

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.8496 of 2015

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1. The Secretary Navyug Vidyalaya (a Unit of Navyug Bal Kendra) Radha Rani
Sinha Road, Adampur, P.S. - Kotwali, District - Bhagalpur - 812001.

2. The Principal, Navyug Bal Kendra through Navyug Vidyalaya, P.S. Kotwali,
District - Bhagalpur - 812001.

.... Petitioners

Versus

1. The State of Bihar through the Principal Secretary, Labour Resources
Department, Government of Bihar, Vikas Bhawan, New Secretariat Building,
Bailey Road, Patna - 800001.

2. The Labour Commissioner, Bihar, Patna (An Appellate Authority under the
Payment of Gratuity Act, 1972) Labour Resources Department, Government of
Bihar, Vikas Bhawan, New Secretariat Building, Bailey Road, Patna - 800001.

3. The Deputy Labour Commissioner, Bhagalpur (Controlling Authority under the
Payment of Gratuity Act, 1972) Labour Resources Department, Bhagalpur.

4. Binodanand Jha Son of Late Prayag Narayan Jha Resident of Mohalla - Laloo
Chak, Bhatta, P.O. & P.S. - Lodipur, District - Bhagalpur.

.... Respondents

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Appearance :

For the Petitioner/s : Mr. Alok Kumar Sinha, Advocate
Mr. Indrajeet Bhushan, Advocate

For the Respondent No.4 : Mr. Avanindra Kumar Jha, Advocate

For the State : Mr. Prashant Pratap, GP-2
Mr. Asit Kumar Jha, AC to GP-2

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 03-05-2017

The present writ petition has been filed invoking



extraordinary jurisdiction of this Court under Articles 226 of the Constitution of India for quashing the order dated 27.02.2015 passed in Gratuity Appeal Case No. 1 of 2014 by the Labour Commissioner-cum-Appellate Authority, Bihar, Patna (Respondent no.2) under the Payment of Gratuity Act, 1972 (for short 'the Gratuity Act') by which the respondent no.2 has upheld the order dated 12.02.2014 passed in Gratuity Case No. 8 of 2011 by the Deputy Labour Commissioner-cum-Controlling Authority, Bhagalpur (respondent no.3) whereby and whereunder the claim of gratuity of the respondent no.4 has been allowed and upheld directing the petitioners to pay Rs.2,00,100/- as the principal amount of gratuity along with simple interest of Rs. 68,032/-, thereby totaling to Rs.2,68,132/- as also for holding and declaring that since the respondent no.4 had admittedly retired from service as a teacher on 31.08.2009, therefore, he could not have derived any benefit out of 'the Amendment Act, 2009' (for short 'Amendment Act'), which was introduced later on 31.12.2009 and consequently, could not have been treated as an 'employee' within the amended definition of 'employee' as given in Section 2(e) of the Gratuity Act, which stood amended by the Amendment Act and also for holding and declaring that in any view of the matter, the respondentno.4 could not have been treated as an 'employee' for the period 01.07.1986 to



02.04.1997 because by the Amendment Act, the definition of 'employee' was amended with retrospective effect from 03.04.1997 and, hence, any period prior to it could not have legally qualified for the purpose of computation of gratuity.

2. The petitioner no.1 is the Secretary of Navyug Vidyalaya, which is a society, registered under the Societies Registration Act, 1986, which runs and manages school, namely, Navyug Vidyalaya situated at Adampur, Bhagalpur. The petitioner no.2 is the Principal of the school appointed by the society.

3. The facts of the case are not in dispute. The respondent no.4 was employed as a teacher in Navyug Vidyalaya during the period 01.07.1986 to 31.08.2009. On 31.08.2009, he retired from service. His last drawn monthly wage was Rs.15,072/-. After attaining the age of retirement, the respondent no.4 filed a claim application for payment of gratuity on 12.11.2011 before the respondent no.3. The claim of respondent no.4 was opposed by the petitioners by filing show cause on 17.12.2013. However, the respondent no.3 allowed the entire claim of gratuity of respondent no.4 by order dated 12.02.2014 passed in Gratuity Case No. 8 of 2011 whereby the petitioners have been directed to pay Rs.2,00,100 as the principal amount of gratuity along with simple interest of Rs.68,032/-.



4. Being aggrieved with the aforesaid order dated 12.02.2014 passed by the respondent no.3, the petitioners preferred an appeal before the respondent no.2 vide Gratuity Appeal Case No.1 of 2014.

