PAYMENT OF GRATUITY TO TEACHERS

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The Hon'ble Supreme Court in its recent judgment pronounced on January 7, 2019 in the case of Birla Institute of Technology vs. State of Jharkhand [Civil Appeal No. 2530 of 2012] ("**BIT Case**"), has endorsed its earlier view taken in the case of *Ahmadabad Pvt. Primary Teachers Association* vs. *Administrative Officer and Others* [(2004) 1 SCC 755] ("**APPTA Case**") that teachers are not employees for the purposes of Payment of Gratuity Act, 1972 ("**PG Act**").

Facts and Judgment in the BIT Case: In the BIT Case, the respondent no. 4 was appointed as an assistant professor in Birla Institute of Technology ("**BIT**") on September 16, 1971 and superannuated on November 20, 2001 after attaining the age of superannuation. The respondent no. 4 made a representation to BIT for payment of gratuity under the PG Act which demand was declined by BIT. Subsequently, the respondent no. 4 submitted an application against BIT, before the controlling authority under the PG Act and the controlling authority directed BIT to pay a sum of INR 3,38,796/- along with interest @10% per annum, towards gratuity.

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BIT filed an appeal before the appellate authority under the PG Act, followed by writ petition before the High Court of Jharkhand and further followed by Letters Patent Appeal before the division bench of the High Court of Jharkhand (against the order passed by the Single Judge dismissing the writ petition).

Eventually, BIT filed an appeal before the Hon'ble Supreme Court against the final judgment and order dated April 2, 2008 passed by the High Court of Jharkhand dismissing the Letters Patent Appeal filed by BIT.

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The Hon'ble Supreme Court after hearing the arguments opined that the issue involved in this appeal remains no longer *res integra* and has been decided by the court in the APPTA Case. The question which arose for consideration in APPTA Case was "*whether 'Teacher' could be regarded as an 'employee' under Section 2(e) of the Act and, if so, whether he/she is entitled to claim gratuity amount from his employer in accordance with the provisions of the Act*" and the Hon'ble Supreme Court had in that case concluded that in view of the words and expression used in the definition of 'employee' under clause 2(e) of the PG Act, 'teachers' who are mainly employed for imparting education are not intended to be covered for extending gratuity benefits under the PG Act. While deliberating upon the usage of the words 'unskilled', 'semi-skilled' and 'skilled' in the definition of the term 'employee' under section 2(e) of the PG Act, the Hon'ble Supreme Court opined in APPTA Case that:

> "*The legislature was alive to various kinds of definitions of the word 'employee' contained in various previous labour enactments when the Act was passed in 1972. If it intended to cover in the definition of 'employee' all kinds of employees, it could have as well used such wide language as is contained in Section 2(f) of the Employees' Provident Funds Act, 1952 which defines 'employee' to mean 'any person who is employed for wages in any kind of work, manual or otherwise, in or in connection with the work of an establishment …'. Nonuse 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*."

Relying on the aforesaid judgment passed in the APPTA Case, the Hon'ble Supreme Court in the BIT Case concluded that "*Reading the aforementioned principle of law laid down by this Court, we have no hesitation in holding that the respondent No. 4, who was also a teacher and worked with the appellant as such, was not eligible to claim gratuity amount from the appellant (BIT) under the Act*".

Amendments to the PG Act post the APPTA Case: Interestingly, an 'educational institution' is covered within the ambit of the PG Act (vide notification passed by the Ministry of Labour and Employment vide number S.O. 1080 dated April 3, 1997). Subsequently, keeping in view the observations of the Hon'ble Supreme Court in the APPTA Case, Payment of Gratuity (Amendment) Act, 2009 ("**PG Amendment Act**") was introduced to widen the definition of the term 'employee' under section 2(e) of the PG Act with an intent of extending the benefits of gratuity to teachers as well. The new definition of the 'employee' reads as under:

> *"'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."*

Interestingly, the BIT Case neither refers to the amendments effected to the PG Act vide the PG Amendment Act nor the impact of the APPTA Case being nullified by virtue of the said amendment (as is evident from the statement of objects and reasons of the PG Amendment Act). It is not clear as to why the PG Amendment Act (which had been specifically introduced to extend the benefit of gratuity to teachers and effectively undo the decision of the APPTA Case) was not considered in the BIT Case. As a consequence, the Hon'ble Supreme Court has held that the teachers would not be entitled to the benefit of gratuity under the PG Act while the PG Act itself has been amended to include a much wider definition of the term 'employee'.

Feedback