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IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
SANJIV KHANNA; J., BELA M. TRIVEDI; J.
AUGUST 29, 2022
INDEPENDENT SCHOOLS' FEDERATION OF INDIA (REGD.) *versus* **UNION OF INDIA AND ANOTHER**

Payment of Gratuity Act, 1972; Sections 2(e) and 13A - Payment of Gratuity (Amendment) Act, 2009 - Constitutional validity of the amendment to Section 2(e) and insertion of Section 13A upheld - The amendment with retrospective effect is to make the benevolent provisions equally applicable to teachers - It seeks to bring equality and give fair treatment to the teachers.

Legislation- Amendment - When the legislature acts within its power to usher in a valid law and rectify a legal error, even after a court ruling, the legislature exercises its constitutional power to enact the law and does not overrule an earlier court decision - 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. *(Para 13, 22)*

Legislation - Difference between retroactive effect and retrospective operation - Retrospective statute operates backwards and takes away vested rights accrued under law. The retroactive statute does not operate retrospectively, but it operates in future, albeit it does not become retrospective in operation when the operation is based on the character and status that arose earlier. Character or event which has happened in past or requisites which have been drawn from antecedent events cannot be necessarily construed as having retrospective effect. A retrospective statute means a statute which creates a new obligation on transactions or considerations already past or destroyed or impaired vested rights on and from the retrospective date. *Refers to Shanti Conductors Private Limited v. Assam State Electricity Board (2019) 19 SCC 529, Vineeta Sharma v. Rakesh Sharma (2020) 9 SCC 1. et al. (Para 17- 18)*

CIVIL APPEAL NO. 8162 OF 2012 WITH CIVIL APPEAL NO. 8684 OF 2012 CIVIL APPEAL NO. 2229 OF 2013 CIVIL APPEAL NO. 9406 OF 2013 CIVIL APPEAL NOS. 6316-6329 OF 2017 CIVIL APPEAL NOS. 6330-6331 OF 2017 CIVIL APPEAL NO. 3870 OF 2018 CIVIL APPEAL NO. 7457 OF 2018 CIVIL APPEAL NO. 7458 OF 2018 CIVIL APPEAL NO. 7459 OF 2018 CIVIL APPEAL NO. 7460 OF 2018 CIVIL APPEAL NO. 7461 OF 2018 CIVIL APPEAL NO. 7462 OF 2018 CIVIL APPEAL NO. OF 2022 (ARISING OUT OF SPECIAL LEAVE PETITION (CIVIL) NO. 12535 OF 2014) CIVIL APPEAL NO. OF 2022 (ARISING OUT OF SPECIAL LEAVE PETITION (CIVIL) NO. 15069 OF 2015) CIVIL APPEAL NO. OF 2022 (ARISING OUT OF SPECIAL LEAVE PETITION (CIVIL) NO. 19930 OF 2017) CIVIL APPEAL NO. OF 2022 (ARISING OUT OF SPECIAL LEAVE PETITION (CIVIL) NO. 3293 OF 2019) CIVIL APPEAL NO. OF 2022 (ARISING OUT OF SPECIAL LEAVE PETITION (CIVIL) NO. 2235 OF 2020) WRIT PETITION (CIVIL) NO. 44 OF 2016 WRIT PETITION (CIVIL) NO. 1158 OF 2019 A N D TRANSFER CASE (CIVIL) NO. 104 OF 2015

For Appellant(s) Mr. Shyam Divan, Sr. Adv. Mr. Mehul M. Gupta, Adv. Mr. R. P. Gupta, AOR

For Respondent(s) Mr. Rajiv Nanda, Adv. Ms. Alka Aggarwal, Adv. Mr. Raj Bahadur, Adv. Mr. Shreekant N. Terdal, AOR

J U D G M E N T

SANJIV KHANNA, J.

Leave granted in the special leave petitions.

2. The civil appeals by way of special leave, which impugn the judgements of the High Court of Allahabad- Lucknow Bench[1], the High Court of Gujarat[2], the High Court of Delhi[3], the High Court of Bombay- Aurangabad Bench[4], the High Court of Punjab and Haryana[5], the High Court of Chhattisgarh- Bilaspur Bench[6] and the High Court of Madhya Pradesh,- Indore Bench[7], as well as a batch of writ petitions under Article 32 of the Constitution of India, were heard together as they involve a common question – constitutional validity of the amendment to Section 2(e) and insertion of Section 13A to the Payment of Gratuity Act, 1972[8], with retrospective effect from 3rd April 1997 *vide* the Payment of Gratuity (Amendment) Act, 2009[9].

