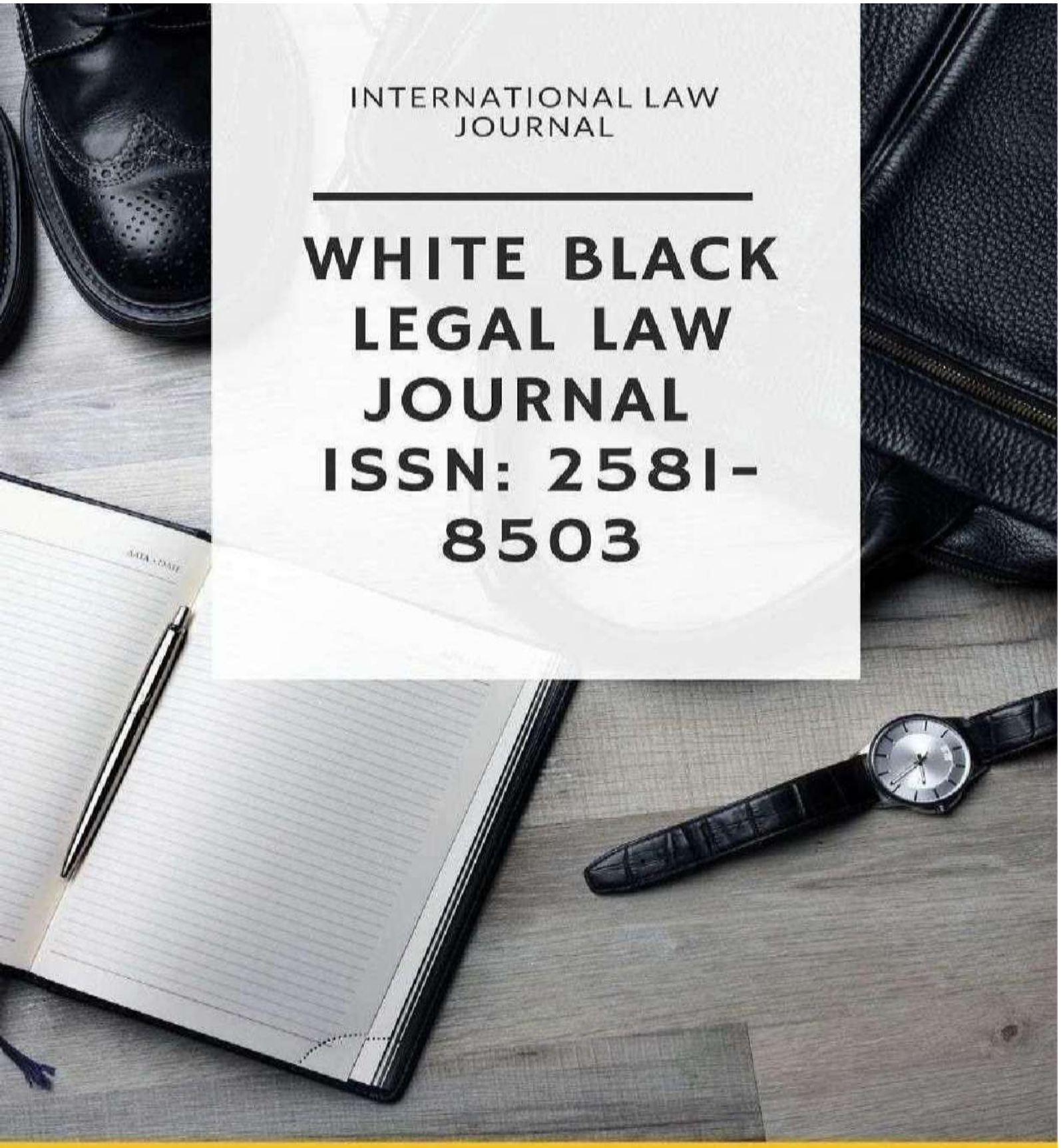

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ANALYSIS OF PAYMENT OF GRATUITY IN EDUCATIONAL INSTITUTIONS

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M.Sc. MBA. LL.M., (PhD)

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Constitution of India, 1950.

1. INTRODUCTION

Gratuity is a mandated financial benefit to employees. It is a gesture of gratitude for their extended tenure in an establishment. It serves as a mechanism of social security. It provides financial stability for employees after retirement or at the cessation of working under specific conditions. The Payment of Gratuity Act, 1972, regulates gratuity provisions for employees in "factories, mines, oilfields, plantations, ports, railway companies, shops, or other establishments employing 10 or more individuals. The Act states that employees with a minimum of five years of continuous service are eligible for gratuity."[1] Even though the Act is a social welfare Act, in the past, there has been a lot of legal confusion and disagreement about whether it applies to teachers who work in schools.

