

[2022] S.C.R. 463

JAGDISH PRASAD SAINI & ORS.

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v.

STATE OF RAJASTHAN & ORS.

(Civil Appeal No. 6953 of 2022)

SEPTEMBER 26, 2022

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[UDAY UMESH LALIT, CJI AND S. RAVINDRA BHATT, JJ.]

Rajasthan Voluntary Rural Education Service Rules, 2010 – rr.5, 10 – Rajasthan Non-Government Educational Institutions (Recognition Grant-In-Aid and Service Conditions, Etc.) Rules, 1993 – rr.47, 82 – Rajasthan Non-Government Educational Institutions Act, 1989 – ss. 2, 29 – Appellants were appointed against sanctioned posts by fourth respondent-school, controlled by fifth respondent trust (collectively “establishment”) – Establishment discontinued receipt of grant-in-aid from the State – In the meanwhile, 2010 Rules were brought into force by the State – Appellants sought absorption with the State in accordance with the rules, denied – Eventually, Supreme Court set aside the denial of absorption of the appellants and directed their regularization – However, their complaint of non-compliance with the respondent’s obligation to pay leave encashment and gratuity for the period they were in the aided establishment was not gone into, permitted to agitate grievance before High Court – By impugned judgment High Court has now held that since arrears of salary had been paid, nothing more was to be done – On appeal, held: Salary includes leave encashment – Further, 2010 Rules were framed to enable the absorption of employees and teachers of non-government aided institutions – Condition in clause (viii) of r.5 i.e., bar on carry forward of balance privilege leave and requiring employees to seek encashment from their previous employer i.e., aided institutions, is an arbitrary condition which cannot be enforced – Also, in the present case, the management establishment was recipient of 70% aid, in the form of grant – Thus, the State cannot shrug its part of the responsibility to pay the appellants the share of leave encashment benefits, and hide behind either r.5 (viii) or the undertaking executed by them – Appellants entitled to privilege leave entitlement benefits, to be paid by the State and management establishment in the ratio

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- A *of 70:30, respectively – Management also liable to pay gratuity to the appellants – Impugned order set aside – Service Law.*
Service Law – Leave encashment, if part of salary – Held: Yes.
- B **Allowing the appeal, the Court**
- C **HELD:** 1.1 Non-government educational institutions in Rajasthan are governed by the Rajasthan Non-Government Educational Institutions Act, 1989 (“Act”) and the rules framed. Section 2 (r) of the Act defines salary as “*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 3 of the Act provides for recognition of grant-in-aid institutions; Sections 4 to 6 of the Act provide for the eventuality of refusal of recognition, withdrawal of aid and the remedies for the institution. Section 7 of the Act onwards are regulatory provisions requiring audit, recruitment, orders of termination of teachers, provision of tribunal for redressal of teachers’ grievances regarding dismissal or termination, etc. Section 29 of the Act is relevant for the present purposes. The relevant provisions of the 1993 Rules are Rules 47, and, pertinently, 82. Rule 47 deals with privilege leave. [Paras 14-16][472-D-E, G; 473-A, E]
- D 1.2 As far as leave encashment dues are concerned, the issue is no longer at large. In *Senior Higher Secondary School Lachhmangarh* this court held that “salary” under the Act, includes leave encashment. The reasoning therein is binding, and conclusive as regards entitlement of the appellants to claim leave encashment benefits. However, the State had urged that by virtue of Rule 5 of the 2010 Rules, the employees who were regularized could not claim these benefits. The 2010 Rules were framed in exercise of powers under proviso to Article 309 of the Constitution. Evidently, these rules were framed to enable the absorption of employees and teachers of non-government aided institutions. What is relevant for the purposes of this case is that by Rule 5(viii), carry forward of existing privilege leave is denied; likewise, the period of service in aided institutions is not to be reckoned for the purpose of gratuity under Rule 5(ix). Every
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employee had to furnish an undertaking in the prescribed form to accept the terms and conditions. Ordinarily no public employer can be faulted in imposing pre-conditions before it recruits an employee. However, such conditions cannot be arbitrary, or so onerous as to be unconscionable. In the opinion of this court, the condition in clause (viii) of Rule 5 i.e., carry forward of balance privilege leave, is barred and requiring employees to seek encashment from their previous employer, i.e., aided institutions, is an arbitrary and unconscionable condition, which cannot be enforced. [Paras 18-20][475-B, 476-H; 477-A; 478-F-H; 479-A]

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State of Rajasthan and Anr. v. Senior Higher Secondary School, Lachhmangarh (2005) 10 SCC 346 – relied on.

