

**HIGH COURT OF CHHATTISGARH, BILASPUR****(Judgment / Order delivered on 06.03.2020)****WPL No. 223 of 2017**

Ambika Mission Boys Middle School, Ambikapur Through Its Manager, Robert Tigga, S/o Abraham Tigga, Aged About 49 Years R/o Ambika Mission Boys Middle School, Ambikapur District Sarguja Chhattisgarh. --- **Petitioner**

Versus

1. State of Chhattisgarh through its Chief Secretary, Secretariat, Mahanadi Bhawan, New Raipur, Chhattisgarh.
2. The Principal Secretary, Department of School Education Govt. of Chhattisgarh, Secretariat, Mahanadi Bhawan, New Raipur, District : Raipur, Chhattisgarh
3. The Commissioner, Department of Public Instruction, Secretariat, Govt. of Chhattisgarh, Mahanadi Bhawan, New Raipur, District : Raipur, Chhattisgarh
4. The District Education Officer, Ambikapur, District Sarguja, District : Surguja (Ambikapur), Chhattisgarh
5. Shri Anil Kumar Tirkey, S/o Late Augustine Tirkey, Retd. Teacher, R/o Village Dhobipara, Fundrudehari, Ambikapur, Sarguja : Surguja (Ambikapur), Chhattisgarh --- **Respondents**

WPS No. 1650 of 2017

Shri Mahabir Shiksha Prasar Samiti A Registered Society, Having Its Registered Office At Gudhiyari, Raipur Thana and Post Gudhiyari, District Raipur through Its Secretary, Shri Raj Kamal Boob, Son of Late Shri Bridhi Chand Boob, 62 Years, Gudhiyari, Thana and Post Gudhiyari, District Raipur Chhattisgarh.

--- **Petitioner****Versus**

1. State of Chhattisgarh Through Department of School Education, Mahanadi Bhawan, Mantralaya, Naya Raipur, District Raipur Chhattisgarh.
2. Directorate of Public Instructions, through the Commissioner, Vivekanand Nagar, Raipur, District Raipur Chhattisgarh.
3. Tehsildar, Raipur, District Raipur Chhattisgarh.
4. Shri K. C. Pandey, S/o Late Shri Keshav Pandey, R/o 50/359 Bandhwapara, Purani Basti, Raipur, District : Raipur, Chhattisgarh
5. Shri R. K. Tiwari, R/o Tilak Nagar, Gudhiyari, Raipur, District : Raipur, Chhattisgarh
6. Shri Sukhram Yadav, S/o Late Shri Kanhaiyalal Yadav, R/o Ganga Nagar, Bhanpuri, Near Durga Mandir, Raipur, District : Raipur, Chhattisgarh



7. Smt. B. Leela Patnaik, W/o Shri B. Ramesh, R/o D/184, Sector 1, Devendra Nagar, Raipur, District : Raipur, Chhattisgarh --- Respondents

WPS No. 3722 of 2017

Anima Dey D/o Late Shri Vishnu Charan Dey, Aged About 72 Years R/o Lakhe Nagar, Pragati Chowk, Police Station- Aminpara, Raipur, Tahsil and District Raipur, Chhattisgarh. --- Petitioner

Versus

1. State of Chhattisgarh through its Secretary, Department of School Education, Mahanadi Mantralaya, Police Station And Post- Rakhi, New Raipur, District Raipur, Chhattisgarh.
2. Divisional Joint Director, Office of Divisional Joint Director, Kosh Lekha And Pension, Raipur District Raipur, Chhattisgarh.
3. District Education Officer, Office of District Education Officer, Raipur, District- Raipur, Chhattisgarh.
4. Principal, Mahabir Higher Secondary School, Gudhiyari, Raipur, District Raipur, Chhattisgarh. --- Respondents

WPL No. 87 of 2019

Shri Mahabir Shiksha Prasar Samiti, A Registered Society, Having Its Registered Office At Gudhiyari, Raipur Thana And Post Gudhiyari, District Raipur, Chhattisgarh, Through Its Secretary, Shri Raj Kamal Boob, S/o Late Shri Bridhi Chand Boob, 64 Years, Gudhiyari, Thana And Post Gudhiyari, District Raipur, Chhattisgarh. --- Petitioner

Versus

1. State of Chhattisgarh through the Secretary, Department of School Education, Mahanadi Bhawan, Mantralaya, Atal Nagar District Raipur Chhattisgarh.
2. Directorate of Public Instructions, Through Its Director, Sector 19, Kotara Bhantha, Atal Nagar, District Raipur Chhattisgarh.
3. Principal, Mahabir Higher Secondary Shcool, Gudhiyari, Thana and Post Gudhiyari, District Raipur, Chhattisgarh.
4. Shri S.K. Sawarkar S/o Shri Chatur Ram Sawarkar, R/o Raja Talab, Near Gopal Store, Sawarkar Furniture, Raipur . , District : Raipur, Chhattisgarh --- Respondents

WPL No. 88 of 2019

1. Shri Mahabir Shiksha Prasar Samiti, a registered Society, having Its Registered Office at Gudhiyari, Raipur Thana And Post Gudhiyari, District Raipur Chhattisgarh, Through Its Secretary, Shri Raj Kamal Boob, S/o Late Shri Bridhi Chand Boob, 64 Years, Gudhiyari, Thana and Post Gudhiyari, District - Raipur Chhattisgarh.



