



W.P.No.11771 of 2011

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.02.2025

CORAM

THE HONOURABLE MR.JUSTICE **M.DHANDAPANI**

W.P.No.11771 of 2011

and

MP.Nos.2 & 3 of 2011

Kalpana Srinivasan,
The Correspondent,
Perks Matriculation Higher Secondary School,
Coimbatore – 641 015.

...Petitioner

Vs.

1. The Secretary to the Government of India,
Ministry of Law and Justice,
New Delhi.
2. The Controlling Authority
under the Payment of Gratuity Act/
Assistant Commissioner of Labour,
Coimbatore – 15.
3. V.N.Narayanan

...Respondents

Petition filed Under Article 226 of the Constitution of India
praying for the issuance of Writ of Declaration to declare that the
amendment Act 47 of 2009, viz., the payment of Gratuity (Amendment)
Act, 2009 as unconstitutional, illegal and a colourable legislation.



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For Petitioner : Mr.V.Vijayshankar

For Respondents : Mr.A.Kumaraguru, for R1 & R2
: No Appearance, for R3

ORDER

The petitioner has come up with this Writ petition seeking to declare the amendment Act 47 of 2009, viz., the payment of Gratuity (Amendment) Act, 2009 as unconstitutional and illegal.

2. The facts leading to filing of this Writ petition are as follows:-

The petitioner school claims to be a renowned educational institution running at Coimbatore and the 3rd respondent was employed as teacher in the petitioner school and he was retired from the services of the petitioner institution after putting 29 years of service on 31.05.2007. The 3rd respondent sent representations to the petitioner school claiming gratuity. When there was no response even for his Advocate Notice, the 3rd respondent filed a petition under Payment of Gratuity Act before the Assistant Commissioner of Labour, Coimbatore in G.A.No.219 of 2010, in which, the petitioner school filed a detailed counter affidavit claiming that it is not bound to pay the gratuity to school teacher who has retired



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and that a teacher cannot be brought within the ambit of employee as defined under the Payment of Gratuity Act. The Parliament had made amendment to the definition of Employee under Payment of Gratuity Act with retrospective effect on 03.04.1997 bringing the teachers within the definition of Employee and the government also inserted 13A which was also made effective from 03.04.1997 and the 3rd respondent drew strength from these two amendments and called upon the petitioner school to pay his gratuity amount. Hence, the petitioner has come up with this Writ petition seeking to declare that the aforesaid amendments are unconstitutional.

3. When the matter was taken up for hearing, the learned counsel appearing for the 1st and 2nd respondents submitted that, the issue involved in the present Writ petition is no longer *res integra* and the very same enactment was challenged before the Hon'ble Apex Court in the case of ***Independent Schools' Federation of India (Regd.) Vs. Union of India and Another*** reported in ***2022 SCC Online SC 1113*** (Civil Appeal No.8162 of 2012 dated 29.08.2022) and the Hon'ble Apex Court had upheld the validity of the said amendments. For better appreciation, the relevant portion of the said decision is extracted hereunder:



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12.

Clause (e) to Section 2 of the PAG Act was amended with retrospective effect from 3rd April, 1997, and reads:

“2. **Definitions.** –

XX XX XX

(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;”

13. Further, Section 13A was inserted also with effect from 3rd April 1997 and reads :

“**13A. Validation of payment of gratuity.**–

Notwithstanding anything contained in any judgement, decree or order of any court, for the period commencing on and 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 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 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



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all material times and the gratuity shall be payable accordingly:

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17. The first ground should not hold us for long, as the legislation in question rectifies the infirmities and defects pointed out by the Court, and the amended clause (e) to Section 2, defining the word “employee” and the newly inserted Section 13A with retrospective effect from 3rd April 1997, effectuate and catalyse the object and purpose of the Notification No. S-42013/1/95-SS.(II). This power to legislate with retrospective effect, which vests in every sovereign legislature, is not taken away by a court decision. However, a court decision cannot be overruled by the legislature. The legislature can amend the language of the provision that was the subject matter of the court decision, and such an amendment does not overrule the court decision. Overruling assumes a decision based on the same law. Where the law, as in the present case, has been amended, and the defects have been removed or cured, the law changes, and therefore, the earlier interpretation is no longer applicable and becomes irrelevant. Doctrine of separation of powers demarcates the exclusive domains of the legislature, which enacts the laws, and the courts’, which interpret the law as enacted. The earlier decision in Ahmedabad Private Primary Teachers’ Association (supra) by this Court had interpreted the law, that is, Section 2(e) of the PAG Act, as it then existed in the statute. The judgment even acknowledged and prompted the legislature to enact a legislation granting the benefit of gratuity to teachers, who had been excluded because of the legal flaw. When the legislature acts within its power to usher in a valid law and rectify a legal error,



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even after a court ruling, the legislature exercises its constitutional power to enact the law and does not overrule an earlier court decision. This principle is too well settled to require elaborate quotations, albeit reference can be made amongst other cases to *Shri Prithvi Cotton Mills Ltd. and Another v. Broach Borough Municipality and Others*²⁰, 20 (1969) 2 SCC 283 *Ujagar Prints and Others (II) v. Union of India and Others*²¹ and *National Agricultural Cooperative Marketing Federation of India Ltd. And Another v. Union of India and Others*.

