# Ahmedabad Pvt. Primary Teachers' ... vs Administrative Officer And Ors on 13 January, 2004

## Bench: Shivaraj V. Patil, D.M Dharmadhikari

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           CASE NO.:
Appeal (civil)  6369 of 2001

PETITIONER:
AHMEDABAD PVT. PRIMARY TEACHERS' ASSOCIATION

RESPONDENT:
ADMINISTRATIVE OFFICER AND ORS.

DATE OF JUDGMENT: 13/01/2004

BENCH:
SHIVARAJ V. PATIL & D.M   DHARMADHIKARI

JUDGMENT:
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JUDGMENT 2004(1) SCR 47 The Judgment of the Court was delivered by DHARMADHIKARI. J. This appeal has been preferred by Ahmedabad Private Primary Teacher's Association. The Association complains that in the petition filed by an individual teacher [respondent no. 2 herein] employed in a school run by Ahmedabad Municipal Corporation, the Full Bench of the High Court of Gujarat by impugned judgment dated 04.5.2001 in Special Civil Application No. 5272 of 1987 not only rejected the claim of the teacher for payment of gratuity under the provisions of Payment of Gratuity Act. 1972 [for short "the Act) but has decided an important question of law against the teachers as a class that they do not fall within the definition of 'employee' as contained in Section 2(e) of the Act and hence can raise no claim to gratuity under the Act.

The definition of employee contanned in section 2(e) of the Act of 1972 reads as under-

'2(e). 'employee' means any person (other than an apprentice) employed on wages, in any establishment, factory, mine, olifield, 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].

[Italics giving emphasis] One of the learned Judges of the High Court in his separate concurring opinion held that as gratuity payable to teachers employed in schools of Ahmedabad Municipal Corporation are governed by statutory regulations known as 'Gratuity Regulations of the Municipal Corporation of the city of Ahmedabad' framed by the Corporation under Section 465(i)(h) of the Bombay Municipal Corporation Act. 1949. such teachers even if held to be covered by main part of

definition of 'employee' are expressly excluded by the last exclusionary clause of the definition shown by underlining it as above.

As all the learned judges have unanimously held that teachers are not covered by the definition of "employee' under section 2(e) of the Act, it has become necessary for this court to consider the correctness of the view with regard to the applicability of the Act to the teachers as a class.

We have heard the learned counsel appearing for all contesting parties.

As the legal question involved is general in nature affecting teachers as a class, on our request, senior advocate Dr. Rajeev Dhawan appeared as Amicus Curiae. We are immensely benefited by his able assistance which we thankfully acknowledge.

The Act is a piece of social welfare legislation and deals with the payment of gratuity which is a kind of retiral benefit like pension, provident fund etc. As has been explained in the concurring opinion of one of the learned judges of the High Court 'gratuity in its etymological sense is a gift, especially for services rendered, or return for favours received.' It has now been universally recognized that all persons in society need protection against loss of income due to unemployment arising out of incapacity to work due to invalidity, old age etc. For the wage earning population, security of income, when the worker becomes old or infirm, is of consequential importance. The provisions contained in the Act are in the nature of social security measures like employment insurance, provident fund and pension. The Act accepts, in principle, compulsory payment of gratuity as a social security measure to wage earning population in industries, factories and establishments.

Thus, the main purpose and concept of gratuity is to help the workman after retirement, whether, retirement is a result of rules of superannuation, or physical disablement or impairment of vital part of the body. The expression, 'gratuity' itself suggests that it is a gratuitous payment given to an employee on discharge, superannuation or death. Gratuity is an amount paid unconnected with any consideration and not resting upon it. and has to be considered as something given freely voluntarily or without recompense. It is sort of financial assistance to tide over post-retiral hardships and inconveniences.

