

**HIGH COURT OF CHHATTISGARH, BILASPUR****WPL No. 227 Of 2014**

St.Xavier's H.S.School, Ambikapur, District Surguja (CG)  
through its Manager Kalyanus Minj S/o Temba Minj R/o  
St. Xavier's H.S.School, Ambikapur District Surguja (CG)

---- **Petitioner**

**Versus**

1. State of Chhattisgarh, through its Chief Secretary, Secretariat, Mahanadi Bhawan New Raipur, Chhattisgarh
2. The Principal Secretary, Department of Education, Govt. of Chhattisgarh, Secretariat, Mahanadi Bhawan New Raipur, Chhattisgarh
3. The Commissioner, Department of Public Instruction, Govt. of Chhattisgarh Secretariat, Mahanadi Bhawan New Raipur, Chhattisgarh
4. The District Education Officer, Ambikapur District Surguja (C.G.)
5. Shri Theophil Minj, Retd. Teacher, R/o. Village Fundurdehari, Dhobipara, Ambikapur, District Surguja (CG)

---- **Respondents**

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For Petitioner	: Mr.A.Lakra and Ms I. Lakra, Advocates
For Respondents No.1 to 4	: Mr.D.R.Minz, Dy.Govt.Advocate
For Respondent No.5	: Mr.B.K.Chakrawarthy, Advocate

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**Hon'ble Shri Justice Sanjay K. Agrawal**

**C A V Order**

**11/12/2015**

1. Critical question that arises for consideration is whether teacher of fully aided educational institution can be held to be “employee” within the meaning of Section 2(e) of the Payment of Gratuity Act, 1972 (hereinafter referred to as “the Act of 1972”) to enable the teacher to claim gratuity ?
  
2. Petitioner-school is a minority institution and receiving 100% grant-in-aid from the State Government. Respondent No.5 herein was superannuated on 30.6.2003 from the petitioner’s school as Assistant Teacher. He made an application under Section 4 read with Section 7 of the Act of 1972 and Rule 10 of the said Act stating inter-alia that he is entitled for gratuity from petitioner’s school as definition of “employee” under Section 2(e) of the Act of 1972 has been amended with effect from 3.4.1997 bringing the “teacher” within the definition of Section 2(e) of the Act of 1972, therefore, he is entitled for amount of gratuity. The Controlling Authority by order dated 23.3.2013 allowed that application holding inter-alia that definition of “employee” has been amended with effect from 3.4.1997 by the Payment of Gratuity (Amendment) Act, 2009 and therefore, he is entitled for

amount of gratuity payable by the petitioner's Institution and accordingly, directed for payment of gratuity.

3. Feeling dissatisfied with the order passed by the Controlling Authority, the petitioner herein preferred an appeal under Section 7 (7) of the Act of 1972 before the Appellate Authority and the Appellate Authority by order dated 22.8.2014 affirmed the order of the Controlling Authority finding inter-alia that respondent No.5 is entitled for amount of gratuity pursuant to the amendment in the Payment of Gratuity Act, in which educational institution has been brought into definition of "employee" under Section 2 (e) pursuant to the Payment of Gratuity (Amendment) Act, 2009 with effect from 3.4.1997.
4. Questioning the order of the Appellate Authority affirming the order of the Controlling Authority, present writ petition has been filed by the petitioner institution stating inter-alia that order passed by the Appellate Authority holding the petitioner institution liable to make payment of gratuity is unsustainable and bad in law as petitioner-school is 100% Government aided school and it is for the State Government, if any, to make payment of

gratuity and as such, order of the Appellate Authority affirming the order of the Controlling Authority deserves to be set aside and it be held that petitioner-school is not liable to make payment of gratuity.

5. Return has been filed by the State/respondents No.1 to 4 opposing the writ petition holding inter-alia that petitioner-institution is liable to make payment of gratuity. It has also been pleaded that the State was not party before the Appellate Authority and Controlling Authority and unnecessarily the State has been made as party respondent in this writ petition.
6. Mr.A.Lakda and Mrs. I. Lakda, learned counsel appearing for petitioner-school, would vehemently submit that order passed by the Controlling Authority as affirmed by the Appellate Authority is clearly perverse and contrary to the record, as respondent No.5 retired as Assistant Teacher, he is not an employee within the meaning of Section 2(e) of the Act of 1972 and alternatively, liability, if any, has to be borne by the State Government as petitioner-school is fully aided school by the State Government since long and therefore, order of the Controlling

Authority as affirmed by the Appellate Authority deserves to be set aside.

