



Applicability of the Payment of Gratuity ACT, 1972 in Private Educational Institutions

A.Mohamed Ibrahim M.L.

Assistant Professor, School of Law, SASTRA University, Thanjavur

Aiswarya Hariharan

IV Year B.Com., LL.B. ,(Hons.), School of Law, SASTRA University, Thanjavur

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Introduction

Gratuity is a sum of money paid by an employer to an employee for services rendered in the company. However, gratuity is paid only to employees who complete 5 or more years with the company or the industry. It can be understood as a form of tip paid by employer to the employee for services offered in the company. Since tips are a function of culture, various countries have various gratuity limits that are doled out by employers.

The Payment of Gratuity Act, 1972 aims to provide for a scheme for the payment of Gratuity to employees engaged in factories, mines, oilfields, airports, railway companies, plantations, shops or other establishments and for matters connected therewith or incidental thereto as pointed out in *Delhi Cloth and General Mills Co. Ltd v Their workman*³.

It has been observed by the High Court of Karnataka⁴ that the Payment of Gratuity Act was enacted to introduce a scheme for payment of gratuity for a certain industrial and commercial establishments as a measure of social security. The main aim of the gratuity, as specified in the preamble of the Act, is to protect the working class people especially after the termination of their service either because of superannuation, physical disability etc. **Whether this Act is applicable to Private Institution Teachers ?**

In *Ahmedabad Private Primary Teachers' Association v. Administrator Officers & Others*⁵ Petition was filed by a teacher employed in school run by Ahmedabad Municipal Corporation claiming for the payment of gratuity before the Hon'ble High Court of Gujarat. But it was dismissed by the Hon'ble High Court holding that teachers as a class not being covered by definition of "employee" under Section 2 (e), were disentitled to claim gratuity. It not only rejected the claim of the teacher for payment of gratuity but also 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 therefore cannot raise any claim to gratuity under the Act and therefore, Appeal was preferred before the Hon'ble Supreme Court of India. The Hon'ble Apex Court held that on plain construction of words and expression used in definition clause 2 (e) of the Act teachers who are mainly employed for imparting education are not to be covered for extending gratuity benefits under the Act. The Hon'ble Apex Court pointed out that a trained teacher is not described in industrial field or service jurisprudence as skilled employee and "semi-skilled" and "unskilled" are not understood in educational establishments as describing nature of job of untrained teachers.

The Hon'ble Court further held that teachers although engaged in very noble profession of educating our younger gen-

eration 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. The judgment also mentioned that, 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. Thus the Honorable Supreme court held that teachers are not entitled to gratuity benefit under the Payment of Gratuity Act, 1972 at the end of their service.

This showed the ambiguity in the definition of the term "employee" in the Act. The typical question which, in the above case, arose before the court was that does the expression "persons employed" include teaching as well as nonteaching staff of the educational institution?

In the case of *G.B. Pant University of Agriculture and Technology, Pantnagar, Nainital v. State of Uttar Pradesh and Ors.*⁶ it is said that Section 2(e) of the Payment of Gratuity Act includes and covers in its compass the class of teachers employed in an establishment of a school and are therefore entitled to the benefits of payment of gratuity in accordance with provisions of the Act."

Amendment of Gratuity Act and its Implementation in Private Institutions:

Even these days many private institutions do not provide proper salary and other benefits to the teachers, thereby teachers are exploited vulnerably in some education institutions. Due to this reason, there was a proposal to bring in some changes in the Act so that teachers in private schools can also get gratuity. Accordingly, a Bill, The Payment of Gratuity (Amendment) Bill, 2006, was introduced in the Raja Sabah for the same.

The object and reasons of this amendment is that the definition of "employee" as in Section 2 (e) of the Act covers any establishment, factory, mine, oilfield, plantation, port, railway company or shop to do any skilled, semiskilled, or unskilled, manual, supervisory, technical or clerical work and not those performing teaching jobs in schools, colleges or universities.

In order to extend benefit of Gratuity to the teaching community, specific amendments to the provisions of the Act have become necessary to bring the schools, colleges and universities and those performing teaching jobs within the purview of the Act.

It was proposed by the Lok Sabah 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 Sabah on the 26th November, 2007 and same was referred to the Stand-

ing 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.