5. After hearing the parties, the respondent no.2 passed the impugned order dated 27.02.2014 by which the order passed by the respondent no.3 in Gratuity Case No. 8 of 2011 has been upheld.

6. Challenging the aforesaid order dated 27.02.2015 passed by the respondent no.2, Mr. Alok Kumar Sinha, learned counsel for the petitioners submitted that under the un-amended definition of the term 'employee', which existed prior to the introduction of the Amendment Act, teachers did not qualify as 'employee' and, hence, they were not entitled to the benefit of gratuity under the Gratuity Act. He submitted that since the claimant (respondent no.4) had retired much prior to the introduction of the Amendment Act on 31.08.2009 by which the definition of 'employee' was amended, therefore, he could not have derived any benefit of the said Amendment Act. He submitted that the respondent no.1 also completely erred in law as he failed to appreciate that even as per the Amendment Act, the definition of 'employee' stood amended with retrospective effect from 03.04.1997 and, therefore,



the period of 01.07.1986 to 02.04.1997 under no circumstance could have been taken into account for the purpose of computation of gratuity. According to him, the entire adjudication was faulty. He submitted that the respondent nos. 2 and 3 grossly erred in law to appreciate the fact that the benefit of the Amending Act could only have been availed by such employees, who were in service as on 31.12.2009. He contended that the amendment brought in the definition of the term 'employee' by the Amendment Act very clearly envisages the 'employee' to be in the employment of the employer on the date the amending Act was introduced in order to take benefit of the amended definition and, hence, respondent no.4 could not have been granted the benefit of such amendment introduced on 31.12.2009 as he had already retired from service on 31.08.2009.

7. *Per contra*, Mr. Asit Kumar Jha, learned counsel appearing on behalf of respondent-State submitted that the payment of gratuity to an employee is a statutory mandate on the employer under the Gratuity Act. He contended that by virtue of Act 47 of 2009 as published in the Gazette of India with effect from 03.04.1997, the definition of 'employee' in Section 2(e) of the Gratuity Act was redefined on 31.12.2009 with retrospective effect from 03.04.1997. He submitted that by the same Act, a new Section



13-A was also inserted in the Gratuity Act with effect from 03.04.1997, which validated the Notification dated 03.04.1997 with retrospective effect i.e. 3rd April, 1997. He contended that in view of the aforesaid amendments, the respondent no.4 was rightly held to be entitled for the benefit of gratuity and there is no error in the order passed by the Appellate Authority whereby the appeal preferred by the petitioner against the order of the Controlling Authority has been dismissed.

8. Mr. Avanindra Kumar Jha, learned Advocate appearing on behalf of the respondent no.4 has supported the contentions advanced by the learned counsel for the State. He submitted that taking note of the observation of the Supreme Court in its judgment in **Ahmedabad (P) Primary Teachers' Association vs. Administrative Officer, [(2004) 1 SCC 755]**, the legislature has amended the definition of 'employee' under Section 2(e) of the Gratuity Act with effect from 03.04.1997. The objects and reasons of such amendment make the intention of the legislature very clear to apply the provisions of the Gratuity Act to the teachers also with retrospective effect. He contended that a writ petition filed by **Independent Schools' Federation of India vide WP(c) No.6166 of 2010** raising challenge to the validity of sub-Section (2) of Section 1 of the Amendment Act, 2009 whereby retrospective effect to the



provisions of Amendment Act, 2009 has been given with effect from 3rd April, 1997 has been dismissed by a Division Bench of the Delhi High Court on 02.12.2011 after elaborate discussion on facts and law. He contended that for the purpose of calculation of gratuity the entire service period of the employee is required to be calculated and not from the date the amendment has been brought into effect or the Act has been made applicable to educational institutions.

9. I have heard learned counsel for the parties and carefully perused the record.

10. Before I consider the aforesaid questions of law, it would be appropriate to refer to the background under which the Amendment Act was brought into force.

11. The Gratuity Act (No.39 of 1972) was enacted and brought into force from 16th September 1972. The Act provides for payment of gratuity to employees employed in any factory, mine, oilfield, plantation, port, Railway Company and in any shop or establishment employing ten or more workers. It has also been extended to motor transport undertakings employing ten or more workers.

