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M.P. SHIKSHAK CONGRESS AND ORS.

v.

R.P.F. COMMISSIONER, JABALPUR AND ORS.

DECEMBER 1, 1998

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[SUJATA V. MANOHAR AND G.B. PATTANAİK, JJ.]

Constitution of India, 1950; Article 254

C *Central Law—State law—Repugnancy—Applicability of Article 254(2)—Condition for—There must be a repugnancy between any provision of a State law and any provision of an earlier existing law made by Parliament.*

M.P. Ashaskiya Sikshan Sansthan (Adhyapekon Tatha Anya Karamchariyon Ke Vetano Ka Sandaya) Adhiniyam, 1978: Section 5(2).

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Employees' Provident Fund and miscellaneous Provisions Act, 1952: Sections 1(3) (b) and 16(1) (b) (As amended with effect from 1.8.1988).

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State of Madhya Pradesh—Aided Schools—Teachers and Employees—Regional Provident Fund Commissioner—Order directing the appellant to deposit contribution of employers as well as employees from 1.8.82 to 1.12.88—Writ challenging order—Dismissal by High Court—Appeal before Supreme Court—Plea of repugnancy between State and Central Act—Held in the present case, when the Madhya Pradesh Act of 1978 was enacted, there was no repugnancy between that State Act and the Employees Provident Fund and Miscellaneous Provisions Act of 1952 already enacted by Parliament—The Parliamentary Act did not apply to educational institutions—The State Act dealt with salaries and other ancillary matters governing certain educational institutions—Therefore, there was no repugnancy between the earlier Parliamentary legislation and the late State legislation—There was no question, therefore, of the State Act prevailing over the Parliamentary Act of 1952—In fact, quite clearly the Central Act did not apply to educational institutions either in the State of Madhya Pradesh or anywhere else—The Employees' Provident Fund and Miscellaneous Provisions Act, 1952 became applicable to educational institutions in the State of Madhya Pradesh for the first time on 6th of March, 1982—This was much later than the enactment of the State Act of 1978—The Parliamentary enactment, therefore, would prevail over the State Act of 1978—For the

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period 1st August, 1982 to 1st August, 1988 the Employees' Provident Fund Act was applicable to such teachers and employees of the aided schools in the State of Madhya Pradesh who are covered by the provisions of the scheme framed thereunder—The order of the Regional Provident Fund Commissioner, therefore, in so far as the orders cover the period 1st August, 1982 to 1st August, 1988 are valid—For the limited purpose of examining whether for the period 1st of August 1988 to 1st of December, 1988 the provisions of Employees' Provident Fund and Miscellaneous Provisions Act, 1952 are applicable to the concerned institutions—The matter referred to Regional Provident Fund Commissioner.

Doctrine of pith and substance—Applicability of.

Pt. Rishikesh & Anr. v. Salma Begum (Smt.), [1995] 4 SCC 718, held inapplicable.

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 3969-70 of 1994.

From the Judgment and Order dated 15.4.93 of the Madhya Pradesh High Court in M.P.Nos. 1555 and 3040 of 1991.

S.K. Mehta, C.L. Sahu and Ms. Shobha for the Appellants.

Ms. Kamareshwari, Praveen Swarup, Ms. Anil Katiyar, (Mrs. Madhur Dadlani and S.K. Agnihotri for the Respondents.

The Order of the Court was delivered by

The present appeals arise from the judgments and orders of the Madhya Pradesh High Court under which the High Court has upheld the orders of the Regional Provident Fund Commissioner dated 24th of April, 1991 and 15th of July, 1991 directing the employer concerned, being the schools mentioned in the said orders, to deposit, the contribution of the employees as well as the employers to the provident fund constituted under the Employees' Provident Fund and Miscellaneous Provisions Act, 1952, for the period 1st August, 1982 to 1st December, 1988. The writ petitions filed by the appellants to challenge these orders have been dismissed by the High Court. The appellants have filed the present appeals in a representative capacity on behalf of the teachers and other employees of various private but aided schools in the State of Madhya Pradesh.