2. Principal Shri Mahabir Shiksha Prasar Samiti, A Registered Society, Gudhiyari, Raipur Thana and Post Gudhiyari, District - Raipur Chhattisgarh. Through The Secretary **--- Petitioners**

Versus

1. State of Chhattisgarh through The Secretary, Department of School Education, Mahanadi Bhawan, Mantralaya, Atal Nagar, District - Raipur Chhattisgarh.
2. Smt. Rajmani Sharma W/o Late Shri S. P. Sharma R/o Behind Suyash Hospital, Samta Colony Raipur, District : Raipur, Chhattisgarh **--- Respondents**

WPL No. 94 of 2019

Shri Mahabir Shiksha Prasar Samiti A Registered Society, Having Its Registered Office At Gudhiyari, Raipur Thana And Post Gudhiyari, District Raiur Chhattisgarh, Through Its Secretary, Shri Raj Kamal Boob, S/o Late Shri Bridhi Chand Boob, 64 Years, Gudhiyari , Thana and Post Gudhiyari , District Raipur Chhattisgarh. **--- Petitioner**

Versus

1. State of Chhattisgarh through The Secretary, Department Of School Education, Mahanadi Bhawan, Mantralaya, Atal Nagar, District : Raipur, Chhattisgarh
2. Directorate of Public Instructions through Its Director, Sector 19, Kotara Bhantha, Atal Nagar, District : Raipur, Chhattisgarh
3. Principal Mahabir Higher Secondary School, Gudhiyari, Thana And Post Gudhiyari, District : Raipur, Chhattisgarh
4. Shri Ramlal Vishwakarma S/o Late Shri Jageshwar Prasad Vishwakarma R/o Village Methori, Mangawan, District : Rewa, Madhya Pradesh **--- Respondents**

WPL No. 95 of 2019

Shri Mahabir Shiksha Parsar Samiti A Registered Society, Having Its Registered Office at Gudhiyari, Raipur Thana and Post Gudhiyari, District- Raipur, Chhattisgarh, Through Its Secretary, Shri Raj Kumar Boob, 64 Years, Gudhiyari, Thana and Post Gudhiyari, District- Raipur, Chhattisgarh **--- Petitioner**

Versus

1. State of Chhattisgarh through The Secretary, Department of School Education, Mahanadi Bhawan, Mantralaya, Atal Nagar, District : Raipur, Chhattisgarh
2. Directorate of Public Instructions through Its Director, Sector 19, Kotara Bhantha, Atal Nagar, District : Raipur, Chhattisgarh
3. Principal Mahabir Higher Secondary School, Gudhiyari, Thana And Post Gudhiyari, District : Raipur, Chhattisgarh
4. Ku. Pushplata Kaser R/o House No. J/0495, Shiv Nagar, Near Soni Cycle Store, New Changorabhanta, Raipur, District : Raipur, Chhattisgarh **--- Respondent**

WPL No. 96 of 2019

Shri Mahabir Shiksha Prasar Samiti, A Registered Society, Having Its Registered Office At Gudhiyari, Raipur Thana And Post Gudhiyari, District



Raipur, Chhattisgarh, Through Its Secretary, Shri Raj Kamal Boob, Son of Late Shri Bridhi Chand Boob, 64 Years, Gudhiyari, Thana and Post Gudhiyari, District : Raipur, Chhattisgarh --- **Petitioner**

Versus

1. State of Chhattisgarh through the Secretary, Department of School Education, Mahanadi Bhawan, Mantralaya, Atal Nagar District : Raipur, Chhattisgarh
2. Directorate of Public Instructions, through Its Director, Sector 19, Kotara Bhantha, Atal Nagar , District : Raipur, Chhattisgarh
3. Principal, Mahabir Higher Secondary School, Gudhiyari, Thana, And Post Gudhiyari , District : Raipur, Chhattisgarh
4. Shri Vishnu Prasad, R/o Verma Flour Mill, Punjab Mill Gali, Ramsagar Para, Raipur , District : Raipur, Chhattisgarh --- **Respondents**

WPL No. 97 of 2019

1. Shri Mahabir Shiksha Prasar Samiti A Registered Society, Having Its Registered Office At Gudhiyari, Raipur Thana And Post Gudhiyari, District- Raipur, Chhattisgarh, Through Its Secretary, Shri Raj Kumar Boob, S/o Late Shri Bridhi Chand Boob 64 Years, Dudhiyari, Thana And Post Gudhiyari, District : Raipur, Chhattisgarh
2. Principal Shri Mahabir Shiksha Prasar Samiti A Registered Society, Gudhiyari Raipur, Thana And Post Gudhiyari, District- Raipur, Chhattisgarh. Through The Secretary. --- **Petitioners**