3. The PAG Act enacted and enforced with effect from 16th September 1972, requires payment of gratuity to an employee after he has rendered continuous service for not less than 5 years, on his superannuation, retirement or resignation or on his death or disablement due to accident or disease.[10] However, sub-section (3) to Section 1 of the PAG Act restricts its applicability to the following establishments:

"**1. Short title, extent, application and commencement. –**

xx xx xx

(3) It shall apply to –

(a) every factory, mine, oilfield, plantation, port and railway company;

(b) every shop or establishment within the meaning of any law for the time being in force in relation to shops and establishments in a State, in which ten or more persons are employed, or were employed, on any day

of the preceding twelve months;

(c) such other establishments or class of establishments, in which ten or more employees are employed, or were employed, on any day of the preceding twelve months, as the Central Government may, by notification, specify in this behalf."

In the present case, we are only concerned with clause (c) and not clauses (a) and (b) to sub-section (3) to Section 1 of the PAG Act. As per clause (c), the PAG Act applies

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[1] *City Montessori School and Another* v. *Union of India and Others.,* Miscellaneous Bench No. 3075/2015; and *City Montessari School* v. Appellate Authority, Misc. Single No. 4583/2017.

[2] *Saraswati Vidya Mandal* v. *Ashaben Vinubhai Majmudar and Another*, S.C.A. No. 17839/ 2011 and 11 other cases; *Jain Citizens Education Society, Surendranagar and Another* v. *Union of India and Others*, S.C.A. No. 9022/2011 and 1 other Case; and *Nalanda Kelavani Mandal v. Shri Amrutbhai Nathudas Patel and Another,* S.C.A. No. 18772/2015, and 5 other cases.

[3] *Independent Schools' Federation of India (Regd.)* v. *Union of India & Anr.,* W.P. (C) No. 6168/2010; and *Maharishi Shiksha Sansthan Registered Society* v. *Union of India and Another.,* W.P(C) 4696/2012.

[4] *Saint Xaviers High School* v. *Shailaja Vishnu Deshpande.,* Writ Petition No. 15344/2017; and *Saint Xaviers High School* v. *Jayashree Shamal Ghosh,* Writ Petition No. 15282/2019.

[5] *The Sonipat Hindu Educational & Charitable Society* v. *Union of India and Another*, C.W.P. No. 17643/2010 (O&M); *Maharishi Dayanand Education Society and others* v. *Union of India and Others,* C.W.P. 16884/2012*; and Independent Schools Association, Chandigarh* v. *Union of India and Others*, C.W.P. No. 23489/2011.

[6] *The Secretary, Board of Secondary Education and Others* v. *Union of India and Others,* W.P.L. No. 138/2012 and 1 other case.

[7] *Bal Niketan Sangh through Smt. Meena Phadke* v. *State of Madhya Pradesh & Others*., Writ Petition No. 5508/ 2014.

[8] For short, "PAG Act".

[9] For short, "Amendment Act, 2009".

[10] Section 4 of the PAG Act.

to an establishment or a class of establishments in which ten or more employees are employed, as the Central Government may, by notification, specify on this behalf.[11]

4. In exercise of powers conferred by clause (c) to Section 1(3) of PAG Act *vide* notification No. S.O. 239, the provisions of the PAG Act were made applicable to the "local bodies" in which ten or more persons are employed, as a class of establishments, with effect from 8th January 1982. As a result, the schools under the local bodies with ten or more employees became liable to pay gratuity to their employees. However, the notification did not apply to private schools.

5. By Notification No. S-42013/1/95-SS.(II) issued by the Ministry of Labour and Employment, Government of India on 3rd April, 1997, the provisions of the PAG Act have been made applicable to the educational institutions with ten or more employees. The private schools being educational institutions, in which ten or more persons are employed, became liable to pay gratuity to their employees as per the provisions of the PAG Act.

6. However, some private schools raised a dispute claiming that the teachers in educational institutions or schools are not "employee" as defined in Section 2(e) of the PAG Act. The expression "employee" in clause (e) to Section 2, post the Payment of Gratuity (Amendment) Act, 1994, which came into effect from 24th May 1994, at that time, read thus:

"**2. Definitions. –**

xx xx xx

(e) employee means any person (other than 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 nor 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 did not fulfil the description of the employees, who are skilled, semi-skilled or unskilled persons employed on wages, was accepted by the Full Bench of the High Court of Gujarat *vide* judgment dated 4th May 2001[12]. Thus, the teachers were denied the benefit of gratuity, but other employees of the private schools, were entitled to the benefit of gratuity.

7. This decision of the High Court of Gujarat was impugned by an association of teachers – Ahmedabad Private Primary Teachers' Association, before this Court, but their challenge was rejected *vide* judgment dated 13th January 2004[13]. Applying the doctrine of *pari materia,* this Court held that the expression "employee", as defined *vide* clause (e) to Section 2, is restrictive and not expansive. Relying on decisions in ***A.***

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[11] Sub-section 3A to Section 1, inserted by the Payment of Gratuity (Second Amendment) Act, 1984 with effect from 18th May 1984, states that a shop or establishment to which the PAG Act applies, shall 4. continue to be governed by the enactment, notwithstanding the number of persons employed therein, at any time after the PAG Act has become applicable, falls below ten.

[12] *Shantiben L. Christian* v. *Administrative Officer, Ahmedabad Municipal School Board,* Special Civil Application No. 5272 of 1987.