1.3 In the scheme of the 1993 Rules, the assessment of, and determination of the extent of, aid to be granted to any institution, is provided by Rule 13. What forms part of the approved expenditure that would be the content of aid, is provided by Rule 14. In the present case, the management establishment was recipient of 70% aid, in the form of grant. In these circumstances, the State cannot shrug its responsibility to shoulder its part of the responsibility to pay the appellants the share of leave encashment benefits, and hide behind either Rule 5 (viii) or the undertaking executed by them. The appellants are held entitled to privilege leave entitlement benefits. Such benefit shall be calculated from the date they entered the service of the establishment till the date of their absorption, by the State, in 2016. The State shall pay the benefits due to the extent of 70%, and the balance 30% shall be payable by the management establishment. On the issue of gratuity, again, the question of liability has been conclusively settled. Although the management relied on a Chhattisgarh High Court decision *Ambika Mission Boys Model School*, this court is of the opinion that it cannot be construed as an authority, because the court in that case analysed the provisions of the Payment of Gratuity Act, 1972, as amended in 2009. However, in the present case, the scheme of the 1993 Rules, which contained the conditions of grant, categorically cast the liability to pay gratuity on the employer, i.e., the aided establishment, i.e., the fourth, fifth and sixth respondents in this

- A case. Furthermore, *Rajasthan Welfare Society* is an authority, in that it considered the effect of the 1993 Rules, and held that it is the management of the aided institution which has to bear the liability towards payment of gratuity. Neither has Rule 82 changed, nor has any other material been brought to the notice of the court,
- B to say that the management, i.e., respondent nos. 3-7 are absolved of their liability to pay gratuity, upon termination of their relationship with the appellants as their employers. Rule 82 is a *condition of grant*, which meant that the management establishment was conscious and aware of its liability when it applied and was granted aid, under the 1993 Rules. Therefore, it
- C cannot escape its liability on that score. [Paras 21, 22][479-C-G; 480-A-B; 482-G]

- 1.4 With respect to leave encashment, the State and the respondent nos. 3 to 7 are liable to pay the appellants, in the ratio of 70:30 respectively. The respondent nos. 3 to 7 shall also
- D calculate and pay the amount of gratuity, to the appellants (on the basis of their initial date of entry in the school, till the date of order of absorption, by the respondent State), within six weeks from today. Since both sets of respondents contested their liability and denied them to the appellants, the amounts payable to the appellants shall also carry interest, at the rate of 10% from the date(s) of their entitlement, till the date of payment. The impugned order is set aside. [Para 23][482-H; 483-A-C]

Rajasthan Welfare Society v. State of Rajasthan (2005)

5 SCC 275 : [2005] 3 SCR 387; Regional Provident

F Fund Commissioner v. Sanatan Dharam Girls Secondary School & Ors. (2007) 1 SCC 268 : [2006] 7 Suppl. SCR 849; Pani Ram v. Union of India & Ors.

2021 SCC OnLine SC 1277; Central Inland Water Transport Corporation Limited & Anr. v. Brojo Nath Ganguly & Anr. (1986) 3 SCC 156 : [1986] 2 SCR 278 – referred to.

Ambika Mission Boys Model School v. State of Chattisgarh, (2020) 2 CLR 177 – distinguished.

<u>Case Law Reference</u>			A
[2005] 3 SCR 387	referred to	Para 10	
[2006] 7 Suppl. SCR 849	referred to	Para 13	
[1986] 2 SCR 278	referred to	Para 20	

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 6953 B
of 2022.

From the Judgment and Order dated 26.04.2019 of the High Court of Judicature for Rajasthan at Jaipur Bench, Jaipur in S.B. Writ Miscellaneous Application No. 357 of 2017.

Deepak Nargolkar, Sr. Adv., Syed Ahmed Saud, Daanish Ahmed Syed, Mohd. Parvez Dabas, Uzmi Jameel Husain, Aqib Baig, Mohd. Shahib, M/s. Shakil Ahmad Syed, Advs. for the Appellants.