Teachers are professionals involved in cultivating the intellectual and ethical foundation of society. They are essential to national progress. Unfortunately, for decades, they were excluded from the Payment of Gratuity Act. The conflict mostly arose from the interpretation of the term "employee" as defined in Section 2(e)[2] of the Act, which first explicitly excluded teachers. The term pertains to employees engaged in skilled, semi-skilled, unskilled, manual, supervisory, technical, or clerical roles. It does not explicitly include educational or academic services. This gap in legislation resulted in legal disputes and conflicting interpretations among various High Courts across the country. Many courts have determined that teachers not engaging in manual or clerical tasks cannot be classified as employees under the Act. On the other hand, few courts acknowledged the teachers and emphasized that such gaps undermine the purpose of social welfare legislation.

The Payment of Gratuity (Amendment) Act, 2009[3], significantly expanded gratuity benefits to

[1] The Payment of Gratuity Act, 1972, No. 39 of 1972, India Code (1972).
[2] The Payment of Gratuity Act, 1972, No. 39 of 1972, § 2(e), India Code (1972).
[3] The Payment of Gratuity (Amendment) Act, 2009, No. 49 of 2009, India Code (2009).

teachers by including the educational institutions within the scope of the Act. In 2020, the Ministry of Labour and Employment released a notification. It indicated that teachers are entitled for gratuity under the Act. There are still concerns that persist even after the amendment and the notification It includes the retroactive application of the regulations, and the different implementation strategies among states and institutions. This research study aims to assess the applicability of the Payment of Gratuity Act for teachers, its present status, it looks into its legislative history, it tries to analyse the legal rulings, and analyse the efficacy and practicality of recent changes.

1.1 REVIEW OF LITERATURE

1. Srivastava, Suresh C. Srivastava's Gratuity: The Approaches of Indian Judiciary[4] gives a detailed understanding of the judicial trends surrounding gratuity. He addresses one of the major judicial interpretations of gratuity being applicable to teachers, which resulted in an amendment that made the judicial pronouncement render no effect. While he analyses the judgment, he does not support the amendment; rather, he considers it to be a legislative overrule of the judicial ruling. Whereas, the researcher considers it a legislative correction.
2. Jayna Kothari's A Social Rights Model for Social Security: Learnings from India[5] appreciates the applicability of gratuity for teachers. For the teachers in noble profession, non-applicability was unfair from the perspective of the author of this literature. The gap with this literature is that it encompasses a socio-legal perspective with less appreciation for the legislation and the judgments. It still helps the researcher understand not only from the legal point of view, but also from the social welfare lens. The applicability of gratuity, as said by the author of this literature, specifically encourages the welfare of woman as this profession has been dominated by woman for quite a long time now.
3. Kharbanda V.K. gave Commentaries on Payment of Gratuity Act, 1972[6] which helps the researcher understand payment of gratuity to the fullest. This book analyses every sngle provision of this act with scholarly perspectives. A wide range of judgments concerning gratuity and minimum wages are dealt in this book. While this book do not

[4] Srivastava, Suresh C. "Gratuity: The Approaches of Indian Judiciary." Indian Journal of Industrial Relations, vol. 7, no. 3, 2002.
[5] Kothari, Jayna. "A Social Rights Model for Social Security: Learnings from India." Verfassung Und Recht in Übersee / Law and Politics in Africa, Asia and Latin America, vol. 47, no. 1, 2014.
[6] Kharbanda V.K. (2008). Commentaries on Payment of Gratuity Act, 1972, Allahabad: Law Publishing House.

specifically deal with payment of gratuity to teachers, it is important for the researcher to understand the concept of gratuity as a whole to proceed with a narrowed approach in the realm.

4. J. Joseph and S. Jagannathan's Employment Relations & Managerialist Undercurrents - The Case of Payment of Gratuity Act, 1972[7] analyses how payment of gratuity is essential in all the establishments including educational institutions for the efficiency of the employees concerned. The literature states that exclusion of teachers initially from the legislation created a classification between the teachers and employees in other establishments that was not justifiable. The literature states that the educational institution tries to escape the liability of gratuity. The literature acknowledges that it is now mandatory to pay gratuity to teachers, enhancing the social welfare and utility of the teachers.
5. D.S. Chopra's, Payment of Gratuity Act, 1972[8] gives a wide understanding of payment of gratuity. With respect to gratuity for teachers, it supports that gratuity is not applicable to teachers in educational institutions, to which the researcher disagrees. However, this opinion in the literature was given before the landmark judgments and the amendments. This literature gives the researcher an understanding on why teachers were not included. It is important to understand the initial exclusion of teachers from the Act as well.

