



# Mahatma Gandhi Mission

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Ref : MGM/Admn/ 015

Date : 08-05-2012

Prof. S. K. Bandi  
Co-ordinator Secretary  
Association of Unaided Engineering Colleges  
C/o.K. K. Education Society  
Vidyanagari, Amrutdham  
Nashik 422003

By Courier

Sub : Payment of Gratuity to teachers as per Payment of  
Gratuity Amendment Act, 2009.

Dear Sir,

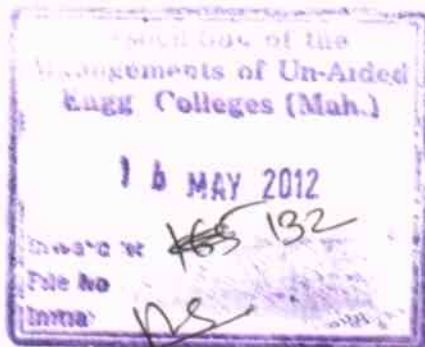
In the meeting of the Association held on 06-05-2012 at Pune the above matter was discussed. I am herewith enclosing a copy of the amendment to Payment of Gratuity Act, 1972 made in the year 2009, by which a teacher is not only an employee but also entitled to get gratuity with retrospective effect from 03-04-1997. A decision in writ petition No.3415/2011 in this regard of Bombay High Court Bench at Nagpur delivered on 21-02-2012 confirming the facilities to be extended to teachers is enclosed.

Thanking you,

Yours faithfully,

  
Administrative Officer  
Mahatma Gandhi Mission

AO  
4670/inf/2012-11/04/2012  
02/04/12  
  
Encl : 1



## Payment of Gratuity Amendment act, 2009

[Act No. 47 of 2009] [31st December 2009]

**Preamble.-** An Act further to amend the Payment of Gratuity Act, 1972. Be it enacted by Parliament in the Sixtieth Year of the Republic of India as follows:--

**1. Short title and commencement.-** (1) This Act may be called the Payment of Gratuity (Amendment) Act, 2009.

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

**2. Amendment of Section 2.-** In the Payment of Gratuity Act, 1972(39 of 1972) (hereinafter referred to as the principal Act), in section 2, for clause (e), the following clause shall be substituted, namely:--

(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;'

**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 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 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."

section (3)(a) of the Act, as distinct from merely temporary or casual employees engaged for some abnormal or emergent purpose other than the normal work of such establishment. It shall naturally depend upon the facts of each case to find out as to whether the so called temporary workmen were regularly employed in connection with the normal and usual course of business of that establishment or they were engaged in the performance of some work which had no relation with the normal and regular course of business of the establishment.

Applying the aforesaid principles to the facts of the present case, we find that out of 21 persons, who were said to have been employed on March 18, 1964 in the factory of the petitioner, 8 persons were merely temporary labourers employed for the purpose of carrying on the repairs of the factory building and it cannot be held that they were employed for the normal business of the establishment. Even if casual or temporary workers are engaged occasionally or intermittently to meet some temporary expediency or unusual or emergent situation, such temporary or casual workmen cannot be considered to be employees of the concern for the purposes of section 1(3)(a) of the Act."

4. Learned counsel for the petitioner further submitted that the order Annex. 11 dated 27/12/2010 passed by the Regional Provident Fund Commissioner-II in pursuance of remand order by the appellate Tribunal dated 15/2/2010 is also a non-speaking order and does not discuss the relevant evidence nor the Full Bench decision of this Court has been followed in the same. He also submitted that the appellate order of the learned Tribunal (Annex.13) dated 8/9/2011 summarily dismissing the appeal of the petitioner unit is also wholly a non-speaking order and vide para 9 it only says, "No inconsistency is noticed, Hence order, the appeal is dismissed."

5. Learned counsel for the respondent Department, Mr. U.S.Gehlot, however, opposed the writ petition.

6. A bare perusal of the impugned orders of the Regional Provident Fund Commissioner as well as appellate Tribunal indicates that said orders are laconic and non-speaking orders and refer to certain judgments of other High Courts and Full Bench decision of this Court. Despite being referred in para 5 of the Tribunal's order, the same has neither been discussed nor followed for reasons best known to learned Tribunal. Unless temporary or casual labours are found to be regular employees of an industrial unit, the same cannot be included to make 20 workmen of an industrial unit for the purpose of

determining whether the Establishment is covered under the definition given in Section 1(3) (a) of the Act. The Full Bench decision of this Court is categorical and is binding on the concerned authorities of the Provident Fund Department working in Rajasihan under the Central Provident Fund Act, 1952. The impugned orders are therefore, found to be non-speaking orders and do not meet the requirement of law and same deserve to be quashed.