[13] *Ahmedabad Private Primary Teachers' Association* v. *Administrative Officer and Others*, (2004) 1 SCC 755.

Sundarambal v. ***Government of Goa, Daman and Diu and Others***[14] and ***Haryana Unrecognised Schools' Association*** v. ***State of Haryana***[15], while interpreting the definition of an "employee" under the Minimum Wages Act, 1948, and the Payment of Bonus Act, 1965, as also the definition of "workmen" under the Industrial Disputes Act, 1947, this Court pointed to the difference in the definition of word "employee" in the Employees' Provident Fund and Miscellaneous Provisions Act, 1952. Accordingly, teachers who impart education to students were held not to be an "employee" under Section 2(e) of the PAG Act as they do not perform any kind of skilled, unskilled, semi-skilled, manual, supervisory, managerial, administrative, technical or clerical work. Reasoning in ***Ahmedabad Private Primary Teachers' Association*** (supra) is crystalized in paragraph 25 of the judgment, which reads:

"25. 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* …". 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."

Nevertheless, being conscious that the teachers would be thereby deprived of the benefit of gratuity, the Court had observed and clarified:

"26**.** Our conclusion should not be misunderstood that teachers although engaged in a very noble profession of educating our young generation should not be given any gratuity benefit. There are already in several States separate statutes, rules and regulations granting gratuity benefits to teachers in educational institutions which are more or less beneficial than the gratuity benefits provided under the Act. It is for the legislature to take cognizance of situation of such teachers in various establishments where gratuity benefits are not available and think of a separate legislation for them in this regard. That is the subject-matter solely of the legislature to consider and decide."

8. On 26th November 2007, the Payment of Gratuity (Amendment) Bill, 2007, was introduced in the Parliament seeking to amend the definition of the word "employee" and thereby rectify the error or *lacuna* identified by this Court in ***Ahmedabad Private Primary Teachers' Association*** (supra). The object and reasons, as stated and obvious, were to extend the benefit of gratuity to teachers of private educational institutions. The bill was referred to the Standing Committee on 10th December 2007. After due deliberations and in-depth consideration, the Standing Committee deemed it appropriate to suggest changes *vide* the 26th Standing Committee Report. The report, on the aspect of grant of gratuity to teachers with effect from 3rd April, 1997 states:

"36…The Committee feel that implementing the law from the year 2004 will cause irreparable loss to a large number of teachers of the country, particularly to those who have already retired. The Committee, therefore, call upon the Government to make the law applicable with retrospective effect, i.e. from the date of notification in the year 1997. This will provide the needed succour as well as justice to all those affected persons who were denied their rightful benefits due to some technical flaw/legal lacuna in the definition of the term 'employee' as contained in Section 2 (e) of the Payment of Gratuity Act, 1972."

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[14] (1988) 4 SCC 42.
[15] (1996) 4 SCC 225.

9. Accepting the said recommendation of the 26th Standing Committee Report, the Payment of Gratuity (Amendment) Bill, 2009 was introduced in the Parliament on 24th February 2009 and was passed on 31st December 2009. 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;"

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 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."

10. The object and reasons for the Amendment Act, 2009 refers to the judgment in ***Ahmedabad Private Primary Teachers' Association*** *(*supra*)*, and states that the legislature, to cover the definition of "employee" to all kinds of employees, has used language similar to the wide language of clause (f) of Section 2 of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952. It is also crystal clear that the Parliament has passed and enacted the Amendment Act, 2009 to confer, with retrospective effect from the date of the notification on 3rd April 1997, benefit of gratuity to the teachers who have rendered continuous service for not less than 5 years, on their superannuation, retirement or resignation, or on their death or disablement due to accident or disease.

11. Several private schools challenged the constitutional validity of the amendments, which writ petitions have been dismissed by seven High Courts, as mentioned in the first paragraph of this judgment. These appeals by way of special leave impugn these judgments. Some private schools have also filed writ petitions under Article 32 of the Constitution of India before us.

12. The power of the Parliament and State Legislatures under Articles 245, 246 and 248 of the Constitution of India, as held by this Court in ***State of Tamil Nadu*** v. ***Arooran Sugar Ltd.***[16] and several other decisions of this Court, including ***State of Gujarat and***

[16] (1997) 1 SCC 326.

Another v. ***Raman Lal Keshav Lal Soni and Others***[17], ***T.R. Kapur and Others*** v. ***State of Haryana and Others***[18] and ***Union of India and Others*** v. ***Tushar Ranjan Mohanty and Others***[19], to legislate, embraces the power to amend, delete or obliterate the statute or enact a statute prospectively or retrospectively. To be fair, the appellants and the writ petitioners do not contest the competency, and that the legislature has the power to amend an already enacted law or enact a new law with retrospective effect. They also do not dispute that the amendment to Section 2(e), and the insertion of Section 13A have been given retrospective effect. The two main grounds of challenge raised and required to be considered in nutshell can be summarised as:

(a) The legislation *vide* the Amendment Act 2009 overrules the judicial decision in ***Ahmedabad Private Primary Teachers' Association*** (supra) and violates the doctrine of separation of powers.