1.2 RESEARCH PROBLEM

Teachers were not explicitly entitled to gratuity until 2009. They were devoid of the social welfare available to employees in other establishments. The Payment of Gratuity (Amendment) Act, 2009, expanded gratuity payments to teachers. Thus, rectifying their prior exclusion from the 1972 Act, which limited social welfare for teachers in educational institutions. This modification has elicited worries about its retrospective implementation and its financial implications that came along. There was uncertainty on whether the government or private management at assisted institutions should assume liability. Numerous educational institutions, though they have legal obligations, have difficulties because of financial limitations. This makes the law challenging to implement efficiently.

[7] J. Joseph and S. Jagannathan, "Employment Relations & Managerialist Undercurrents - The Case of Payment of Gratuity Act, 1972.," Indian J. Ind. Relat., 2011.
[8] Chopra, D.S., Payment of Gratuity Act, 1972, Eastern Law House, Calcutta" umar, H.L., What Everybody Should Know About Labour Laws, Universal Book Traders, Delhi, 1995.

1.3 RESEARCH QUESTIONS

1. Whether exclusion of teachers from the scope of the Payment of Gratuity Act, 1972 by the judiciary before the 2009 Amendment valid?
2. Whether the Payment of Gratuity (Amendment) Act, 2009 extends gratuity benefits to teachers effectively or it creates financial burden on institutions?
3. Whether the retrospective application of the Payment of Gratuity (Amendment) Act, 2009, unconstitutional?
4. Whether the government is liable to pay gratuity to the teachers in government-aided educational institutions?

1.4 RESEARCH OBJECTIVES

1. To examine the validity of the exclusion of teachers from the Payment of Gratuity Act, 1972 by the judiciary before the 2009 Amendment.
2. To analyse whether the Payment of Gratuity (Amendment) Act, 2009 effectively extends gratuity benefits to teachers or it creates a financial burden on educational institutions.
3. To assess the constitutionality of the retrospective application of the Payment of Gratuity (Amendment) Act, 2009.
4. To evaluate whether the government is liable to pay gratuity to the teachers in government-aided educational institutions.

1.5 RESEARCH METHODOLOGY

The research adopts a **doctrinal and analytical methodology**. It relies majorly on the analysis of statutes, amendments, and judicial pronouncements on the Payment of Gratuity Act, 1972. Primary sources include judicial pronouncements, statutes and the constitution. Secondary sources include books, journal articles, and commentaries, which were referred for interpretation and scholarly perspectives.

2. ANALYSIS OF EVOLUTION OF GRATUITY RIGHTS FOR TEACHERS

2.1 INITIAL EXCLUSION OF TEACHERS

The legal status regarding teachers' entitlement to gratuity under the Payment of Gratuity Act, 1972 has developed through statutory interpretation, judicial examination, and legislative action. The Act ensures social security for employees upon termination of employment. But its

applicability to teachers was ambiguous for decades. Payment of Gratuity Act, 1972 gave section 2(e) to define the term "Employee". It stated, "someone employed for wages, in any kind of skilled, semi-skilled, unskilled, manual, supervisory, technical or clerical work."[9] But the term didn't say anything about teachers or educational work, and it also didn't say anything about intellectual or academic services. This language meant that teachers were not "employees" under the Act because their work did not fit into any of the categories that were mentioned. In the case of ***Surendra Kumar v. Central Government Industrial Tribunal–cum-Labour Court***[10], the court has held that, "Semantic luxuries are misplaced in the interpretation of "bread and butter" statutes. Welfare statutes must, of necessity, receive a broad interpretation. Where legislation is designed to give relief against certain kinds of mischief, the court is not to make inroads by making etymological excursions." But the broad interpretation, as it was supposed to be, lacked, as teachers imparting knowledge, though they were in a noble profession, were not included under the ambit of Payment of Gratuity.

The Supreme Court in ***Ahmedabad Private Primary Teachers Association Vs. Administrative Officer***[11] held that section 2(e)[12] of the Act defines "employee" in a certain way. It says that the teaching staff as a class is not covered by that term, but the non-teaching staff of an educational institution is. The court said, "they do not perform any kind of skilled, unskilled, semi-skilled, manual, supervisory, managerial, administrative, technical or clerical work."[13] With legal analysis, one can understand the reason why teachers were not included in the scope of the Act in the above case. The intent of the judiciary was not to curtail the social welfare, but rather to interpret the statute. The court gave an interpretation of Section 2(e) of the Act as present at that time. The ruling even acknowledged the legal flaw that kept teachers from getting the benefit of gratuity and pushed the legislature to pass a law that did so.

