

**IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JODHPUR**

:::

ORDER

**Professor Jeewan Lal Mathur
Vs.
The State of Rajasthan & Ors.**

**S.B. CIVIL WRIT PETITION
NO.1230/2003 UNDER
ARTICLE 226 OF THE
CONSTITUTION OF INDIA.**

DATE OF ORDER :: 22nd December, 2006

PRESENT

REPORTABLE

HON'BLE JUSTICE SHRI MOHAMMAD RAFIQ

Mr.Kuldeep Mathur, Advocate, for the petitioner.
Mr. Deepesh Beniwal Advocate, for the respondents.

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BY THE COURT:

The petitioner has filed this writ petition with the prayer
that the order passed by the respondents dated 16.9.2002

whereby the respondents Lachoo Memorial College of Science & Technology (in short the College) denied the payment of gratuity and leave encashment to him be quashed and set aside and the respondents be directed to pay him the aforesaid benefits together with interest on delayed payment.

Shri Kuldeep Mathur, learned counsel for the petitioner argued that the petitioner was appointed with the said college on the post of lecturer in the year 1965 wherefrom he was relieved by the management committee of the said college on 21st August, 1991 on account of his appointment as Chairman of the Rajasthan Board of Secondary Education, Ajmer. The order dated 31.8.1991 by which he was relieved stated that his lien would be maintained with the college for one year which was extended lastly by order dated 21.12.1992 whereby it was stated that the lien of the petitioner would stand terminated w.e.f. 31.10.1992 because the petitioner has left the services of the college from 1.9.1991. According to the petitioner, the said college was recognized institution and was receiving regular grant in aid from the State Government. The State

Legislature enacted Rajasthan Non-Government Education Institutions Act, 1989 (in short the Act of 1989). The State of Rajasthan in exercise of the powers conferred under Section 43 framed the Rajasthan Non-Government Educational Institutions (Recognition, Grant in Aid and Service Conditions etc.) Rules, 1993 (in short the Rules of 1993). As per Rule 82 of the Rules of 1993, the employees of the aided non-government educational institutions are entitled for gratuity. The petitioner after his retirement from the services of respondent no.3, submitted a representation to the Managing committee requesting them to make payment of his gratuity under rule 82 of the Rules of 1993 and also for payment of leave encashment. The respondent college however by order dated 16th Sept., 2002 declined to extend the aforesaid benefits which order is under challenge in the present proceedings. Learned counsel for the petitioner in support of his argument has relied upon the judgment of this Court as well as the judgment of the Hon'ble Supreme Court such as (i) Smt. Pawan Bhargava Vs. State of Rajasthan & Ors. 2002 WLC (Raj.) UC 765, (ii) Brahmchari Madhyamik Vidyalaya Alwar Vs. Raj. Non

Government Educational Institutions Tribunal Jaipur & Ors 2005(4) WLC (Raj) 401, (iii) S.R. Higher Secondary School & Anr. Vs. Raj. Non-Government Educational Institutions Tribunal, Jaipur & 23 Ors 2002(3) WLC (Raj.) 586 and (iv) Rajasthan Welfare Society Vs. State of Rajasthan JT 2005 (4) SC 163.

The respondents have contested the writ petition by filing reply. They have raised a preliminary objection that the writ petition filed by the petitioner suffers from delay and laches. While the petitioner relieved from their service on 31.10.1991, he already stood appointed as Chairman of the Rajasthan Board of Secondary Education, Ajmer w.e.f. 31.8.1991. He did not claim payment of gratuity till 2002 and the writ petition was filed enormously delayed in the year 2003. The writ petition therefore suffers from delay and laches. On merits, the respondents submitted that the Act of 1989 came into force w.e.f. 1.1.1993 while the petitioner stood retired much prior to that on 31.10.1992. Even if the age of superannuation of the petitioner is taken as the basis, he superannuated on

31.10.1992 whereas the Act came into force w.e.f. 1.1.1993.

In these circumstances, the petitioner is not entitled to any relief under the Act of 1989. It has been stated that petitioner is not entitled to benefit of gratuity and leave encasement as per the Rules of 1993 or other benefits which were admissible to him have already been paid.