(b) The retrospective amendments are unreasonable, excessive and harsh, and therefore, unconstitutional.

13. 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, 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], ***Ujagar Prints and Others (II)*** v. ***Union of India and Others***[21] and ***National Agricultural Cooperative Marking Federation of India Ltd. and Another*** v. ***Union of India and Others***[22].

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[17] (1983) 2 SCC 33.
[18] (1986) Supp SCC 584.
[19] (1994) 5 SCC 450
[20] (1969) 2 SCC 283
[21] (1989) 3 SCC 488
[22] (2003) 5 SCC 23

14. 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 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.

15. A secondary argument on behalf of the private educational institutions that they would be liable to pay gratuity for a period of service prior to 3rd April 1997, and, therefore, the amendments are unconscionable and tyrannous, is equally fallacious for several reasons. A somewhat similar controversy had arisen in the case of ***Management of Goodyear India Limited.*** v. ***Shri K.G. Devessar***[24], wherein the employee was in service from 24th January 1961 to 31st December 1974. On 16th September 1972, the date when the PAG Act came into effect, he was drawing a salary of more than Rs. 1,000/- per month and hence, in terms of the then definition of the word "employee" under the PAG Act, which excluded those drawing salary of more than Rs. 1,000/- per month, as per the employer- management, the employee was not entitled to gratuity. Rejecting the contention, this Court held that the gratuity is payable to an employee as per the mandate of Section 4[25] of the PAG Act, after he has rendered continuous service for not less than

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[23] See paragraph 69 in *Ujagar Prints and Others (II)* v. *Union of India and Others*, (1989) 3 SCC 488.

[24] (1985) 4 SCC 45

[25] 4. Payment of gratuity.—(1) Gratuity shall be payable to an employee on the termination of his employment after he has rendered continuous service for not less than five years,—

(a) on his superannuation, or

(b) on his retirement or resignation, or

(c) on his death or disablement due to accident or disease:

5 years on his superannuation, retirement or resignation or on his death or disablement due to accident or disease, when such event has occurred post the enforcement of the PAG Act. The Court rejected the submission on behalf of the employer-management that an employee is entitled to gratuity only when, both on the date when the PAG Act came into force, and on the date when the employee retired, he/she was drawing wages not exceeding Rs.1,000/- per month. The Court observed that to approve the submission of the employer-management would render a whole class of workers, who were during the course of their employment drawing salary less than Rs. 1,000/- per month but on the eve of their retirement were getting wages of Rs. 1,000/- per month, without the benefit of gratuity. This could not have been the intention of the Parliament. The reasonable way to construe Section 4 in the light of Section 2(e) of the PAG Act would be to hold that when the employees' services are terminated for any reason mentioned in Section 4 after coming into force of the PAG Act, the employee would be entitled to the payment of gratuity if he has rendered continuous service for not less than 5 years and for that period during which he satisfied the definition of "employee" under Section 2(e). It does not matter whether that period comes before the commencement of the PAG Act. Once that condition is satisfied, the next and only question would be regarding the amount of gratuity payable.

16. The argument of unreasonableness and that the amendment is financially confiscatory, predicated on past liability, which may predate the notification effective from 3rd April 1997, apart from the other reasons, is to be rejected as there are upper-cap

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Provided that the completion of continuous service of five years shall not be necessary where the termination of the employment of any employee is due to death or disablement:

Provided further that in the case of death of the employee, gratuity payable to him shall be paid to his nominee or, if no nomination has been made, to his heirs, and where any such nominees or heirs is a minor, the share of such minor, shall be deposited with the controlling authority who shall invest the same for the benefit of such minor in such bank or other financial institution, as may be prescribed, until such minor attains majority.

Explanation.— For the purposes of this section, disablement means such disablement as incapacitates an employee for the work which he was capable of performing before the accident or disease resulting in such disablement.

(2) For every completed year of service or part thereof in excess of six months, the employer shall pay gratuity to an employee at the rate of fifteen days' wages based on the rate of wages last drawn by the employee concerned:

Provided that in the case of a piece-rated employee, daily wages shall be computed on the average of the total wages received by him for a period of three months immediately preceding the termination of his employment, and, for this purpose, the wages paid for any overtime work shall not be taken into account:

Provided further that in the case of an employee who is employed in a seasonal establishment and who is not so employed throughout the year, the employer shall pay the gratuity at the rate of seven days' wages for each season.

Explanation.— In the case of a monthly rated employee, the fifteen days' wages shall be calculated by dividing the monthly rate of wages last drawn by him by twenty-six and multiplying the quotient by fifteen.

(3) The amount of gratuity payable to an employee shall not exceed such amount as may be notified by the Central Government from time to time.