The court placed its reliance on the case of ***A. Sundarambal v. Govt. of Goa, Daman and Diu***[14] and stated that The Court did not agree with the teachers' claim that they were covered by the description of "workman" under the Industrial Disputes Act[15]. They said that teachers in an educational institution could not be consulted as workers, even though the institution had to be

[9] The Payment of Gratuity Act, 1972, No. 39 of 1972, § 2(e), India Code (1972).
[10] Surendra Kumar modifyv. Central Government Industrial Tri bunal–cum-Labour Court 1981 AIR 422.
[11] Ahmedabad Private Primary Teachers Association Vs. Administrative Officer (2004) 1 SCC 755.
[12] The Payment of Gratuity Act, 1972, No. 39 of 1972, § 2(e), India Code (1972).
[13] Supra note 11.
[14] A. Sundarambal v. Govt. of Goa, Daman and Diu [1988] 4 SCC 42.
[15] The Industrial Disputes Act, 1947, No. 14 of 1947, India Code (1947).

treated as a "industry." Section 2(s)[16] of the Act says that teachers who work for schools, whether they teach UG, PG, primary or seconday, cannot be called "workmen." The main job of teachers is to teach, which can't be thought of as skilled or unskilled physical work, supervisory work, technical work, or clerical work. Giving education is a noble calling. If they do any clerical work, it's only incidental, the main work remains the same, which is teaching.[17]

It is pertinent to note that as of March 3, 1997, the "Ministry of Labour and Employment of the Government of India issued Notification No S-42013/1/95-SS.(II)"[18], which made the Act's rules eligible to educational institutions with number of workers equal to 10 or more. An employee must be given gratuity when he has been in he same establishment for minimum of 5 years, when he retires, quits, or becomes superannuated, or when he dies or becomes disabled because of an accident or illness.[19] It is after this notification that the above case denied gratuity to the teachers. In the Ahmedabad case[20], the Supreme Court interpreted the Notification dated 03.04.1997. A classification was made between the teaching and non-teaching staff in the educational institution. The Act's applicability and welfare would not go to teaching staff but only to non-teaching staff. It said that "it is for the legislature to take cognizance of the situation of such teachers in various establishments where gratuity benefits are not available and think of a separate legislation for them in this regard." Thus, the court intended to interpret the statute as it is and tried not to overstep or defeat the legislative intent.

2.2 LEGISLATIVE AMENDMENT: PAYMENT OF GRATUITY (AMENDMENT) ACT, 2009

The critical analysis that one could make is that why this classification had to be made by the Supreme Court in the above case in the first place, especially since the Central Government's Statutory Notification included "educational institutions" in the Act's definition of "employees." But, it is pertinent to note that the classification by the Supreme Court was needed to clear up any confusion about whether or not the Act applied to schools because the language in Section 2(e)[21] did not support the legality of the official notice. This made sure the constitution was valid and stopped regulation that was not based on reason.

[16] The Industrial Disputes Act, 1947, No. 14 of 1947, § 2(s), India Code (1947).
[17] Samant, S.R.,Rmployer's Guide to Labour Laws, Labour Law Agency, Mumbai, 1999.
[18] Ministry of Labour & Employment, Notification No. S-42013/1/95-SS.(II), Gazette of India, pt. II, (India).
[19] Supra note 12.
[20] Supra note 11.
[21] Supra note 9.

Following the observation of the Supreme Court, the Payment of Gratuity Act was changed in 2009 to include all types of employees, thus including teachers. It was also made clear that the 2009 Amendment applies back, retrospectively, to the 3rd of April 1997. On April 3, 1997, the Central Government notified "other establishments," which included "educational institutions," that the Amending Act would start to apply to them from that date forward[22]. The Payment of Gratuity (Amendment) Act, 2009[23] was introduced by the government. The Amendment Act added a new Section 13A and amended Clause (e) to Section 2 of the Act.

Section 1(3)(c) of the Act gives the Central Government the power to apply the Act's rules to any class or group of classes that employs ten or more people by publishing a notice in the Official Gazette. Thus, the government notified to include *"educational institutions"* within its scope. After the amendment, the term "employee" was made broad enough as such. The researcher states that, the phrase "*any kind of work*"[24] has given the inclusion of teachers within the ambit of the Act. It was implied that all personnel employed in educational institutions, including teachers, are entitled to gratuity. This nullifies the classification put forth in Ahmedabad case. After the judgment, all teachers working in schools, whether they are public or private, aided or not are now entitled to the benefits of the Act. So, only those types of employees who retired before April 3, 1997, would not be eligible. On the other hand, those types of employees who were working on April 3, 1997, and started working afterward will be eligible for the benefits.

