

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble Justice Raja Basu Chowdhury

WPA 14943 of 2022

Central Model School, Barrackpore & Anr.
Vs.
The State of West Bengal & Ors.

For the petitioners: Mr. Dibyendra Narayan Ray,
Ms. Munmum Tewary,
Mr. Rajesh Kumar Shah.

For the State
/Controlling Authority: Mr. Susovan Sengupta,
Mr. Srikanta Paul

For the respondent: Ms. Mita Hansa(in-person)
no. 6.

Heard on : 28.09.2022

Judgment on : 15th December, 2022

Raja Basu Chowdhury, J:

1. The principal question for consideration in this writ application is whether the respondent no. 6 (herein after referred to as the private respondent), who had been engaged as an Assistant Teacher in the Central Model School, Barrackpore, upon her superannuation on 31st July, 2019, can maintain her claim for gratuity in terms of the provisions

contained in The Payment of Gratuity Act, 1972 (hereinafter referred to as the said Act).

2. The writ petitioner no.1 is a reputed English Medium School, affiliated with the Central Board of Secondary Education (CBSE). Admittedly, the private respondent joined the school on 19th June, 2012 as an assistant teacher and was superannuated from service on 31st July, 2019. On superannuation, the private respondent applied in Form-‘T’, on 12th December, 2019, to the petitioner no.1 for disbursal of her gratuity claim as per the provisions of the said Act. Since the writ petitioners did not disburse the gratuity, the private respondent filed an application in Form-‘N’ with the Controlling Authority under the said Act. The writ petitioners did not contest such proceedings. By an order dated 18th February, 2021, the Controlling Authority determined the amount of gratuity payable to the private respondent. A notice in ‘Form-R’ was issued by the Controlling Authority, calling upon the writ petitioner no.1 to make payment of gratuity, to the private respondent. The writ petitioner no.1 instead of making payment of gratuity to the private respondent, deposited gratuity as determined, with the Controlling Authority and preferred an appeal which was registered as Case No. G-A-2 of 2021.

3. One of the contentions urged by the writ petitioners before the Appellate Authority was that the private respondent did not qualify, for being entitled to gratuity. The private respondent was a teacher, she does not come within the meaning of “*employee*”, as defined in section 2(e) of the said Act. Consequentially neither she is entitled to claim gratuity, nor can she maintain her claim before the controlling authority, for the controlling authority to determine the amount of gratuity payable to her. The Appellate Authority, however, by its order dated 16th June, 2022 refused to interfere with the order passed by the Controlling authority and dismissed the appeal.

4. Being aggrieved, the present writ application has been filed.

5. Mr. Ray learned advocate representing the writ petitioners by placing reliance on the provisions of the said Act, submits that the private respondent does not come within the meaning of the word “*employee*” as defined in section 2(e) of the said Act. It is contended on behalf of the petitioners that the original definition of an “*employee*” within the meaning of the said Act had been substituted by the Payment of Gratuity (Amendment) Act (No. 47 of 2009), with a retrospective effect from 3rd April, 1997, so as to include teachers within the ambit

of the said Act. Still later in the year 2016 the Government of India, Ministry of Law and Justice by publishing a notification in the gazette of India on 9th May, 2016, has enforced the Repealing and Amending Act, 2016 (hereinafter referred to as the “Repealing Act”), whereby the enactments specified in the first schedule thereof have been repealed to the extent mentioned in the fourth column thereof. Drawing attention to the fourth column of the first schedule of the aforesaid Repealing Act, he says that the whole of the Payment of Gratuity (Amendment) Act, 2009 has been repealed and as such the private respondent, consequent upon the aforesaid repeal, can no longer be considered an employee, within the meaning of the said Act.