I have considered the arguments as advanced by learned counsel for the parties and perused the record.

A coordinate bench of this Court dealing with some what similar controversy on the question of applicability of the Act of 1989 and the Rules of 1993 to those who retired prior to their enforcement in Smt. Pawan Bhargava Vs. State of Rajasthan & Ors. 2002 WLC (Raj.) UC 765 in para 2 to 4 held as under: -

"2. After having heard rival submissions and on carefully scanning the material on record, I am of the view that the claim of the petitioner could not have been dismissed on the ground of limitation. It is well settled that the cause of action for the retiral benefits is recurring and the provisions contained in the Limitation Act are not applicable to such cases. Even on the ground of delay and laches the claim of

retiral benefits cannot be dismissed.

3. Undeniably the respondent Mahesh Shikshan Sansthan is an aided institution and in view of the Rule 82 of 1993 Rules, the petitioner is entitled to the gratuity as admissible to her under Payment of Gratuity Act, 1972.

4. I do not find any force in the arguments of learned counsel for the respondent that the petitioner got retired prior to enactment of the 1989 Act, she is not entitled to the gratuity. Although the provisions contained in 1989 Act are prospective in nature but I find that they are applicable to those employees also who got retired prior to application of the said Act. There can be discrimination between the employees who got retired prior to application of 1989 Act and those who got retired after the application of the said Act."

In *Brahmchari Madhyamik Vidyalaya Alwar Vs. Raj. Non Government Educational Institutions Tribunal Jaipur & Ors* 2005(4) WLC (Raj) 401 while rejecting the similar argument that the Act of 1989 would not apply to those who retired to its enforcement, this Court held in para no.3 as under: -

"3. I have pondered over the submissions. In my considered opinion of even if the respondent employee had retired on November 30, 1992 the application under section 21 of the 1989 Act was maintainable. In view of the provisions contained in

sub-section (2) of Sections 21, 27 and 16 of the 1989 Act gives a mandate to the aided institutions to grant equal pay allowances and other benefits to its employees equal to the government employees. Besides the cause of action to receive the amount of gratuity is recurring and the provisions contained in Rule 80(2) of Rajasthan Non Government Educational Institutions Rules, 1993 are applicable to the petitioner therefore he is entitled to claim the amount of gratuity as admissible under Payment of Gratuity Act, 1972. In *Management of Goodyear India Ltd. Vs. K.G. Devessar* (supra) Their Lordships of Supreme Court indicated that all persons whose employment came to end after coming into force of 1972 Act were entitled to payment of gratuity for the period during which they satisfied the definition of employee. The respondent employee also got retired after coming into force of Payment of Gratuity Act, 1972 and he is entitled to receive the payment of gratuity."

The question with regard to entitlement of selection scale came up for consideration before this Court in *S.R. Higher Secondary School & Anr. Vs. Raj. Non-Government Educational Institutions Tribunal, Jaipur & 23 Others* 2002(3) WLC (Raj.) 586. The full bench of this Court on the basis of entire law on the subject held as under: -

"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 S.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 grant-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.”

The question with regard to payment of gratuity to the employees of the institution also came up for consideration before the Hon'ble Supreme Court in Rajasthan Welfare Society Vs. State of Rajasthan JT 2005 (4) SC 163. In that the Hon'ble Supreme Court held that the gratuity within the meaning of the Act and the Rules cannot form part of recurring grant. It is not includable as part of approved expenditure for the purposes of computing the amount of grant payable to the appellant. The Hon'ble Supreme Court in concluding para of the judgment further observed that “if representations are made by aided Non-Government Educational Institutions, the State Government would consider sympathetically the question of the gratuity amount payable to the employees being taken into consideration for the purpose of computing the amount of

grant-in-aid. It was further clarified that pending making of such representation and its consideration, the payment of gratuity to the employees shall not be delayed.