Dr. Manish Singhvi, C.U. Singh, Sr. Advs., D. K. Devesh, Upendra Pratap Singh, Harsh Singh Rawat, Abhinav S. Raghuvanshi, Suprabh Kumar Roshan, Ms. Snehal U. Kanzarkar, Ms. Sneha Jankiraman, Moha Paranjpe, M/s. Khaitan & Co., Advs. for the Respondents.

The Judgment of the Court was delivered by

S. RAVINDRA BHAT, J.

1. Special leave granted. With consent of counsel for the parties, the appeal was heard finally. The appeal is directed against a judgment and order of the Rajasthan High Court, Jaipur Bench,¹ dismissing the appellant's application, seeking enforcement of this court's previous judgment.²

2. The appellants were appointed against sanctioned posts by the fourth respondent (a senior secondary school, established and controlled by the fifth respondent trust, hereafter referred to collectively as the "establishment") in 1993. They continued to work uninterruptedly in that establishment on a regular basis. The establishment was recipient of grant-in-aid from the State of Rajasthan (hereafter, "State"). By a unilateral resolution dated 5th November 2008, the managing committee of the establishment decided to discontinue receipt of grant-in-aid from the State with effect from 1st April 2008. Accordingly, the State by an

¹ Dated 26th April 2019 in SBWMA No. 357/2017

² Order dated 19th July 2016 in Civil Appeal No 6601-6603 of 2016

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- A order dated 28th December 2012 ceased to grant aid with effect from 1st March 2012.
3. In the meanwhile, the State had framed and brought into force the Rajasthan Voluntary Rural Education Service Rules, 2010 (hereafter, “2010 Rules”) with the objective of providing security to the employees
- B working in aided institutions, and to absorb them in the State’s service. The appellants sought their absorption with the State in accordance with the rules, by unavailingly representing in this regard. Finally, they were driven to file writ petitions before the High Court. The State had, pursuant to the rules framed by it, absorbed other employees and teachers from aided institutions, but denied this benefit to the appellants.
- C 4. The appellants writ petitions were clubbed with several other petitions and disposed of by the High Court, refusing to direct the State to absorb these employees. The employees, including the appellants, unsuccessfully sought review of those orders; which was rejected on 29th November 2013. The appellants thereafter approached this court
- D by petitions for special leave to appeal questioning the orders of the High Court.
5. By its final order of 19th of July 2016, this court set aside the denial of absorption of the appellants. The court directed as follows:
- E *“..We are therefore convinced that the said eleven teachers having been in the service of the school management in the aided posts and were in receipt of such aid from the state government, right from the date of their entry into service till the aid came to be discontinued in 2008, only at the instance of the school management, which has now been restored*
- F *pursuant to the orders of this court, the state government can be directed to pass necessary orders for their absorption applying the 2010 rules as from the date such rules came into effect. We therefore set aside the orders denying such absorption and remit the matter back to the respondent number one-state government to consider the claim of the eleven aided teachers for their absorption as from the date when the 2010 rules came into effect and such orders shall be passed within one month from the date of receipt of a copy of this order.*
- G *After passing such orders of absorption, it is needless to state that whatever salary that fell due and payable to the said*
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eleven teachers for the past period i.e. from 23.3.2008 shall be restored in the manner such aid is to be granted prior to the coming into force of the 2010 rules. In other words, such aid is to be sanctioned to an extent of 70% and 30% to be borne by the school management, such calculation shall be made, and the extent to which aid is to be sanctioned shall be granted up to the date by which the order of absorption is passed on thereafter the full salary payable for an absorbed teacher in the state service shall also be calculated and sanctioned by respondent No 1/ state government. A

On such orders being passed, we also direct the school management to take necessary steps for praying the 30% of their liability from March 2008 up to date of the absorption of the eleven teachers, as per the orders to be passed by the state government. C

We permit the school management to make such payment of 30% to the eleven teachers in easy instalments by negotiating with the concerned teachers in order to ensure that sudden huge financial liability is not cast on the school management so that the running of the school for the benefit of the school going children in that location.” D