In the State of Madhya Pradesh, under the Central Provinces and Berar

A Education Manual, 1928, in Appendix XVIII there was a scheme constituting a provident fund for teachers in non-pensionable service, under Rule 3 of Appendix XVIII the proportion of contribution to be paid by the teachers was specified, while under Rule 4, contribution by the Government and by the management of the school to the Provident Fund was also specified. Rule 6 dealt with the management of the Contributory Provident Fund.

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In 1978, the Madhya Pradesh Act 20 of 1978 was promulgated known as the Madhya Pradesh Ashaskiya Sikshan Sanstha (Adhyapakon Tatha Anya Karmcharyon ke vetano ka Sandaya) Adhiniyam, 1978. The preamble of the Act states that it is an act to make provision for regulating payment of salaries to teachers and other employees of Non-Government Schools receiving grant-in-aid from the State Government and Non-Government Educational Institutions for High Education receiving grants from the Madhya Pradesh Uchcha Shiksha Anudan Ayog and other matters ancillary thereto. The Act was, therefore, basically meant to regulate payment of salaries to the employees of the Institutions covered by that Act.

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Under Section 5 of the said Act 1978 and institutional fund was constituted for payment of salary to the teachers. The section prescribes the amounts which have to be deposited in the institutional fund. Under Section 5(2), the State Government or the Ayog, as the case may be, was required to place to the credit of the institution fund, in advance, such sums as may be required for the payment of salary to teachers and employees of the institution including the institutions contribution to the provident fund accounts at the rate at which it was required to make such contribution under any enactment for the time being in force. Therefore, the amount which was required to be contributed as the institutions' contribution to any provident fund, was now required to be deposited in the institutional fund. The Act of 1978 did not prescribe any scheme for provident fund as such.

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Therefore, the existing scheme for contributory provident fund under the Central Provinces and Berar Educational Manual, 1928 continued to remain in force except that the institution's contribution was now required to be deposited in the institutional fund. The Rules framed in 1978 under the said Act 1978 also did not set up any new scheme for contributory provident fund.

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The Rule of 1978 also did not prescribe any rate of contribution to a contributory provident fund. The Rules of 1978 were, however, replaced by the Ashasiya Shikshan Sanstha Institutional Fund Rules, 1983. Under these Rules, for the first time, specific provisions were made under Rule 8 for

opening of accounts for deposit of salary and teachers' contribution to the provident fund. Under Rule 10, the deductions to be made, *inter alia*, in respect of provident fund were also required to be set out in the statement in Form IV prescribed under the Rules and the amounts had to be dealt with as prescribed under those Rules. Sub-rule (6) of Rule 10, however, was as follows:

“10(6) :Notwithstanding anything contained in rules 8,9 and this rule; where the provisions of the Employees Provident Fund and Miscellaneous Provisions Act, 1952 (No. 19 of 1952) apply to the teachers and other employees of any institution, the Provident Fund account and other record relating thereto shall be maintained in accordance with the provisions of the said Act.”

In 1952, much prior to the Madhya Pradesh Act 20 of 1978, the Employees' Provident Fund and Miscellaneous Provisions Act, 1952 was promulgated by the Central Government. The said Act, however, initially did not apply to educational institutions. Hence the teachers and employees of the aided schools in Madhya Pradesh remained under the Contributory Provident scheme of the Central Provinces and Berar Educational Manual. Even after the Madhya Pradesh Act 20 of 1978 came into force, the same scheme continued with the modification set out above. However, by Notification dated 19.2.1982 which came into effect on its publication in the Gazette of India dated 6th of March, 1982, in exercise of powers conferred by Section 1(3)(b) of the Employees' Provident Fund and Miscellaneous Provisions Act, the Central Government specified certain classes of establishments in which 20 or more persons were employed, as covered by the said Central Act of 1952. The establishments so covered included any College whether or not affiliated with the University, as also any School whether or not recognised or aided by the Central or the State Government. It also covered any other institution in which the activity of imparting knowledge or training was carried on. By virtue of this Notification, therefore, from 6th of March 1982, the Employees' Provident Fund and Miscellaneous Provisions Act, 1952 became applicable, *inter alia*, to the aided schools of the State of Madhya Pradesh.