18. The second ground is again devoid of any merit and substance. The legislature, vide the Amendment Act, 2009, has given retrospective effect to the amended provision of Section 2(e) and the newly inserted Section 13A with effect from 3rd April 1997, which is also the date of the notification issued by the Government under Section 1(3)(c), making the PAG Act applicable to the educational institutions with ten or more employees. The amendment enforces and gives effect to what was intended by the notification, but could not be achieved on account of the technical and legal defect. The lacuna, a distortion in the language that had the unwitting effect of leaving out teachers, has been rectified so as to achieve the object and purpose behind the issuance of the notification, making the PAG Act applicable to all educational institutions. The argument of the educational institutions that they have been taken by surprise is incorrect and unacceptable as the legislation had cured the inadvertent defect in a statute, as pointed out by this Court, through legislative repair. Private schools, when they claim a vested right arising from the reason of defect, should not succeed, for acceptance would be at



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the expense of teachers who were denied and deprived of the intended benefit. Marginal inconvenience in the form of financial outgo or difficulty is of little weight, when curing of an inadvertent defect is made retrospectively in greater public interest, which consideration will overrule the interest of one or some institutions.²³ We find little merit in this argument also for the reason, that the observations of this Court in Ahmedabad Private Primary Teachers' Association (supra) in paragraph 26 were sufficient to indicate that a legislation should intervene to grant the benefit of gratuity to teachers. The contention that the private schools were sure to succeed as to deny the teachers the benefit of the Notification No. S-42013/1/95-SS.(II) dated 3rd April 1997, is questionable and farfetched to be accepted. The challenge was contested and had remained pending before the High Courts and then this Court. The private schools had relied on some judgments of this Court, but these judgments have interpreted the word "employee" under other enactments. The law is subject to uncertainty ex-ante when two or more views are possible, but there may be certainty ex-post litigation in view of the law of precedents, which reduces uncertainty.

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20. The argument of unreasonableness and that the amendment is financially confiscatory, predicated on past liability, which may pre- date the notification effective from 3rd April 1997, apart from the other reasons, is to be rejected as there are upper-cap limits on payment of gratuity. Therefore, though gratuity is computed with reference to the years of service, in view of the upper-cap limit, the payment towards gratuity cannot



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exceed the specified amount, even if the employee would be entitled to higher amount in view of the years of the service rendered to the employer.

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26. A supplementary submission of the private schools was that the judgments of this Court upholding retrospective amendments are valid only when there is a tax implication as the Government has to refund the paid taxes, is unfounded and irrational. The power to amend, which includes the power to amend the statute with retrospective effect, is a constitutional power vested with the legislature, which is not confined and restricted to any particular type of statutes, namely, tax statutes. We would not accept any attempt to circumscribe and limit the power vested with the sovereign legislature, thereby putting fetters when such fetters are not prescribed by the Constitution. When and which cases to exercise the power has to be left to the legislature. In case the constitutional validity of the amendment act is challenged, the court is entitled to examine the relevant circumstances which prompted the legislature to make retrospective amendment. Judicial review, when validity of an amendment act is challenged, is decided on the grounds of lack of legislative competence, violation of the fundamental rights or any other provisions of the Constitution of India. In the present case, the notification No. S-42013/1/95-SS.(II) dated 3rd April 1997 had ensured that the benevolent provisions requiring payment of gratuity should be extended to the “employees” of the educational institutions. The amendment with retrospective effect is to make the benevolent provisions equally applicable to teachers. The



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amendment seeks to bring equality and give fair treatment to the teachers. It can hardly be categorised as an arbitrary and high-handed exercise.”

4. In view of the above, nothing remains for adjudication before this Court as the issue is squarely covered by the aforesaid decision of the Hon'ble Apex Court. In the result, this Writ petition fails and the same stands dismissed. No costs. Consequently, the connected Miscellaneous petitions are closed.

03.02.2025

skt

NCC : Yes/No
Index : Yes / No
Speaking Order : Yes / No

To

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M.DHANDAPANI, J.

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