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We also direct the school management to submit a statement of calculation as regards the salary which was actually disbursed to the aided teachers as well as non-aided teachers from the month of April, 2008. The school management shall separately prepare a statement of calculation as regards the salary paid to the aided teachers and forward it to the state government with proof of payment in order to enable the State government to comply with our directions with regard to the payment of salary payable up to the date of absorption. As far as revision in the payment of salary is to be granted, the same shall also be prepared and appropriate order be passed by the state government. Such payment shall also be effected positively by the school management.” F G

6. After this order, in September 2016, the establishment moved an application seeking directions from this court. The application H

- A contended that the establishment had to pay the 11 aided employees, (i.e., the appellants) to the tune of ₹ 57.68 lakhs, and privilege leave salary to the tune of 36.20 lakhs. The application also produced a chart of calculation of gratuity and leave encashment. This application was not allowed. Contemporaneously, the appellants also filed contempt proceedings, i.e., C.P. No (Civil) 640 – 642/ 2017, in the disposed of Civil Appeal Nos. 6601-6603 of 2016. This court by order of 6th March 2017, allowed the appellants to withdraw the contempt petitions, with liberty to move the High Court for enforcement of orders of this court. In these circumstances, the appellants moved the High Court contending that the orders of this court had not been properly complied with, to the extent that they had not been paid privilege leave encashment and gratuity amounts.

7. The High Court by the impugned order rejected the applications preferred before it on the ground that since the salary required to be disbursed had in fact been paid to the appellant employees, there was no cause to pursue the matter further. The High Court was of the opinion that neither gratuity nor leave encashment was covered by the expression “salary”, even under Rule 10 of the 2010 Rules or under the Rajasthan Non-Government Educational Institutions (Recognition Grant-In-Aid and Service Conditions, Etc.) Rules, 1993 (hereafter, “1993 Rules”).

E 8. The aggrieved appellants have therefore approached this court. It was contended on their behalf by Mr Deepak Nargokar, learned senior counsel, that the expression “salary” included both components, i.e., gratuity, as well as leave encashment. It was pointed out that one of the original appellants who approached this court, was in fact paid gratuity as well as leave encashment by the respondent establishment. It was also argued that under Rule 5 of the 2010 Rules, employees were entitled to leave encashment and gratuity benefits from private institutions.

9. The learned senior counsel next relied upon the averments made in the application by the management establishment, especially para 13(6), filed in this court³. It was submitted that the management establishment clearly admitted to its liability for payment of leave encashment dues and gratuity. In these circumstances, the establishment could not deny those liabilities. He also relied upon the chart produced by the establishment management which specifically set out the gratuity and

H ³ In Civil Appeal Nos 6601-6603 of 2016

leave encashment amounts which all the 11 employees were entitled to, according to it. He also relied upon the judgment of this court in *State of Rajasthan and Anr. v. Senior Higher Secondary School, Lachhmangarh*⁴ where the court declared that leave encashment had, “to be read and understood with the definition of the word salary”. A

10. Learned senior counsel for the State, Dr. Manish Singhvi argued that in terms of Rule 5 (xi) of the 2010 Rules, every employee had executed an undertaking that she or he accepted all terms and conditions of service prescribed by the 2010 Rules. Furthermore, the concept of ‘carry forward of balance of privileged leave’ too was denied by Rule 5(viii) of the 2010 Rules. It was submitted that in terms of Rule 5(viii), the employees could seek payment of leave encashment of balance of privileged leave only from the private institutions. The State, therefore, could not be fastened with the liability on that score. So far as the question of gratuity liability was concerned, Dr. Singhvi relied upon the judgment in *Rajasthan Welfare Society v. State of Rajasthan*⁵ and submitted that by virtue of Rule 82 of the 1993 Rules, the employees of aided educational institutions were entitled to gratuity under the Payment of Gratuity Act, 1972. Yet, in terms of Rule 14 of the 1993 Rules, gratuity was not an approved expenditure. As a consequence, this court held in no uncertain terms that gratuity was not part of the recurring grant and that the State was not liable in that regard. B C D E

11. Mr. C.U. Singh, learned senior counsel appearing for the establishment, submitted that the order of this court was explicit in its terms and that leave encashment and gratuity could not be said to form part of “salary”. It was further submitted that the example provided by the appellants, i.e., that one amongst them (Mr S.S. Shekhawat, respondent no.8) was paid gratuity is a solitary instance which *per se* could not cast liability without any corresponding obligation in law. F

