

A BIRLA INSTITUTE OF TECHNOLOGY

v.

THE STATE OF JHARKHAND & ORS.

(Civil Appeal No. 2530 of 2012)

B JANUARY 09, 2019

**[ABHAY MANOHAR SAPRE AND
R. SUBHASH REDDY, JJ.]**

- Payment of Gratuity Act – s.2(e) – Matter listed suo motu –*
- C *In this matter i.e. in Civil Appeal No. 2530 of 2012, judgment was passed on 7.1.2019 as reported in [2019] 1 S.C.R. 21 whereby appeal was allowed by relying on the decision in Ahmedabad Pvt. Primary Teachers Association v. Administrative Officer & Ors. – During the course of hearing of the appeal, it was not brought to the notice of the bench that pursuant to the decision in Ahmedabad Pvt. Primary Teachers Association, the legislative amendment was made to the definition of “employee” under s.2(e) of the Payment of Gratuity Act with retrospective effect from 3.4.1997 – Prima facie, there is error in judgment dated 7.1.2019 – Operation of the judgment is stayed till the matter is reheard finally by appropriate bench – Registry is directed to list the matter for rehearing before appropriate bench.*
 - D *In this matter i.e. in Civil Appeal No. 2530 of 2012, judgment was passed on 7.1.2019 as reported in [2019] 1 S.C.R. 21 whereby appeal was allowed by relying on the decision in Ahmedabad Pvt. Primary Teachers Association v. Administrative Officer & Ors. – During the course of hearing of the appeal, it was not brought to the notice of the bench that pursuant to the decision in Ahmedabad Pvt. Primary Teachers Association, the legislative amendment was made to the definition of “employee” under s.2(e) of the Payment of Gratuity Act with retrospective effect from 3.4.1997 – Prima facie, there is error in judgment dated 7.1.2019 – Operation of the judgment is stayed till the matter is reheard finally by appropriate bench – Registry is directed to list the matter for rehearing before appropriate bench.*
 - E *In this matter i.e. in Civil Appeal No. 2530 of 2012, judgment was passed on 7.1.2019 as reported in [2019] 1 S.C.R. 21 whereby appeal was allowed by relying on the decision in Ahmedabad Pvt. Primary Teachers Association v. Administrative Officer & Ors. – During the course of hearing of the appeal, it was not brought to the notice of the bench that pursuant to the decision in Ahmedabad Pvt. Primary Teachers Association, the legislative amendment was made to the definition of “employee” under s.2(e) of the Payment of Gratuity Act with retrospective effect from 3.4.1997 – Prima facie, there is error in judgment dated 7.1.2019 – Operation of the judgment is stayed till the matter is reheard finally by appropriate bench – Registry is directed to list the matter for rehearing before appropriate bench.*

*Ahmedabad Pvt. Primary Teachers Association v.
Administrative Officer & Ors. (2004) 1 SCC 755 :
[2004] 1 SCR 470 – referred to.*

F **Case Law Reference**

[2004] 1 SCR 470 referred to Para 2

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 LPA No. 53 of 2007.

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

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

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The following Order of the Court was passed:

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O R D E R

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.

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.

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.

Devika Gujral

— Operation of earlier judgment stayed.

— Matter to be reheard.

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