every calendar year. The grant of privilege leave shall be subject to the following conditions :-

(i) Eight days privilege leave out of fifteen days in a calendar year, shall qualify for carry forward of balance to the next year.

(ii) Rest/seven days privilege leave, out of fifteen days, in a calendar year shall if not availed of, during the calendar year in which it is credited to leave-account, shall lapse at the end of the calendar year.

(c) The teaching staff appointed during a calendar year shall be allowed privilege leave @ 1-1 days for each completed months of his service immediately after the expiry of that calendar year subject to the condition laid down in Clause (b) above in proportion of 8:7, respectively."

Thus, there is a provision for accumulation of privilege leaves. Admittedly, the teachers working in government educational institutions are entitled for encashment of privilege leave on their retirement. By virtue of Section 29 of the Act the teachers of NGEIs are entitled for the similar scale of pay and allowances except compensatory allowance, it being the post of granted in aid therefore, whatever allowances the teachers of government educational institutions are entitled to, would also be available to the teachers of NGEIs. Leave encashment is an allowance and the teachers in the NGEIs would have the right to claim this allowance.

For the aforesaid reasons, the writ petitions are dismissed. However, there shall be no order as to costs.