12. It was further submitted that privileged leave cannot be included within the term salary which under the Rajasthan Non-Governmental Educational Institutions Act, 1989 (Section 2(r)) means “aggregate of the emoluments of an employee”. Learned counsel relied upon the judgment of this court in *Senior Higher Secondary School Lachhmangarh* (supra) and submitted that corresponding aid, therefore, G

⁴ *State of Rajasthan and Anr. v. Senior Higher Secondary School, Lachhmangarh*, 2005 (10) SCC 346 H

⁵ *Rajasthan Welfare Society v. State of Rajasthan*, 2005 (5) SCC 275

- A has to be disbursed by the State Government, to enable the payment of privileged leave.

13. So far as the gratuity was concerned, learned counsel relied upon a decision of the Chhattisgarh High Court in *Ambika Mission Boys Model School v. State of Chhattisgarh*⁶ and urged that the State
- B was primarily liable to disburse the gratuity of employees of aided institutions. It was also submitted that the Chhattisgarh High Court had relied upon the previous judgment of this court in *Regional Provident Fund Commissioner v. Sanatan Dharam Girls Secondary School & Ors*⁷, to hold that although aided institutions did not “belong” to the
- C Central or the State Government yet they were under the “control” of the State under various ways. The judgment had further noted that the Payment of Gratuity Act, 1972 had amended the definition of “employee” under Section 2(e) with retrospective effect from 3rd April 1997.

Analysis and Conclusions

- D 14. Non-government educational institutions in Rajasthan are governed by the Rajasthan Non-Government Educational Institutions Act, 1989 (hereafter “Act”) and the rules framed. Section 2 (r) of the Act defines salary as “*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*”. Compensatory allowance, by Section 2 (d) means:

- E “(d) ”compensatory allowance” means 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”.

- F 15. Section 3 of the Act provides for recognition of grant-in-aid institutions; Sections 4 to 6 of the Act provide for the eventuality of refusal of recognition, withdrawal of aid and the remedies for the G institution. Section 7 of the Act onwards are regulatory provisions requiring audit, recruitment, orders of termination of teachers, provision of tribunal for redressal of teachers’ grievances regarding dismissal or

⁶ *Ambika Mission Boys Model School v. State of Chhattisgarh*, (2020) 2 CLR 177

⁷ *Regional Provident Fund Commissioner v. Sanatan Dharam Girls Secondary School & Ors*, 2007 (1) SCC 268

termination, etc. Section 29 of the Act, which is relevant for the present A purposes, states as follows:

"29. Pay and allowances 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 B categories in Government institutions.

(2) Notwithstanding any contract to the contrary, the salary of an employee of a recognised institution, for any period after commencement of this Act, shall be paid to him by the management before the expiry of the fifteenth day or such C earlier day, as the State Government 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 or salary D and allowances.

(3) The salary shall be paid without deductions of any kind except those authorised by the rules made under this Act or by any other law for time being in force."

16. The relevant provisions of the 1993 Rules are Rules 47, and, E pertinently, 82. Rule 47 deals with privilege leave.⁸ Rule 82 is as follows:

⁸ 47. Privilege Leave.- (1) Non-Teaching Staff - Members of the non-teaching staff whether temporary or permanent, shall be entitled to privilege leave of 30 days in a calendar year. Fifteen days privilege leave shall be credited to the leave account of the employee on 1st January and the remaining fifteen days on 1st of July, each year subject to the total accumulation upto a maximum of 300 days. F

(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; G

(b) The teaching staff in schools and colleges shall be entitled to fifteen days/privilege leave in a calendar year. The leave account shall

