



**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

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RSA-3857-2016 (O&M)
Date of Decision : 24.09.2024

EXECUTIVE OFFICER, PANCHAYAT SAMITI, KARNAL

.... APPELLANT

V/S

SAROJ RANI AND ORS

.... RESPONDENTS

CWP-9598-2018

PANCHAYAT SAMITI, KARNAL

.... PETITIONER

V/S

SAROJ RANI AND ORS

.... RESPONDENTS

CORAM : HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present :- Mr.Narender Pal Bhardwaj, Advocate
for the appellant.

Mr. Parminder Singh, Advocate
for respondent No.1.

JAGMOHAN BANSAL, J. (Oral)

1. By this common order, RSA-3857-2016 and CWP-9598-2018 are disposed of as facts and issues involved in both the petitions are inter-connected. For the sake of convenience and with the consent of parties, the facts are borrowed from RSA-3857-2016.

2. The appellant through instant appeal is seeking setting aside of judgment and decree dated 07.05.2014 whereby Civil Judge (Jr. Division), Karnal has held that respondent is entitled to leave encashment and judgment dated 18.05.2016 whereby Additional District Judge, Karnal has upheld judgment of lower Court.



3. The petitioner is a Panchayat Samiti constituted under Haryana Panchayati Raj Act, 1994 (for short '1994 Act'). Prior to 1994 Act, Punjab Panchayat Samitis and Zila Parishads Act, 1961 (for short '1961 Act') was applicable to Samities and Gram Panchayats constituted within the State of Haryana.

4. The respondent joined petitioner on 08.10.1975 as craft teacher on temporary basis. She was regularized vide letter dated 08.06.1982 issued by Deputy Commissioner, Karnal. The State Government vide notification dated 24.12.1982 sanctioned two posts of Craft Teachers. There is no dispute that the post of Craft Teacher is a sanctioned post and many craft teachers across the states have been appointed, regularized and paid pensionary benefits.

5. The respondent retired on 31.03.2012 on attaining the age of superannuation. The respondent filed a suit before the Civil Court claiming earned leave of 300 days. The Civil Judge (Jr. Divn.), Karnal vide judgment and decree dated 07.05.2014 decreed suit of the respondent and held that employee is entitled to earned leave. The petitioner preferred an appeal before District Judge, Karnal. The matter came up for consideration before Additional District Judge, Karnal who vide judgment dated 18.05.2016 dismissed appeal of the petitioner. The petitioner through instant second appeal is seeking setting aside of orders passed by Courts below.

6. The respondent also filed an application before Controlling Authority under the Payment of Gratuity Act, 1972 Act (for short '1972 Act') claiming gratuity to the tune of Rs.5,61,788/-. The said authority vide order dated 10.04.2015 allowed application of the respondent and



ordered the petitioner to pay a sum of Rs.5,46,605/- towards gratuity along with interest @ 10%. The petitioner preferred an appeal before the Appellate Authority which vide order dated 29.08.2017 dismissed the same on the ground of limitation. The said order is under challenge by way of CWP No.9598 of 2018.

7. The writ petition may be dismissed without adverting on merits because appeal before the Appellate Authority was filed beyond the maximum period prescribed for condoning the delay, However, considering the fact that respondent is claiming that she was governed by Punjab Panchayat Samitis and Zila Parishads Service Rules, 1965 (for short '1965 Rules') read with Punjab Civil Services Rules (as amended), the matter needs to be examined on merits because 1972 Act is inapplicable to a person who holds a post under Central Government or State Government and is governed by any other Act or Rules providing for payment of gratuity. Section 2(e) of 1972 Act defines expression "Employee". The said Section is reproduced as below :

"(e) "employee" means any person (other than an apprentice) employed on wages, in any establishment, factory, mine, oilfield, plantation, port, railway company or shop, to do any skilled, semi-skilled, or unskilled, manual, supervisory, technical or clerical work, whether the terms of such employment are express or implied, and whether or not such person is employed in a managerial or administrative capacity, but does not include any such person who holds a post under the Central Government or a State Government and is governed by any other Act or by any rules providing for payment of gratuity."

8. From the perusal of above said Section, it is quite evident



that 1972 Act is applicable to employees who are not holding posts under the Central Government or State Government and are not governed by any other Act or Rules for payment of gratuity. The respondent-employee is claiming that she was governed by Punjab Civil Service Rules which provides for gratuity. If it is held that respondent was employee of State Government and covered by 1961 Act read with Punjab Civil Service Rules, she cannot be entitled to gratuity under 1972 Act.