Thereafter, by an amendment to Section 16(1)(b) of the Employees' Provident Fund and Miscellaneous Provisions Act, 1952 made on 1st of August, 1988, it was provided as follows :

“Section 16(1): The Act shall not apply—

(b) to any other establishment belonging to or under the control of

A the Central Government or a State Government and whose employees are entitled to the benefit of contributory provident fund or old age pension in accordance with any scheme or rule framed by the Central Government or the State Government governing such benefits;

B We have to examine whether, by the amendment of Section 16(1)(b), with, effect from 1st of August, 1988, the Employees' Provident Fund and Miscellaneous Provisions Act, 1952 ceased to apply to the employees and teachers of the aided schools of the State of Madhya Pradesh. The respondents contend that in any event, the said Central Act of 1952 was applicable to all
 C teachers and employees of the aided schools in the State of Madhya Pradesh from 6th of March, 1982 till 1st August, 1988.

The appellants, however, contend that the Central Act, that is to say, the Employees' Provident Fund and Miscellaneous Provisions Act, 1952 is not applicable to the aided schools of the State of Madhya Pradesh. They
 D contend that the Central Act was a prior Act existing at the time when the State Act 20 of 1978 came into force. The State Act of 1978 had received the assent of the President. Hence under Article 254(2) of the Constitution, in the State of Madhya Pradesh, Act 20 of 1978 would prevail over the Employees' Provident Fund and Miscellaneous Provisions Act 1952. This argument is
 E fallacious. Under Article 254(1) of the Constitution, if any provision of a law made by the legislature of a State is repugnant to any provision of a law made by Parliament, which Parliament is competent to enact, then subject to the provisions of clause (2), the law made by the Parliament, whether passed before or after the law made by the legislature of such State, shall prevail and the law made by the legislature of the State shall, to the extent of the
 F repugnancy, be void. The ordinary rule, therefore, is that when both the State legislature as well as Parliament are competent to enact a law on a given subject, it is the law made by Parliament which will prevail. The exception which is carved out is under clause (2) of Article 254. Under this clause (2) where a law made by the legislature of a State with respect to one of the
 G matters enumerated in the Concurrent List contains any provision repugnant to the provisions of an earlier law made by Parliament, then the law so made by the legislature of such State shall, if it has been reserved for the consideration of the President and has received his assent, prevail in the State. Provided that nothing in this clause shall prevent Parliament from enacting at any time any law with respect to the same matter including a law
 H adding to, amending, varying or repealing the law so made by the legislature

of the State. A

Before clause (2) of Article 254 is attracted, there must be a repugnancy between any provision of a State law and any provision of an earlier existing law made by Parliament. In the present case, when the Madhya Pradesh Act 20 of 1978 was enacted, there was no repugnancy between the Madhya Pradesh Act 20 of 1978 and the Employees' Provident Fund and Miscellaneous Provisions Act of 1952 already enacted by Parliament. The Parliamentary Act did not apply to educational institutions. The State Act dealt with salaries and other ancillary matters governing certain educational institutions. Therefore, there was no repugnancy between the earlier Parliamentary legislation and the late State legislation. There was no question, therefore, of the State Act prevailing over the Parliamentary Act of 1952. In fact, quite clearly the Central Act did not apply to educational institutions either in the State of Madhya Pradesh or anywhere else. Secondly, as the preamble and other provisions of the State Act 20 of 1978 show, the primary purpose of the State Act was to make provisions for regulating the payment of salaries to teachers and other employees of aided Non-Government schools. The Act did not even provide for any scheme for setting up a Provident Fund. The Act incidental required that the institutional contribution to any existing Provident Fund scheme should be paid into the institutional fund set up under the said Act. Looking to the pith and substance of the State Act of 1978 also, it cannot be said that it in any way made provisions which were repugnant to the Employees Provident Fund and Miscellaneous Provisions Act, 1952. B
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It was by reason of the Notification of 6th of March, 1982 that the Central Act was extended to educational institutions. The Employees' Provident Fund and Miscellaneous Provisions Act, 1952, therefore, became applicable to educational institutions in the State of Madhya Pradesh for the first time on 6th of March, 1982. This was much later than the enactment of the State Act 20 of 1978. The Parliamentary enactment, therefore, would prevail over the State Act 20 of 1978, assuming that the State Act of 1978 created or affected any scheme for Provident Fund Article 254(2), therefore, has no application in the present case. F
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The Appellants, however, relied upon a decision of this Court in the case of *Pt. Rishikesh & Anr. v. Salma Begum (Smt.)* [1995] 4 SCC 718 in which this Court said that if a law is made by Parliament at a given date, but is brought into force at a later date, then, if in the interregnum, a State law is made which has received the assent of the President the State law will prevail H

