(2002) 02 RAJ CK 0111

In the Rajasthan High Court

Case No : Civil Special Appeal (Writ) No. 87 of 2002 and 22 Others Writ Petition

Union of India (UOI) and Others APPELLANT

Vs

Digamber Jain Secondary School RESPONDENT

Date of Decision : 12-02-2002

Acts Referred:

Employees Provident Funds and Miscellaneous Provisions Act, 1952 — Section 1(3), 16, 16(1)
Rajasthan Non-Government Educational Institutions (Recognition, Grant-in-aid and Service Conditions etc. Rules, 1993 — Rule 2(r), 2(s), 92

Citation : (2003) 1 LLJ 398 : (2002) 4 RLW 2411 : (2002) 3 WLC 74

Hon'ble Judges : M.R. Calla, J;K.S. Rathore, J

Bench : Division Bench

Advocate : Narendra Jain, Praveen Jain, N.C. Jain and Gaurav Jain, S.M. Mehta, A.G. and Parinitoo Jain, for the Appellant; N.K. Maloo, Mahendra Singh, Prahlad Singh, Akhil Simlot, P.L. Agrawal, A.K. Bajpai, Amitabh Bhatnagar, Mahendra Goyal, Neeraj Bhatt, Sanjay Pareek, C.L. Saini, R.K. Mathur and Ajay Tantia, for the Respondent

Final Decision : Dismissed

Judgement

Calla, J.—Out of these 23 appeals, 21 appeals are directed against the common judgment and order dated 16.1.2001 passed by the learned Single Judge in S.B. Civil Writ Petitions Nos. 1085/2000, 1086/2000, 1087/2000, 5440/1999, 5289/1999, 3140/1998, 3132/1994, 5371/1998, 5271/1996, 1521/1997, 4109/2000, 2167/1998, 3899/1998, 3833/1998, 4891/2000, 3755/1997, 2832/1998, 240/2000, 6690/1999, 215/2001 and 216/2001. The rest of the two appeals, i.e., D.B. Civil Special Appeals (Writ) No. 337/2001 and 338/2001 are directed against the separate judgment and order dated 16.1.2001 passed in S.B. Civil Writ Petitions No. 3890/99 and 106/99 which were dismissed. These two writ petitions had been filed by the Regional Provident Fund Commissioner against the order which has been passed by the Employees Provident Fund Appellate Tribunal, on 18.9.1998. Such order passed by the Employees Provident

Fund Appellate Tribunal in the appeals which have been filed by the respective institutions, i.e; respondents in S.B. Civil Writ Petitions Nos.3890/99 and 106/99 and this order as was passed by the Employees Provident Fund Appellate Tribunal was made the subject-matter of challenge in these writ petitions by the Regional Provident Fund Commissioner, but the order was upheld and for the reasons recorded in the common judgment and order dated 16.1.2001 passed in 21 writ petitions, these two writ petitions had also been dismissed.

2. Whereas, all these 23 appeals involve common questions of law based on identical facts, we propose to decide all these 23 appeals by this common judgment and order as under.

3. Before we proceed to deal with the grounds on which the judgment and order passed by the learned Single Judge has been assailed before us, we may briefly give the history of the relevant enactments and schemes of the rules under consideration.

4. On 4.3.1952 the Employees Provident Funds and Misc. Provisions Act, 1952 (for short, "EPF Act, 1952") came into force, Section 1(3)(a) of the EPF Act, 1952, provides that every establishment employing 20 or more persons in any industry specified in Schedule-1 are covered under the provisions of this Act and Section 3(1)(b) provides that any other establishment employing 20 or more persons or class of such establishments which the Central Govt. may, by notification in the official gazette, specify in his behalf are covered by the EPF Act 1952.

5. Vide Gazette notification of Govt. of India dated 19.2.1982, the following Educational Institutions were specified u/s 1(3)(b) w.e.f. 6.3.1982:

(i) any University,

(ii) any College whether or not affiliated to- a University,

(iii) any School, whether or not recognised or Aided by the Central or State Government,

(iv) Any scientific institution,

(v) Any institution in which research in respect of any matter is carried on

(vi) any other institution in which the activity of imparting knowledge or training is systematically carried on.