The recommendations regarding the position of teachers, originating from U.N.E.S.C.O. and I.L.O., were approved at the Special Intergovernmental Conference on October 5, 1966. The recommendation is to implement social security measures to safeguard the interests of teachers.[25] The payment of gratuity is a policy advocated by international organizations and included into our domestic law. This Court's intervention is unwarranted due to the failure of educational institutions to collect funds from students for teacher gratuities, which renders the institutions' operations unviable. Thus, the case of ***Maharishi Dayanand Education Society And Others V. Union Of India And Others***[26] upheld the amended statutory provision including

[22] Ibid.
[23] The Payment of Gratuity (Amendment) Act, 2009, No. 49 of 2009, India Code (2009).
[24] The Payment of Gratuity (Amendment) Act, 2009, No. 49 of 2009, § 2(e), India Code (2009).
[25] UNESCO & ILO, Recommendations Regarding the Position of Teachers, Special Intergovernmental Conference, Oct. 5, 1966.
[26] Maharishi Dayanand Education Society And Others V. Union Of India And Others W.P.No.16884/2012.

teachers in the scope of payment of gratuity. In the same year***, President/Secretary, Vidarbha Youth Welfare Institution (Society), Amravati V. Pradipkumar And Others***[27] it has been determined that, following the 2009 amendment, a teacher qualifies as an employee under the Payment of Gratuity Act and is entitled to receive gratuity retroactively from April 3, 1997. The case of ***Birla Institute Of Technology vs The State Of Jharkhand***[28] in 2019 held that the Ahmedabad case has no binding effect hereon and thus with the legislative correction, teachers are entitled to gratuity.

3. ANALYSIS OF JUDICIAL RESPONSE TO INSTITUTIONAL CHALLENGES

3.1 LEGISLATIVE AUTHORITY OVERRIDING JUDICIAL PRONOUNCEMENTS

In ***Independent Schools' Federation Of India (Regd.) V Union Of India And Another***[29] the petitioners said that the Amendment Act 2009[30] goes against the court's ruling in Ahmedabad Private Primary Teachers' Association[31] and goes against the idea of separation of powers as enshrined in the Constitution. The Court did not agree with that argument and said that the law in question fixes the problems and flaws that the Court pointed out in the previous decision. The new section 13A and the changed clause (e) to Section 2 that defines the word "employee" carry out the purpose and intention of Notification No. S-42013/1/95-SS (II)[32]. According to the Court, the legislature cannot overrule a judicial pronouncement. However, the legislature can change the language of the law that the court decision was about, and that change does not overturn the judicial pronouncement. The bench observed, "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."

Court pointed out that the decision in Ahmedabad case encouraged and acknowledged the government to pass law giving teachers the social welfare of gratuity, who had been left out

[27] President/Secretary, Vidarbha Youth Welfare Institution (Society), Amravati V. Pradipkumar And Others 2012 LLR 417.
[28] Birla Institute Of Technology vs The State Of Jharkhand 2019 (4) SCC 513.
[29] Independent Schools' Federation Of India (Regd.) V Union Of India And Another AIRONLINE 2019 DEL 350.
[30] Supra note 23.
[31] Supra note 11.
[32] Supra note 18.

because of mistake in the legislation. The amendment did what the notification meant to do, but could not because of the technical and legal flaw. The mistake in the wording that left out teachers has been fixed so that the notification's goal of applying the Act to all educational institutions can be met. The researcher believes that if the government deviated from a judicial decision to make a valid law and fix a legal mistake, then it was within its power given by the constitution to make the law. It did not overturn the earlier judicial pronouncement. After this judgement, several cases held mandatory the payment of gratuity to teachers. In ***Bagbahara Shiksha Samiti vs State Of Chhattisgarh And Ors***.[33] The bench confirmed that there is no ambiguity concerning payment of gratuity to teachers in Private schools. In the case of ***Sd Senior Secondary School Shimla vs State Of Himachal Pradesh And Ors***[34] the court held that the teacher who worked for the 4 years and 10 months is also eligible for gratuity, placing its reliance on the gratuity awarded in such cases to employees in other establishments.

3.2 CONSTITUTIONAL VALIDITY OF THE AMENDMENT

3.2.1 FROM THE LENS OF FUNDAMENTAL RIGHTS

The schools in the case of ***Independent Schools' Federation of India (Regd.) v. Union of India***[35] claimed a breach of Articles 14[36], 19(1)(g)[37], 21[38], and 300-A[39] of the Constitution. The Court asserted that the Constitutional requirements remain intact. It stated that the denial of gratuity benefits to teachers following the implementation of notification No. S-42013/1/95-SS.(II) constituted an anomaly that necessitated rectification. The Court noted that the teachers were discriminated against by being refused gratuity, a terminal benefit that was granted to other workers of private schools and educational institutions, including those in administrative and managerial roles. The amendment with retroactive effect rectifies the unfairness and prejudice experienced by teachers due to a legislative error. The point of contention made by the private schools and writ applicants was based on the Repealing and Amending Act 2016[40], which repealed the Amendment Act 2009. The Court again said no to this argument because it didn't take into account Section 6A of the General Clauses Act, 1897[41] and Section 4 of the