A because the law made by Parliament is an earlier law. This ratio has no application to the present case where the Act was already in force from inception. This law in force was not repugnant to the State Act when the State Act came into force. The Central Act however, in the present case, was applied to educational institutions at a date later than the State Act. Hence

B the repugnancy arose only at a later date when the Central Act became applicable to educational institutions. In such a situation, there can be no question of the application of Article 254(2) because the repugnancy arose later in point of time than the State Act. Moreover, in the present case, there is no question of repugnancy between the two Acts since the State Act of 1978 does not provide for any Provident Fund Scheme.

C However, after the application of the Employees' Provident Fund and Miscellaneous Provisions Act, 1952 to education institutions, in 1983 new Rules were framed by the State of Madhya Pradesh under Act 20 of 1978. These are referred to as the State Rules of 1983. Under the State Rules of 1983,

D for the first time a scheme was set out for Contributory Provident Fund covering the teachers and employees of aided school. The State Government, however, was conscious of the fact that the employees' Provident Fund and Miscellaneous Provisions Act, 1952 was applicable in the State of Madhya Pradesh. Therefore, by Rule 10(6) of the State Rules of 1983, it was provided that the scheme as set out in the State Rules of 1983 would not apply where

E the provisions of the Employees' Provident Fund and Miscellaneous Provisions Act, 1952 apply. Clearly, therefore, far from there being any conflict between the State and the Central Legislation, the State Legislation by Rules framed in 1983 has excluded from the operation of the State scheme as framed under the 1983 rules, those employees to whom the Central Act applies.

F In this view of the matter, there can be no doubt that for the period 1st August, 1982 to 1st August, 1988 the Employees' Provident Fund and Miscellaneous Provisions Act, 1952 was applicable to such teachers and employees of the aided schools in the State of Madhya Pradesh who are covered by the provisions of the scheme framed thereunder. The orders of

G the Regional Provident, Fund Commissioner, therefore, in so far as the orders cover the period 1st August, 1982 to 1st August, 1988 are valid.

The said orders, however, also refer to an additional period from 1st of August, 1988 to 1st December, 1988. According to the appellants, on 1st of August, 1988, by virtue of the amended Section 16(1)(b) of the Employees' Provident Fund and Miscellaneous Provisions Act, 1952 coming into effect

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in the provisions of the 1952 Act are no longer applicable to them. Section 16(1)(b) provides that the 1952 Act will not apply to any establishment under the control of the State Government whose employees are entitled to the benefit of Contributory Provident Fund in accordance with any scheme framed by the State Government conferring such benefits. Whether on 1st of August, 1988, there was any scheme in existence of the State Government which conferred Contributory Provident Fund benefit to the employees covered earlier by the Central Act of 1952 or not is a matter which the Regional Provident Fund Commissioner will have to examine if such a contention is raised before him by the appellants.

We, therefore, remit the matter to the concerned Regional Provident Fund Commissioner only for the limited purpose of examining whether for the period 1st of August, 1988 to 1st of December, 1988 the provisions of Employees' Provident Fund and Miscellaneous Provisions Act, 1952 are applicable to the concerned institutions. The orders, however, for the period 1st August, 1982 to 1st August, 1988 are upheld.

The appeals are accordingly dismissed with the above modification.

T.N.A.

Appeals dismissed.