

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.]

C *Payment of Gratuity Act – s.2(e) – Matter listed suo motu –*
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
D 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
E 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, Arijit 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: A

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. B C

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. D

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 E

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. F

Devika Gujral

— Operation of earlier judgment stayed.

— Matter to be reheard.