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- A “82. *Gratuity and Insurance.- (1) The employees of the Aided educational institutions shall be entitled to Gratuity as admissible under Payment of Gratuity Act, 1972 as amended. from time to time.*
- B *(2) The managing committee shall arrange for Group Insurance of its employees under the respective scheme of Life Insurance Corporation of India.”*
- C 17. In the present case, the appellants had to fight for their entitlements. The State initially refused them the benefit of regularization. Their petitions for relief were unsuccessful. Ultimately, this court, by its order, dated 19th July 2016, directed their regularization. The court even initiated *suo motu* contempt proceedings, after which the appellants were paid their salaries and arrears according to the recommendations of the Pay Commission. However, the appellants’ complaint of non-compliance with the respondent’s obligation to pay leave encashment and gratuity
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- D *be credited with fifteen days privilege leave immediately after expiry of every calendar year; the unavailaed portion of the so credited privilege leave shall be qualified for carry forward to the next year upto a maximum of 300 days.*
- E *(c) The teaching staff appointed during a calendar year shall be allowed privilege leave @ 1 1/4 days for each completed month 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;*
- F *(d) The privilege leave admissible to such an employee in respect of any calendar year in which he is prevented from availing himself of the full vacation shall be in such proportion of 15 days as the number of days of vacation not taken bears to the full vacation. If in any calendar year the employee does not avail the full vacation, fifteen days privilege leave will be admissible to him at the end of the vacation in respect of that calendar year.*
- G *(e) Vacation may be taken in combination with or in continuation of any kind of leave under these rules provided that the total duration of vacation and privilege leave taken in combination or in continuation of other leave, shall not exceed the amount of privilege leave due and admissible to an employee at a time under sub-rule (1) above.*
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for the period they were in the aided establishment was not gone into. A They were permitted to agitate that grievance before the High Court. Upon their doing so, the High Court, by its impugned order, gave short shrift to their argument, holding that since arrears of salary had been paid, nothing more was needed to be done.

18. As far as leave encashment dues are concerned, the issue is B no longer at large. In *Senior Higher Secondary School Lachhmangarh* (supra) this court held that “salary” under the Act, includes leave encashment. The relevant observations are extracted below:

“19. The contention urged is that Section 16 refers to various conditions of service including pay whereas Section 29(1) refers only to ‘scales of pay and allowances’ and not the ‘conditions of service’. Learned Counsel submits that by implication, Section 29 excludes the benefit of leave encashment. We are unable to accept the above contention. C

20. Section 16 confers a rule-making power on the State D Government to regulate recruitment and conditions of service including conditions relating to qualifications, pay, gratuity, insurance, age of retirement, entitlement of leave, conduct and discipline etc. of employees of aided institutions. Section 16 has to be read and worked harmoniously with Section 29 which directs maintenance of parity in the scales of pay and allowances between employees of aided institutions and Government institutions. E

21. As we have held above the expression pay and allowances in Section 29 read with wider definition of the word ‘salary’ in Section 2(r) of the Act has a very wide connotation. We F have come to the conclusion that the expression includes benefit of leave encashment which is nothing but salary for the unavailed leave to the credit of the employee.

22. Section 16 confers rule-making power on the State G Government to regulate ‘Conditions of service’ of employees of aided institutions. The Section specifically confers power to frame rules regarding entitlement of leave. If leave salary is of kind a salary within the wide definition of ‘salary’ under Section 2(r), the rules to regulate conditions of service of employees of aided institutions, must be so framed as to H

- A *maintain parity in conditions of service in that regard with employees in Government institutions. That is the mandate of Section 29 of the Act. The contention, therefore, advanced that subject-matter of entitlement of leave encashment is covered by Section 16 of the State but is beyond the purview of Section 29 of the Act, is fallacious and has to be rejected.*
- B *23. While construing the provision under consideration, it is to be borne in mind that interpretation of a welfare legislation should be to promote education. The service conditions of the employees of the aided institutions are sought to be improved and brought at par with those in Government educational institutions to maintain educational standards. It has also to be borne in mind that our Constitution makers have placed the field of education at a higher pedestal and granted it a special status. Various provisions of the Constitution deal with the aspect of advancement of education. The primary education has been held to be a fundamental right in the decision of this Court in *Unni Krishnan, J.P. and Ors. v. State of Andhra Pradesh* 1993 (1) SCC 645 and this aspect still holds the field despite the decision having been overruled on some other aspects in *T.M.A. Pai Foundation and Ors. v. State of Karnataka and Ors.* 2002 (8) SCC. To improve education, various State Governments grant aid to educational institutions and, by and large, teachers of aided private schools deserve to be treated at par with teachers of Government institutions to the extent possible. The provisions of these Acts deserve to be liberally interpreted in favour of the teaching class except where statute may compel otherwise. A statute of no other State has been brought to our notice where similar benefit has been denied to the teachers of the aided institutions to improve education. The service conditions of the teachers also deserve to be improved.”*
- G *19. This court is of the opinion that the aforementioned reasoning is binding, and conclusive as regards entitlement of the appellants to claim leave encashment benefits. However, the State had urged that by virtue of Rule 5 of the 2010 Rules, the employees who were regularized could not claim these benefits. The 2010 Rules were framed in exercise*
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of powers under proviso to Article 309 of the Constitution. Rule 5, to the extent it is relevant, states as follows:

“5. Terms and condition for appointment of employees in Government Service.—The regularly appointed existing employees in the No.- Government Aided Educational Institutions who are working against sanctioned aided post on the date of commencement of these rules shall be appointed under the Rajasthan Voluntary Rural Education Service on the following terms and conditions, namely :—

(i) The employee should possess the requisite educational and professional qualification for the respective posts as per the relevant service rules applicable to the Government servant of similar cadre. C

(ii) The posts on which the employees shall be appointed in the Government shall constitute a separate dying cadre for each category of employees. D

(iii) The appointed employees shall be posted only in the colleges/ schools, as the case may be, in the rural areas on the equivalent posts specified in column number 2 of the Schedule. However, in case there is no such equivalent post in the government, they shall be appointed on other posts carrying the same pay scale of aided posts: E

(vi) The salary of all the appointed employees shall be fixed on the basis of the salary as drawn at the time of appointment as per the Sixth Pay Commission with effect from the date they join in the government under these rules. Those who are drawing salary in Rajasthan Civil Services (Revised Pay Scale) Rules, 1998, Rajasthan Civil Services (Revised Pay Scales) for Government College Teachers including Librarian and PTI Rules, 1999 and Rajasthan Civil Services Revised Pay Scales for Government Polytechnic College Teachers, Librarians and Physical Training Instructors Rules, 2001 shall be allowed benefit of Rajasthan Civil Services (Revised Pay) Rules, 2008, Rajasthan Civil Services (Revised Pay Scales) for Government College teachers including Librarian and PTI Rules, 2009 and Rajasthan Civil Services (Revised Pay Scales) H

- A *for Government Polytechnic College Teachers, Librarians and Physical Training Instructors Rules, 2010 respectively with effect from the date they join in the Government after appointment under these rules.*
- B *(vii) No arrears on any account whatsoever, (including arrears of salary, selection scale, Assured Career Progression or Career Advancement Scheme) shall be paid by the State Government for the period prior to the date of their joining in the Government after appointment under these rules.*
- C *(viii) Carry forward of the balance of Privilege Leave shall not be allowed. Employees shall be free to get payment of encashment of balance of P. L. from the respective grant-in-aid educational institutions.*
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- D *(x) The period of service in the aided institutions shall not be counted for payment of gratuity, The employees shall be free to obtain payment of gratuity from the respective grant in aid educational institution.*
- E *(xi) Each employee shall be required to execute an undertaking, in Form - II, that he/she voluntarily accepts all the terms and conditions of service prescribed under these rules and agrees to serve in the government educational institutions situated in the rural areas till attaining the age of superannuation in the service of Government."*
- F 20. Evidently, these rules were framed to enable the absorption of employees and teachers of non-government aided institutions. What is relevant for the purposes of this case is that by Rule 5(viii), carry forward of existing privilege leave is denied; likewise, the period of service in aided institutions is not to be reckoned for the purpose of gratuity under Rule 5(ix). Every employee had to furnish an undertaking in the prescribed form to accept the terms and conditions. Ordinarily no public employer can be faulted in imposing pre-conditions before it recruits an employee. However, such conditions cannot be arbitrary, or so onerous as to be unconscionable. In the opinion of this court, the condition in clause (viii) of Rule 5 i.e., carry forward of balance privilege leave, is barred and
- G requiring employees to seek encashment from their previous employer,

i.e., aided institutions, is an arbitrary and unconscionable condition, which cannot be enforced. Speaking that such conditions are enforceable, this court, recently, in *Pani Ram vs. Union of India & Ors.*⁹ after quoting the observations in *Central Inland Water Transport Corporation Limited & Anr. V Brojo Nath Ganguly & Anr*¹⁰ held as follows:

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23. “....Right to Equality guaranteed Under Article 14 of the Constitution of India would also apply to a man who has no choice or rather no meaningful choice, but to give his assent to a contract or to sign on the dotted line in a prescribed or standard form or to accept a set of Rules as part of the contract, however unfair, unreasonable and unconscionable a Clause in that contract or form or Rules may be.”

