

BIRLA INSTITUTE OF TECHNOLOGY

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v.

THE STATE OF JHARKHAND & ORS.

(Civil Appeal No. 2530 of 2012)

MARCH 07, 2019

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[ABHAY MANOHAR SAPRE AND INDU MALHOTRA, JJ.]

Payment of Gratuity Act, 1972:

s.2(e) – Appellant is a premier technical educational Institute of repute in the country – Respondent no.4 joined the appellant-Institute as Assistant Professor – On superannuation, he made a claim for payment of gratuity amount – Entitlement for gratuity – Held: The definition of “employee” as defined under s.2(e) was amended with effect from 03.04.1997 retrospectively by Payment of the Gratuity (Amendment) Act, 2009 (No. 47 of 2009) published on 31.12.2009 – In the light of the amendment made, the benefit of the Payment of Gratuity Act was extended to the teachers also from 03.04.1997 – In other words, the teachers were brought within the purview of “employee” as defined in s.2(e) of the Payment of Gratuity Act by Amending Act No. 47 of 2009 with retrospective effect from 03.04.1997 – Respondent no.4 is entitled to the payment of gratuity – Payment of the Gratuity (Amendment) Act, 2009.

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Constitution of India:

Constitutionality of a statute – Appellant is a premier technical educational Institute – Claim made by a teacher of appellant-Institute for payment of gratuity – Appellant challenged the applicability of the Payment of the Gratuity (Amendment) Act, 2009 (No. 47 of 2009) by which teachers were brought within the purview of “employee” as defined in s.2(e) of the Payment of Gratuity Act – The challenge was on the ground that the constitutional validity of Amending Act No. 47 of 2009 was under challenge in a writ petition, which was pending – Held: Pendency of any writ petition by itself does not affect the constitutionality of the Amending Act, and nor does it affect the right of teacher in any manner in claiming gratuity amount from the appellant(employer) under the Act – It is only when the Court declares a Statute as ultra vires the provisions of the

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A *Constitution that the question may arise to consider its effect on the rights of the parties and that would always depend upon the declaration rendered by the Court and the directions given in that case – Such was not the case in the instant matter – Plea rejected – Payment of Gratuity Act, 1972 – s.2(e).*

B **Dismissing the appeal, the Court**

HELD: 1. **In the light of the amendment made in the definition of the word “employee” as defined in Section 2(e) of the Act by Amending Act No. 47 of 2009 with retrospective effect from 03.04.1997, the benefit of the Payment of Gratuity Act was**

C **also extended to the teachers from 03.04.1997. In other words, the teachers were brought within the purview of “employee” as defined in Section 2(e) of the Payment of Gratuity Act by Amending Act No. 47 of 2009 with retrospective effect from 03.04.1997.** [Paras 28, 29][973-E, F]

D *Ahmadabad Pvt. Primary Teachers Association v. Administrative Officer and Others (2004) 1 SCC 755 : [2004] 1 SCR 470 – held inapplicable.*

2. **The appellant urged that the constitutional validity of Amending Act No. 47 of 2009 is under challenge in this Court in a writ petition, which is pending. It is only when the Court declares a Statute as being *ultra vires* the provisions of the Constitution then the question may arise to consider its effect on the rights of the parties and that would always depend upon the declaration rendered by the Court and the directions given in that case. Such is not the case here.** [Paras 32, 34][974-B-D]

F **Case Law Reference**

[2004] 1 SCR 470 held inapplicable Para 1

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2530 of 2012.

G **From the Judgment and Order dated 02.04.2008 of the High Court of Jharkhand at Ranchi in L.P.A. No. 53 of 2007.**

Shambo Nandy, Ms. N. Annapoorani, Advs. for the Appellant.

Anil Kumar Jha, Sunil Roy, Advs. for the Respondents.

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The Judgment of the Court was delivered by A

ABHAY MANOHAR SAPRE, J.