(4) For the purpose of computing the gratuity payable to an employee who is employed, after his disablement, on reduced wages, his wages for the period preceding his disablement shall be taken to be the wages received by him during that period, and his wages for the period subsequent to his disablement shall be taken to be the wages as so reduced.

(5) Nothing in this section shall affect the right of an employee to receive better terms of gratuity under any award or agreement or contract with the employer. (6) Notwithstanding anything contained in sub-section (1),—

(a) the gratuity of an employee, whose services have been terminated for any act, wilful omission or negligence causing any damage or loss to, or destruction of, property belonging to the employer shall be forfeited to the extent of the damage or loss so caused;

(b) the gratuity payable to an employee may be wholly or partially forfeited

(i) if the services of such employee have been terminated for his riotous or disorderly conduct or any other act of violence on his part, or

(ii) if the services of such employee have been terminated for any act which constitutes an offence involving moral turpitude, provided that such offence is committed by him in the course of his employment.

(7). *********

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 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.

17. In the context of applicability of an enactment, the courts have drawn difference between retroactive effect and retrospective operation. ***Shanti Conductors Private Limited and Another*** v. ***Assam State Electricity Board and Others***[26] refers to earlier case law and elucidates:

"64**.** The opinion of Gowda, J. dated 31-8-2016 although holds that the Act is not retrospective but he holds the Act retroactive. The word "retroactive" has been defined in *Black's Law Dictionary* in the following words:

"*Retroactive*, adj.(17*c*) (Of a statute, ruling, etc.) extending in scope or effect to matters that have occurred in the past. —Also termed *retrospective*. Cf. Prospective (1).–retroact, vb."

65**.** The two-Judge Bench of this Court in *State Bank's Staff Union (Madras Circle)* v. *Union of India*, had occasion to examine the concept of retroactive and retrospective. In paras 20 and 21 of the judgment the following has been laid down: (SCC p. 593)

"*20*. *Judicial Dictionary* (13th Edn.) by K.J. Aiyar, Butterworth, p. 857, states that the word "retrospective" when used with reference to an enactment may mean (*i*) affecting an existing contract; or (*ii*) reopening up of past, closed and completed transaction; or (*iii*) affecting accrued rights and remedies; or (*iv*) affecting procedure. *Words and Phrases*, Permanent Edn., Vol. 37-A, pp. 224-25, defines a "retrospective or retroactive law" as one which takes away or impairs vested or accrued rights acquired under existing laws. A retroactive law takes away or impairs vested rights acquired under existing laws, or creates a new obligation, imposes a new duty, or attaches a new disability, in respect to transactions or considerations already past.

21. In *Advanced Law Lexicon* by P. Ramanatha Aiyar (3rd Edn., 2005) the expressions "retroactive" and "retrospective" have been defined as follows at p. 4124, Vol. 4:

'*Retroactive*.—Acting backward; affecting what is past.

(Of a statute, ruling, etc.) extending in scope or effect to matters that have occurred in the past. —Also termed retrospective. (*Black's Law Dictionary*, 7th Edn., 1999)

"Retroactivity" is a term often used by lawyers but rarely defined. On analysis it soon becomes apparent, moreover, that it is used to cover at least two distinct concepts. The first, which may be called "true retroactivity", consists in the application of a new rule of law to an act or transaction which was completed before the rule was promulgated. The second concept, which will be referred to as "quasi-retroactivity", occurs when a new rule of law is applied to an act or transaction in the process of completion … The foundation of these concepts is the distinction between completed and pending transactions … [T.C. Hartley, *The Foundations of European Community Law*, p. 129 (1981)].

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Retrospective.—Looking back; contemplating what is past.

Having operation from a past time.

"Retrospective" is somewhat ambiguous and that good deal of confusion has been caused by the fact that it is used in more senses than one. In general, however, the courts regard as retrospective any statute which operates on cases or facts coming into existence before its commencement in the sense that it affects, even if for the future only, the character or consequences of transactions previously entered into or of other past conduct. Thus, a statute is not retrospective merely because

[26] (2019) 19 SCC 529.

it affects existing rights; nor is it retrospective merely because a part of the requisite for its action is drawn from a time antecedent to its passing.' (Vol. 44, *Halsbury's Laws of England*, 4th Edn., p. 570, para 921.)"

66. Further in *Jay Mahakali Rolling Mills* v. *Union of India*, explaining retroactive and retrospective the following has been laid down: (SCC p. 200, para 8)

"*8*. "Retrospective" means looking backward, contemplating what is past, having reference to a statute or things existing before the statute in question. Retrospective law means a law which looks backward or contemplates the past; one, which is made to affect acts or facts occurring, or rights occurring, before it comes into force. Retroactive statute means a statute, which creates a new obligation on transactions or considerations or destroys or impairs vested rights."

67. Retroactivity in the context of the statute consists of application of new rule of law to an act or transaction which has been completed before the rule was promulgated."