Prior to 1.8.1998, Section 16 of the Central Act i.e. EPF Act, 1952 was as under:

"6. Act not to apply to certain establishments

(1) This Act shall not-apply

(a) to any establishment registered under the Co-operative Societies Act, 1912 (2 of 1912) or under any other law for the time being in force in any State relating to Co-operative Societies, employing less that fifty persons and working without the aid of power; or

(b) to any other establishment employing fifty or more persons or twenty or more, but less than fifty persons until the expiry of three years in the case of the former and five years in the case of the latter, from the date on which the establishment is, or has been, set up.

Explanation.--For the removal of doubts, it is hereby declared that an establishment shall not be deemed to be newly set up merely by reason of a change in its location.

(2) If the Central Government is of opinion that having regard to the financial position of any class of establishments or other circumstances of the case, it is necessary or expedient so to do, it may, by notification in the official Gazette, and subject to such conditions, exempt that class of establishments from the operation of this Act for such period as may be specified in the notification.

6. On 1.8.1988 Section 16 was amended and the Clause (b) of Section 16(1) of the EPF Act, 1952 was substituted by new Clauses (b) (c) or (d) for the above old Clause (b), i.e. by way of amendment Act of 33 of 1988, w.e.f. 1.8.1988. The amended section is reproduced as under:

"16. ACT NOT TO APPLY TO CERTAIN ESTABLISHMENT.--(1) This Act shall not apply -

(a) to any establishment registered under the Co-operative Societies Act, 1912, or under any other law for the time being in force in any State relating to Co-operative Societies, employing less than fifty persons and working without the aid of power, or

(b) to any other establishment belonging to or under the control of the Central Government or a State Government and whose employees are entitled to the benefit of contributory provident fund or old age pension in accordance with any scheme or rule framed by the Central Government or the State Govt. governing such benefits; or

(c) to any other establishment set up under any Central, Provincial or State Act and whose employees are entitled to the benefits of contributory provident fund or old age pension in accordance with any scheme or rule framed under that Act governing such benefits; or

(d) to any other establishment newly set up, until the expiry of a period of three years from the date on which such establishment is, or has been, set up.

Explanation.--For the removal or doubts, it is hereby declared that an establishment shall not be deemed to be newly set up merely by reason of a change in its location.

(2) If the Central Government is of opinion that having regard to the financial

position of any class of (establishment) or other circumstances of the case, it is necessary or expedient so to do, it may be notification in the Official Gazette, and subject to such conditions as may be specified in the notification, exempt (whether prospectively or retrospectively) that class of (establishments from the operation of this Act for such period as may be specified in the notification).

7. The Rajasthan Rules for Payment of Grant-in-Aid to Non-Government Educational & Cultural Institutions, 1963, were published vide Notification No. F.2(24)Edu/Cell/VI/62, dated 19.1.1963 in Rajasthan Gazette Part IV-C, dated 24.1.1963 at page 839-866 (refer page 299 Vol. 14 of Rajasthan Local Laws, Third Edition, Jindal''s - India Publishing House, Jodhpur. These rules will hereinafter be referred to as "State rules of 1963".

8. In the year 1989, the Rajasthan Legislative Assembly passed the Rajasthan Non-Government Educational Institutions Act, 1989 which will be hereinafter referred to as "State Act of 1989". This State Act of 1989 received the Presidential assent on 4.6.1992 and vide Gazette Notification issued by the State of Rajasthan, this State Act of 1989 was notified to come into force w.e.f. 1.1.1993 and thus, the Rajasthan Non-Government Educational Institutions (Recognition, Grant-in-aid and Service Conditions etc.) Rules, 1993 came into force from 1.1.1993, which will be hereinafter referred to as "State rules of 1993".