12. The aforesaid Act was made applicable to local bodies with effect from 8.1.1982. Therefore, the schools under the control of local bodies got covered under the Act with effect from



8.1.1982 itself. However, the employees of other educational institutions were put to great disadvantage due to denial of gratuity as they were not covered under the Act. The employees of the Government schools were already entitled to gratuity under the extant rules of the Government governing gratuity and pension, but the employees of the private schools were having no legal entitlement to gratuity. Since gratuity is an old age retiral social security benefit, it was considered desirable by the Central Government to extend the benefit of the payment of gratuity to all employees employed in all educational institutions having ten or more persons.

13. Pursuant to that, the Central Government extended the provisions of the Gratuity Act to the educational institutions empowering ten or more persons vide the Ministry of Labour and Employment Notification No. S.O. 1080 dated 3rd April, 1997. The notification came into force with effect from 19.04.1997, the date on which it was published in the Gazette of India.

14. However, in **Ahmedabad (P) Primary Teachers' Association (supra)** the Supreme Court ruled that teachers are not entitled to gratuity under the Gratuity Act in view of the fact that the teachers do not answer description of 'employee' under Section 2(e) of the Act. It held, inter alia, that non-use of wide language similar to



the definition of 'employee' as is contained in Section 2(f) of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 reinforces the conclusion that teachers are not covered in the definition.

15. In this context, the relevant paragraph nos. 25 and 26 of the said judgment is reproduced as under:-

“25. The Legislature was alive to various kinds of definitions of the 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 the definition of 'employee' in Section 2(e) of the Act of 1972 reinforces our conclusion that teachers are clearly not covered in the definition.

26. 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”.

16. Keeping in view the observations of the Supreme Court in **Ahmedabad (P) Primary Teachers’ Association (supra)**, the Government of India, Ministry of Labour and Employment introduced the Payment of Gratuity (Amendment Bill), 2007 in the Lok Sabha on 26th November, 2007. The aforesaid Bill was referred to the Standing Committee on Labour, which submitted its 26th Report to the Lok Sabha on 26th February, 2008 and the Report was laid in the Rajya Sabha on the same day containing several recommendations. The four major recommendations made by the Standing Committee are as under:-

(i) Government should ensure that the new



definition of employee should be unambiguous, encompassing with clear reference to the targeted group, i.e., teachers of the private educational institutions.

(ii) Ceiling of ten or more persons should be removed and the gratuity should be payable to all irrespective of the number of persons employed.

(iii) The amendment should be made applicable retrospectively with effect from 3rd April, 1997 i.e. the date of notifying the educational institutions under the Act.

(iv) Contract workers should be brought under the purview of the Act by laying down specific provisions in the Act itself.

17. The Standing Committee in its report took note of the fact that the Central Government had extended the provisions of the Gratuity Act under clause (c) of sub-section (3) of Section 1 of the Act to the educational institutions employing ten more persons through Notification No. S-42013/1/95-58 II dated 3rd April, 1997. However, subsequent to the decision of the Hon'ble Supreme Court, the teachers of private schools were being denied the benefits of gratuity in view of the fact that teachers were not covered in accordance with the definition of 'employee' under Section 2 (e) of



the Act. To restore the *status quo ante*, the amendment had been proposed to the Act for extending again the benefits to the teachers, who were deprived of it due to the ruling of the Supreme Court.

18. Further, the Standing Committee was of the view that the Gratuity Act was made applicable to the local bodies with effect from 08.01.1982 whereby all schools under the control of local bodies were brought within the purview of the Act but the employees of private educational institutions were being denied benefits of gratuity as they had not been covered under the Act. The Committee opined that with a view to provide benefit of the Gratuity Act to all employees in all educational institutions employing ten or more persons, the provisions of the Act were extended through a notification with effect from 19.04.1997. However, the objective of providing the desired coverage under the Act was annulled following the judgment of the Hon'ble Supreme Court in the year 2004 excluding teachers from the term 'employee' as given in the Act. Thus, to nullify the effect of the verdict of the Supreme Court, the Committee proposed to widen the definition of 'employee' in order to extend the benefits of gratuity to the teachers by amending the same. The Committee called upon the Government to make the law applicable with retrospective effect, i.e. from the date of notification in the year 1997 in order to provide justice to all those affected



persons, who were denied their rightful benefits due to some legal lacuna in the unamended definition of the term ‘employee’ as contained in Section 2 (e) of the Gratuity Act.