The following important words and expressions in the definitions clause 2(e) are before us for consideration and interpretation in the light of the arguments advanced which project different points of view:-

> 2(e). '2(e). 'employee' means any person (other than an apprentice) employed on wages, in any establishment, factory, mine, olifield, plantation, port, railway company or shop, to do any skilled, semi-skilled or unskilled, manual, supervisory, technical or clerical work..... whether or not such person is employed in a managrial or administrative capacitv [Italics giving emphasis] The learned counsel appearing for the Teacher's Association and also the learned Amicus Curiae very strenuously urged that a beneficial, purposeful and wide interpretation should be placed on the definition of employee in section 2(e) of the Act particularly in the light

of the fact that earlier in the definition clause, there was an income limit of wages being not more than Rs. 2.300 per month, for extending coverage of gratuity benefit to the employees. That wages or salary limit has. however, been done away with by introducing amendment to the definition clause 2(e) of the Act. Now gratuity-is payable to all employees irrespective of the quantum of salary or wages paid to them. It is. further, pointed out that in the unamended definition clause, employees working in managerial or administrative capacity were excluded from the definition of an 'employee' but after the amendment introduced with effect from 01.7.1984, even employees in managerial or administrate capacity and without any bar or limit on their salaries or wages are brought within the definition of "employee" to extend the benefit of gratuity to them. Learned counsel appearing for the appellant and the learned Amicus Curiae, therefore, contended that a very wide meaning has to be given to the word 'employee" in the definition contained in Section 2(e) of the Act.

On the other hand, learned senior counsel Shri R.F, Nariman contends that the Act is one of the labour welfare legislations. The words and expressions used in the provisions of the Act should be considered in the lignt of the provisions contained in other labour legislations where similar expressions and definitions have been used. He has referred to the definition of 'employee' in section 2(i) of the Minimum Wages .Act. Section 2(13) of the Payment of Bonus Act and compared those provisions with definition of 'employee' in section 2(1) of the Provident Funds Act. Reference is also made to definition of 'workman' under section 2(s) of the Industrial Disputes Act Thus, on comparative reading of the various definitions in different enactments in the field of labour legislation, the learned counsel appearing for the respondents argues that a teacher cannot be said to be employed either for skilled, semi-skilled. unskilled, manual, supervisory technical or clerical work. He/she is also not employed in any managerial or adminastrative capacity. The teacher is engaged in imparting education for intellectual or moral development of student. He'She does not answer any of the above mentioned descriptions in the definition clause with regard to the nature of work.

The learned Amicus Curiae,in is counter reply submitted that the words-'skilled', 'semi-skilled or 'unskilled, do not quality the words 'manual'. 'supervisory', 'technical' or 'clerical'. It is contended that all the words 'skilled', 'semi-skilled', 'unskilled', 'manual', 'supervisory', 'technical', or 'clerical', because of the commas in between them have to be read disjunctively and they all qualify the word 'work' which is mentioned at the end of all these words.

We have critically examined the definition clause in the light of the arguments advanced on either side and have compared it with the definitions given in other labour enactments. On the doctrine of 'pari matreria, reference to other statutes dealing with the same subject or forming pan of the same system is a permissible aid to the construction of provisions in a statute. See the following observations contained in Principles of Statutory Interpretation by G.P. Singh [8th Ed.]-Synopsis 4

at pg. 235 to 239:-

'Statutes in Pari Materia:- It has already been seen that a statute must be read as a whole as words are to be understood in their context. Extension of this rule of context permits reference to other statutes in pari materia i.e. statutes dealing with the same subject matter or forming part of the same system. Viscount Simonds in a passage already noticed conceived it to be a right and duty to construe every word of a statute in its context ard he used the word context in its widest sense including 'other statutes in pari materia'. As stated by Lord Mansfield 'where there are different statutes in pari materia though made at different times, or even expired, and not referring to each other, they shall be taken and construed together, as one system and as explanatory of each other.....