Versus

1. State of Chhattisgarh through the Secretary, Department of School Education, Mahanadi Bhawan, Mantralaya, Atal Nagar, District : Raipur, Chhattisgarh
2. Shri L. M. Singh S/o Late Shri R. K. Singh Near Naya Talab, Raipur, District : Raipur, Chhattisgarh --- **Respondents**

WPL No. 99 of 2019

Shri Mahabir Shiksha Prasar Samiti, a registered Society, Having Its Registered Office At Gudhiyari, Raipur Thana and Post Gudhiyari, District- Raipur, Chhattisgarh, Through Its Secretary, Shri Raj Kumar Boob, S/o Late Shri Bridhi Chand Boob 64 Years, Dudhiyari, Thana and Post Gudhiyari, District : Raipur, Chhattisgarh --- **Petitioner**

Versus

1. State of Chhattisgarh through the Secretary, Department of School Education, Mahanadi Bhawan, Mantralaya, Atal Nagar, District : Raipur, Chhattisgarh
2. Directorate of Public Instructions through its Director, Sector 19, Kotara Bhantha, Atal Nagar, District : Raipur, Chhattisgarh
3. Principal Mahabir Higher Secondary School, Dudhiyari, Thana And Post Gudhiyari, District : Raipur, Chhattisgarh
4. Shri Makhanpuri Goswami S/o Shri Durgapuri Goswami R/o Dr. Ambedkar Nagar, Gudhiyari, Raipur, District : Raipur, Chhattisgarh --- **Respondents**

**WPL No. 100 of 2019**

Shri Mahabir Shiksha Prasar Samiti A Registered Society, Having Its Registered Office At Gudhiyari, Raipur Thana And Post Gudhiyari, District Raipur, Chhattisgarh, Through Its Secretary, Shri Raj Kamal Boob, Son Of Late Shri Bridhi Chand Boob, 64 Years, Gudhiyari, Thana and Post Gudhiyari, District : Raipur, Chhattisgarh **--- Petitioner**

Versus

1. State of Chhattisgarh Through The Secretary, Department of School Education, Mahanadi Bhawan, Mantralaya, Atal Nagar, District : Raipur, Chhattisgarh
2. Directorate of Public Instructions, Through Its Director, Sector 19, Kotara, Bhantha, Atal Nagar, District : Raipur, Chhattisgarh
3. Principal Mahabir Higher Secondary School, Gudhiyari, Thana And Post Gudhiyari, District : Raipur, Chhattisgarh
4. Shri B.L. Chandel R/o Naya Talab, Gudhiyari, Raipur District : Raipur, Chhattisgarh **--- Respondents**

WPL No. 101 of 2019

Shri Mahabir Shiksha Prasar Samiti A Registered Society, Having Its Registered Office at Gudhiyari, Raipur, Thana and Post Gudhiyari, District Raipur, Chhattisgarh, Through Its Secretary, Shri Raj Kamal Boob, S/o Late Shri Bridhi Chand Boob, 64 Years, Gudhiyari, Thana And Post Gudhiyari, District : Raipur, Chhattisgarh **--- Petitioner**

Versus

1. State of Chhattisgarh through the Secretary, Department of School Education, Mahanadi Bhawan, Mantralaya, Atal Nagar, District : Raipur, Chhattisgarh
2. Directorate of Public Instrucitons Through Its Director, Sector 19, Kotara Bhantha Atal Nagar, District : Raipur, Chhattisgarh
3. Principal Mahabir Higher Secondary School, Gudhiyari, Thana And Post Gidhiyari, District : Raipur, Chhattisgarh
4. Shri Thomas P.C. R/o Quarter No. J/498, Tilak Nagar, Gidhiyari, Raipur, District : Raipur, Chhattisgarh **--- Respondents**

WPL No. 102 of 2019

1. Shri Mahabir Shiksha Prasar Samiti a Registered Society, Having Its Registered Office At Gudhiyari, Raipur Thana And Post Gudhiyari, District Raipur, Chhattisgarh, Through Its Secretary, Shri Raj Kamal Boob S/o Late Shri Bridhi Chand Boob, 64 Years, Gudhiyari, Thana and Post Gudhiyari, District : Raipur, Chhattisgarh
2. Principal Shri Mahabir Shiksha Prasar Samiti, A Registered Society, Gudhiyari, Raipur Thana And Post Gudhiyari, District Raipur Through Secretary.