6. By placing reliance on a judgment delivered by the Hon’ble Supreme Court in the case of **Ahmedabad Pvt. Primary Teachers’ Association -Vs. - Administrative Officer and Others.**¹, it is submitted that the definition of “*employee*” within the meaning of the said Act, prior to its amendment in the year 2009, had been interpreted by the Hon’ble Supreme Court, so as not to include teachers within the ambit of the definition of “*employee*” within the meaning of the said Act. He says by the Repealing Act, the substituted

¹ Ahmedabad Pvt. Primary Teachers’ Association v. Administrative Officer and Others., (2004) 1 SCC 755.

definition of “*employee*” in the said Act, has been obliterated, thereby reviving the unamended definition of “*employee*” which has already been interpreted so as not to include teachers. As such the private respondent, who was superannuated in the year 2019, does not come within the ambit of the definition of an employee, within the meaning of the said Act. Consequentially neither can the private respondent maintain an application before the Controlling Authority, in terms of the provisions of the said Act nor could the Controlling Authority adjudicate the same. For reasons as aforesaid the decision rendered by the Controlling Authority and subsequent order passed by the Appellate Authority stands vitiated and the same should be set aside.

7. *Per contra*, Mr. Susovan Sengupta, learned advocate, representing the state of West Bengal submits that the judgment delivered in the case of **Ahmedabad Pvt. Primary Teachers’ Association**² cannot be relied on by the petitioners, in light of the judgment delivered by the Hon’ble Supreme Court in the case of **Birla Institute of Technology**³. He says that the private respondent was appointed in the year 2012 when the definition of “*employee*” in the said Act, based on the judgment delivered in the case of **Ahmedabad Pvt. Primary**

² *Ahmedabad Pvt. Primary Teachers’ Association v. Administrative Officer and Others.*, (2004) 1 SCC 755.

³ *Birla Institute of Technology v. the State of Jharkhand and Others.*, (2019) 4 SCC 513.

Teachers' Association⁴ was amended by the Payment of Gratuity (Amendment) Act, (No. 47 of 2009), on 31st December, 2009 with retrospective effect from 3rd April, 1997. He says that the private respondent was appointed in the year 2012 and as such is covered by the amended definition of the said Act. The contrary contentions raised by the writ petitioners are unacceptable. He says that the order passed by the Controlling Authority as well as the Appellate Authority cannot be faulted.

8. The private respondent, who is appearing in-person, has filed a compilation of documents pursuant to directions passed by this Court and has enclosed therein, her letter of joining, letter of confirmation of services, experience certificate, salary statement issued by the writ petitioner no.1, as also the orders passed by the Controlling Authority and the Appellate Authority under the said Act. Drawing attention of the Court to her letter of appointment, she says at the time she had entered service and when her service was confirmed, she was categorically informed by her employer, that amongst other benefits, she shall be entitled to provident fund and gratuity. She says that her employer having agreed to make payment of gratuity at the time of appointment and confirmation of her services, cannot today turn around and claim that she is not entitled to payment of gratuity. She says that there is no

⁴ *Ahmedabad Pvt. Primary Teachers' Association v. Administrative Officer and Others.*, (2004) 1 SCC 755.

irregularity in the order passed by the Controlling Authority or by the Appellate Authority. In support of her contentions that the teachers are entitled to payment of gratuity, she has placed reliance on a judgment delivered by the Hon'ble Supreme Court in the case of **Independent Schools' Federation of India (Regd.)**⁵. She says that the instant application has been filed with the sole object of delaying and denying her rightful entitlements. She prays for dismissal of the writ application.

9. I have considered the submissions made by the learned advocates representing the respective parties and the private respondent in person. I have also considered the materials on record. The short question that falls for consideration in the present application is whether the private respondent, a teacher of a private educational institution, can be said to be covered by the provisions of the said Act, for her to maintain a claim before the Controlling authority. Admittedly the private respondent had been employed by the petitioner no.1 and was engaged as an Assistant Teacher. From the letter of confirmation issued by the writ petitioner no.1 it would appear, that amongst others, the writ petitioner no.1 agreed to make payment of gratuity to the private respondent. I find that the Payment of Gratuity Act, 1972, was amended in the year 2009 by Payment of Gratuity (Amendment) Act (No. 47 of 2009). The

⁵ *Independent Schools' Federation of India (Regd.) V. Union of India and Another*, 2022 SCC Online SC 1113.

effect of such amendment has been considered by the Hon'ble Supreme Court in the case of **Birla Institute of Technology**⁶ wherein it has been held as follows.:

“22. *The definition of “employee” as defined under Section 2(e) was accordingly amended with effect from 3-4-1997 retrospectively vide Payment of the Gratuity (Amendment) Act, 2009 (47 of 2009) published on 31-12-2009. The amended definition reads as under:*

“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.”