Further Loksabha decide to widen the definition of the term 'employee' after the observation of Apex court in various cases. Accordingly, the Payment of Gratuity (Amendment) Bill, 2007 was withdrawn and a new Bill of 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 was lapsed. Therefore, another Bill of Payment of Gratuity (Amendment) Bill, 2009 was produced in the Lok Sabha on 12th November, 2009 which the Lok Sabha has passed. The Payment of Gratuity(Amendment) Bill, which aims at amending definition of employees in the 1972 legislation for covering teachers in private institutions with retrospective effect from 3rd April, 1997, was passed in the Rajya Sabha. It was approved by Lok Sabha on 16th December, 2009.

Section 2(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.

The proposed Bill was passed by both the houses and the presidential assent was received on 31st December 2009. The gazette notification was also published on the same date. Hence now it is settled that the teachers are beneficiaries of the provisions of the Payment of Gratuity Act, 1972. In fact the Act by amending Section 13 has also nullified the effect if any due to judgement of the Hon'ble Supreme Court had on payment of gratuity. Therefore it is concluded that the maximum amount of gratuity payable under the Act is now is Rs. 10,000, 00/-. As in the case of *Independent School Federation v. Union of India*⁷ the petitioner Federation is an All India Association of Schools affiliated to Council of the Indian School Certificate Examinations (CISCE) and Central Board of Secondary Education (CBSE) all over India. The writ petition was filed invoking extra ordinary jurisdiction of this Court under Article 226 of the constitution of India raising challenge to validity of sub-section 2 of Section 1 of the Payment of Gratuity Act 2009 has given retrospective effect to the provisions of Amendment Act, 2009, deemed to have come into force w.e.f. the 3rd day of April, 1997, i.e. some more than 12 years back. Section 13-A has been newly inserted by section 3 of the Payment of Gratuity (Amendment) Act, 2009 in the Payment of Gratuity Act, 1972, which has validated the Notification dated 03.04.1997 with retrospective w.e.f. 3rd April, 1997.

The petitioners contented that the effect of the same is that the educational institutions which were brought within the ambit of the Payment of Gratuity Act, 1972, w.e.f. 3rd April, 1997 vide Notification dated 3rd April, 1997, would become liable to pay gratuity to all their teachers who have retired or superannuated or died or resigned or became disabled due to accident or any disease in the last more than 12 years.

The respondent council contended that in order to give benefit of gratuity payable under the Payment of Gratuity, 1972 to the teachers, the respondent decided to issue Notification dated 3rd April, 1997. This was issued by the Central Government in exercise of its power conferred upon it by clause (c) of sub-section (3) of Section 1 of Gratuity Act, 1972. Clauses (a) and (b) of sub- Section (3) of Section (1) enlist the various establishments to which Payment of Gratuity Act is applicable. Clause (c) empowers the Central Government to cover other

establishments or class of establishments as well with only condition that there should be 10 or more employees employed therein. It is under this provision; the aforesaid notification was issued covering educational institutions. The Appeal is pending before the Hon'ble Supreme Court.

Conclusion

In *Surendra Kumar v. Central Government Industrial Tribunal-cum-Labour Court*¹, the court has held that, "Semantic luxuries are misplaced in the interpretation of "bread and butter" statutes. Welfare statutes must, of necessity, receive a broad interpretation. Where legislation is designed to give relief against certain kinds of mischief, the court is not to make inroads by making etymological excursions"

It is concluded that the teachers are covered under the payment of gratuity act 1972 and eligible to receive gratuity. While interpreting labour statutes the court shall give regard to the decisions given by Supreme court in *Workmen v. American Express International Banking Corporation*², Chinnapa Reddy. J, has categorically said in the following words: "the principle of statutory construction are well settled. Words occurring in statutes of liberal import such as social welfare legislation and human rights legislation are not to be put in prosecution beds or shrunk to Lilliputian dimensions".

Reference

1. (1968) 36 FJR 247
2. B.K Kale v Karnataka State Road Transport Corp. , 1999 ILLJ 932.
3. Ahmadabad Primary Teachers' Association v. Administrative officer, AIR 2004 SC 1426
4. AIR (2000) SC 2695
5. W.P. (C) 6168 of 2010
6. (1981) 4 SCC 443
7. AIR (1986) SC 458