19. As the draft bill of 2007 was later on withdrawn, a new Bill, namely, the Payment of Gratuity (Amendment Bill), 2009 was introduced in the Lok Sabha on 24th February, 2009, which also proposed retrospective effect to be given to the amendments with effect from 3rd April, 1997, i.e. the date on which the provisions of Gratuity Act were made applicable to the educational institutions and on being passed from the Parliament, the same became an Act.

20. At this stage, it would be pertinent to refer to the existing definition of ‘employee’ in Section 2(e) of the Gratuity Act as envisaged prior to the Amendment Act, which reads as follows:-

“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, manual, supervisory, technical or clerical work, whether the term 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]”.

21. Further, it would also be pertinent to refer to the definition of ‘employee’ vide Amendment Act, which reads as follows:-

“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”.

22. Sub-Section (2) of Section 1 of the Amendment Act, which has given retrospective effect to the provisions of the Amendment Act, reads as under:-

“(1) xxx xxx xxx

(2) It shall be deemed to have come into force on the 3rd day of April, 1997.”

23. By the aforesaid Amendment Act, after Section 13



of the Principal Act, a new Section 13-A has been inserted, which has validated the notification dated 3rd April, 1997 by stating that the said notification shall be valid and shall be deemed always to have been valid as if the Amendment Act had been in force at all material times and the gratuity shall be payable accordingly. It reads as under:-

“13-A. Notwithstanding anything contained in any judgment, decree, or order of any court, for the period commencing on any from the 3rd day of April, 1997 and ending on the day on which the Payment of Gratuity (Amendment) Act, 2009 receives the assent of the Government of India in the Ministry of Labour and Employment vide S.O. No. 1080 dated 3rd 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”.

24. Having seen the background, in which the Amendment Act was brought into force, now let me consider the questions raised in the present application. As stated above, the contention of the petitioners is that the benefit of the Amending Act could only have been availed by such employees, who were in service as on 31.12.2009, as the amendment brought in definition of ‘employee’ very clearly envisages the employee to be in employment in order to take benefit of the amended definition. The respondent no.4, therefore, could not have been granted the benefit of such amendment introduced on 31.12.2009 because he had already retired from service on 31.08.2009. His contention is that the manner in which the Controlling Authority and the Appellate Authority have interpreted the Amendment Act is not justified and such interpretation would lead to making the amendment arbitrary, unjust and unreasonable.

25. From the discussions made above, it would be evident that keeping in view the observations of the Supreme Court, it was proposed to widen the definition of ‘employee’ under the Gratuity Act in order to extend the benefit of gratuity to the teachers and after examining the recommendations of the Standing Committee, it was decided to give effect to the amendment



retrospectively with effect from 3rd April, 1997, the date on which the provision of said Act was made available to the educational institutions.

26. The legislature has consciously and unambiguously made the amendment retrospectively. The amendment is a benevolent measure introduced for the welfare of the teacher of the private schools by making them beneficiary of the Gratuity Act. In this background of the fact, it cannot be said that the implementation of the Amendment Act with effect from the retrospective date was either arbitrary or unjust or unfair or unreasonable.

27. At this stage, it would also be pertinent to note that the validity of the Amendment Act was challenged before the **Delhi High Court in Writ Petition (C) No. 6168 of 2010** and the Division Bench of Delhi High Court vide judgment dated 02.12.2011 upheld the said amendment after placing reliance on several judgments of the Supreme Court on the issue of retrospectivity. The reasons assigned by the Division Bench are as under:-

“21. We have considered the submissions of counsel on either side. Before we proceed to discuss the same and give our analysis, it will be apt to recapitulate once again some of the



important facts having bearing on the issue. In order to give benefit of gratuity payable under the Payment of Gratuity Act, 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 sub-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”.

22. It also cannot be disputed that it was a benevolent and beneficiary measure thereby extending the scope of this Act to the employees of educational institutions/schools. It is worthwhile to mention here that Payment of Gratuity Act was made applicable to local bodies w.e.f. 8th January, 1992. Therefore, the schools under the control of legal bodies stood cover from 8th January, 1982 itself. Thus,



whereas the employees of the government schools were entitled to gratuity. Insofar as government schools are concerned, their employees were already entitled to gratuity under the extent rules of government governing gratuity and pension. It is only the employees of the private school which were left out. As the gratuity is an old age retiral social security benefit, the Central Government deemed it proper to extent the benefit of this Act to all employees employed in all educational institutions having 10 or more persons. With this objective in mind, the aforesaid notification dated 3 rd April, 1997 was issued.