---- Petitioners**Versus**

1. State of Chhattisgarh through the Secretary, Department of School Education, Mahanadi Bhawan, Mantralaya, Atal Nagar, District : Raipur, Chhattisgarh



2. Smt. Nirmala Chopra W/o Shri H. L. Chopra Resident Of Near Kalra Nursing Home, Dayanand Nagar, Raipur District : Raipur, Chhattisgarh ---

Respondents

WPL No. 103 of 2019

Shri Mahabir Shiksha Prasar Samiti A Registered Society, Having Its Registered Office At Gudhiyari, Raipur Thana And Post Gudhiyari, District Raipur, Chhattisgarh, Through Its Secretary, Shri Raj Kamal Boob, Son Of Late Shri Bridhi Chand Boob, 64 Years, Gudhiyari, Thana And Post Gudhiyari, District : Raipur, Chhattisgarh --- **Petitioner**

Versus

1. State of Chhattisgarh Through The Secretary, Department of School Education, Mahanadi Bhawan, Mantralaya, Atal Nagar, District : Raipur, Chhattisgarh
2. Directorate of Public Instructions Through Its Director, Sector 19, Kotara, Bhantha, Atal Nagar, District : Raipur, Chhattisgarh
3. Principal Mahabir Higher Secondary School, Gudhiyari, Thana And Post Gudhiyari, District : Raipur, Chhattisgarh
4. Shri N. K. Dewangan R/o B-66, Kota Housing Colony, Near Sai Darbar, Kota, Raipur District : Raipur, Chhattisgarh --- **Respondents**

WPL No. 160 of 2014

Shiksha Pracharak Samiti having its Office at Gandhi Chowk, Raipur, Civil and Revenue Distt Raipur, through Its Secretary Ajay Tiwari, S/o Lt. Kanhaiya Prasad Tiwari, Age 65 Yrs, C/o Shiksha Pracharak Samiti, Gandhi Chowk, Raipur, Civil And Revenue Distt Raipur, Chhattisgarh --- **Petitioner**

Versus

1. State of Chhattisgarh through Secretary, Department of School Education, Mantralaya, Mahanadi Bhawan, Naya Raipur, Civil and Revenue Distt Raipur, Chhattisgarh
2. Assistant Labour Commission, Raipur Controlling Authority, Under Payment Of Gratuity Act 1972, Raipur, Civil And Revenue , District : Raipur, Chhattisgarh
3. The Collector, Raipur Civil and Revenue District : Raipur, Chhattisgarh
4. Additional Tahsildar, Raipur Tah, Civil And Revenue, District : Raipur, Chhattisgarh
5. Shri B.D.Dwivedi S/o Lt Ganga Pasad Dwivedi, Aged About 75 Years R/o Saryudham, Byron Bazaar, Raipur, Civil And Revenue, District : Raipur, Chhattisgarh --- **Respondents**

WPL No. 174 of 2018

1. M.P. Vanwasi Sewa Mandal, a Registered Society Through Its Secretary, Mandla, Kasturba Kanya Parisar, District- Dindori, Madhya Pradesh.
2. Vibhag Sanyojak Vibhag Kaaryalaya, M.P. Vanwasi Sewa Mandal, Ambikapur, District- Surguja, Chhattisgarh. --- **Petitioners**

Versus



1. State of Chhattisgarh Through The Secretary, Scheduled Caste And Scheduled Tribe Development Department, Mahanadi Bhawan, Mantralaya, Naya Raipur, District : Raipur, Chhattisgarh
2. Secretary Department of Finance And Planning, Mantralaya, Mahanadi Bhawan, Naya Raipur, District : Raipur, Chhattisgarh
3. Commissioner Scheduled Caste And Scheduled Tribe Development Department, Indrawati Bhawan, Naya Raipur, District : Raipur, Chhattisgarh
4. Controlling Authority-Cum-Labour Officer Baikunthpur, District : Koriya (Baikunthpur), Chhattisgarh
5. Shri Ram Milan Tripathi S/o Shri Ram Sunder Tripathi R/o Village Naugoi, Post Katgodi, Thana And Tehsil Sonhat, District : Korba, Chhattisgarh ---

Respondents

WPL No. 215 of 2016

Xavier Institute Surguja Society Registered Under The Madhya Pradesh Societies, Registration Act 1959, Having Its Head Office, At St. Xaviers Higher Secondary, School, Ambikapur, Through Its Secretary Namely Gabriel Minj, S/o Barnabas Minj, Aged About 54 Years, R/o St. Xaviers Higher Secondary School, Ambikapur, Police Station and Post Ambikapur, District Surguja, Chhattisgarh

--- Petitioner

Versus

1. State of Chhattisgarh through the Secretary, Department of Fianance and Planning, Mantralaya, Mahanadi Bhawan, Naya Raipur, Tahsil, Revenue and Civil District Raipur, Pin Code 492001, Chhattisgarh
2. Secretary, Department of School Education, Mantralaya, Mahanadi Bhawan, Naya Raipur, Tahsil Revenue And Civil Pin Code-492001, District : Raipur, Chhattisgarh
3. Secretary, Department of Scheduled Tribes and Scheduled Caste Development, Mantralaya, Mahanadi Bhawan, Naya Raipur, Tahsil Revenue and Civil, Pin Code-492001, District : Raipur, Chhattisgarh
4. Secretary, Department Of Labour, Mantralaya, Mahanadi Bhawan, Naya Raipur, Tahsil, Revenue and Civil Pin Code-492001, District : Raipur, Chhattisgarh
5. Director, Directorate of Public Instruction, Indrawati Bhawan, Chhattisgarh, Naya Raipur, Tahsil and District Raipur, Pin Code- 492001, District : Raipur, Chhattisgarh
6. Commissioner, Scheduled Tribes And Scheduled Caste Development Department, 61, Jal Vihar Colony, Raipur, Tahsil and District Raipur, Chhattisgarh Pin Code-492001, District : Raipur, Chhattisgarh --- **Respondents**