But the argument whether Act of 1989 and Rules framed thereunder would apply to even those who stood retired prior to their enforcement needs a dispassionate consideration. Section 1(3) of the Act provides that the Act shall come into force on such date as the State Government may, by notification in the Official Gazette, appoint and different dates may be appointed for different provisions of the Act. The State Government in exercise of its power under Section 3(3) of the Act by notification dated 15.10.1992 appointed 1.1.1993 as the date for commencement of the Act. When the Act has come in force w.e.f. 1.1.1993, accepting the contention learned counsel for the petitioner would tantamount to enforcing the provisions of the said Act and making them binding on Non-Government Educational Institutions not only prior to 1.1.1993 but also even before 1989 though the Act was nowhere in existence then. And if the argument of learned counsel for the

petitioner is taken to its logical conclusion and further subjected to a closure scrutiny, then how far behind can one go on extending the application of the Act of 1989 whether till 1980, 1970 or 1960 or even 1950. Their Lordships of the Hon'ble Supreme Court while dealing with a some what similar question, albeit in the context of section 25 of the Land Acquisition Act in *Land Acquisition Officer-cum-DSWO Vs. B.V. Reddy and sons* (2002) 3 SCC 463 in para 6 of the judgment observed as under: -

"6. Coming to the second question, it is a well-settled principle of construction that a substantive provision cannot be retrospective in nature unless the provision itself indicates the same. The amended provision of Section 25 nowhere indicates that the same would have any retrospective effect. Consequently, therefore, it would apply to all acquisitions made subsequent to 24-9-1984, the date on which Act 68 of 1984 came into force. The Land Acquisition (Amendment) Bill of 1982 was introduced in Parliament on 30-4-1982 and came into operation with effect from 24-9-1984. Under the amendment in question, the provisions of Section 23(2) dealing with solatium were amended and Section 30(2) of the amended Act provided that the provisions of sub-section (2) of Section 23 of the principal Act as amended by clause (b) of Section 15 shall be deemed to have applied, also to and in relation to any award made by the Collector or court or to any order passed by the High Court or the Supreme Court in appeal against any such award under the provisions of the principal Act,

after 30-4-1982 and before the commencement of the Act. It is because of the aforesaid provision, the question cropped up as to whether in respect of an award passed by the Collector between the two dates, the amended provision will have an application or not and that question has been answered by this Court in the Constitution Bench decision in Union of India Vs. Raghubir Singh. Sub-section (2) of Section 30 has at all no reference to the provisions of Section 25 of the Act. In that view of the matter, question of applicability of the amended provisions of Section 25 of the Act to an award of the Collector made earlier to the amendment and the matter was pending in appeal, does not arise. In our considered opinion, the amended provisions of Section 25 of the Act, not being retrospective in nature, the case in hand would be governed by the unamended provisions of Section 25 of the Act.”

Such an interpretation would not only lead to absurd consequences but create a disastrous situation for the private educational institutions.

The Hon'ble Supreme Court in Shashikant Singh vs. Tarkeshwar Singh & Anr, (2002)5 S.C.C. p.738 while elaborating upon this principle of interpretation of statutes in the context of the language used by the legislature in Section 319 of the Code of Criminal procedure observed in para 12 of the said judgment as under:-

"12.....XXXXX.....XXXXX.....
 The construction to be placed on a provision like this has to commend to justice and reason. It has to be a reasonable construction to promote the ends of justice. The words "could be tried together with the accused" in Section 319(1) cannot be said to be capable of only one construction. If it was so, approach to be adopted would be different since the intention of Parliament is to be respected despite the consequences of interpretation. There is, however, a scope for two possible constructions. That being the position, a reasonable and common sense approach deserves to be adopted and preferred rather than a construction that would lead to absurd results of Respondent 1 escaping the trial despite passing of an order against him on the court's satisfaction under Section 319(1) and despite the fact that the proceedings against him have to commence afresh....."

In view of foregoing discussion, I am not persuaded to accept the argument of learned counsel for the petitioner that even though the petitioner retired from the service of the respondents and even if lien of the petitioner stood terminated from the services of the respondent college on 31st Oct., 1993, yet the provisions of the Act of 1989 and the Rules of 1993 should be applied to cover even those cases where the employees retired from services of Non-Governmental Educational Institutions from a date earlier than enforcement

of the said Act and the Rules.

In the result, the writ petition is dismissed with no order as to costs.

(MOHAMMAD RAFIQ),J.

c.p.goyal/-