23. While issuing this notification it was not realized that any person employed by the school has also to come within the definition of employees under Section 2 (e) of the Payment of Gratuity Act but this definition existing at that time did not cover the teachers. It is for this reason that the Supreme Court held that with the aforesaid notification teachers would still be not the beneficiary of the said Act. At the same time, all other category of staff in the schools who fit in the definition of “employee” stood cover by the aforesaid notification and started getting gratuity. In



order to remove this anomaly, it became necessary to amend the definition of “employee” contained in Section 2 (e) of the Act and that is precisely is done by the impugned amendment. As the Act is otherwise extended to all the educational institutions vide Notification dated 3rd April, 1997 w.e.f. 19th April, 1997 and all other employees except teachers stood cover by the aforesaid notification, in order to cover teachers as well from the same date, the Parliament has amended the definition of teachers with retrospective effect i.e. w.e.f. 3rd April, 1997.

24. Keeping in view the aforesaid parameters, we now consider the question as to whether such retrospective amendment is valid or not.

25. As noted above, there is no quarrel with the proposition that the Legislature has power to amend the laws with retrospective effect to any substantive provision. It is quite trite that such retrospective action takes away vested rights and the amendment must be reasonable and not arbitrary or discriminatory violating Article 14 of the Constitution. Amendment in question is not



arbitrary. Rather, it achieves the equity by bringing within the ambit of Gratuity Act also as beneficiary which only remained excluded. The only question, therefore, is as to whether this amendment has taken away any vested rights of the petitioner.

26. The legislative power either to introduce enactment for the first time or to amend the enacted law with retrospective effect is subject to certain judicially recognized limitations, some of which are as under:

(i) There should be express language used by the Legislature expressly providing for or clearly applying retrospective operation;

(ii) The retrospectivity must be reasonable and not excessive or harsh.

Otherwise, it runs the risk of being struck down as unconstitutional; and

(iii) Where the Legislation is introduced to overcome a judicial decision, the power cannot be used to subvert the decision without removing the statutory basis of the decision.

27. In the present case, the first two limitations are clearly not attracted. It is not in dispute that the Legislature has



expressly made the amendment retrospective. The date from which the amendment to Section 2(e) of the Gratuity Act has to come into force has been specified. It also cannot be disputed that the amendment does not suffer from the vice of arbitrariness. On the contrary, it is a benevolent measure introduced for the welfare of teachers by making them as well beneficiary of the Gratuity Act. Therefore, it cannot be said to be harsh.

28. As pointed out above, the Legislature had intended to extend the Gratuity Act to the educational institutions as well with effect from 3.4.1997 and it stands extended to all the employees of educational institutions. Only teachers remained out as consequential amendment in the definition of "employee" was not made. The retrospective amendment thus only seeks to remove the statutory basis of the earlier decision. This is permissible and it is so held by the Apex Court time and again. In Ujagar Prints v. Union of India, (1989) 3 SCC 488, the Supreme Court explained the permissibility of such a power in the following words:

“....A competent legislature



can always validate a law which has been declared by courts to be invalid, provided the infirmities and vitiating infactors noticed in the declaratory judgment are removed or cured. Such a validating law can also be made retrospective. If in the light of such validating and curative exercise made by the legislature - granting legislative competence - the earlier judgment becomes irrelevant and unenforceable, that cannot be called an impermissible legislative overruling of the judicial decision. All that the legislature does is to usher in a valid law with retrospective effect in the light of which earlier judgment becomes irrelevant. (See *Sri Prithvi Cotton Mills Ltd. v. Broach Borough Municipality*, (1969) 2 SCC 283 : (1907) 1 SCR 388 : (1971) 79 ITR 136.

66. Such legislative expenditure of validation of laws is of particular significance and utility and is quite often applied, in taxing statutes. It is necessary that the legislature should be able to cure defects in statutes. No individual can



acquire a vested right from a defect in a statute and seek a windfall from the legislatures mistakes. Validity of legislations retroactively curing defects in taxing statutes is well recognized and courts, except under extraordinary circumstances, would be reluctant to override the legislative judgment as to the need for and wisdom of the retrospective legislation."

The aforesaid observations qua taxing statute would apply in the present context as well.