7. Accordingly, the present writ petition is allowed and setting aside the impugned order Annex. 11 dated 27/12/2010 passed by the Regional Provident Fund Commissioner-II, Jodhpur and order Annex. 13 dated 8/9/2011 passed by Employees' Provident Fund Appellate Tribunal New Delhi, Camp at Jaipur, the matter is restored back to the Regional Provident Fund Commissioner-II, Jodhpur, who may pass fresh speaking order after giving fresh opportunity of hearing to the petitioner unit and discussing the relevant evidence and case laws including the Full Bench decision of this Court. The petitioner's authorised representative may appear in the first instance, before the Regional Provident Fund Commissioner-II, Jodhpur on 21/2/2012 and the said authority shall decide the case afresh as aforesaid within a period of three months thereafter.


2012 LLR 417 ✓

**BOMBAY HIGH COURT**Hon'ble Mr. R.K. Deshpande, J.  
W.P. No. 3415/2011, D/-21-2-2012**President/Secretary, Vidarbha Youth Welfare  
Institution (Society), Amravati**

vs.

**Pradipkumar S/o Ramchandrarao Lambhate & 2  
Ors.****PAYMENT OF GRATUITY ACT, 1972 - Section  
2(e) - Teacher - Whether an 'employee' under  
the Act entitled for gratuity - Held, in view of  
amendment of 2009 and section 13A, a teacher  
is not only an 'employee' but also entitled to gra-  
tuity with retrospective effect since 3-4-1997 -  
Hence, petition is dismissed. Paras 5 and 6****For Petitioner: Mr. S.G. Jagtap, Advocate.****For Respondent No. 1 Mr. S.T. Harkare, Advocate.****For Respondent No. 2 & 3. Mr. J.D. Jaiswal, AGP.**

**IMPORTANT POINT**

 In view of amendment of 2009 in the Payment of Gratuity Act, a teacher is not only an 'employee' but also entitled to gratuity with retrospective effect since 3.4.1997.

**JUDGMENT**

**PER R.K. DESHPANDE, J.—1.** Rule, made returnable forthwith. Heard Shri Jagtap, the learned counsel for the petitioner; Shri Harkare, the learned counsel for respondent No.1; and Shri Jaiswal, the learned AGP for respondent Nos. 2 and 3.

2. This petition challenges the judgment and order dated 29-5-2010 passed by the Controlling Authority under the Payment of Gratuity Act, 1972 and the Assistant Labour Commissioner, Amravati in Case No. P.G.A. 95/2006 directing the petitioner to pay the gratuity of Rs. 3,50,000 with interest of Rs. 1,20,000 at the rate of 10% per annum for the period from 31.10.2005 to 31.1.2009 and the additional interest of Rs. 27,872 at the rate of 10% per annum with effect from 31.1.2009 to 22-10-2009. The petition also challenges the judgment and order dated 23.3.2011 passed by the Appellate Authority under the Payment of Gratuity Act, 1972 in Appeal No. PGA/60/2010 confirming the judgment and order passed by the Controlling Authority.

3. Respondent No. 1 Pradipkumar Lambhate was appointed as Principal of Social Work College run by the petitioner-Society on 10-5-1995. He retired on attaining the age of superannuation with effect from 31-5-2005. Upon his retirement, he submitted an application on 20-9-2006 to the Controlling Authority under the Payment of Gratuity Act, 1972 seeking a direction to the petitioner-Society to make the payment of gratuity along with interest thereon. As pointed out earlier, the said application was allowed by the Controlling Authority and the appeal against it, has been dismissed by the Appellate Authority. Hence, this petition by the employer.

4. The only question urged by Shri Jagtap, the learned counsel for the petitioner, in this case is that respondent No.1 is a Teacher and not covered by the definition of "employee" under Section 2(e) of the Payment of Gratuity Act, 1972 (for short, "the said Act") and hence the provisions of the said Act are not applicable. This very question fell for consideration of the Apex Court in the decision in the case of *Ahmedabad Pvt. Primary Teachers' Association v. Administrative Officer & Ors.*, reported in JT 2004(2) SC 27. The Apex Court has considered

the definition of "employee", as it stood then, which is reproduced below:

"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 the terms 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]."

The contention that the Teachers should be treated as included in the expression 'unskilled' or 'skilled', was rejected. It was held that the Teachers are also not employed in 'managerial' or 'administrative' capacity, and occasionally, 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. It was further held that the Teachers are clearly not intended to be covered by the definition of 'employee'. In para 25 of the said judgment, the Apex Court has observed as under:

"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 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."