WPL No. 224 of 2014

St.Xaviers H.S.School Through Its Manager Kalyanus Minj S/o Temba Minj R/o St. Xavier H.S.School Ambikapur Dist. Surguja, Chhattisgarh

--- Petitioner

Versus

1. State of Chhattisgarh Through Its Chief Secretary Secretariat Mahandi Bhawan New Raipur, Chhattisgarh



2. The Principal Secretary Department of Education Govt. of Chhattisgarh Secretariat, Mahandi Bhawan New Raipur , District : Raipur, Chhattisgarh
3. The Commissioner Department of Public Instruction Govt. of Chhattisgarh Secretariat, Mahanadi Bhawan New Raipur, District : Raipur, Chhattisgarh
4. The District Education Officer Ambikapur Dist. Surguja , District : Surguja (Ambikapur), Chhattisgarh
5. Ranjit Singh Retd. Clerk, R/o Vill. Fundurdehari, Dhobipara Ambikapur, District : Surguja (Ambikapur), Chhattisgarh --- **Respondents**

WPL No. 224 of 2017

Ambika Mission Boys Middle School Ambikapur Aged About 49 Years through its Manager, Robert Tigga, S/o Abraham Tigga, R/o Ambika Mission Boys Middle School, Ambikapur, Distirct Sarguja, Chhattisgarh --- **Petitioner**

Versus

1. State of Chhattisgarh through its Chief Secretary, Secretariat, Mahanadi Bhawan, New Raipur, Chhattisgarh
2. The Principal Secretary, Department of Education, Govt. of Chhattisgarh Secretariat, Mahanadi Bhawan, New Raipur, District : Raipur, Chhattisgarh
3. The Commissioner, Department of Public Instruction, Govt. of Chhattisgarh Secretariat, Mahanadi Bhawan, New Raipur, District : Raipur, Chhattisgarh
4. The District Education Officer, Ambikapur, District : Surguja (Ambikapur), Chhattisgarh
5. Shri Barnabas Kujur, S/o Late Augustine Kujur, Retd. Teachear, R/o Village Fundurdehari Beechpara Ambikapur, District : Surguja (Ambikapur), Chhattisgarh --- **Respondents**

WPL No. 225 of 2014

St.Xaviers H.S.School Through Its Manager Kalyanus Minj S/o Temba Minj R/o St. Xavier H.S.School Ambikapur Dist. Surguja , Chhattisgarh --- **Petitioner**

Versus

1. State of Chhattisgarh through Its Chief Secretary Secretariat Mahandi Bhawan New Raipur , Chhattisgarh
2. The Principal Secretary Department of Education Govt. of Chhattisgarh Secretariat, Mahandi Bhawan New Raipur , District : Raipur, Chhattisgarh
3. The Commissioner Department of Public Instruction Govt. of Chhattisgarh Secretariat, Mahanadi Bhawan New Raipur , District : Raipur, Chhattisgarh
4. The District Education Officer Ambikapur , District : Surguja (Ambikapur), Chhattisgarh
5. Nabore Kerketta Village Fundrudehari Dhobipara Ambikapur , District : Surguja (Ambikapur), Chhattisgarh --- **Respondents**

WPL No. 226 of 2014

St.Xaviers H.S.School through its Manager Kalyanus Minj S/o Temba Minj R/o St. Xavier H.S.School, Ambikapur Dist. Surguja , Chhattisgarh --- **Petitioner**



Versus

1. State of Chhattisgarh through its Chief Secretary Secretariat Mahandi Bhawan New Raipur , Chhattisgarh
 2. The Principal Secretary Department of Education Govt. of Chhattisgarh Secretariat, Mahandi Bhawan New Raipur , District : Raipur, Chhattisgarh
 3. The Commissioner Department of Public Instruction Govt. of Chhattisgarh Secretariat, Mahanadi Bhawan New Raipur , District : Raipur, Chhattisgarh
 4. The District Education Officer Ambikapur , District : Surguja (Ambikapur), Chhattisgarh
 5. Gautam Singh Geharwar Retd. Lecturer R/o Vijay Marg, Ambikapur , District : Surguja (Ambikapur), Chhattisgarh
- Respondents**

WPL No. 228 of 2017

Ambika Mission Boys Middle School through its Manager, Robert Tigga, S/o Abraham Tigga, Aged About 49 Years, R/o Ambika Mission Boys Middle School, Ambikapur District Surguja , Chhattisgarh