23. *In the light of the amendment made in the definition of the word “employee” as defined in Section 2(e) of the Act by Amending Act 47 of 2009 with retrospective effect from 3-4-1997, the benefit of the Payment of Gratuity Act was also extended to the teachers from 3-4-1997. In other words, the teachers were brought within the purview of “employee” as defined in Section 2(e) of the Payment of Gratuity Act by Amending Act 47 of 2009 with retrospective effect from 3-4-1997.*

24. *The effect of the amendment made in the Payment of Gratuity Act vide Amending Act 47 of 2009 on 31-12-2009 was twofold. First, the law laid down by this Court*

⁶ *Birla Institute of Technology v. the State of Jharkhand and Others.*, (2019) 4 SCC 513.

in Ahmedabad Private Primary Teachers' Assn. [Ahmedabad Private Primary Teachers' Assn. v. Administrative Officer, (2004) 1 SCC 755 : 2004 SCC (L&S) 306] was no longer applicable against the teachers, as if not rendered, and second, the teachers were held entitled to claim the amount of gratuity under the Payment of Gratuity Act from their employer with effect from 3-4-1997.”

10. It is, therefore, clear that consequent upon the definition of “*employee*” being amended, upon the Payment of Gratuity (Amending) Act (No. 47 of 2009) being notified, it cannot be said that the private respondent was not entitled to gratuity at the time when she entered the service. The right to receive gratuity therefore accrued in favour of the private respondent in the year 2012 itself.

11. Mr. Ray, however, by placing reliance on the provisions of the Repealing Act, has, *inter alia*, claimed that consequent upon the repeal of *Payment of Gratuity (Amendment) Act (No. 47 of 2009)*., the private respondent loses her right of being entitled to gratuity, as the private respondent can no longer be said to be an *employee*, within the meaning of the provisions of the said Act. In my view the aforesaid submission as advanced by Mr. Ray is not acceptable. The Hon’ble Supreme Court in the case of **Independent Schools’ Federation of India (Regd.)**⁷ while considering the effect of the Repealing Act, on

⁷ *Independent Schools’ Federation of India (Regd.) V. Union of India and Another*, 2022 SCC Online SC 1113.

the amended provisions of the said Act, which were introduced by the Payment of Gratuity (Amending) Act (No.47 of 2009) has held :

“27. The last contention raised by the private schools and writ petitioners is predicated on the enactment of the Repealing and Amending Act 2016³⁴, by virtue of which the Amendment Act 2009 was repealed. The argument, in our opinion, overlooks Section 6A of the General Clauses Act, 1897 and Section 4 of the Repealing and Amendment Act, which read thus:

“Section 6A of The General Clauses Act, 1897

6A. Repeal of Act making textual amendment in Act or Regulation.— *Where any Central Act or Regulation made after the commencement of this Act repeals any enactment by which the text of any Central Act or Regulation was amended by the express omission, insertion or substitution of any matter, then, unless a different intention appears, the repeal shall not affect the continuance of any such amendment made by the enactment so repealed and in operation at the time of such repeal.*

xxx

xxx

xxx

Section 4 of The Repealing and Amendment Act, 2016

4. Savings.— *The repeal by this Act of any enactment shall not affect any other enactment in which the repealed enactment has been applied, incorporated or referred to,*

and this Act shall not affect the validity, invalidity, effect or consequences of anything already done or suffered, or any right, title, obligation or liability already acquired, accrued or incurred, or any remedy or proceeding in respect thereof, or

any release or discharge of or from any debt, penalty, obligation, liability, claim or demand, or any indemnity already granted, or the proof of any past act or thing;

nor shall this Act affect any principle or rule of law, or established jurisdiction, form or course of pleading, practice or procedure, or existing usage, custom, privilege, restriction, exemption, office or appointment, notwithstanding that the same respectively may have been in any manner affirmed or recognised or derived by, in or from any enactment hereby repealed;

nor shall the repeal by this Act of any enactment revive or restore any jurisdiction, office, custom, liability, right, title, privilege, restriction, exemption, usage, practice, procedure or other matter or thing not now existing or in force.”