9. On 5.8.1997, Finance Department of the Government of Rajasthan issued an order to implement the provisions of EPF Act, 1952 on Non-Government aided Educational Institutions employing 20 or more persons. A copy of this document is Annexure-7 with the Writ Petition No. 106/99, out of which DB Civil Special Appeal (W) No. 338/2001 has arisen. On 24.8.1998, the Finance Department of the State Government passed an order about the transfer of Provident Fund amount from State Treasury to the Provident Fund amount from State Treasury to the Provident Fund Commissioner. A copy of this document is Annexure-9 with the SBCWP No. 106/99 out of which Appeal No. 338/2001 has arisen. On 14.8.1997, the Education Group-V, Government of Rajasthan had issued an order requiring the Non-Governmental Aided Educational Institutions to deposit the C.P.F. amount with Regional Provident Fund Commissioner. A copy of this document is Annexure-10 in SBCWP No. 1085/2000 out of which Appeal No. 563/2001 has arisen. After the decision of the learned Single Judge the order dated 22.3.2001 was issued by the Government of Rajasthan whereby the order dated 14.8.1997 issued by Edu. Gr. V, Government of Rajasthan was withdrawn. This order dated 22.3.2001 has been placed on record.

10. The above referred orders dated 5.8.97, 14.8.97 and 24.8.98 as had been passed by the State Government gave rise to the cause of action to Non-Government Educational Institutions to challenge the same by way of filing the petitions before this Court and such petitions 21 in number have been decided by the common judgment and order dated 16.1.2001. Kanoria Mahila Mahavidayala, Jaipur, had filed appeals before the Employees'' Provident Fund Appellate

Tribunal, New Delhi, against the order dated 20.1.1998 passed by the Assistant Provident Fund Commissioner. The Tribunal set aside the order passed by the Assistant Provident Fund Commissioner vide its order dated 18.9.1998. This order dated 18.9.1998 was made the subject-matter of challenge by the Regional Provident Fund Commissioner in SBCWP No. 3890/99, out of which DBCSAW No. 337/2001 has arisen. This litigation i.e. SBCW No. 3890/99 and DBCSAW No. 337/2001 was for the period from April 1991 to March 1997 and the date of the order of the Assistant Provident Fund Commissioner was 20.1.98. Similarly, another Writ Petition No. 106/99 was filed by the Regional Provident Fund Commissioner against the order passed by the Employees Provident Fund Appellate Tribunal, New Delhi, whereby the Assistant Provident Fund Commissioner''s order dated 19.11.1997 for the period from August, 1982 to March 1991 had been set aside. These two writ petitions filed by the Regional Fund Commissioner have been rejected by the learned Single Judge vide his order dated 16.1.2001 giving rise to Appeals No. 337/2001 and 338/2001.

11. Shri Jain, learned counsel for the appellant has submitted that the Central Act i.e. EPF Act, 1952 became applicable in all Educational Institutions with effect from 6.3.82 and there was no State Act or Rules having the assent of Hon''ble the President of India till 4.76.1992 while Hon''ble the President gave its assent to the State Act of 1989, in 1992 which was made effective with effect from 1.1.1993, During the period from 6.3.1982 to 31.12.1992, the Central Act of 1952 was in force in all Educational Institutions employing more than 20 employees. His further submission is that the Educational Establishment covered or coverable under the EPF Act, 1952 during the period from 6.3.82 to 31.12.1992 will remain covered or coverable under the Central Act of 1952 itself even after coming into force (or made applicable) of State Act of 1989 or State rules of 1993, and the Regional Provident Fund Commissioner has already settled the PF Accounts of their employees on retirement and has settled the PF Accounts of their employees on retirement and has settled their Pension cases, Family Pension cases, Children and Parents Pension cases and has been paying monthly Pension/Family Pension regularly for number of years. In support of his submission, he has placed strong reliance on the decision of the Supreme Court in M.P. Shishak Congress and Ors. v. R.P.F. Commissioner, Jabalpur and Ors. (1). Shri Jain has further submitted that notwithstanding the definition of "Non-Government Educational Institution" and. "Recognised Institution" as given in Section 2(p) and (q) of the State Act of 1989, such Institutions are covered by the Central Act, 1952.