7. Mr.D.R.Minz, learned Deputy Government Advocate appearing for the State/respondents No.1 to 4, would submit that pursuant to the decision of the Supreme Court in the matter of **Ahmedabad Pvt. Primary Teacher's Assn. v. Administrative Officer & Ors.**<sup>1</sup> definition of "employee" has been amended by the Parliament by the Payment of Gratuity (Amendment) Act, 2009 and new definition of "employee" has been brought into force and that has been given effect from 3.4.1997 and educational institution has been brought within the purview of the Act of 1972 and therefore, respondent No.5/retired teacher would come within the definition of employee as defined in Section 2(e) of the Act of 1972 and as such, the Appellate Authority has rightly held the petitioner-institution liable for payment of gratuity and therefore, no interference would be called for in exercise of Article 227 of the Constitution of India.

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1 (2004) 1 SCC 755

8. Mr.B.K.Chakrawarthy, learned counsel appearing for respondent No.5 would submit that order passed by the Controlling Authority as affirmed by the Appellate Authority is in accordance with law and no jurisdictional error has been committed by the Appellate Authority warranting interference by this Court in exercise of Article 227 of the Constitution of India and as such, the writ petition deserves to be dismissed.
9. I have heard learned counsel appearing for the parties, also considered the rival submissions made therein and gone through the record of the case with utmost circumspection.
10. In order to answer the question raised in this writ petition, it would be appropriate to notice the Statements of objects and Reasons of the Act of 1972(unamended) justifying the statutory grant of gratuity which states as under:-

“An Act to provide for a scheme for the payment of gratuity to employees engaged in factories, mines, oilfields, plantations, ports, railway companies, shops or other establishments and for matters connected therewith or incidental thereto.”

11. A meaningful reading of the aforesaid Objects and Reasons of the Act, which is a beneficial legislation, would show that a beneficial interpretation has to be preferred which advances the Object of the Act. Nevertheless it is to be borne in mind that a beneficial interpretation should be applied only to those employees who are intended to be covered by the Act and not to others.
  
12. “Employee” under Section 2(e) of the (unamended) Act of 1972 which provides as under:-

“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 or not such person is employed in a managerial or administrative capacity.”
  
13. The question whether “teacher” would come within the meaning of employee as defined in Section 2(e) of the Act of 1972 (unamended) came to be considered before the Supreme Court in the matter of **Ahmedabad Pvt. Primary Teacher’s Assn. (supra)** and it has been held by the Supreme Court that employee as defined in Section

2(e) of the Act of 1972, the teachers are not covered.

Their Lordships have held as under:-

“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 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 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. Occa-

sionally, 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".

25. 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\(f\)](#) 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 definition of "employee" in [section 2\(e\)](#) of the Act of 1972 reinforces our conclusion that teachers are clearly not covered in the definition."

- 14.** While concluding, Their Lordships of the Supreme Court observed 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 by holding as under:-

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.”

- 15.** The Legislature took cognizance of the judgment of the Supreme Court particularly observation made in paragraph 26 of the aforesaid judgment and the Payment of Gratuity (Amendment) Act, 2009 was introduced to widen the definition of “employee” and to extend the benefit of gratuity to teacher. Statement of objects and Reasons of the payment of Gratuity (Amendment) Act, 2009 states 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 sub-section (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 3<sup>rd</sup> April, 1997.

2. The Hon'ble Supreme Court in its judgment in Civil Appeal No.6369 of 2001, dated the 13<sup>th</sup> 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.

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 26<sup>th</sup> 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 3<sup>rd</sup> April, 1997, the date on which the provisions of the said Act were made applicable to educational institutions.

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 24<sup>th</sup> 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.

5. The Bill seeks to achieve the above objectives.”

The above-stated amendment Act, amending the Act of 1972, bringing the “teacher” within the definition of “employee” was passed and brought into force w.e.f. 3.4.1997. The amended definition of ‘employee’ under Section 2(e) states as under:-

“(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 the any other Act or by any rules providing for payment of gratuity.”

