

CASE NO.:
Appeal (civil) 2936 of 2002

PETITIONER:
Rajasthan Welfare Society

RESPONDENT:
State of Rajasthan

DATE OF JUDGMENT: 07/04/2005

BENCH:
Y.K.Sabharwal & Tarun Chatterjee

JUDGMENT:
J U D G M E N T
[With SLP (C) No.21640 of 2003, Civil Appeal Nos.2934, 2935 & 2940 of 2002, SLP (C) No.4544 of 2004, Civil Appeal No.6896 of 2003 and Civil Appeal Nos.7432 & 7433 of 2004]

Y.K. Sabharwal, J.

Gratuity is to be paid to an employee on the termination of his employment in terms of the provisions of the Payment of Gratuity Act, 1972. The question for determination in the present case is whether the amount of gratuity payable to the employees of the aided educational institutions has to be taken into consideration or not for determining the amount of grant-in-aid. The question has to be examined in the context of Rajasthan Non-Government Educational Institution Act, 1989 (for short, 'the Act') which came into force with effect from 1st January, 1993.

The power of the State Government to make rules is contained in Section 43 of the Act. Section 43 of the Act, inter alia, provides that the Rules may provide for the terms and conditions for grant of recognition to Non-Government Educational Institutions. Rules can also be framed for the giving of grants-in-aid. In exercise of powers conferred by Section 43 and all other powers enabling the State Government in this behalf, Rules called the Rajasthan Non-Government Educational Institutions (Recognition, Grant-in-Aid and Service Conditions Etc.) Rules, 1993 (for short, 'the Rules') have been made.

The appellant is running an aided educational institution. The expression 'aided institution' has been defined in Section 2(b) of the Act to mean a recognized institution which is receiving aid in the form of maintenance grant from the State Government. The Act has been enacted to provide for better organization and development of education in the non-Government Educational Institutions in the State of Rajasthan. The expression 'recognised institution' is defined in Section 2(q) of the Act to mean a Non-Government Educational Institution affiliated to any University or recognized by the Board, Director of Education or any officer authorized by the State Government or the Director of Education in this behalf. The educational institution being run by the appellant is a recognized institution.

Section 2(a) defines 'aid' to mean any aid granted to a recognized educational institution by the State Government. The educational institution of the appellant has been granted aid within the meaning of the Act. The expression 'employee' includes a teacher and every other employee working in a recognized institution. The expression 'salary' has been defined in Section 2(r) as follows :

" 'Salary' 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."

Section 7 of the Act provides for grant-in-aid to recognized institutions. It, inter alia, provides that no aid shall be claimed by an institution as a matter of right. Section 7(4) provides that "the aid may cover such part of the expenditure of the institution as may be prescribed". Section 16 of the Act enables the State Government to regulate the terms and conditions of employment. It, inter alia, provides that 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. Section 29 of the Act provides that 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 Government institutions. The expression 'compensatory allowance' is defined in Section 2(d) to mean an allowance granted to meet personal expenditure necessitated by the special circumstances in which duty is performed and shall include a travelling allowance but shall not include a sumptuary allowance nor the grant of a free passage to or from any place outside India. Chapter III of the Rules deals with 'AID, ACCOUNTS AND AUDIT', containing Rules 9 to 22. Rule 9 relates to the sanction of grants-in-aid and reads as under :

"Rule 9. Grants\027The State Government may at its discretion sanction following grants\027

- (1) Maintenance or recurring grant.
- (2) Non-recurring grant towards equipments, building etc.
- (3) Ad hoc, non recurring or recurring grant to an institution which is of an all India Character and its project and activities have been approved by the Central or State Government on such terms and conditions as it may deem fit to impose.
- (4) Such other grants as may be sanctioned by the Government from time to time."

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

Rule 14. Approved Expenditure\027Approved expenditure referred to in Rule 13 above, shall relate to the following items only\027All the items from (a) to (v) mentioned below will form component 'A' of the admissible items of the expenditure.

- (a) Actual salary, and provident fund contribution not exceeding 8.33% in respect of teaching and non-teaching staff.
- (b) to (v)\005\005.."

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

"Note.\0272. Charges on account of contribution made by the Institution to a pension fund or a gratuity scheme or on account of the pension or gratuity paid to former teachers are ordinarily not admitted for the purpose of grant-in-aid unless the Rules on the subject are approved by Government;
Provided that in the case of staff obtained on lent services from any State Government or Government of India, pension and leave salary contribution shall be allowed as approved expenditure."

Rule 82 provides that the employees of the aided educational institutions shall be entitled to gratuity as payable under the Payment of Gratuity Act, 1972, as amended from time to time.