[33] Bagbahara Shiksha Samiti vs State Of Chhattisgarh And Ors. (2022) 3 Chhattisgarh L.J. 456.
[34] Senior Secondary School Shimla v. State of Himachal Pradesh and Ors., (2024) 7 HMCL L.J. 567.
[35] Supra note 29.
[36] India Const. art. 14.
[37] India Const. art. 19(1)(g).
[38] India Const. art. 21.
[39] India Const. art. 300-A.
[40] Repealing and Amending Act, No. 22 of 2016 (India).
[41] General Clauses Act, 1897, § 6A (India).

Repealing and Amendment Act[42]. These sections say that the repeal won't affect any law that has used, incorporated, or referred to the law that was repealed. It also says that the Repealing Act won't change the legality, effect, or consequences of things that have already been done or suffered, or any right, title, duty, or liability that has already been acquired, accrued, or incurred. Thus, the court concluded that here, it is not the fundamental rights of the schools being affected, it is rather the rectification of the violated fundamental rights of the teachers who were devoid of payment of gratuity. Right to equality of the teachers were at stake when "employees" did not include teachers without any intelligible differentia.

3.3 VALIDITY OF THE RETROACTIVITY

The Court said that the Amendment applied retroactively, they also said that the Act's rules would only apply to teachers who were working as of April 3, 1997, and had been working for at least five years at the time of their removal. The Court said that the five-year period could include some time before April 3, 1997, because the date of employment does not affect whether the PAG Act applies. But the date of end of service should come after the date of enforcement. The full amount of service, including the time worked before April 3, 1997, must be taken into account when figuring out the 5 years of service requirement.[43]

Concerning the legislature's power, the Court decided that the power to amend, including power to change a law in a way that affects people who have already lived under it, is a constitutional power that the legislature has. This power is not limited to just tax laws. The court said it would not stand for any attempt to limit the power that the sovereign assembly has by putting limits on it that are not set out in the Constitution. It is up to the lawmakers to decide when and how to use the power. Should the constitutionality of the amendment act be called into question, the court can look into what happened that led the lawmakers to make the changes that were made in the past. If someone challenges the legality of an amendment act, the court will decide if the legislature did not have the power to make the change, if the basic rights were violated, or if any other part of the Constitution of India was broken.[44]

"The amendment with retroactive effect aims to extend the benevolent provisions to teachers equitably. The amendment aims to establish equality and ensure equitable treatment for

[42] Repealing and Amending Act, No. 22 of 2016, § 4 (India).
[43] Supra note 29.
[44] Ibid.

educators. It can scarcely be classified as a capricious and arbitrary action. The retrospective amendment rectifies the injustice and inequality experienced by teachers due to a legislative error recognized following the ruling in Ahmedabad Private Primary Teachers' Association"[45]. The modification was essential to guarantee that the remuneration owed to the teachers is not withheld from them due to a statutory flaw. The payment of gratuity cannot be classified as a windfall or a gift provided by private schools, as it constitutes one of the fundamental terms of employment.

In the case of ***Sarvodaya Education Trust vs The Union Of India***[46] when the amendment was challenged, the court said that, "An act can be struck down only on two grounds - (i) lack of legislative competence and (ii) violation of fundamental rights or any other provisions of the Constitution. No third ground exists for invalidating the legislation." The researcher is of the opinion that The authority of Parliament and State Legislatures to enact legislation is granted by Articles 245[47], 246[48], and 248[49] of the Constitution of India. The aforementioned Articles do not indicate that Indian Legislatures lack the authority to enact retrospective legislation, a prerogative inherent to any sovereign legislature. In the case of ***State Of Tamil Nadu V. Arooran Sugars Ltd.***[50] "the Hon'ble Supreme Court has held that legislature has the power to amend, delete or obliterate the statute or to enact a statute prospectively or retrospectively."

4. ANALYSIS OF AMENDMENT'S FINANCIAL IMPLICATIONS

The private educational institutions criticized the Amendment, asserting that they would be obligated to pay gratuity for service rendered before April 3, 1997. It said that the modifications were unconscionable, oppressive, erroneous, and financially expropriative. The Court deemed the aforementioned argument fallacious. It noted that based on prior liability, because of existence of upper limits on gratuity payments, gratuity payment cannot surpass the designated amount, no matter the employee's entitlement to a greater sum based on years of service to the employer.[51]

The assertion made by private schools that the modifications infringed upon Articles

