REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL No.2530 OF 2012

Birla Institute of Technology ....Appellant(s)

VERSUS

The State of Jharkhand & Ors. ...Respondent(s)

J U D G M E N T

Abhay Manohar Sapre, J.

1. This appeal is directed against the final judgment and order dated 02.04.2008 passed by the High Court of Jharkhand at Ranchi in LPA No.53 of 2007 whereby the Division Bench of the High Court dismissed the LPA filed by the appellant herein and confirmed the order dated 12.01.2007 passed by the Single Judge of the High Court in W.P. No.2572 of 2005.

2. The controversy involved in this appeal is a short one as would be clear from the facts stated *infra*.

3. The appellant is a premier technical educational institute of repute in the country. It is known as "Birla Institute of Technology" (BIT).

4. Respondent No.4 joined the appellant-Institute as Assistant Professor on 16.09.1971 and superannuated on 30.11.2001 after attaining the age of superannuation.

5. Respondent No.4 then made a representation to the appellant and prayed therein for payment of gratuity amount which, according to respondent, was payable to him by the appellant under the Payment of Gratuity Act, 1972 (for short called "The Act"). The appellant, however, declined to pay the amount of gratuity as demanded by respondent No.4.

6. Respondent No.4, therefore, filed an application before the controlling authority under the Act against

the appellant and claimed the amount of gratuity which, according to him, was payable to him under the Act.

7. By order dated 07.09.2002, the controlling authority (respondent No.3) allowed the application filed by respondent No.4 and directed the appellant to pay a sum of Rs.3,38,796/- along with interest at the rate of 10% p.a. towards the gratuity to respondent No.4.

8. The appellant felt aggrieved and filed appeal before the appellate authority under the Act. By order dated 15.04.2005, the appellate authority dismissed the appeal. The appellant felt aggrieved and carried the matter to the High Court in a writ petition. The High Court (Single Judge) by order dated 12.01.2007 dismissed the writ petition and upheld the orders of the authorities passed under the Act. The appellant then filed Letters Patent Appeal before the Division Bench against the order passed by the Single Judge.

The LPA was also dismissed by the impugned order which has given rise to filing of the present appeal by way of special leave by the appellant-Institute in this Court.

9. The short question, which arises for consideration in this appeal, is whether the Courts below were justified in holding that respondent No.4 was entitled to claim gratuity amount from the appellant (employer) under the Act.

10. Heard Mr. Shambo Nandy, learned counsel for the appellant and Mr. Anil Kumar Jha, learned counsel for respondent Nos.1-3 and Mr. Sunil Roy, learned counsel for respondent No.4.

11. Having heard the learned counsel for the parties and on perusal of the record of the case, we find merit in this appeal.

12. As rightly argued by the learned counsel for the appellant, the issue involved in this appeal remains no

longer *res integra* and is decided by this Court in **Ahmadabad Pvt. Primary Teachers Association** vs. **Administrative Officer and Others** (2004) 1 SCC 755 in favour of the appellant.

13. The question arose for consideration in the case of **Ahmadabad Pvt. Primary Teachers Association** (supra) as to 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.

14. The two-Judge Bench examined this question in detail. Justice D.M. Dharmadhikari speaking for the Bench held that a teacher is not an employee within the meaning of the expression "employee" as defined under Section 2(e) of the Act and hence he/she is not entitled to claim any gratuity amount from his employer under the Act. In other words, it was held

that since a teacher is not an employee under Section 2(e) of the Act, he has no right to invoke the provisions of the Act for claiming gratuity under the Act from his/her employer.

15. It is apposite to quote the reasoning of Their Lordships in paras 20 to 26 of the judgment which reads as under:

> **"20. An educational institution, therefore, is an "establishment" notified under Section 1(3)(c) of the Payment of Gratuity Act, 1972. On behalf of the Municipal Corporation, it is contended that the only beneficial effect of the notification issued under Section 1(3)(c) of the Act of 1972, is that such non-teaching staff of educational institutions as answer the description of any of the employments contained in the definition clause 2(e), would be covered by the provisions of the Act. The teaching staff being not covered by the definition of "employee" can get no advantage merely because by notification "educational institutions" as establishments are covered by the provisions of the Act.**
>
> **21. Having thus compared the various definition clauses of the word "employee" in different enactments, with due regard to the different aims**

and objects of the various labour legislations, we are of the view that even on plain construction of the words and expression used in the definition clause 2(e) of the Act, "teachers" who are mainly employed for imparting education are not intended to be covered for extending gratuity benefits under the Act. Teachers do not answer description of being employees who are "skilled", "semi-skilled" or "unskilled". These three words used in association with each other intend to convey that a person who is "unskilled" is one who is not "skilled" and a person who is "semi-skilled" may be one who falls between the two categories, meaning he is neither fully skilled nor unskilled. The Black's Law Dictionary defines these three words as under:

> **"Semi-skilled work.—Work that may require some alertness and close attention, such as inspecting items or machinery for irregularities, or guarding property or people against loss or injury.**
>
> **Skilled work.—Work requiring the worker to use judgment, deal with the public, analyze facts and figures, or work with abstract ideas at a high level of complexity.**
>
> **Unskilled work.—Work requiring little or no judgment, and involving simple tasks that can be learned quickly on the job."**

22. In construing the abovementioned three words which are used in association with each other, the rule of construction noscitur a sociis may be applied. The meaning of each of these words is to be understood by the company it keeps. It is a legitimate rule of construction to construe words in an Act of Parliament with reference to words found in immediate connection with them. The actual order of these three words in juxtaposition indicates that meaning of one takes colour from the other. The rule is explained differently: "that meaning of doubtful words may be ascertained by reference to the meaning of words associated with it". [See Principles of Statutory Interpretation by Justice G.P. Singh, 8th Edn., Syn. 8, at p. 379.]

23. The word "unskilled" is opposite of the word "skilled" and the word "semi-skilled" seems to describe a person who falls between the two categories i.e. he is not fully skilled and also is not completely unskilled but has some amount of skill for the work for which he is employed. The word "unskilled" cannot, therefore, be understood dissociated from the word "skilled" and "semi-skilled" to read and construe it to include in it all categories of employees irrespective of the nature of employment. If the legislature intended to cover all categories of employees for extending benefit of gratuity under the Act, specific mention of categories of employment in the definition clause

was not necessary at all. Any construction of definition clause which renders it superfluous or otiose has to be avoided.

24. The contention advanced that teachers should be treated as included in the expression "unskilled" or "skilled" cannot, therefore, be accepted. The teachers might have been imparted training for teaching or there may be cases where teachers who are employed in primary schools are untrained. A trained teacher is not described in the industrial field or service jurisprudence as a "skilled employee". Such adjective generally is used for an employee doing manual or technical work. Similarly, the words "semi-skilled" and "unskilled" are not understood in educational establishments as describing nature of job of untrained teachers. We do not attach much importance to the arguments advanced on the question as to whether "skilled", "semi-skilled" and "unskilled" qualify the words "manual", "supervisory", "technical" or "clerical" or the above words qualify the word "work". Even if all the words are read disjunctively or in any other manner, trained or untrained teachers do not plainly answer any of the descriptions of the nature of various employments given in the definition clause. Trained or untrained teachers are not "skilled", "semi-skilled", "unskilled", "manual", "supervisory", "technical" or "clerical" employees. They are also not employed

in "managerial" or "administrative" capacity. Occasionally, even if they do some administrative work as part of their duty with teaching, since their main job is imparting education, they cannot be held employed in "managerial" or "administrative" capacity. The teachers are clearly not intended to be covered by the definition of "employee".

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.

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." (emphasis supplied)

16. Reading the aforementioned principle of law laid down by this Court, we have no hesitation in holding that 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.

17. In our opinion, the High Court though took note of the decision rendered in the case of **Ahmadabad Pvt. Primary Teachers Association** (supra) but erred in distinguishing it on the ground that it is applicable only to the primary teachers working in primary

schools and since the case at hand is not a case of a primary teacher, it has no application to this case.

18. In our view, the High Court failed to read last line of Para 24 quoted above wherein this Court has held in clear terms that *"teachers" are clearly not intended to be covered by the definition of "employee"*. The High Court was, therefore, not justified in making a distinction between the "teachers working in the primary schools" and the "teachers working in other educational institutions".

19. In other words, the High Court failed to see that this Court had examined the expression "teacher" *qua* the expression "employee" defined in Section 2(e) of the Act and then held that "teacher" is not an employee within the meaning of Section 2(e) of the Act. While laying down the law, this Court did not make any distinction between the teachers *inter se* and nor made any distinction as to in which type of educational

institute the teacher is working for determining his entitlement to claim the gratuity under the Act.

20. We cannot, therefore, concur with the view taken by the High Court, which in our view, is not in conformity with the law laid down by this Court in the case of **Ahmadabad Pvt. Primary Teachers Association** (supra). It is based on incorrect reading of this Court's decision and, therefore, it deserves to be set aside.

21. We, however, make it clear that we have examined the case at hand only in the light of the provisions of the Act, which were akin to the facts of the case in **Ahmadabad Pvt. Primary Teachers Association** (supra).

22. In case there is any other State Act or Scheme in force, which extends any benefit to the employees of the Institute only then respondent No.4 would be at

liberty to take benefit of such Act/Scheme in accordance with law.

23. As a result, the appeal succeeds and is accordingly allowed. The impugned order is set aside. As a consequence, the application made by respondent No.4 before the controlling authority under the Act against the appellant is dismissed as not maintainable.

.....J.
[ABHAY MANOHAR SAPRE]

.....J.
[INDU MALHOTRA]

New Delhi;
January 07, 2019