18. ***Vineeta Sharma*** v. ***Rakesh Sharma and Others***[27] observes that retrospective statute operates backwards and takes away vested rights accrued under law. The retroactive statute does not operate retrospectively, but it operates in future, *albeit* it does not become retrospective in operation when the operation is based on the character and status that arose earlier. Character or event which has happened in past or requisites which have been drawn from antecedent events cannot be necessarily construed as having retrospective effect. A retrospective statute means a statute which creates a new obligation on transactions or considerations already past or destroyed or impaired vested rights on and from the retrospective date.[28] The judgment in ***Vineeta Sharma*** (supra) relies on and quotes from an earlier decision in ***Darshan Singh*** v. ***Ram Pal Singh and Another***,[29] which portion we would also like to quote:

"*35*. Mr Sachar relies on *Gokal Chand* v. *Parvin Kumari*, *Garikapati Veeraya* v. *N. Subbiah Choudhry* , *Jose Da Costa* v. *Bascora Sadasiva Sinai Narcornim* , *Govind Das* v. *CIT* , *Henshall* v. *Porter* , *United Provinces* v. *Atiqa Begum*, in support of his submission that the Amendment Act was not made retrospective by the legislature either expressly or by necessary implication as the Act itself expressly provided that it shall be deemed to have come into force on 23-1-1973; and therefore there would be no justification to giving it retrospective operation. The vested right to contest which was created on the alienation having taken place and which had been litigated in the court, argues Mr Sachar, could not be taken away. In other words, the vested right to contest in appeal was not affected by the Amendment Act. However, to appreciate this argument we have to analyse and distinguish between the two rights involved, namely, the right to contest and the right to appeal against the lower court's decision. Of these two rights, while the right to contest is a customary right, the right to appeal is always a creature of statute. The change of the forum for appeal by enactment may not affect the right of appeal itself. In the instant case we are concerned with the right to contest and not with the right to appeal as such. There is also no dispute as to the propositions of law regarding vested rights being not taken away by an enactment which is ex facie or by implication not retrospective. But merely because an Act envisages a past act or event in the sweep of its operation, it may not necessarily be said to be retrospective. Retrospective, according to *Black's Law Dictionary*, means looking backward; contemplating what is past; having reference to a statute or things existing before the Act in question. Retrospective law, according to the same dictionary, means a law which looks backwards or contemplates the past; one which is made to affect acts or facts occurring, or rights occurring, before it came into force. Every statute which takes away or impairs vested rights acquired under existing laws, or creates a new obligation, imposes a new duty, or attaches a new disability in respect to transactions or considerations already past. Retroactive

[27] (2020) 9 SCC 1.

[28] In the present case, the constitutional mandate of Article 20(1) is not required to be examined and considered.

[29] 1992 Supp. (1) SCC 191

statute means a statute which creates a new obligation on transactions or considerations already past or destroys or impairs vested rights.

36. In *Halsbury's Laws of England* (4th Edn., Vol. 44, at para 921) we find:

"921. *Meaning of "retrospective".*—It has been said that "retrospective" is somewhat ambiguous and that a good deal of confusion has been caused by the fact that it is used in more senses than one. In general, however, the courts regard as retrospective any statute which operates on cases or facts coming into existence before its commencement in the sense that it affects, even if for the future only, the character or consequences of transactions previously entered into or of other past conduct. Thus a statute is not retrospective merely because it affects existing rights; or is it retrospective merely because a part of the requisites for its action is drawn from a time antecedent to its passing.'

37. We are inclined to take the view that in the instant case the legislature looked back to 23-1-1973 and not beyond to put an end to the custom and merely because on that cut-off date some contests were brought to abrupt end would not make the Amendment Act retrospective. In other words, it would not be retrospective merely because a part of the requisites for its action was drawn from a time antecedent to the Amendment Act coming into force. We are also of the view that while providing that "no person shall contest any alienation of immovable property whether ancestral or non-ancestral or any appointment of an heir to such property", without preserving any right to contest such alienations or appointments as were made after the coming into force of the Principal Act and before the coming into force of the Amendment Act, the intention of the legislature was to cut off even the vested right; and that it was so by implication as well. There is no dispute as to the proposition that retrospective effect is not to be given to an Act unless, the legislature made it so by express words or necessary implication. But in the instant case it appears that this was the intention of the legislature. Similarly courts will construe a provision as conferring power to act retroactively when clear words are used. We find both the intention and language of the Amendment Act clear in these respects."

19. The provisions of the PAG Act, even post the retrospective amendments, will apply only to those teachers who were in service as on 3rd April 1997, and at the time of termination have rendered service of not less than 5 years. The period of 5 years may be partly before 3rd April 1997, as the date on which the person was employed does not determine the applicability of the PAG Act. The date of termination of service, in the form of superannuation, retirement, or resignation, or death or disablement due to accident or disease, should be post the enforcement date, which in the present case is 3rd April 1997. The entire length of service, including the service period prior to 3rd April 1997, is to be counted for the purpose of computing the entitlement condition of 5 years of service. This is the correct effect of the ratio and decision in ***Management of Goodyear India Limited.*** (supra) and the decisions explaining retroactive effect of a statute. This legal position would be equally true and correct when the PAG Act was first enforced with effect from 16th September 1972, and when Notification No. S-42013/1/95-SS.(II) under Section 1(3)(c) of the PAG Act was issued and enforced with effect from 3rd April, 1997. It would be the position in case of all notifications issued under Section 1(3)(c) of the PAG Act, unless a contrary intention is expressed, which is not the situation in the present case and thus need not be examined.