Section 13-A was also inserted by the Payment of Gratuity (Amendment) Act, 2009 which states about the validation of the Payment of Gratuity Act by stating as under:-

**3. Insertion of new section 13A.** After section 13 of the principal Act, the following section shall be inserted, namely:-

**“13A. Validation of payment of gratuity.-**  
Notwithstanding anything contained in any judgment, decree or order of any court, for

the period commencing on or from the 3<sup>rd</sup> day of April, 1997 and ending on the day on which the payment of Gratuity (Amendment) Act, 2009, receives the assent of the President, the gratuity shall be payable to an employee in pursuance of the notification of the Government of India in the Ministry of Labour and Employment vide number S.O.1080, dated the 3<sup>rd</sup> day of April, 1997 and the said notification shall be valid and shall be deemed always to have been valid as if the Payment of Gratuity (Amendment) Act, 2009 had been in force at all material times and the gratuity shall be payable accordingly:

Provided that nothing contained in this section shall extend, or be construed to extend, to affect any person with any punishment or penalty whatsoever by reason of the non payment by him of the gratuity during the period specified in this section which shall become due in pursuance of the said notification.”

16. Thus, the Legislature has taken cognizance of the observation made by the Supreme Court in paragraph 25 of **Ahmedabad Pvt. Primary Teacher's Assn.** case (**supra**), in which it has been held that definition of “employee” under Section 2(e) of the said Act has to be

couched in the wide language as is contained in the definition of “employee’ under Section 2(f) of the Employees’ Provident Funds Act, 1952 so as to include a teacher within the meaning of “employee” under Section 2(e) of the Act of 1972. Thus, taking a note of such observation, the Legislature has amended the definition of “employee” under Section 2(e) of the said Act with effect from 3<sup>rd</sup> April, 1997. The Objects and Reasons of such amendment makes the intention of the Legislature very clear to apply the provisions of the Payment of Gratuity Act to the teachers also. The amended definition is wide enough to cover the category of “teacher” for the purpose of applicability of the said Act. There is no escape but to hold that teacher is an “employee” within the meaning of Section 2(e) of the Act of 1972 and hence, the provisions of the said Act are applicable. The said amendment has brought in force w.e.f. 3.4.1997 by virtue of Section 13-A of the Amendment Act, 2009.

17. Submission of learned counsel appearing for petitioner-school that petitioner-school is 100% Government

aided school and the Government has already taken a decision to make payment of gratuity to the employees. Copy of the said decision has been brought on record dated 7<sup>th</sup> June, 2013, in which the Government has taken a decision that so far as the retired employees from the Government aided school are concerned, gratuity would be payable to them as grant-in-aid with effect from 1.4.2013. Since respondent No.5 having retired from service prior to 1.4.2013, there is no decision of the State Government to make payment of gratuity and therefore, it will remain the liability of the petitioner and said circular is not applicable so far as payment of gratuity to respondent No.5 is concerned.

18. The petitioner-school has also raised grievance that there is much financial hardship to make payment of gratuity, but the fact remains that liability of the petitioner-school to make payment of gratuity pursuant to the amended provisions in the Payment of Gratuity Act, 1972 is the statutory liability, therefore, financial hardship is no ground to deny the statutory gratuity to respondent No.5 under the Act of 1972 and even on the

ground of financial hardship, petitioner-school cannot avoid the statutory obligation. It is quite vivid that teacher is covered under the definition of Section 2(e) of the amended Act of 1972 and gratuity is “property” within the meaning of Article 300-A of the Constitution of India.

19. As a fall out and consequence of the aforesaid discussion, the writ petition being without substance is liable to be and is hereby dismissed. No order as to cost(s).

**Sd/-**  
**(Sanjay K. Agrawal)**  
**JUDGE**

B/-

**HIGH COURT OF CHHATTISGARH, BILASPUR**

**WPL No. 227 Of 2014**

**PETITIONER** : St.Xavier's H.S.School, Ambikapur

**Versus**

**RESPONDENTS** : State of Chhattisgarh and others

**Head Note**

(English)

Teacher of fully aided school is an employee within the meaning of Section 2(e) of Payment of Gratuity Act, 1972 and entitled for gratuity.

(हिन्दी)

पूर्ण रूप से अनुदान प्राप्त विद्यालय का शिक्षक उपदान सदाय अधिनियम, 1972 की धारा 2 (ड) के अतर्गत एक कर्मचारी है और उपदान का अधिकारी है।

(Bablu Bhanarkar)  
Private Secretary to Hon'ble Shri  
Justice Sanjay K. Agrawal