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21. This court had categorically ruled, in *Senior Higher Secondary School* (supra) that leave encashment is part of salary. In the scheme of the 1993 Rules, the assessment of, and determination of the extent of, aid to be granted to any institution, is provided by Rule 13. What forms part of the approved expenditure that would be the content of aid, is provided by Rule 14. In the present case, the management establishment was recipient of 70% aid, in the form of grant. In these circumstances, the State cannot shrug its responsibility to shoulder its part of the responsibility to pay the appellants the share of leave encashment benefits, and hide behind either Rule 5 (viii) or the undertaking executed by them. The appellants are held entitled to privilege leave entitlement benefits. Such benefit shall be calculated from the date they entered the service of the establishment till the date of their absorption, by the State, in 2016. The State shall pay the benefits due to the extent of 70%, and the balance 30% shall be payable by the management establishment.

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22. On the issue of gratuity, again, the question of liability has been conclusively settled. Although the management relied on a Chhattisgarh High Court decision *Ambika Mission Boys Model School* (supra), this court is of the opinion that it cannot be construed as an authority, because the court in that case analysed the provisions of the Payment of Gratuity Act, 1972, as amended in 2009. However, in the present case, the scheme of the 1993 Rules, which contained the conditions of grant, categorically cast the liability to pay gratuity on the

⁹ *Pani Ram vs. Union of India & Ors*, 2021 SCC OnLine SC 1277

¹⁰ *Central Inland Water Transport Corporation Limited & Anr. V Brojo Nath Ganguly & Anr* (1986) 3 SCC 156

- A employer, i.e., the aided establishment, i.e., the fourth, fifth and sixth respondents in this case. Furthermore, *Rajasthan Welfare Society* (*supra*) is an authority, in that it considered the effect of the 1993 Rules, and held that it is the management of the aided institution which has to bear the liability towards payment of gratuity:
- B “7. 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. In, *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 also stipulates 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 :
- E Rule 14. Approved Expenditure- Approved expenditure referred to in Rule 13 above, shall relate to the following items only- All the items from (a) to (v) mentioned below will form component ‘A’ of the admissible items of the expenditure.
- F (a) Actual salary, and provident fund contribution not exceeding 8.33% in respect of teaching and non-teaching staff.
- (b) to (v).....”
- G 8. Note 2 appended to Rule 14 is relevant for the present purposes and reads thus :
- “Note - 2. 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;
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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.” A

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

14. 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 of the case of Metal Box Company of India Limited v. Their Workmen (1969) I LLJ 785 (SC) 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. F G

15. Further, gratuity cannot be included in the approved expenditure as under Rule 9 the State Government can H

- A *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.*
- B *16. 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 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.*
- C *17. 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."*
- D *Neither has Rule 82 changed, nor has any other material been brought to the notice of the court, to say that the management, i.e., respondent nos. 3-7 are absolved of their liability to pay gratuity, upon termination of their relationship with the appellants as their employers.*
- E *Rule 82 is a condition of grant, which meant that the management establishment was conscious and aware of its liability when it applied and was granted aid, under the 1993 Rules. Therefore, it cannot escape its liability on that score.*
- F *23. In view of the above discussion, it is held that with respect to leave encashment, the State and the respondent nos. 3 to 7 are liable to*
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pay the appellants, in the ratio of 70:30 respectively. The respondent State shall, within four weeks from today, determine the extent of entitlement of each appellant, and communicate the extent of amount payable by the management establishment (respondent nos. 3 to 7), to the appellants. These amounts shall be paid by all the respondents, within six weeks from today. The respondent nos. 3 to 7 shall also calculate and pay the amount of gratuity, to the appellants (on the basis of their initial date of entry in the school, till the date of order of absorption, by the respondent State), within six weeks from today. Since both sets of respondents contested their liability and denied them to the appellants, the amounts payable to the appellants shall also carry interest, at the rate of 10% from the date(s) of their entitlement, till the date of payment.

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24. The impugned order is therefore set aside. The appeal is allowed in terms of the above directions. There shall be no order on costs.

Divya Pandey
(Assisted by : Deepak Panwar, LCRA)

Appeal allowed.