12. Shri Mehta, learned Advocate General has submitted that Section 16 of the EPF Act 1952, provides that the Central Act shall not apply to any other establishment belonging to or under the control of the Central Government or State Government and whose employees are entitled to the benefit of contributory provident fund or old age pension in accordance with any scheme or rule framed by the Central or State Government governing such benefits. On the basis of the language contained in Section 16(1)(b), the learned Advocate

General has submitted before us that prior to the coming into force of the State Act of 1989 and State Rules of 1993 made thereunder, the State Rules of 1963, were in force ever since 24.1.1963 and Rule 4(j) and (k) of the Rules of 1963 are reproduced as under for ready reference:

"4(j) - P.F. Rules are to be followed by the institutions as framed by the Department/Board of Secondary Education/University/Universities to be established.

Provided that the institutions shall follow the directions issued by the Government of Rajasthan with regard to investment of past accumulations as well as current and future accretions to the C.P.F. account and ancillary matters from time to time.

Note.--The Department/Board of Secondary Education/University/Universities to be established shall make necessary amendment in the respective rules framed by them.

(k) (i) All accumulated, current and future accretions to the P.F. amount of the employees and contribution of the institution shall be deposited in the interest bearing personnel deposit account by the institutions in Government Treasury in the manner and as per directions laid down by the State Government from time to time.

(ii) The reserve funds and deposits etc. of institutions shall also be invested in the State Government. Securities or National Savings Securities viz., Post Office Savings Bank Account, National Defence Certificates or Defence Deposit Certificates only.

(iii) All the other recurring and non-recurring grants which are not needed within a period of three months shall be deposited in the Post Office Saving Account.

Note.--Reserve Funds will be invested in the manner prescribed under (ii) above only if under the relevant rules the maintenance of such funds is a condition precedent for entitlement of grant-in-aid."

13. It has been further submitted that a scheme was also there in force. A copy of this scheme has been placed on record as Annexure-1 at page 22 with SBCWP No. 5371/98, out of which DBSAW No. 196/2001 has arisen and under this scheme appropriate provisions have been made with regard to the P.P. rules for the Aided Institutions and, therefore, the Institutions in question, which have filed the writ petitions" are clearly excluded from the provisions of Central Act and the Central EPF Act 1952 is not applicable in terms of Section 16(1)(b) itself. He has also submitted that keeping in view of the provisions of Section 2(a) of 2(b) of the Act 1989, "aid" means any aid granted to a recognised educational institution by the State Government; "aided institution" means a recognised institution which is receiving aid in the form of maintenance grant from the State Government. It has also been argued that in terms of Rule 4(j) and 4(k) of the State Rules, 1963, it is clear that the PF Rules are to be followed by the

institutions as framed by the Department/Board of Secondary Education/ University/Universities to be established and the institutions shall follow the directions issued by the Government of Rajasthan with regard to investment of past accumulations as well as current and future accretions to the C.P.F. account and ancillary matters from time to time, with the note that the Department/ Board of Secondary Education/University/Universities to be established, shall make necessary amendments in the respective rules framed by them. All accumulated, current and future accretions to the P.F. account of the employees and contribution of the institution shall be deposited in the interest bearing personnel deposit account by the institution in Government Treasury in the manner and as per directions laid down by the State Government from time to time.

14. With regard to the order Annexure-10 as was issued by the Government of Rajasthan on 14.8.1997 to which the reference has also been made in the earlier part of this order, the learned Advocate General has very candidly stated before us that this order is indefensible in view of the provisions contained in Section 16(1)(b) of the EPF Act 1952 read with provisions contained in the State Rules of 1963 and the scheme framed thereunder, he has submitted that for the reasons aforesaid the protection of Article 254(2) of the Constitution is not available to the appellants and the case of M.P. Shishak Congress v. R.P.F. Commissioner (supra) rests on entirely different factsituation and the same is not at all applicable to the facts of the present case.