The application of this rule of construction has the merit of avoiding any apparent contradiction between a series of statutes dealing with the same subject, it allows the use of an earlier statute to throw light on the meaning of a phrase used in a later statute in the same context, it permits the raising of a presumption, in the absence of any context indicating a contrary intention, that the same meaning attaches to the same words in a later statute as in an earlier statute if the words are used in similar connection in the two statutes, and it enables the use of a later statute as parliamentary exposition of the meaning of ambiguous expressions in an earlier statute.

The definition of 'workman' contained in section 2(s) of the Industrial Disputes Act, 1947 meaning "any person employed in any industry to do any skilled or unskilled manual supervisory technical, operational, or clerical work' came up for consideration before this Court when teachers claimed that they are covered by the definition of the Industrial Disputes Act. In the case of A. Sundarambal v. Govt. of Goa, Daman and Diu.[1988] 4 SCC 42 this Court negatived the claim of teachers that they are covered by the definition of 'workman' under industrial Disputes Act thus:-

"Even though an educational institution has to be treated as an 'industry', teachers in an educational institution cannot he consulted as workman.

The teachers employed by educational institutions whether the said institutions are imparting primary, secondary, graduate or postgraduate education cannot be called as 'workman' within the meaning of Section 2(s) of the Act. Imparting of education which is ihe main function of teachers cannot he considered as skilled or unskilled manual work or supervisors work or technical work or clerical work Imparting of education is in the nature of a mission or a noble vocation. The clerical work, if any. they may do, is only incidental to their principal work of teaching."

The definition of 'employee' as contained in section 2(i) of the Minimum Wages Act. 1948 came up for consideration before this Court in the case of Haryana

Unrecognised Schools' Association v. State of Haryana, [1996] 4 SCC

225. In section 2(i) of the Minimum Wages Act. the word 'employee is defined to mean: 'any person who is employed for hire or reward to do any work, skilled or unskilled, manual or clerical, in a scheduled employment in respect of which minimum rates of wages have been fixed". This Court held that as teachers are not employed for any skilled or unskilled, manual or clerical work, it is not open to the State Government to include their employment as a scheduled employment under the Minimum Wages Act. The relevant observations need to be quoted:-

"A combined reading of sections 3, 2 (i) and 27 of the Minimum Wages Act. 1948 and the Statement of Objects and Reasons of the legislation makes it explicitly clear that the State Government can add to either part of the Schedule any employment where persons are employed for hire or reward to do any work skilled or unskilled, manual or clerical. If the persons employed do not do the work of any skilled or unskilled or of a manual or clerical nature then it would not be possible for the State Government to include such an employment in the Schedule in exercise of power under Section 27 of the Act. Since the teachers of an educational institution are not employed to do any skilled or unskilled or manual or clerical work and therefore, could not be held to be an employee under Section 2(i) of the Act, it is beyond the competence of the Stale Government to bring them under the purview of the Act by adding the employment in educational institution in the Schedule in exercise of power under Section 27 of the Act. Hence, the State Government in exercise of powers under the Act is not entitled to fix the minimum wage of such teachers. The impugned notifications so far as the teachers of the educational institution are concerned are accordingly quashed."

[Emphasis added by Italics] The definitions of 'employee' in other labour legislations which need to be considered for comparison are first section 2(13) of the Payment of Bonus Act, 1965 where the definition reads as under:-

'2(13). 'Employee' means any person (other than an apprentice) employed on a salary or wage not exceeding [three thousand and five hundred rupees] per mensem in any industry to do any skilled or unskilled, manual, supervisory. managerial, administrative, technical or clerical work for hire or reward, whether the terms of employment be express or implied.' [Emphasis added] Section 2(0 of the Employees' Provident Funds Act, 1952 defines 'employee' as under:-

"2(f), 'employee' means 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] and who gets his wages directly or indirectly from the employer."

[Emphasis added | Learned counsel appearing for the Corporation does not dispute that definition of employee under the Employees Provident Funds Act, 1952 is very wide and may include even a teacher in an educational establishment because the expression in the definition clause used is '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] and who gets his wages directly or indirectly from the employer.' It is submitted that suite such language of wide import in defining 'employee' is not used in the Payment of Gratutuity Act of 1972, the definition is restrictive and not expansive. It has to be understood as excluding 'teachers' who are not doing any kind of skilled or unskilled, manual, supervisor), managerial, administrative, technical or clerical work.