9. Mr. Narender Pal Bhardwaj, Advocate submits that as per Section 218 of 1994 Act, 1961 Act as applicable to State of Haryana stands repealed. As 1961 Act applicable to State of Haryana stood repealed with the introduction of 1994 Act, the rules framed under 1961 Act ceased to exist.

10. Per contra, Mr. Parminder Singh, Advocate submits that the petitioner was governed by 1965 Rules and those rules are still in force. The State legislature has repealed 1961 Act as applicable to State of Haryana, however, only a few rules made under the said Act have been repealed and 1965 Rules have not been repealed.

11. I have heard the arguments of counsel for the parties and perused the record.

12. The 1994 Act came into force w.e.f. 21.04.1994. Like other statutes, there is Section 218 in the said Act which repeals earlier Acts applicable to Gram Panchayats. The said Section is reproduced as below:

“218. The Punjab Gram Panchayat Act, 1952, (Punjab Act No.4 of 1953) and the Punjab Panchayat Samitis Act, 1961 (Punjab Act No.3 of 1961), in their application to the State of Haryana are hereby repealed : Repeal and Savings. Provided that such

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repeal shall not effect— (a) the previous operation of any Act so repealed or anything duly done or suffered thereunder ; or (b) any right, privilege, obligation or liability acquired or incurred under any Act so repealed ; or (c) any penalty, forfeiture or punishment incurred in respect of any offence committed against any Act so repealed ; or (d) any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid ; and any such investigation, legal proceeding or remedy may be instituted, continued or enforced, and any such penalty, forfeiture or punishment may be imposed, as if this Act had not been passed : Provided further that anything done or any action taken under the Acts so repealed shall be deemed to have been done or taken under this Act, and shall continue to be in force accordingly, unless and until superseded by anything done or any action taken under this Act.”

13. From the perusal of said Section, it is evident that Punjab Gram Panchayat Act, 1952 (for short ‘1952 Act’) and 1961 Act stood repealed from the date of implementation of 1994 Act. Section 209 of 1994 Act empowers the State Government to make rules for carrying out purpose of the Act. In exercise of power conferred by Section 209, the State Government has made different rules including Haryana Panchayati Raj Rules, 1995 (for short ‘1995 Rules’). These rules do not advert with appointment and terms & conditions of employees. Rule 32 of 1995 Rules has repealed different rules made under 1961 Act. Rule 32 of 1995 Rules is reproduced as below :

“Repeal and saving.- *The Punjab Panchayat Samiti and Zila Parishad Chairman and Vice-Chairman*

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(Election) Rules, 1961, the Punjab Panchayat Samiti (Co-option of Members) Rules, 1961, the Punjab Panchayat Samitis and Zila Parishads (Sale, lease and other alienation of property and public places) Rules, 1964, the Punjab Panchayat Samitis and Zila Parishads (Conduct of Proceedings) Rules, 1961, the Punjab Panchayat Samitis (Vacation of office by Chairman and Vice-Chairman) Rules, 1963 and the Punjab Panchayat Samitis and Zila Parishads (Suits) Rules, 1963 and the Punjab Gram Panchayat Rules, 1965 in their application to the State of Haryana and the Haryana Gram Panchayat (Co-option of Women Panches) Rules, 1971 and the Haryana Panchayat Samitis (Primary Members) Election Rules, 1981, are hereby repealed :

Provided that anything done or any action taken under the rules so repealed shall be deemed to have been done or taken under the corresponding provisions of these rules to the extent it is not inconsistent with these rules.”

14. From the perusal of aforesaid Rule, it is evident that it has repealed many rules made under 1961 Act, however, 1965 Rules have not been repealed. As a normal rule, as soon as an Act is repealed, rules made thereunder stand repealed, however, where an Act is substituted by another Act but, rules are not framed, the rules made under repealed Act remain in force. Like Section 24 of General Clauses Act, 1897, Section 22 of Punjab General Clauses Act, 1898 (for short ‘1898 Act’) provides that where any Punjab Act is repealed and re-enacted with or without modifications then, unless it is otherwise expressly provided, any rule issued under the repealed Act shall so far as it is not inconsistent with the provisions re-enacted continue in force. Section 22 of 1898 Act is



reproduce as below :

“22. Continuation of orders, etc., issued under enactments repealed and re-enacted.—Where any Punjab Act, is repealed and re-enacted with or without modification, then, unless it is otherwise expressly provided any appointment notification, order, scheme, rule, form or bye-law, made or issued under the repealed Act, shall, so far as it is not inconsistent with the provisions reenacted, continue in force, and be deemed to have been made or issued under the provisions so reenacted, unless and until it is superseded by any appointment notification, order, scheme, rule, form or bye-law made or issued under the provisions so re-enacted.”