--- Petitioner

Versus

1. State of Chhattisgarh through its Chief Secretary, Secretariat Mahanadi Bhawan, New Raipur , Chhattisgarh
 2. The Principal Secretary, Department of Education, Govt. of Chhattisgarh Secretariat, Mahanadi Bhawan, New Raipur , District : Raipur, Chhattisgarh
 3. The Commissioner, Department of Public Instruction, Govt. of Chhattisgarh Secretariat, Mahanadi Bhawan, New Raipur , District : Raipur, Chhattisgarh
 4. The District Education Officer, Ambikapur, District : Surguja (Ambikapur), Chhattisgarh
 5. Smt. Mary Margaret Ekka W/o Late Sylvanus Ekka Teacher, R/o Village Muktipara, Fundurdehari, Ambikapur, District : Surguja (Ambikapur), Chhattisgarh
- Respondents**

WPL No. 240 of 2016

1. The President Managing Committee Lahari Multipurpose Higher Secondary School, Chirmiri, District Koriya, Chhattisgarh
 2. The Principal Lahari Multipurpose Higher Secondary School, Chirmiri, District Koriya Chhattisgarh
- Petitioners**

Versus

1. State of Chhattisgarh through the Secretary, Finance Department, Mahanadi Bhawan, Mantralaya, New Raipur, P. S. Rakhi, District Raipur Chhattisgarh
2. The Secretary, Government of Chhattisgarh, School Education Department, Mahanadi Bhawan, Mantralaya, New Raipur, P. S. Rakhi, District : Raipur, Chhattisgarh
3. The District Education Officer, Koriya, District : Koriya (Baikunthpur), Chhattisgarh



4. The Controlling Authority, Under Payment Of Gratuity Act- Cum- Labour Officer, Baikunthpur, District : Koriya (Baikunthpur), Chhattisgarh
5. L. N. Jaiswal S/o Late Mahadev Prasad Jaiswal, Bada Bazar, Post Chirmiri, District : Koriya (Baikunthpur), Chhattisgarh --- Respondents

WPS No. 500 of 2015

Bagbahara Shiksha Samiti Bagbahara. Society Registered Having Its Office At Mandi Road, Ward No. 15, Bagbahara, Tahsil And Police Station Bagbahara, Revenue And Civil District Mahasamund C.G. Pin Code- 493449 Through Its Secretary Abdul Razzaq S/o Eshaq Chamara, Aged About 79 Years, C/o Bagbahara Shiksha Samiti, Mandi Road, Ward No. 15, Bagbahara, Tahsil And Police Station Bagbahara, Revenue And Civil District Mahasamund Pin Code-493449. --- Petitioner

Versus

1. State of Chhattisgarh through The Secretary, Department of Finance And Planning, Mantralaya, Mahanadi Bhawan, Naya Raipur, Tahsil, Revenue And Civil District Raipur C.G. Pin Code- 492001, Chhattisgarh
2. Secretary, Department of School Education, Mantralaya, Mahanadi Bhawan, Naya Raipur, Tahsil Revenue And Civil District Raipur C.G. Pin Code- 492001, District : Raipur, Chhattisgarh
3. Secretary, Department of Scheduled Tribes And Scheduled Caste Development, Mantralaya, Mahanadi Bhawan, Naya Raipur, Tahsil, Revenue And Civil District Raipur C.G. Pin Code- 492001, District : Raipur, Chhattisgarh
4. Secretary, Department of Labour, Mantralaya, Mahanadi Bhawan, Naya Raipur, Tahsil, Revenue And Civil District Raipur C.G. Pin Code - 492001,
5. Director, Directorate of Public Instruction, Pension Bada, Raipur Tahsil, Revenue And Civil District Raipur C.G. Pin Code- 492001,
6. Commissioner, Scheduled Tribes And Scheduled Caste Development Department, Ravishankar University Premises, Tahsil, Revenue And Civil District Raipur C.G. Pin Code- 492001. --- Respondents

WPS No. 5277 of 2014

Rashtriya Vidyalaya Samiti Having Its Office at Bal Ashram Parisar, Kutchery Chowk, Raipur, Civil And Revenue Distt Raipur, Chhattisgarh --- Petitioner

Versus

1. State of Chhattisgarh Through The Secretary, Department of Finance and Planning, Mantralaya, Mahanadi Bhawan, Naya Raipur, Civil And Revenue Distt Raipur, Chhattisgarh
2. Secretary Department of School Education, Mantralaya, Mahanadi Bhawan, Naya Raipur, Civil and Revenue Distt Raipur, Chhattisgarh
3. Secretary, Department of Scheduled Tribes And Scheduled Caste Development, Mantralaya, Mahanadi Bhawan, Naya Raipur, Civil And Revenue Distt Raipur, Chhattisgarh
4. Secretary, Department of Labour Mantralaya, Mahanadi Bhawan, Naya Raipur, Civil And Revenue Dist. Raipur, Chhattisgarh



5. Director, Directorate of Public Instruction, Pension Bada, Raipur, Civil And Revenue Distt Raipur, Chhattisgarh
 6. Commissioner Scheduled Tribes And Scheduled Caste Development Department, Ravishankar University Premises, Civil And Revenue Distt Raipur, Chhattisgarh
- Respondents

For the Petitioners : Mr. Mr. Manoj Paranjpe with Mr. K. Rohan, Advs.
Mr. Sachin Singh Rajput , Advocate,
Mr. Anoop Majumdar Advocate
Mr. Abhyuday Singh, Advocate
Mr. Abhishek Pandey & Mr. I. Lakra, Advocates.