15. Rule 92 of the State rules of 1993 framed under the Act of 1989 which deals with the State Government''s power to exempt from the rules of 1993, has been declared to be ultra vires by the learned Single Judge. Learned Advocate General, of course, made an attempt to argue that this rule is not ultra vires and notwithstanding this rule being valid or invalid, the order Annexure 10 dated 14.8.97 could not have been passed and for the purpose of setting aside the order Annexure 10, it would at the most be said to be a case of wrong exercise of power under the said rules but the wrong exercise of power under the said rules but the wrong exercise of power under Rule 92 cannot be used so as to hold the rule to the ultra vires of Section 43 of the Act of 1989. Section 43 of the State Act of 1989 and Rule 92 of the State Rules of 1993 are reproduced as under for ready reference;

"43. Power to make rules.--(1) The State Government may make rules for the purpose of carrying into effect the provisions of this Act.

(2) In particular and without prejudice to the generality of the foregoing powers, such rules may provide for-

(a) the terms and conditions for the grant of recognition to non-Government educational institutions;

(b) the maintenance of recognised institutions;

(c) the giving of grants-in-aid to recognised institutions;

(d) the levy, regulation and collection of fees in recognised institutions;

(e) regulating rates of fees in recognised institutions;

(f) regulating admissions to recognised institutions which are receiving aid out of State funds by making special provision for the advancement of socially and educationally backward classes of citizens and the Scheduled Castes and Scheduled Tribes;

(g) the manner in which accounts, registers or records shall be maintained in aided institutions and the authority responsible for such maintenance;

(h) the submission of returns, statements, reports and accounts by Secretaries of the managing committees of recognised institutions;

(i) the inspection of recognised institutions and the officer by whom inspection shall be done;

(j) the mode of keeping and auditing of accounts of recognised institutions;

(k) the standards of education and courses of study; and

(l) all matters expressly required or allowed by this Act to be prescribed.

(3) All rules made under this Act shall be laid, as soon as may be after they are so made, before the House of the State Legislature, while it is in session, for a period of not less than fourteen days which may be comprised in one session or in two successive sessions and, if before the expiry of the session which they are so land or of the session immediately following, the House of the State Legislature makes any modification in any of such rules or resolves that any such rule should not be made, such rule shall thereafter have effect only in such modified form or be of non effect, as they case may be, so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done thereunder.

92. Power to Exempt from rules.--The State Government may, by general or special order exempt any institution or any class of institutions from any of the provisions of the rules or may direct that such provisions shall apply to such institution or class of institutions with such modifications and, or conditions as may be specified in the orders."

16. We have heard learned counsel for both the sides and have also gone through the order passed by the learned Single Judge. The provisions of Section 16(1)(b) of the EPF Act, 1952 make it very clear that the Central Act does not apply in cases where there is a scheme or rule framed by the State Government for the benefits available under EPF Act 1952. It is established that the State Rules of 1963 were already in force since 1963 and, therefore, the benefits under EPF Act, 1952 were available to the establishments of the institutions who have filed the petitions and the scheme made thereunder was applicable and the same

was valid.

17. In this view of the matter, we are clearly of the opinion that the establishments belonging to or under the control of the State Government and their employees were entitled to the benefits of the contributory provident fund in accordance with the rules which were already there in Rajasthan for such benefits and, therefore, there is no question of the applicability of the Central Act so far as such institutions are concerned. The learned Single Judge in the judgment has classified the educational institutions in the State of Rajasthan in four categories as under:

"(1) Those educational institutions, which are owned, controlled and managed by State Government, which are called Government educational institutions, and where the services of employees are at par with Stale Government employees;

(2) the second category of educational institutions in State of Rajasthan, are owned and controlled by State Government, but managed by universities, local authorities, or other authorities of the State.

(3) the third category of educational institutions are those, which are recognised institutions, but are being managed by private managements, registered under the Registration of Societies Act and are called Non-Government Educational Institutions; and

(4) there are fourth category of educational institutions, in State of Rajasthan, which are recognised by State Government, and are also on the list of Grant-in-Aid of State Government, but managed by private managements, registered under the Registration of Societies Act and are also called Non-Government Educational Institutions."