20. The schools have claimed violation of Articles 14, 19(1)(g), 21 and 300-A of the Constitution of India which, in our opinion, are not violated as, to deny gratuity benefits to the teachers upon enforcement of the notification No. S-42013/1/95-SS.(II) dated 3rd April 1997 was itself an anomaly which mandated correction. The effect of the decision in ***Ahmedabad Private Primary Teachers' Association*** (supra) was that although private educational institutions were covered under the PAG Act, gratuity benefits could

not be extended to teachers in view of the legal flaw in the definition, consequent to which they were not treated as employees. The teachers were discriminated to be denied benefit of gratuity, a terminal benefit, which was payable to other employees of the private schools/educational institutions, including those engaged in administrative and managerial work. The amendment with retrospective effect remedies the injustice and discrimination suffered by the teachers on account of a legislative mistake, which was understood after the pronouncement of the judgment in ***Ahmedabad Private Primary Teachers' Association*** (supra). The amendment was necessary to ensure that something which was due and payable to the teachers is not denied to them due to a defect in the statute. Payment of gratuity cannot be categorized as a windfall or a bounty payable by the private schools as it is one of the minimal conditions of service.[30] In this background, the argument of the private schools that they do not have capacity and ability to pay gratuity to the teachers is unapt and parsimonious. All establishments are bound to follow the law, including the PAG Act. As observed earlier, the private schools were certainly aware of the intent of the Government that the educational institutions, as an establishment, would be covered and must pay gratuity upon issue of notification No. S-42013/1/95-SS.(II) dated 3rd April 1997. Some schools have raised an argument relying upon decision of this Court in ***T.M.A. Pai Foundation and Others*** v. ***State of Karnataka and Others***[31], which observes that as a matter of principle, charging of capitation fee or profiteering by educational institutions is impermissible. However, the judgment does not state that the teachers should not be paid gratuity. In fact, the judgment holds that the educational institutions are entitled to reasonable surplus to meet the cost of expansion and augmentation of the facilities and this does not amount to profiteering. It is possible that in some States there are fee fixation laws which will have to be complied with. But compliance with these laws does not mean that the teachers should be deprived and denied gratuity, which they were/ are entitled to receive as other employees of an educational institution. Regulation of fee is to ensure that there is no commercialisation and profiteering, and the effect is not to prohibit a school from fixing and collecting "just and permissible school fee", as has been held by this Court in ***Indian School, Jodhpur and Another*** v. ***State of Rajasthan and Others***.[32]

21. Reliance placed on the dissenting opinion of Amarendra Nath Sen, J. in ***Lohia Machines Ltd. and Another*** v. ***Union of India and Others***[33] is misplaced. The majority opinion of the Constitution Bench Judgment of Five Judges, authored by P.N. Bhagwati, J., had upheld the constitutional validity of Rule 19-A of the Income Tax Rules, 1962, enacted *vide* Finance Act (No.2 of 1980) with retrospective effect from 1st April 1972, thereby restricting the deduction available under Section 80-J of the Income Tax Act, 1961. In paragraph 78, Amarendra Nath Sen, J., in his dissenting opinion, has observed that a validating act validating any fiscal provision with retrospective operation is usually held not to be unreasonable and arbitrary, as they are generally made to clarify an ambiguity or rectify some flaw or defect. Such validating act should not be construed as having the effect to impose fresh tax with retrospective effect. Thereafter, Amarendra Nath Sen, J., in the context of the amendment, observed that it had the effect of withdrawal of benefit, unequivocally granted by the main provision, which reason has not

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[30] See *Bakshish Singh* v. *M/s Darshan Engineering Works and Others*, (1994) 1 SCC 9.
[31] (2002) 8 SCC 481
[32] (2021) 10 SCC 517
[33] (1985) 2 SCC 197

been accepted and did not find favour with the majority judgment. In the present case, there is no withdrawal of benefit unequivocally granted.

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

23. The last contention raised by the private schools and writ petitioners is predicated on the enactment of the Repealing and Amending Act 2016[34], 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.

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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;

[34] For short, "Repealing and Amendment Act".

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."