1. On 07.01.2019, this Court placing reliance on the decision of this Court in **Ahmadabad Pvt. Primary Teachers Association vs. Administrative Officer and Others** (2004) 1 SCC 755, which was brought to the Court's notice by the learned counsel appearing for the appellant, allowed the appeal and set aside the order of the High Court.

2. However, after the pronouncement of the order in this appeal, it came to the notice of this Court that consequent upon the decision of this Court rendered in **Ahmadabad Pvt. Primary Teachers Association** (supra), the Parliament amended the definition of the word "employee" as defined in Section 2(e) of the Payment of Gratuity Act, 1972 by Amending Act No. 47 of 2009 on 31.12.2009 with retrospective effect from 03.04.1997. This amendment was not brought to our notice while passing the order on 07.01.2019 in this appeal.

3. This Court, therefore, *suo motu* took up the appeal to its file and directed it to be listed on the Board. On 09.01.2019 the appeal was accordingly listed for orders. This Court then stayed its order dated 07.01.2019 and passed the following order:

" On 07.01.2019 this Court delivered the judgment allowing the appeal and setting aside the order of the High Court impugned therein.

Today, we have listed the matter *suo motu*. The reason being that during the course of hearing of the appeal it was not brought to the notice of the Bench that the judgment of this Court in Ahmedabad Pvt. Primary Teachers Association vs. Administrative Officer & Ors. (2004) 1 SCC 755 on which the reliance was placed for allowing the appeal necessitated the Parliament to amend the definition of "employee" under Section 2(e) of the Payment of Gratuity Act by Amending Act No.47 of 2009 with retrospective effect from 03.04.1997.

In other words, though the definition was amended in 2009 by Act No.47 of 2009, yet the same was given retrospective effect from 03.04.1997 so as to bring the amended definition on Statute Book, from 03.04.1997.

- A **Keeping in view the amendment made in the definition of Section 2(e), which as stated above was not brought to the notice of the Bench, this issue was not considered though had relevance for deciding the question involved in the appeal. It is for this reason, we *prima facie* find error in the judgment and, therefore, are inclined to stay the operation of our judgment dated 07.01.2019 passed in this appeal**

The judgment dated 07.01.2019 shall not be given effect to till the matter is reheard finally by the appropriate Bench.

- C **The Registry is directed to list this matter for rehearing before the appropriate Bench comprising of Hon'ble Mr.Justice Abhay Manohar Sapre and Hon'ble Ms.Justice Indu Malhotra as early as possible.”**

- D 4. It is in the light of the aforementioned order, the matter was listed before this Bench for passing the appropriate order in the disposed of appeal.

5. We heard the learned counsel for the parties. Both the parties have also filed their written submissions.

- E 6. Having heard the learned counsel for the parties and on perusal of the record of the case including the written submissions, we are inclined to recall our order dated 07.01.2019 because, in our view, it contains an error apparent on the face of the order.

- F 7. The apparent error is that it was not brought to our notice that the Parliament, consequent upon the decision of this Court in **Ahmadabad Pvt. Primary Teachers Association** (supra), had amended the definition of “employee” as defined in Section 2(e) of the Payment of Gratuity Act by amending Act No. 47 of 2009 with retrospective effect from 03.04.1997. This amendment, in our opinion, had a direct bearing over the issue involved in this appeal.

- G 8. What was brought to our notice was only the decision of this Court rendered in **Ahmadabad Pvt. Primary Teachers Association** (supra) by contending that the issue involved in this appeal remains no longer *res integra* and stands answered in appellant's favour. We accepted this submission.