15. In the case in hand, the State legislature introduced 1994 Act which principally substituted 1961 Act. Under the substituted Act, different rules were framed, however, rules governing the condition of service of employees were not framed.

16. Counsel for the parties are ad-idem that rules governing service of employees of Samities were not framed. As the State Government did not frame rules governing service of employees, in terms of Section 22 of 1898 Act, 1965 Rules framed under repealed Act continue to govern service conditions of employees.

17. It is apt to notice that Rule 32 of 1995 Rules further indicates intention of the State. Different Rules are repealed by Rule 32 but 1965 Rules are not repealed. Thus, inescapable conclusion is that 1965 Rules still exist. As per Rule 15 of 1965 Rules, if the matter is not expressly covered by these rules, it would be governed by Punjab Civil Service

Rules. Rule 15 is reproduced as below :

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“15. (1) In matters not expressly covered by these rules or any other rules framed under the Punjab Panchayat Samitis and Zila Parishads Act 1961, the members of the Service shall be governed by the provisions of the Punjab Civil Services Rules as amended from time to time in so far as they are not inconsistent with the provisions of the aforesaid Act, and the rules made thereunder :Provided that for words "Government" and "Government Servants" wherever they occur in the Punjab Civil Services Rules the words "Panchayat Samiti or Zila Parishad, as the case may be", and "members of the Punjab Panchayat Samitis and Zila Parishads Service" shall be deemed to have been substituted respectively. The competent authority may construe the provisions of the rules referred to in sub-rule (1) above with such adaptations not affecting the substance thereof as may be necessary or proper in order to adapt them to the matter before such authority :Provided that if any doubt arises regarding the adaptations with which the said rules should be construed, the matter shall be referred to the Government and the decision of the Government on such reference shall be final.

Explanation :- 'Competent Authority' means Executive Office of the Panchayat Samiti in the case of Panchayat Samiti and Secretary, Zila Parishad in the case of Zila Parishad.”

18. The petitioner has not framed Rules governing gratuity and leave encashment, thus, Punjab Civil Service Rules providing for leave encashment and gratuity are applicable to respondent. The petitioner is relying upon order dated 01.02.2007 passed by a Co-ordinate Bench of this Court wherein it has been held that post of Craft Teacher was not



covered under the Rule and was never provincialized, thus, the State is not liable to pay pensionary benefits. The Court noticed that posts of Craft Teachers have not been mentioned in Appendix-A. A Co-ordinate Bench of this Court vide recent judgment dated 28.05.2024 noticing aforesaid judgment has held that post of Craft Teacher is duly sanctioned by State Government and it finds mention in the Appendix of the applicable Rules.

19. In the wake of the recent judgment dated 28.05.2024 whereby employees have been held entitled to pensionary benefits, reliance cannot be placed upon earlier judgment dated 01.02.2007 passed in RSA No.2054 of 2001.

20. In view of Section 22 of 1898 Act, 1965 Rules read with Punjab Civil Services Rules are applicable to respondent. It is apt to notice here that by Rule 32 of 1995 Rules, different rules framed under 1961 Act have been repealed, however, 1965 Rules governing service of employees have not been repealed, thus, inescapable conclusion is that 1965 Rules are still applicable to employees of the appellant. All the employees are entitled to gratuity and leave encashment as payable under Punjab Civil Services Rules. This Court cannot ignore the fact that other Panchayat Samiti(s) within the State of Haryana has/have released gratuity and leave encashment to similarly situated craft teachers. The employee herein cannot be isolated because it would amount to discrimination.

21. In the wake of above discussion and findings, this Court is of the considered opinion that respondent is entitled to leave encashment and gratuity as per 1965 Rules read with Punjab Civil Service Rules. The



employee is not entitled to gratuity in terms of 1972 Act. Accordingly, writ petition (CWP-9598-2018) is hereby allowed and orders dated 10.04.2015 and 29.08.2017 passed by authorities under 1972 Act are hereby set aside. Appeal (RSA-3857-2016) is hereby dismissed.

22. The amount deposited by appellant with this Court, with respect to leave encashment, shall be released to respondent on furnishing proof of identity. It is made clear that if the petitioner/appellant has already paid gratuity, neither recovery on account of excess payment, if any, nor interest on account of delayed payment shall accrue.

23. Pending miscellaneous application (s), if any, shall also stand disposed of.

24.09.2024

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(JAGMOHAN BANSAL)
JUDGE

Whether speaking/reasoned : Yes/No
Whether Reportable : Yes/No