18. Institutions against whom the present petition has been filed are clearly covered by the third and fourth categories as above and they are clearly covered by the definition Clause (p) and (q) of Section 2 of the State Act of 1989 and Rule 2(r) and (s) of the State Rules, 1993. The argument that such institutions are still governed by the Central Act of 1952 has been stated only to be rejected. Keeping in view the provisions contained in Section 16(1)(b) read with definition Clause (p) and (q) of Section 2 of the Act of 1989 and also keeping in view the provisions u/s 16(1)(b) of EPF Act 1952, it is very clear that the Central act i.e. EPF Act 1952 does not apply to such institutions.

19. Rule 92 of the State Rules of 1993 which has been to be ultra vires by the learned Single Judge is the rule which deals with the power to exempt from rules. It was argued before the learned Single Judge that Rule 92 had been framed in exercise of the power u/s 43 of the Act of 1989. Section 43 of the State Act of 1989 provides for the rule making power of the State. The State Government may make rules for the purpose of carrying into effect the provisions of this Act of 1989. We fail to understand how this rule-making power to frame the rules for the purposes of carrying into effect the provisions of this

act could be made use of so as to make the rule with regard to the power to exempt from the rules so as to defeat the very purpose of carrying into effect the provisions of this Act. Therefore, we find that endeavour on the part of the present appellants before the learned Single Judge to defend the impugned order Annexure-10 on the basis of Rule 92 was simply misconceived as that order Annexure-10 which was impugned by the original petitioners could be set aside even without declaring Rule 92 to the ultra vires of Section 43 and, therefore, notwithstanding the validities or otherwise of Rule 92, we find that in view of provisions of Section 16(1)(b) of the EPF Act, 1952, the order could not be passed and the same could not be sustained and, therefore, the same has been rightly set aside by the learned Single Judge. Whatever be the fate with regard to the validity of the Rule 92 the order Annexure-10 dated 14.8.1997 could not have been issued and the same appears to be contrary to the provisions of Section 16(1)(b) of the Central Act i.e. EPF Act 1952. From the reading of the case of M.P. Shishak Congress (supra) it would be come very clear from para 12 of the judgment that the primary purpose of the M.P. State Act of 1978 was to make provisions for regulating the payment of salaries to teachers and other employees of aided non-Government schools. The Act did not even provide for any scheme for setting up a provident fund. This Act incidentally required that the institutional contribution to any existing Provident Fund Scheme should be paid into the institutional fund set up under (he said Act and it is not in dispute that there was no existing provident fund scheme under the provisions of that Act. In the aforesaid case of M.P. Shishak Congress (supra) when there was no provision for benefits under the Act of 1978 in the M.P., there was no question of excluding such institutions from the provisions of EPF Act. In the case at hand before us, the fact-situation is otherwise and it is a matter of record and undeniable fact that Grant-in-Aid State Rules of 1963 were in force with a proper scheme under the rules of 1963 and the scheme framed therein to which we have already made a reference in the earlier part of the order was in force ever since 1963 and, therefore, in our opinion this case of M.P, Shishak Congress (supra) on which strong reliance has been placed by Shri Jain is of no avail to the appellants.

20. The directions as have been given by the learned Single Judge are fully justified and such directions could certainly be given in the present case and on the basis of this reasoning, other two petitions as had been filed by the Nary Manila Mavidalaya have also been rightly allowed and the orders passed by the Provident Fund Tribunal have been rightly set aside.

21. The upshot of the aforesaid discussion is that all these 23 appeals fail and the same are hereby dismissed. The common judgment as has been passed by the learned Single Judge deciding the 21 petitions filed by the institutions, is upheld and we do not find any reason to set aside the common judgment and order dated 16.1.2001 as has been passed by the learned Single Judge and for the same reasons, we also do not find any reason to interfere with the order dated 16.1.2001, whereby the two writ petitions filed by the Regional Provident

Fund Commissioner have been dismissed. 21 writ petitions have been rightly allowed and the rest of 2 petitions have been rightly rejected. All these 23 appeals are dismissed as above. Costs made easy.

22. In the facts and circumstances of the case, the time schedule, as was granted by the learned Single Judge for the purpose of carrying out the directions, would commence from today.