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9. In our view, the error mentioned above is an error apparent on the face of the record of the case because the material, subsequent event, which came into existence, had a direct bearing over the controversy involved in this appeal, was not brought to our notice at the time of hearing the appeal. It is this apparent error, which led to passing of the order dated 07.01.2019 in favour of the appellant. A

10. In view of the aforesaid discussion, we recall our order dated 07.01.2019 passed in this appeal. As a consequence, the appeal (Civil Appeal No. 2530 of 2012) is restored to its original number for its disposal on merits in accordance with law. B

11. We now proceed to decide the appeal afresh on its merits. C

12. This appeal is directed against the final judgment and order dated 02.04.2008 passed by the High Court of Jharkhand at Ranchi in LPA No.53 of 2007 whereby the Division Bench of the High Court dismissed the LPA filed by the appellant herein and confirmed the order dated 12.01.2007 passed by the Single Judge of the High Court in W.P. No.2572 of 2005. D

13. The controversy involved in this appeal is a short one as would be clear from the facts stated *infra*. E

14. The appellant is a premier technical educational institute of repute in the country. It is known as "Birla Institute of Technology" (BIT). E

15. Respondent No.4 joined the appellant-Institute as Assistant Professor on 16.09.1971 and superannuated on 30.11.2001 after attaining the age of superannuation. F

16. Respondent No.4 then made a representation to the appellant and prayed therein for payment of gratuity amount which, according to respondent, was payable to him by the appellant under the Payment of Gratuity Act, 1972. The appellant, however, declined to pay the amount of gratuity as demanded by respondent No.4. F

17. Respondent No.4, therefore, filed an application before the controlling authority under the Act against the appellant and claimed the amount of gratuity which, according to him, was payable to him under the Act. G

- A 18. By order dated 07.09.2002, the controlling authority (respondent No.3) allowed the application filed by respondent No.4 and directed the appellant to pay a sum of Rs.3,38,796/- along with interest at the rate of 10% p.a. towards the gratuity to respondent No.4.
- B 19. The appellant felt aggrieved and filed appeal before the appellate authority under the Act. By order dated 15.04.2005, the appellate authority dismissed the appeal. The appellant felt aggrieved and carried the matter to the High Court in a writ petition. The High Court (Single Judge) by order dated 12.01.2007 dismissed the writ petition and upheld the orders of the authorities passed under the Act. The appellant then filed Letters Patent Appeal before the Division Bench against the order passed by the Single Judge. The LPA was also dismissed by the impugned order which has given rise to filing of the present appeal by way of special leave by the appellant-Institute in this Court.
- C 20. The short question, which arises for consideration in this appeal, is whether the Courts below were justified in holding that respondent No.4 was entitled to claim gratuity amount from the appellant (employer) under the Act.
- D 21. Heard Mr. Shambo Nandy, learned counsel for the appellant and Mr. Anil Kumar Jha, learned counsel for respondent Nos.1-3 and Mr. Sunil Roy, learned counsel for respondent No.4.
- E 22. Having heard the learned counsel for the parties and on perusal of the record of the case, we find no merit in this appeal.
- F 23. As mentioned above, the issue in question was subject matter of the decision rendered in the case of **Ahmadabad Pvt. Primary Teachers Association** (supra). This Court had examined the question in the light of the definition of the word “employee” defined in Section 2(e) of the Act as it stood then. The definition reads as under:
- G “2. (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
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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.”

24. This is what was held in paras 22 to 26 of the decision:

“22. In construing the abovementioned three words which are used in association with each other, the rule of construction noscitur a sociis may be applied. The meaning of each of these words is to be understood by the company it keeps. It is a legitimate rule of construction to construe words in an Act of Parliament with reference to words found in immediate connection with them. The actual order of these three words in juxtaposition indicates that meaning of one takes colour from the other. The rule is explained differently: “that meaning of doubtful words may be ascertained by reference to the meaning of words associated with it”. [See Principles of Statutory Interpretation by Justice G.P. Singh, 8th Edn., Syn. 8, at p. 379.]

23. The word “unskilled” is opposite of the word “skilled” and the word “semi-skilled” seems to describe a person who falls between the two categories i.e. he is not fully skilled and also is not completely unskilled but has some amount of skill for the work for which he is employed. The word “unskilled” cannot, therefore, be understood dissociated from the word “skilled” and “semi-skilled” to read and construe it to include in it all categories of employees irrespective of the nature of employment. If the legislature intended to cover all categories of employees for extending benefit of gratuity under the Act, specific mention of categories of employment in the definition clause was not necessary at all. Any construction of definition clause which renders it superfluous or otiose has to be avoided.