The Division Bench of the High Court by the impugned judgment on construction of the Act and the Rules, has come to the conclusion that the State Government is not liable to reimburse the aided institution for the expenditure incurred by it on payments of gratuity to its employees as the said amount is not a part of the approved expenditure. The appellant running the educational institution has challenged the correctness of the view taken in the impugned judgment reversing the decision of learned Single Judge.

The entitlement of the employees of the aided educational institution to gratuity cannot be called in question in view of the provisions contained in Section 16 of the Act and Rule 82 made by the State Government in exercise of its rule making power. The teachers may not be the employees within the meaning of definition of employee as defined in the Payment of Gratuity Act, 1972 but that is of no relevance in view of Section 16 and Rule 82. The decision in Ahmedabad Pvt. Primary Teachers' Association v. Administrative Officer & Ors. [(2004) 1 SCC 755] relied upon by learned counsel for the appellant for the proposition that the teachers are not covered by the definition of employees under the Gratuity Act renders no assistance in the present case to the appellant in view of benefit of the said Act having been extended to the employees of the aided educational institutions. The definition of employee under the Act includes teachers and every other employee working in a recognized institution. We are unable to accept the contention that the teachers of non-Government aided educational institutions are not entitled to gratuity. The appellant's liability to pay the gratuity under Section 4 of the Gratuity Act cannot be doubted. The only question is whether appellant is entitled to include the proportionate amount of gratuity in the approved expenditure for the purposes of computation of grant in aid. For this purpose, we have to consider the provisions of the Act and the Rules.

Section 7 of the Act stipulates that no aid can be claimed as a matter of right and the aid may cover such part of the expenditure of the institution as may be prescribed. The prescribed expenditure is as contained in the Rules. Under Rule 14, the approved expenditure can relate to only items from (a) to (v) mentioned therein. It is nobody's case that the expenditure on gratuity falls under items (b) to (v). Under Item (a) only expenditure on actual salary and provident fund contribution not exceeding 8.33% in respect of teaching and non-teaching staff can be included. The contention urged is that the gratuity is part of salary. We are unable to agree. The amount to be paid as a gratuity in terms of Section 4 of the Gratuity Act, under no circumstances, can be said to be a part of 'actual salary' as postulated by Rule 14. Further, some of the items (b) to (v), wherever recurring or non-recurring expenditure is to form part of approved expenditure, specifically provide for it. Admittedly, the expenditure on gratuity does not fall under Items (b) to (v) as the only contention urged was that it falls under Rule 14(a).

The position becomes further clear on a plain reading of Note 2 appended to Rule 14. It is clear that ordinarily the charges on account of

payment of gratuity paid to former teachers are not admitted for the purpose of grant-in-aid unless the Rules on the subject are approved by the Government. The words 'the rules on the subject' in Note 2 cannot be interpreted to mean rule contained in other part of the Rules, namely, Rule 82. We are unable to accept the contention that Rule 82 would be the rule on the subject approved by the Government. If Rule 82 is to be interpreted as a rule approved by the Government to contribute the amount of gratuity while computing grant-in-aid, the question of appending Note 2 would not have arisen. Clearly, Note 2 refers to Rules framed by Non-Government Educational Institutions which are to be approved by the Government and not the Government itself making the Rules and approving the same. As already stated, Rule 82 only makes it obligatory for aided educational institutions to pay gratuity to their employees in accordance with the Gratuity Act.

The gratuity cannot be termed to be an emolument for the time being payable to the employees so as to come within the definition of salary defined in Section 2 (r) of the Act. Further, Rule 14 uses the word 'actual salary'. Be that as it may, it seems clear the non-recurring payment of this nature cannot be included in the definition of salary. Gratuity is payable at the time of retirement/termination of the employment. Reliance on the decision in the case of Metal Box Company of India Limited v. Their Workmen [(1969) 1 SCR 790] can render little assistance to the appellant. It is a case under Payment of Bonus Act. It was only dealing with accountancy principles. Observations were made that an estimated liability under the gratuity schemes even if it amounts to a contingent liability and is not a debt under the Wealth Tax Act, if properly ascertainable and its present value is fairly discounted, is deductible from the gross receipts while preparing the profits and loss account. In trading circles or in rule or direction in the Bonus Act, there was no prohibition from such a practice. The question in that case was whether while working out the net profits the trader can provide from his gross receipts his liability to pay a certain sum for every additional year of service which he receives from his employees. It was answered in affirmative. If such liability was properly ascertainable, it was possible to arrive at a proper discounted value. This decision, in our view, is not relevant to determine the point in issue in the present case.

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

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

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

In view of the above, we find no infirmity in the impugned judgment of the High Court and, therefore, the appeals and the special leave petitions are dismissed.