

IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.1996/2012

STATE OF RAJASTHAN  
THROUGH SECRETARY EDUCATION DEPARTMENT ...Appellant(s)

VERSUS

SHRI AGARWAL SHIKSHA SAMITI ...Respondent(s)

WITH  
CIVIL APPEAL NO.2040/2012 (XV)

O R D E R

The subject matter of the dispute is the claim of the respondent Institution to Grant-in-Aid in view of an order issued by the appellant-Government of Rajasthan on 07.03.1992. The respondent sought quashing of this order. In the course of pendency of the Writ Petition, a Notification was issued on 15.10.1992 effective from 01.01.1993 bringing into force The Rajasthan Non-Government Educational Institutions Act, 1989 ("the Act, 1989") as well as the Rules framed thereunder i.e. The Rajasthan non-Government Educational Institution (Recognition, Grant-in- Aid and Service Conditions Etc.) Rules, 1993 (hereinafter "the Rules, 1993) under Section 43 of the Act, 1989 which

came into force on 01.04.1993. In terms of the judgment of the learned Single Judge of the High Court, the appellant was directed to sanction Grant-in-Aid to the respondent.

The endeavour of the appellant to assail the order in appeal resulted in order of dismissal but with liberty to file a review petition on the basis of subsequent events. In respect of the same, an order was pronounced on 06.05.1996 whereby the appellant was directed to grant 80 per cent of the expenses incurred by the respondent which according to the appellant was contrary to the statutory scheme mentioned aforesaid. The appeal filed thereafter was also rejected by the impugned order predicated on the bar of delay which was not sufficiently explained.

Insofar as the present proceedings are concerned, post-issuance of notice, leave was granted on 06.02.2012 and interim arrangements were made whereby the operation of the impugned order was stayed but simultaneously it was directed that the appellant/State shall assess the annual recurring grant payable to the respondent in accordance with the Rules 13 and 14 of the Rules, 1993 read with other provisions contained in the Rules and shall pay the same to the respondent.

Learned counsel for the appellant/State submits

that the payments have actually been made and according to his instructions an over payment has been made. The subsequent development was that the services of the employees of these aided institutions were absorbed by the Government itself and consequently the aid was stopped from 09.03.2012.

It is the submission of the learned counsel for the appellant that in view thereof the *lis* does not really survive for consideration.

Learned counsel for the respondent, however, disputed the aforesaid position to a limited extent. While the sequence of what has been set out above by learned counsel for the appellant was not disputed, it is the say of the learned counsel for the respondent that one issue which still requires consideration is the liability to pay gratuity for a period of almost ten years when the employees were absorbed as Government employees. It is her say that since the Grant-in-Aid was to the extent of 80 per cent, the liability of gratuity to the extent of 80 per cent was also to be borne by the appellant. This position was disputed by learned counsel for the appellant and it is in the conspectus of this argument really that we heard the arguments.

Learned counsel for the respondent sought to rely upon the judgment of this Court in *State Of Rajasthan & Anr. v. Senior Higher Secondary School*

*Lachhmangarh & Ors.*- 2005 (10) SCC 346 to contend that while dealing with the issue of leave encashment, the same was held as part of salary as defined in Section 2(r) of the said Act and covered in the wider expression "*scale of pay and allowances*" used in Section 29 of the said Act. The judgment was delivered by a Bench of three Judges Bench of this Court. Since a wider definition has been applied, it is the submission of learned counsel for the respondent that the liability for gratuity would also equally arise.

On the other hand, learned counsel for the appellant has also relied upon the judgment of this Court albeit of Bench of two Judges in *Rajasthan Welfare Society v. state Of Rajasthan* - (2005) 5 SCC 275. He submits that the very question of Grant-in-Aid *qua* the liability of gratuity was considered in the said judgment and it has been opined that while gratuity had to be paid to the employees, the liability of the State to reimburse the gratuity did not arise.

A reading of the judgment clearly shows that the issue is covered by that judgment.

However, learned counsel for the respondent contends that this two Judges Bench judgment runs contrary to the three Judges Bench judgment delivered earlier and thus, is *per incurium* and the matter is required to be considered by a Larger Bench of three Judges. Interestingly, two of the three Judges who were

party to the earlier judgment of three Judges Bench was the very coram which formed the subsequent Bench of two Judges which delivered the judgment in the case of gratuity.

On consideration of the matter, we find no reason to refer the matter to a Larger Bench or to come to the view that the observations made in the subsequent judgment in *Rajasthan Welfare Society* (supra) can be said to be *per incurium*. This is more so as two of the Judges forming the Bench of the earlier coram were the coram in the subsequent Bench.

If we take notice of what has been dealt with, the earlier judgment dealt with a particular aspect of leave encashment while the latter judgment dealt with the issue of gratuity. It cannot be said that the Bench was unaware of the earlier judgment. The issue of gratuity has been squarely interpreted to fasten the liability on the institution insofar as the employees are concerned without the benefit of Grant-in-Aid.

That being the position, we cannot say that the respondent/institution is entitled to be reimbursed to the extent of 80 per cent for its liability towards gratuity for the earlier period of 10 years.

We are thus, of the view that the impugned judgments are liable to be set aside and the appeals are liable to be allowed in terms of our observations therein.

The appeals are accordingly allowed leaving parties to bear their own costs.

.....J.  
[SANJAY KISHAN KAUL]

.....J.  
[M.M. SUNDRESH]

NEW DELHI;  
JANUARY 11, 2022.

ITEM NO.101

Court 6 (Video Conferencing)

SECTION XV

S U P R E M E C O U R T O F I N D I A  
R E C O R D O F P R O C E E D I N G S

Civil Appeal No(s). 1996/2012

STATE OF RAJASTHAN TR.SEC.EDU.DEPT.

Appellant(s)

VERSUS

SHRI AGARWAL SHIKSHA SAMITI

Respondent(s)

WITH

C.A. No. 2040/2012 (XV)

Date : 11-01-2022 These appeals were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE SANJAY KISHAN KAUL  
HON'BLE MR. JUSTICE M.M. SUNDRESH

For Appellant(s) Dr. Manish Singhvi, Sr. Adv.  
Mr. Arpit Parkash, Adv.  
Mr. Sandeep Kumar Jha, Adv.

Ms. Ruchi Kohli, AOR

For Respondent(s) Ms. Shobha Gupta, AOR  
Mr. Rajendra Kumar Panigrahi, Adv.  
Ms. Jessy Kurien, Adv.  
Mr. Nishant Bahuguna, Adv.

UPON hearing the counsel the Court made the following

O R D E R

The appeals are allowed in terms of the signed order.

Pending application, if any, stands disposed of.

(ASHA SUNDRIYAL)  
ASTT. REGISTRAR-cum-PS

(RAM SUBHAG SINGH)  
BRANCH OFFICER

[Signed order is placed on the file]