29. We may also usefully refer to the judgment of the Apex Court in **Krishnamurthi and Co. v. State of Madras**, AIR 1972 SC 2455 : [1973] 2 SCR 64. In that case, the Madras General Sales Tax Act, 1959 (as it stood) provided under entry 47 for tax on "lubricating oils, all kinds of mineral oils (not otherwise provided for in this Act) quenching oil and greases with effect from 1-4-1964". The question was whether this entry covered furnace oil. The Madras High Court construed the phrase and came to the conclusion that it did not. The Legislature then enacted an



amendment Act in 1967. Entry 47 was amended - so as to expressly provide that furnace oil would be subjected to tax. The Act was made effective from 1964. The Act was challenged as being unreasonable since it retrospectively made the dealers liable for sales tax which they had not passed on to others. The challenge was negatived and it was said that (page 197 of 31 STC and page 2459 of AIR 1972):

“The object of such an enactment is to remove and rectify the defect in phraseology or lacuna of other nature and also to validate the proceedings, including realisation of tax, which have taken place in pursuance of the earlier enactment which has been found by the court to be vitiated by an infirmity. Such an amending and validating Act in the very nature of things has a retrospective operation. Its aim is to effectuate and carry out the object for which the earlier principal Act had been enacted. Such an amending and validating Act to make small repairs is a permissible mode of legislation and is frequently resorted to in fiscal



enactments.”

30. It is not necessary to multiply the judgments. Our purpose would be served by taking note of another judgment of the Supreme Court in the case of National Agricultural Co-operative Marketing Federation of India Ltd. & Anr. v. Union of India & Ors., [2003] 260 ITR 548 where entire law on the subject was revisited by the Court.

31. In that case, Section 80P(2)(a)(iii) of the Income-tax Act, 1961, as originally inserted, provided that in the case of a co-operative society engaged in “(iii) the marketing of the agricultural produce of its members” the whole of the amount of profits and gains of business attributable to such activity would be deducted from the gross total income. The Supreme Court, in the decision of Assam Co-operative Apex Marketing Society Ltd. v. CIT(Addl.), [1993] 201 ITR 338 rendered under the corresponding earlier provision, section 81, had held that the phrase "produce of its members" must refer to agricultural produce actually "produced by its members". In a later decision, Kerala State Co-operative Apex Marketing



Federation Ltd. v. CIT , [1993] 231 ITR 814, a larger Bench of the Supreme Court overruled the decision in the case of Assam Co-operative Apex marketing Society Ltd., [1993] 201 ITR 338 and held that the exemption under section 80P(2)(a)(iii), was not restricted only to primary societies and that “produce of its members” in that provision had to be construed as including the “produce belonging to” a member society. Immediately thereafter, in 1999 the provisions of section 80P(2)(a)(iii), were amended by the Income-tax (Second Amendment) Act, 1998 (No. 11 of 1999), with retrospective effect from April 1, 1968, by substituting sub- clause (iii) to read "the marketing of agricultural produce grown by its members". The appellant, an apex co-operative society of a chain of societies operating at different levels, challenged, by a writ petition, the validity of section 80P(2)(a)(iii) as amended retrospectively. The High Court dismissed the writ petition. On appeal to the Supreme Court, the Supreme Court held as follows:

"...the retrospective amendment was valid. By the impugned amendment Parliament had, in effect,



substituted the word “of” in section 80P(2)(a)(iii), and which had been construed by the Supreme Court in 1998 as “belonging to”, with the phrase “grown by”. The clear effect of the retrospective substitution would be that section 80P(2)(a)(iii) must be read as if the substituted phrase were included from April 1, 1968. In making this change Parliament did not overrule the decision of the Supreme Court in Kerala State Co-operative Marketing Federation [1998] 231 ITR 814. Where the law, as in this case, had been changed and was no longer the same, there was no question of the Legislature overruling the Supreme Court. Once the circumstances were altered by legislation, it neutralized the effect of the earlier decision of the Supreme Court”.”

28. It would also be apt to note here that in the President/Secretary, Vidarbha Welfare Institution (Society),



Amrawati vs. Shri Pradipkumar S/o Ramchandrarao Lambhate [2012 (133) F.L.R. 278], the Nagpur Bench of Bombay High Court upheld the order passed by the Controlling Authority and the Appellate Authority under the Gratuity Act whereby Principal of a college run by society, who had retired on attaining the age of superannuation with effect from 31.05.2005, was directed to be paid gratuity with interest thereon.