5. Subsequent to the aforesaid decision of the Apex Court, an amendment was introduced to the definition of 'employee' by the Payment of Gratuity (Amendment) Act, 2009, which was brought into force on 3-4-1997. The amended definition of 'employee' under Section 2(e) runs 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

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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."

Section 3 of the Amendment Act inserted in Section 13-A is reproduced below:

**"13A. Validation of payment of gratuity.—**

Notwithstanding anything contained in any judgment, 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 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."

6. The Objects and Reasons of the Payment of Gratuity (Amendment) Act, 2009 being relevant, are also reproduced below:

"Prefatory Note—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 3rd April, 1997.

2. The Hon'ble Supreme Court in its judgment in Civil Appeal No. 6369 of 2001, dated the 13th January, 2004, in Ahmedabad Pvt. Primary Teachers' Assn. v. Administrative Officer, (2004) 1 SCC 755 : 2004 SCC (L&S) 306 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 26th 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 3rd 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, the Payment of Gratuity (Amendment) Bill, 2009 having retrospective effect was introduced in the Lok Sabha on 24th 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."

7. In view of the law laid down by the Apex Court in the judgment in the case of Ahmedabad Pvt. Primary Teachers' Association, cited supra, a Teacher was not covered by the definition of 'employee' under Section 2(e) of the said Act. It was suggested in para 25 of the said judgment that the definition 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 Payment of Gratuity Act, 1972. 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 3.4.1997, which is in tune with the observations made in para 25 of the judgment of the Apex Court. The Objects and Reasons of such amendment make 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 the Teachers for the purpose of applicability of the said Act. There is no escape but to hold that a Teacher is an 'employee' within the meaning of Section 2(e) of the said Act and hence the provisions of the said Act are applicable. There is no challenge to the judgments and orders passed by the Authorities below on merits. Hence, no fault can be found with the view taken by the Authorities below.

8. In the result, the petition is dismissed. Rule is discharged. No order as to costs.

### IMPORTANT POINTS

When the female employee, as employed in the Plantation Estate is covered by the Minimum Wages Act and also there are more than ten employees, such employees will be entitled to maternity benefits under the Maternity Benefit Act.

While interpreting the provisions of beneficial piece of legislation like Maternity Benefit Act, the court should adopt the beneficial rule of construction which will enable female employee not only to subsist but also to make up her dissipated energy, nurse her child, preserve her efficiency and maintain the level of her previous efficiency and output.

2012 LLR 420

### MADRAS HIGH COURT

Hon'ble Mr. K. Chandru, J.

W.P. No. 5715/2009 & MP No. 1/2009, D/-30-1-2012

*Mgt. Glem Brook Estate, Salem*

vs.

*Plantation Officer, Plantation Office & Anr.*

**MATERNITY BENEFIT ACT, 1961 – Section 5, Right to maternity benefits by the female employee – Second respondent, employed in Plantation Estate, delivered a child on 22.7.2005 and subsequently claimed maternity benefit supported by doctor's certificate – Plantation Officer firstly denied the benefit but subsequently allowed the same stating that the petitioner was employing more than ten workers and the Act was applicable – Petitioner challenged the order allowing maternity benefit – High Court declined to modify the order holding that the employees being covered by the Plantation Labour Act and that they were to receive the minimum wages as notified – Maternity benefit could not be denied.**

Paras 8 to 10

For Petitioner: Mr. D. Shivakumar, Advocate.

For Respondent No. 2: No Appearance

### ORDER

PER K. CHANDRU, J.—1. The petitioner is the management of a Tea Estate at Yercaud. In this writ petition, they have come forward to challenge an order passed by the first respondent Inspector of Plantations, Yercaud (wrongly described as Plantation Officer), dated 31.5.2007 in directing the management to pay Rs. 2923 towards payment of maternity benefits and medical bonus.

2. The writ petition was admitted on 6.4.2009. Rending the writ petition, while Ordering notice in the stay application returnable by three weeks, an interim stay was granted till then. Subsequently, there is nothing on record to show that the stay order has been extended. Even though the second respondent has been served, she has not chosen to appear either in person or through counsel. The fact that the second respondent is employed in the estate was not denied. Further, the fact that she had delivered a child on 22.7.2005 and Subsequently claimed maternity benefit supported by the Doctor's certificate is also not denied.

3. When the second respondent made a complaint about the non-payment, the first respondent took up the complaint and issued a notice to the petitioner estate in Na.Ka.No. 735/2005. The petitioner estate filed a counter-statement stating that the provisions of the Plantations Labour Act as well as the Maternity Benefit Act will not apply. They had never employed 10 or more workers. In view of the non-ap-