For the State-Respondents : Mr. Alok Bakshi, Addl. Advocate General with
Ms. Akanksha Jain, Dy.G.A.

For other private respondents : Mr. N.K. Vyas, Mr. Sishir Dixit and Mr. Ashish
Beck, Advocates.



Justice Goutam Bhaduri

CAV JUDGMENT/ORDER

1. The common challenge made in the entire batch of petitions is to the order dated 07.06.2013 passed by the Special Officer, Finance Department, Chhattisgarh wherein a cut off date has been fixed as 01.04.2013 for payment of gratuity to the persons who retired after 01.04.2013. These petitions are by the aided institutions. Since the question of law and facts raised in all the petitions are similar, they are decided by this common judgment/order.
2. The teachers of the grant-in-aided schools, who retired prior to 01.04.2013 filed the applications before the Controlling Authority under the Payment of Gratuity Act (hereinafter referred to as "the Act, 1972"). The Controlling Authority on such application ordered for payment of gratuity to the Institution which having been challenged in the appeal u/s 7 of the Act, the same was affirmed. The petitioners, therefore, primarily challenged their liability to pay the gratuity on



the ground that they are 100% aided educational institutions, they are not required to pay the gratuity as the teachers were under the control of the State and further challenge is that the order of the State dt. 01.04.2013 inter-alia making a bifurcation to pay certain teachers with cut-off date over a period of time is illegal.

3. Learned counsel for the petitioners would submit that the petitioners are the educational institutions, they are performing the State functions and get 100% grant-in-aid from the State according to the strength of teachers for payment of salaries. It is contended that earlier admittedly the teachers were not covered for the purpose of gratuity. Subsequent to the judgment rendered in ***Ahmadabad Private Primary Teachers Association Versus The Administrative Officer reported (2004) 1 SCC 755***, the amendment was carried out in the Payment of Gratuity Act on 31.12.2009. The Act is made applicable with retrospective effect i.e., from 03.04.1997. It is contended that the petitioners being aided schools, the appointment of teachers and their salaries are governed by by *C.G. Ashashkiya School Viniyaman Adhiniyam 1975 (hereinafter referred to "Adhiniyam 1975)* and *the Chhattisgarh Ashashkiya Shikshan Sanstha (Anudan Ka Pradaya) Adhiniyam, 1978 (hereinafter referred to "Adhiniyam 1978")*. The pleading is made that it is categorically stated that the petitioners get 100% grant-in-aid and there is no provision to collect fee from the students, as such, it has no source of income separately to pay gratuity to teachers. Learned counsel referred to the definition of 'employer' which finds place in Section 2(f) of the Payment of Gratuity Act, 1972 and would submit that u/s 2(f) the "employer" would cover the definition of words *belonging to or under the control of Central Government or the State Government*. The petitioners thereafter referred to the Act of 1978 and reading the provisions and definition, the counsel would submit that the



teachers would require a necessary skill and should have been in hold of a degree as specified under the Adhiniyam, 1975 as recognition of the school also prescribes such conditions. It is stated that unless and until a person possesses the requisite qualification prescribed under the Act of 1975, he cannot not be appointed as a teacher. Consequently the school can get a recognition with fulfillment of conditions set out by the State and it is only on recognition, the aid can be granted. It is further submitted that the terms and conditions of the employee that too are regulated guided and controlled by the State Government as per the Act of 1975.

4. It is further stated that likewise for payment of salary, the teachers who fulfill the condition of recognition affiliation of the institution can claim the grant as the grant is paid separately for the teachers. Referring to 1978 Act, it is further contended that the institutions neither create any post of teacher nor can change the terms of service and even to dispense with the service, the State intervention is necessary, therefore, the control of entire teachers is under the State, hence, the State would be an employer under the definition of Gratuity Act.
5. The reliance is placed on a decision of the Supreme Court in ***Birla Institute of Technology Vs. State of Jharkhand and others (2019) 4 SCC 513*** to assert the statement and object of the Payment of Gratuity Act, with reference to the definition of employer and further reliance is placed in ***Regional Provident Fund Commissioner Vs. Sanatan Dharam Girls Secondary School (2007) 1 SCC 268*** and would submit that reading of the judgment shows that the wording “*belonging to*” and “*under the control of*” has been interpreted by the Supreme Court and the ratio would be applicable as the interpretation of definition would be *pari materia* to the Acts of 1975 & 1978. It is stated that in such a case, the Supreme Court interpreted the words “under the control of” and “belonging to”