[45] Supra note 11.
[46] Sarvodaya Education Trust v. Union of India, (2017) 6 SCC.
[47] India Const. art. 245.
[48] India Const. art. 246.
[49] India Const. art. 248.
[50] State Of Tamil Nadu V. Arooran Sugars Ltd. (1997) 1 SCC 326
[51] Supra note 29

19(1)(g)[52], 14[53], 21[54], and 300A[55] was deemed incorrect. "The Court determined that the change was essential to guarantee that amounts owed to the teachers are not withheld from them due to a statutory flaw. The payment of gratuity cannot be classified as a windfall or a gift provided by private schools, as it constitutes one of the fundamental terms of employment. In this context, the assertion of private schools that they lack the capacity and resources to provide gratuity to instructors is inappropriate and miserly. All entities are obligated to comply with the law, including the PAG Act."[56]

As per the case of ***T.M.A. Pai Foundation v. State of Karnataka***[57] some schools contended that the imposition of capitation fees or profit-making by educational institutions is unacceptable, asserting that they lack the capacity and means to provide gratuities to teachers. The Court deemed the aforementioned argument inadequate and simplistic, clarifying the ruling in the above case by asserting that the judgment does not prohibit the payment of gratuity to teachers; rather, it affirms that educational institutions are entitled to a reasonable surplus to cover the costs of expansion and enhancement of facilities, which does not constitute profiteering. "The Court observed that while certain States may have fee fixation laws that must be adhered to, compliance with these regulations does not justify the deprivation of gratuity to teachers, which they are entitled to receive like other employees of an educational institution. The Court stated that the control of fees is to prevent commercialization and profiteering, and it does not bar a school from establishing and collecting a 'fair and lawful school charge.' The Court stated that it would not tolerate any efforts to restrict the authority granted to the sovereign legislature, thereby imposing limitations that are not mandated by the Constitution. The determination of whether and in which instances to utilize the power must be delegated to the legislature."

The omission, a distortion in the phrasing that inadvertently excluded teachers, has been corrected to fulfill the intent and purpose of the notification, rendering the PAG Act relevant to all educational institutions. The assertion by educational institutions that they were caught off guard is erroneous and inadmissible, as the legislation rectified the unintentional flaw in a statute, as noted by this Court, through legislative amendment.

[52] Supra note 37.
[53] Supra note 36.
[54] Supra note 38.
[55] Supra note 39.
[56] Supra note 29.
[57] T.M.A. Pai Foundation v. State of Karnataka AIR 1994 SUPREME COURT 2372.

4.1 CALCULATION OF GRATUITY CLARIFIED

The Supreme Court took up suo motto in ***Birla Institute of Technology v. State of Jharkhand & Ors***.[58] And clarified the payment of gratuity for teachers.

Gratuity payment = Last drawn salary X 15 X Number of years of service/26

The gratuity ceiling for Central Government employees was increased to ₹20 lakh following the implementation of the 7th Central Pay Commission. In order to maintain uniformity and fairness, the Government decided to extend this benefit to private sector employees as well by raising the ceiling under the Payment of Gratuity Act, 1972 to ₹20 lakh. The Act was accordingly amended to allow the Central Government to notify the maximum limit of gratuity from time to time, providing flexibility for future revisions. At present, the notified ceiling stands at ₹20 lakh. Additionally, the Act was amended to revise the provisions related to maternity leave for the purpose of calculating continuous service. Earlier, only up to 12 weeks of maternity leave was considered for this purpose. However, to align with the revised maternity benefit rules, this period has now been extended to 26 weeks, and like the gratuity ceiling, this duration may also be revised by government notification in the future.[59]

5. GRATUITY IN GOVERNMENT AIDED INSTITUTIONS

The Supreme Court in the case of ***Shri Gujarati Samaj Vs. The State of Madhya Pradesh and others***[60] reviewed the matter presented in an SLP challenging the Madhya Pradesh High Court ruling. It answered the question of who is responsible for payment gratuity in government-aided schools under the Payment of Gratuity Act. The Madhya Pradesh High Court and the Chhattisgarh High Court held opposing views regarding the liability for gratuity payments in government-aided schools under the Payment of Gratuity Act, 1972, as observed by the bench of Justices Hrishikesh Roy, Dinesh Maheshwari, and Sanjay Kishan Kaul while issuing notice. The MP HC determined that the institution is responsible for the gratuity, not the State.