29. It would also be pertinent to note here that the retrospective operation of the Amendment Act, 2009 was also challenged before the Division Bench of Punjab and Haryana High Court in **Maharishi Dayanand Education Society and Others vs. Union of India and Others (C.W.P. No. 16884 of 2012)** and vide judgment dated 18.10.2012, the Division Bench dismissed the writ petition following the aforesaid judgments of the Delhi High Court and the Bombay High Court.

30. In **Jain Citizens Education Society, Surendranagar and Another vs. Union of India through Secretary** [2012 (3) LLJ 91], a challenge was made before the Division Bench of the Gujarat High Court to the validity of the amended Section 2(e) and Section 13-A of the Gratuity Act. After an elaborate discussion of the points raised, the Division Bench in view of the statement of objects and reasons of the Amendment Act, 2009



held that the substituted Section 2(e) and newly inserted Section 13-A of the Gratuity Act are neither violative of Article 14 nor violative of Article 19(1)(g) of the Constitution of India.

31. At this stage, it would also be pertinent to note that the specific plea of the petitioners that the expression 'who is employed' in the amended definition of 'employee' necessarily requires an 'employee' to be in the employment of the employer on the date when the amending Act was introduced cannot be accepted in view of the ratio laid down by the Supreme Court in **Grindwell Norton Ltd. vs. N.L. Abhyankar and another [1980 (40) FLR 52]**, in which after dealing with the relevant provisions of the Gratuity Act, the Supreme Court clearly indicated that the period of employment to be taken into consideration for determination of the amount of gratuity is not restricted only to the period subsequent to the coming into force of the Act, but the period of employment prior to that date has to be taken into consideration. The Supreme Court further held that Section 4 is charging section and it provides that gratuity shall be payable to an employee on the termination of his employment and the termination of the employment is either by superannuation, retirement or resignation, or his death or disablement due to accident or disease. The observations made by the Supreme Court in the aforesaid case are as under:-



“The reading of the relevant provisions clearly indicates that the period of employment to be taken into consideration for the purpose of determining of the amount of gratuity is not restricted only to the period subsequent to the coming into force of the Act, but the period of employment prior to that date has to be taken into consideration.”

32. In view of the ratio laid down by the Supreme Court in **Grindwell Norton Ltd. (supra)**, the contention of the petitioners that the expression ‘who is employed’ in the amended definition of ‘employee’ necessarily requires an employee to be in employment on the date the amending Act was introduced has got no merit.

33. Thus, in view of judgments of different High Courts and of the Supreme Court, I see no reason either to take a different view of the matter or to interpret the law differently. However, before I conclude, I must say that the Amendment Act is not only retrospective, but is also retroactive, which means affecting what is past. By introducing the said amendment, the legislature has simply cured inadvertent defects in statutes pointed out by the Supreme Court in **Ahmedabad (P) Primary Teachers’ Association (supra)**.



34. In **Harvard Law Review**, Vol. 73, p. 692, recognizing the legality of retroactive laws, it was observed:-

“It is necessary that the legislature should be able to cure inadvertent defects in statutes or their administration by making what has been aptly called ‘small repairs’. Moreover, the individual who claims that a vested right has arisen from the defect is seeking a windfall since had the legislature’s or administrator’s action had the effect it was intended to and could have had, no such right would have arisen. Thus the interest in the retroactive curing of such a defect in the administration of Government outweighs the individual’s interest in benefiting from the defect”.

35. The above passage was quoted with approval by the Constitution Bench of the Supreme Court in the case of **Assistant Commissioner of Urban Land Tax vs. Buckingham and Carnatic Co. Ltd [(1969) 2 SCC 55]**.

36. *Craies on Statute Law* (7th Edn.) at p. 396 observed:-

“If a statute is passed for the purpose of protecting the public against some evil or abuse, it may be allowed to operate retrospectively, although by such operation it will deprive some



person or persons of a vested right.”

37. Thus, it would be evident that the public interest at large is one of the relevant considerations in determining the legality and validity of a retrospective and retroactive legislations.

38. We have seen that the object of the amendment was for the benefit to the deprived teachers. Hence, no fault can be found with the order passed by the Controlling Authority or the Appellate Authority whereby the respondent no.4 who had retired from service as a teacher on 31.08.2009 has been allowed amount of gratuity along with interest.

39. In the light of discussions made above, the application, being devoid of any merit, is dismissed.

(Ashwani Kumar Singh, J.)

Sanjeet/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	15.05.2017
Transmission Date	NA