24. The contention advanced that teachers should be treated as included in the expression “unskilled” or “skilled” cannot, therefore, be accepted. The teachers might have been imparted training for teaching or there

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- A may be cases where teachers who are employed in primary schools are untrained. A trained teacher is not described in the industrial field or service jurisprudence as a “skilled employee”. Such adjective generally is used for an employee doing manual or technical work. Similarly, the words “semi-skilled” and “unskilled” are not understood in educational establishments as describing nature of job of untrained teachers. We do not attach much importance to the arguments advanced on the question as to whether “skilled”, “semi-skilled” and “unskilled” qualify the words “manual”, “supervisory”, “technical” or “clerical” or the above words qualify the word “work”. Even if all the words are read disjunctively or in any other manner, trained or untrained teachers do not plainly answer any of the descriptions of the nature of various employments given in the definition clause. Trained or untrained teachers are not “skilled”, “semi-skilled”, “unskilled”, “manual”, “supervisory”, “technical” or “clerical” employees. They are also not employed in “managerial” or “administrative” capacity. Occasionally, even if they do some administrative work as part of their duty with teaching, since their main job is imparting education, they cannot be held employed in “managerial” or “administrative” capacity. The teachers are clearly not intended to be covered by the definition of “employee”.
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- F 25. The legislature was alive to various kinds of definitions of the word “employee” contained in various previous labour enactments when the Act was passed in 1972. If it intended to cover in the definition of “employee” all kinds of employees, it could have as well used such wide language as is contained in Section 2(f) of the Employees’ Provident Funds Act, 1952 which defines “employee” to mean “any person who is employed for wages in any kind of work, manual or otherwise, in or in connection with the work of an establishment ...”. Non-use of such wide language in the definition of “employee” in Section 2(e) of the Act of 1972 reinforces our conclusion that teachers are clearly not covered in the definition.
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26. Our conclusion should not be misunderstood that teachers although engaged in a very noble profession of educating our young generation should not be given any gratuity benefit. There are already in several States separate statutes, rules and regulations granting gratuity benefits to teachers in educational institutions which are more or less beneficial than the gratuity benefits provided under the Act. It is for the legislature to take cognizance of situation of such teachers in various establishments where gratuity benefits are not available and think of a separate legislation for them in this regard. That is the subject-matter solely of the legislature to consider and decide.”

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25. The decision rendered in **Ahmadabad Pvt. Primary Teachers Association** (supra), therefore, led the Parliament to amend the definition of “employee” as defined in Section 2 (e) of the Payment of Gratuity Act by amending Act No. 47 of 2009 on 31.12.2009 with retrospective effect from 03.04.1997.

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26. It is clear from the statement of Objects and Reasons of the Payment of Gratuity (Amendment) Bill, 2009 introduced in the Lok Sabha on 24.02.2009, which reads as under:

“STATEMENT OF OBJECTS AND REASONS

The Payment of Gratuity Act, 1972 provides for payment of gratuity to employees engaged in factories, mines, oilfields, plantations, ports, railway companies, shops or other establishment and for matters connected therewith or incidental thereto. Clause (c) of subsection (3) of section 1 of the said Act empowers the Central Government to apply the provisions of the said Act by notification in the Official Gazette to such other establishments or class of establishments in which ten or more employees are employed, or were employed, on any day preceding twelve months. Accordingly, the Central Government had extended the provisions of the said Act to the educational institutions employing ten or more persons by notification of the Government of India in the Ministry of Labour and Employment vide number S.O. 1080, dated the 3rd April, 1997.