The High Court based its decision on a prior ruling by the Division Bench in ***Suresh Kumar Dwivedi and others Vs. State of M.P***[61], which stated that the teachers of aided institutions are not recruited by the State Government. The relationship between the State Government and the

[58] Birla Institute of Technology v. State of Jharkhand & Ors. 2019 (4) SCC 513.
[59] Payment of Gratuity (Amendment) Act, No. 26 of 2018 (India).
[60] Shri Gujarati Samaj Vs. The State of Madhya Pradesh and others (2023) 4 SCC 456.
[61] Suresh Kumar Dwivedi and others Vs. State of M.P 1993 MPLJ 663

teachers is not one of master and servant. The Act and its associated regulations do not provide any provisions for the payment of the aforementioned benefits to such teachers or workers. The accountability of the State Government in providing such perks and amenities remains ambiguous. Given that this is a policy issue related to financial obligations, it is not within the jurisdiction of this Court to mandate the Government to provide approval, since the Court does not replace the judgment of the legislative or its representatives about subjects within their domain.

On the other hand, in the case of ***Ambika Mission Boys Middle School vs. State of Chhattisgarh***[62] it was held that the state qualifies as an employer under the Payment of Gratuity Act, 1972, for the teachers and employees of assisted educational institutions. Having said that, here were several High Courts that gave conflicting decisions. In the case of ***Ramjilal Kushwah and others Vs. State of M.P. and others,***[63] it was held that it is the state government that should pay the gratuity as it qualifies as employer. In the case of ***J.C. Mills Education Institution and another Vs. Smt. Ashindra Tiwari,***[64] "it was held that the State of Madhya Pradesh is obligated to disburse gratuity to employees of institutions receiving grant-in-aid. In the aforementioned case, the regulating body issued an order under the Payment of Gratuity Act, directing that the employee may collect the gratuity amount from the Deputy Director of Education or the institution. The appellate authority amended the order and instructed that the Deputy Director of Education (Government) shall allocate sufficient grant-in-aid for the disbursement of gratuity. The State Government did not contest the order, and ultimately, the writ appeal was granted, instructing the Deputy Director to disburse the gratuity, so mandating the State Government to effectuate the payment of gratuity. The verdict was rendered on July 30, 2012. But, the preceding judgment in the case of Suresh Kumar Dwivedi and others (above) thoroughly addressed the question concerning the liability of the State Government."

The Supreme Court, thus in the case of ***Shri Gujarati Samaj Vs. The State of Madhya Pradesh and others***[65] upheld the judgment in ***Suresh Kumar Dwivedi and others Vs. State of M.P***[66] observing, State Government is not obligated to pay pension, gratuity, or similar benefits, as they are policy issues associated with financial liability. There exists no master- servant

[62] Ambika Mission Boys Middle School vs. State of Chhattisgarh WPL No. 80 of 2016.
[63] Ramjilal Kushwah and others Vs. State of M.P. and others 2018 (1) MPLJ 49.
[64] J.C. Mills Education Institution and another Vs. Smt. Ashindra Tiwari W.A. No.417/2009.
[65] Supra note 60.
[66] Supra note 61.

between the State and the teachers of the aided institution. Judicial bodies should not obligate the Government to undertake financial decisions unless legally required to do so. There was no legal basis for the shift of gratuity liability to the State. The employer under the Payment of Gratuity Act is not the State Government, it is the aided institution.

CONCLUSION

Before the Payment of Gratuity (Amendment) Act, 2009, teachers were not covered by the Payment of Gratuity Act, 1972. While the judicial decision excluding teachers from the Act and creating a classification of non-teaching staff and teaching staff in an institution was justified, this meant that they did not have the same social welfare rights as employees in other establishments. The 2009 Amendment was meant to fix this problem by giving teachers in schools gratuity, which made their rights the same as those of other workers in other establishments. This change is a good step toward recognizing how important teachers are and making sure they have social security. Teaching has historically served as a significant career path for women, and the absence of gratuity benefits has resulted in a discrepancy in their financial security relative to employees in other industries. The 2009 Amendment provided financial security.[67]

Teachers get gratuity benefits as part of social welfare programs that directly help their finances. This makes sure that they have some financial security after years of work. This is especially important in a field where women make up the majority, as many of them may have to deal with problems like lower pay, job breaks, and not having enough money when they retire. However, even though the law's intent is good, applying the Amendment Act retroactively has raised questions about its constitutionality and actual effects. While the courts have justified that such an amendment is constitutional, it is very hard for educational institutions, especially those that don't have a lot of money, to comply with the law and pay gratuities for past work. It is important to see whether it's fair to put these kinds of obligations on institutions or if it puts too much stress on those institutions. Since the government aids aided-institutions, it should be that the government should play a major role in gratuity, either by taking direct responsibility or supporting these institutions. There is no master servant relationship that mandates the government to have the liability of gratuity as stated above. But, to reiterate, it is a social welfare Act. Thus, without help from the government, institutions might have trouble

[67] Misra S.N. (2009). Labour and Industrial Laws, Allahabad: Central Law Publications.

following the law, which could defeat their goal of protecting teachers' well-being. It is suggested that educational institutions plan for gratuities as part of their long- term financial planning.

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