12. It would, thus, be apparent from a plain reading of section 4 of the Repealing Act that the same provides that the repeal shall not affect any of the enactments in which the repeal enactment has been applied, incorporated, or referred to. The Repealing Act shall also not affect the validity, invalidity, effect or consequence of anything done or suffered or any right, title, obligation or liability already acquired or accrued or incurred etc. In this case the right has already accrued in favour of the private respondent and as such the repealing Act does not in any way effect the rights of the private respondent. The Payment of Gratuity (Amendment) Act (No. 47 of 2009) has already been applied and incorporated to

the parent act. The object of this Repealing Act is not to alter the existing law but to strike out certain amendments which have become unnecessary. In the case of **Independent Schools' Federation of India (Regd.)**⁸ the Hon'ble Supreme Court while considering the impact of the Repealing Act in its application to the said Act had also *inter-alia* relied on and had quoted with approval the following paragraph from the Judgment delivered by this Hon'ble Court in the case of **Khuda Bux**⁹ :

“In Khuda Bux v. Manager, Caledonian Press, Chakravartti, C.J., neatly brings out the purpose and scope of such Acts. The learned Chief Justice says at p. 486:

“Such Acts have no Legislative effect, but are designed for editorial revision, being intended only to excise dead matter from the statute book and to reduce its volume. Mostly, they expurgate amending Acts, because having imparted the amendments to the main Acts, those Acts have served their purpose and have no further reason for their existence. At times, inconsistencies are also removed by repealing and amending Acts. The only object of such Acts, which in England are called Statute Law Revision Acts, is legislative spring-cleaning and they are not intended to make any change in the law. Even so, they are guarded by saving clauses drawn with elaborate care,...”

⁸ *Independent Schools' Federation of India (Regd.) V. Union of India and Another*, 2022 SCC Online SC 1113.

⁹ *Khuda Bux.vmanager,Caledonian Press*, AIR 1954 Cal 484

13. On a reading Section 4 of the Repealing Act read with section 6A of the General clauses Act it would thus become clear that the main object of the Repealing Act was only to strike out the unnecessary acts, by removing the dead matter from the statute in order to reduce its volume and lighten the burden so as to remove confusion from the public mind.

14. The Repealing Act therefore does not alter the definition of “*employee*” as defined in section 2(e) of the said act. The private respondent, who was a teacher, is covered by the definition of “*employee*” as defined in section 2(e) of the said Act and is entitled to enforce her claim before the Controlling Authority under the said Act. The Repealing Act also does not have the effect of reviving the definition of “*employee*” in the said Act, to pre 1997 era, for the ratio of the judgment delivered in the case of **Ahmedabad Pvt. Primary Teachers’ Association¹⁰** to apply. In the instant case as noted hereinabove, the right having already accrued in favour of the private respondent to claim gratuity and the same cannot be taken away and has been saved.

15. The order passed by the Controlling Authority or the Appellate Authority under the said Act cannot be said to be illegal or suffering from any jurisdictional error. No case for interference has been made out.

16. The writ application, being WPA 14943 of 2022, fails and is accordingly dismissed with costs of Rs 10,000/- to be paid by the petitioners to the private respondent.

17. Urgent Photostat certified copy of this order, if applied for, be given to the parties upon compliance of necessary formalities.

(Raja Basu Chowdhury, J.)

¹⁰ Ahmedabad Pvt. Primary Teachers' Association v. Administrative Officer and Others., (2004) 1 SCC 755.