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- A 2. The Hon'ble Supreme Court in its judgment in Civil Appeal No. 6369 of 2001, dated the 13th January, 2004, in **Ahmedabad Private Primary Teachers' Association vs. Administrative Officer and others** [AIR 2004 Supreme Court 1426] had held that if it was extended to cover in the definition of 'employee', all kind of employees, it could have as well used such wide language as is contained in clause (f) of section 2 of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 which defines 'employee' to mean any person who is employed for wages in any kind of work, manual or otherwise, in or in connection with the work of an establishment. It had been held that non-use of such wide language in the definition of 'employee' under clause (e) of section 2 of the Payment of Gratuity Act, 1972 reinforces the conclusion that teachers are clearly not covered in the said definition.
- B 3. Keeping in view the observations of the Hon'ble Supreme Court, it is proposed to widen the definition of 'employee' under the said Act in order to extend the benefit of gratuity to the teachers. Accordingly, the Payment of Gratuity (Amendment) Bill, 2007 was introduced in Lok Sabha on the 26th November, 2007 and same was referred to the Standing Committee on Labour which made certain recommendations. After examining those recommendations, it was decided to give effect to the amendment retrospectively with effect from the 3rd April, 1997, the date on which the provisions of the said Act were made applicable to educational institutions.
- C 4. Accordingly, the Payment of Gratuity (Amendment) Bill, 2007 was withdrawn and a new Bill, namely, this Payment of Gratuity (Amendment) Bill, 2009 having retrospective effect was introduced in the Lok Sabha on 24th February, 2009. However, due to dissolution of the Fourteenth Lok Sabha, the said Bill lapsed. In view of the above, it is considered necessary to bring the present Bill.
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5. The Bill seeks to achieve the above objectives. A

NEW DELHI;

The 12th November, 2009"

MALLIKARJUN KHARGE."

27. The definition of "employee" as defined under Section 2(e) was accordingly amended with effect from 03.04.1997 retrospectively vide Payment of the Gratuity (Amendment) Act, 2009 (No. 47 of 2009) published on 31.12.2009. The amended definition reads as under: B

"(e) "employee" means any person (other than an apprentice) who is employed for wages, whether the terms of such employment are express or implied, in any kind of work, manual or otherwise, in or in connection with the work of a factory, mine, oilfield, plantation, port, railway company, shop or other establishment to which this Act applies, 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." C

28. In the light of the amendment made in the definition of the word "employee" as defined in Section 2(e) of the Act by Amending Act No. 47 of 2009 with retrospective effect from 03.04.1997, the benefit of the Payment of Gratuity Act was also extended to the teachers from 03.04.1997. D

29. In other words, the teachers were brought within the purview of "employee" as defined in Section 2(e) of the Payment of Gratuity Act by Amending Act No. 47 of 2009 with retrospective effect from 03.04.1997. E F

30. The effect of the amendment made in the Payment of Gratuity Act vide Amending Act No. 47 of 2009 on 31.12.2009 was two-fold. First, the law laid down by this Court in the case of **Ahmadabad Pvt. Primary Teachers Association** (supra) was no longer applicable against the teachers, as if not rendered, and Second, the teachers were held entitled to claim the amount of gratuity under the Payment of Gratuity Act from their employer with effect from 03.04.1997. G

31. In our considered opinion, in the light of the amendment made in the Payment of Gratuity Act as detailed above, reliance placed by the learned counsel appearing for the appellant (employer) on the decision H

- A of **Ahmedabad Pvt. Primary Teachers Association**(supra) is wholly misplaced and does not help the appellant in any manner. It has lost its binding effect.

32. Learned counsel for the appellant then urged that the constitutional validity of Amending Act No. 47 of 2009 is under challenge B in this Court in a writ petition, which is pending.

33. Be that as it may, in our view, pendency of any writ petition by itself does not affect the constitutionality of the Amending Act, and nor does it affect the right of respondent No.4 (teacher) in any manner in claiming gratuity amount from the appellant(employer) under the Act.

C 34. It is only when the Court declares a Statute as being *ultra vires* the provisions of the Constitution then the question may arise to consider its effect on the rights of the parties and that would always depend upon the declaration rendered by the Court and the directions given in that case. Such is not the case here as of now.

D 35. In the light of the foregoing discussion, we find no merit in this appeal, which fails and is hereby dismissed with costs quantified at Rs.25,000/- payable by the appellant to respondent No.4(teacher).

Devika Gujral

Appeal dismissed.