It is not disputed that by notification dated 3rd April. 1997. issued in exercise of powers, under section l(3)(c) of| the Payment of Gratuity Act, 1972. the Gratuity Act is extended to educational institutions in which ten or more persons are employed or were employed on any day preceding 12 months. I he relevant part of the notification leads as under:-

> IN EDUCATIONAL INSTITUTIONS 'Notification No. 5-42013/1/95-SS II. Dated 3rd APRIL 1997-In exercise of the powers conferred by CI. (c) of sub-clause (3) of Sec 1 of the Payment of Gratuity Act. l972, (39 of 1972). the Central Government hereby specifies the educational institutions in which ten or more persons are employed or were employed on any day preceding 12 months as a class of establishments to which the said Act shall apply effect from the date of publication of this notification.
>
> Provided that nothing contained in this notification shall effect the operation of the notification of the Ministry of Labour S.O. 239 dated 8th January. 198:
>
> An educational institution, therefore, is an 'establishment' notified under section l(3)(c) of the Payment of Gratuity Act, 1972. On behalf of the Municipal Corporation, it is contended that the only beneficial effect of the Notification issued under section l(3)(c) of the Act of 1972, is that such non-teaching staff of educational institutions as answer the description of any of the employments contained in the definition clause 2(e), would be covered by the provisions of the Act. The teaching staff being not covered by the definition of 'employee' can get no advantage merely because by notification 'educational institutions' as establishments are covered by the provisions of the Act.
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> Having thus compared the various definition clauses of word 'employee' in different enactments, with due regard to the different aims and objects of the various labour legislations, we are of the view that even on plain construction of the words and expression used in definition clause 2(e) of the Act, 'teachers' who are mainly employed for imparting education are not intended to be covered for extending gratuity benefits under the Act. Teachers do not answer description of being employees who are 'skilled', 'semi-skilled' or 'unskilled'. These three words used in association with each other intend to convey that a person who is 'unskilled' is one who is not 'skilled' and a person who is 'semi-skilled' may be one who falls between two categories meaning he is neither fully skilled nor unskilled. The Black's Law Dictionary defines these three words as under:-

"Semi-skilled work. Work that may require some alertness and close attention, such as inspecting items or machinery for irregularities, or guarding property or people against loss or injury.

Skilled work. Work requiring the worker to use judgment, deal with the public, analyze facts and figures, or work with abstract ideas at a high level of complexity.

Unskilled work. Work requiring little or no judgment, and involving simple tasks that can be learned quickly on the job.

In construing the above mentioned three words which are used in association with each other, the rule of construction noscitur a soclls 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 E.d.), Syn. 8 at pg.

379.

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.

The contention advanced that teachers should be treated as included in expression 'unskilled' or skilled' cannot. therefore, be accepted. The teachers might have been imparted training for teaching or there may be cases where teachers who are employed in primary schools are untrained. A trained teacher is not described in industrial field or service jurisprudence as a 'skilled employee'. Such adjective generally is used for employee doing manual or technical work. Similarly, the words 'semi-skilled' and 'unskilled' are not understood in educational establishments a describing nature of job of untrained teachers. We do not attach much importance lo 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', liven if all the words are read disjunctively or in any other manner, (rained or untrained teachers do not plainly answer any of the descriptions of the nature of various employments given in the definition clause, framed 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.

Occasional!}, 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".

The Legislature was alive to various kinds of definitions of 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(1) 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 definition of 'emplovee' in section 2(e) of the Act of l972 reinforces our conclusion that teachers are clearly not covered in the definition.

Our conclusion should not be misunderstood that teachers although engaged in 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.

In conclusion, we find no merit in this appeal. It is, hereby, dismissed but without any order as to costs.