24. Section 4 of the Repealing and Amendment Act states that the repeal shall not affect any of the enactment in which the repealed enactment has been applied, incorporated or referred to. It also states that the Repealing 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 etc. This Court in ***Jethanand Betab*** v. ***State of Delhi***[35] had examined a similar provision of the Repealing and Amendment Act, 1952, whereby the Indian Wireless Telegraph (Amendment) Act, 1949 was repealed in its entirety. Reference was made to the decision of the Judicial Committee in ***Secretary of State for India in Council*** v. ***Hindusthan Co-operative Insurance Society, Ltd.***[36] and the principle that, where the repealing act states that the enactment thereof shall not affect any act in which the enactment has been applied, incorporated or referred to, means that there is an independent existence of the two acts and, therefore, even on the death of the amending act, its offspring survives in the incorporating act. This Court also referred to *Halsbury's Law of England* on the said aspect and the decision of the Calcutta High Court in ***Khuda Bux*** v. ***Manager, Caledonian Press***[37]**.** Relevant extract from the judgment in ***Jethanand Betab*** (supra) reads thus:

"6. The general object of a repealing and amending Act is stated in *Halsbury's Laws of England*, 2nd Edn., Vol. 31, at p. 563, thus:

"A statute Law Revision Act does not alter the law, but simply strikes out certain enactments which have become unnecessary. It invariably contains elaborate provisos."

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,…."

It is, therefore, clear that the main object of the 1952 Act was only to strike out the unnecessary Acts and excise dead matter from the statute book in order to lighten the burden of ever increasing spate of legislation and to remove confusion from the public mind. The object of the Repealing and Amending Act of 1952 was only to expurgate the amending Act of 1949, along with similar Acts, which had served its purpose.

7. The next question is whether Section 4 of the Act of 1952 saved the operation of the amendments that had been inserted in the Act of 1933 by the repealed Act. The relevant part of Section 4 only saved other enactments in which the repealed enactments have been applied,

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[35] (1960) 1 SCR 755.

[36] 1931 SCC OnLine PC 37

[37] 1954 SCC OnLine Cal 132

incorporated or referred to. Can it be said that the amendments are covered by the language of the crucial words in Section 4 of the Act of 1952, namely, "applied, incorporated or referred to". We think not. Section 4 of the said Act is designed to provide for a different situation, namely, the repeal of an earlier Act which has been applied, incorporated or referred to in a later Act. Under that section the repeal of the earlier Act does not affect the subsequent Act. The said principle has been succinctly stated in *Maxwell on Interpretation of Statutes*, 10th Edn., p. 406:

"Where the provisions of one statute are, by reference, incorporated in another and the earlier statute is afterwards repealed the provisions so incorporated obviously continue in force so far as they form part of the second enactment."

So too, in *Craies on Statute Law*, 3rd Edn., the sama idea is expressed in the following words, at p. 349:

"Sometimes an Act of Parliament, instead of expressly repeating the words of a section contained in a former Act, merely refers to it, and by relation applies its provisions to some new state of things created by the subsequent Act. In such a case the rule of construction is that where a statute is incorporated by reference into a second statute, the repeal of the first statute by a third does not affect the second".

The Judicial Committee in *Secretary of State for India in Council* v. *Hindusthan Co-operative Insurance Society, Ltd.* endorsed the said principle and restated the same, at p. 267, thus:

"This doctrine finds expression in a common-form section which regularly appears in the amending and repealing Acts which are passed from time to time in India. The section runs: "The repeal by this Act of any enactment shall not affect any Act…. in which such enactment has been applied, incorporated or referred to". The independent existence of the two Acts is therefore recognized; despite the death of the parent Act, its offspring survives in the incorporating Act. Though no such saving clause appears in the General clauses Act, Their Lordships think that the principle involved is as applicable in India as it is in this country."

It is, therefore, manifest that Section 4 of the 1952 Act has no application to a case of a later amending Act inserting new provisions in an earlier Act, for, where an earlier Act is amended by a later Act, it cannot be said that the earlier Act applies, incorporates or refers to the amending Act. The earlier Act cannot incorporate the later Act, but can only be amended by it. We cannot, therefore, agree with the view expressed by the Punjab High Court in *Mohinder Singh* v. *Mst. Harbhajan Kaur* and *Darbara Singh* v. *Shrimati Karnail Kaur* that Section 4 of the Repealing and Amending Act of 1952 applies to a case of repeal of an amending Act.

25. In most cases, the prayer for stay, as in Civil Appeal No. 8162 of 2012, was not accepted, *albeit* in some cases, stay has been granted for payment of gratuity for the period prior to 3rd April 1997. As explained above and applying the principle of retroactivity and as also following the judgment of this Court in ***Management of Goodyear India Limited.*** (supra), this argument raised on behalf of the private schools should fail and is rejected. The partial stay order dated 31st January 2020 passed in SLP (C) No. 2235 of 2020, titled ***Saint Xaviers High School*** v. ***Jayashree Shamal Ghosh***, or in any other case, is vacated.

26. For the reasons mentioned above, the aforesaid appeals, transfer case and the writ petitions are dismissed. The stay orders, as stated above, are vacated. The private schools would make payment to the employees/teachers along with the interest in accordance with the provisions of the PAG Act within a period of 6 weeks from today and in case of default, the employees/teachers may move the appropriate forum to enforce payment in accordance with the provisions of the PAG Act. In the facts of the case, there will be no orders as to costs.