



LexUpdate

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Supreme Court Re-Affirms the Entitlement of Teachers to receive Gratuity

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Supreme Court Re-Affirms the Entitlement of Teachers to receive Gratuity

The Hon'ble Supreme Court of India, in its judgment pronounced on January 7, 2019 in the case of *Birla Institute of Technology vs. State of Jharkhand* [Civil Appeal No. 2530 of 2012] ("**BIT Case**"), had held that teachers were not employees for the purposes of Payment of Gratuity Act, 1972 ("**PG Act**") and therefore not entitled to receive gratuity. We had discussed the implications of the BIT Case in our earlier article titled '[Payment of Gratuity to Teachers](#)'.

Interestingly, on January 9, 2019, the Hon'ble Supreme Court, suo moto listed the matter and stayed the operation of its judgment in the BIT Case stating that the court had not been apprised of the retrospective amendment to the definition of "employee" in the PG Act vide the Payment of Gratuity (Amendment) Act, 2009 ("**PG Amendment Act**"). The Hon'ble Supreme Court observed that:

"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".

Subsequently, on March 7, 2019, the Hon'ble Supreme Court recalled its earlier judgment of January 7, 2019 in the BIT Case and issued the revised judgment considering the amendments introduced by the PG Amendment Act and

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consequently held that in view of the amendments introduced by the PG Amendment Act, teachers are entitled to claim gratuity under the PG Act.

In its revised judgement, the Hon'ble Supreme Court has taken into consideration the amendment to the definition of "employee" vide the PG Amendment Act as well as the Statement of Objects and Reasons of the Payment of Gratuity (Amendment) Bill, 2009 in which the Parliament has stated the reason for amending the definition of "employee" in the PG Act was to deal with the implications of the law laid down in the case of *Ahmadabad Pvt. Primary Teachers Association vs. Administrative Officer and Others* [(2004) 1 SCC 755] ("**APPTA Case**"), wherein it was held that teachers do not fall under the purview of the PG Act.

The Supreme Court concluded and held that "*teachers were brought within the purview of "employee" as defined in Section 2(e) of the Payment of Gratuity Act by Amending Act No. 47 of 2009 with retrospective effect from 03.04.1997*" and are entitled to claim gratuity under the PG Act with retrospective effect from April 3, 1997. Additionally, it has also clarified that in light of the amendments introduced by the PG Amendment Act, the law laid down in the case of APPTA Case, was no longer applicable and has lost its binding effect.

Separately, it was also brought to the notice of the Hon'ble Supreme Court that the constitutional validity of the PG Amendment Act was presently under challenge in a writ petition before the Supreme Court. However, the Supreme Court held that "*pendency of any writ petition by itself does not affect the constitutionality of the Amending Act, and nor does it affect the right of respondent No.4 (teacher) in any manner in claiming gratuity amount from the appellant (employer) under the Act*".

Thus, the Hon'ble Supreme Court has put to rest the confusion caused by its earlier judgement in the BIT Case and re-affirmed the position that teachers would be covered within the ambit of 'employee' as defined under the PG Act and consequently, entitled to receive gratuity, with retrospective effect from April 3, 1997.

Feedback

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