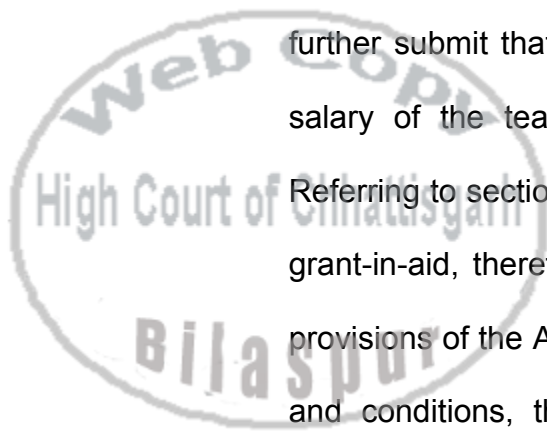
the same words and definition find place in the Payment of Gratuity Act, 1972. Consequently the State cannot disown that the teachers who were receiving the salary under the grant-in-aid were not under the control of the State. It is further stated that if they were under the control of the State, the Payment of Gratuity Act, 1972 which is a central legislation, the liability has to be discharged by the State. The reference is also made to the judgment passed by the M.P. High Court in W.P. No. 5393/2016 *Brij Bihari Singh Chouhan* and would submit that the High Court of M.P., has interpreted the same section and has held that it is the State, who would be the employer under the Act of 1972 and this ratio is upheld in SLP No.16820/2014 by the Supreme Court on 31.10.2014.

6. Learned counsel drawing the analogy of *pari materia* provisions with reference to case law reported in **(2007) 1 SCC 268 (supra)** read out the provisions of 1975 Act and would submit that in case in hand, the ratio *decidendi* would be applicable. The reliance is placed on **(2010) 2 SCC 264; (2008) 3 SCC 111; AIR 1954 S.C. 493** to contend that the interpretation of words “*belonging to*” and “*under control of*” have been interpreted by the Supreme Court in **(2007) 1 SCC 268** which is *pari-materia* to the Act of 1972 and has to be interpreted with reference to State Acts of 1975 & 1978. It is further contended that the Payment of Gratuity Act being a Central legislation, the State by its order dated 07.06.2013 cannot bifurcate a class. It is submitted that it would be totally fallacious to hold that the persons who served before 01.04.2013 would be the employees within the meaning of Gratuity Act and subsequent thereto, they are not. It is further submitted that the contents of letter dated 7th June 2013 also do not find its legislative support under Article 162 & 166 of Constitution of India and it is only a letter issued by the Finance Department, which cannot over ride the Central legislation. Therefore, the order whereby the institutions have been



directed to pay gratuity are bad in law. Consequently the order of the controlling authority cannot be allowed to stand.

7. Per contra, learned State Counsel would submit that the issue whether the institutions are liable to pay the gratuity has been decided by a single bench. It is stated that against that, writ appeal was filed which was withdrawn, so the liability of the schools to pay the gratuity was affirmed by the order of this Court. Referring to section 1978 Act, it is contended that the Act was only to regulate the salaries and grant-in-aid to the teachers of the aided institutions and the grant-in-aid cannot be claimed as a matter of right. Learned counsel would further submit that the State Government consciously taken a decision to pay salary of the teachers and the gratuity cannot be the part of the salary. Referring to section 2 of 1978 Act, he would submit that the State only provides grant-in-aid, therefore, the acts are supervisory in nature. Going through the provisions of the Act of 1978, he would submit that under certain circumstances and conditions, the central consolidated funds are given so that they are properly utilized. With respect to the appointment of teachers, it is stated that since State is conscious to provide education, as such, the quality of teachers would play an important role. Consequently for appointment of the teachers, certain guidelines have been prescribed and since the grant-in-aid is provided, the said factor cannot be left in the hands of the management. Therefore, it will lead to show that the Act is only a regulatory in nature and the State cannot be said to be an employer and the employer would be the Institution/Society which runs the school.
8. The Further submission is made that the grant-in-aid to non-governmental institutions are also governed under the rules which are under the maintenance grant which is defined under the Rule and the grant is only to adjust the deficit of expenditure and income. The State heavily relied on a decision of the





Supreme Court in **AIR 2005 SC Weekly 1951 (Rajasthan Welfare Society Versus State of Rajasthan)** and would submit that in the said case the Supreme Court has observed that the gratuity was not given by holding that it is not part of the salary, consequently in this case the State cannot be directed to pay the gratuity. Elaborating further argument to the definition of admissible expenditure under the Act, counsel would submit that the explanation under the Act and Rules make it clear that the grant is for payment of salary alone and the checks and riders have been provided for the reason that the grant is properly used. Merely since the Cheque and balance have been laid down it cannot be said that the teachers are the employees of the State. Further it is contended that the ultimate liability would not be that of the State as the liability for the gratuity has an independent existence, which has to be borne by the Society/Institution.

9. Referring to letter dated 07th June, 2013 with respect to cut off date, reliance is placed in **(2008) 14 SCC 702; (2004) 2 SCC 76; (1997) 2 SCC 3742 & (2011) 2 SCC 575** and would submit that for financial reasons, if the State has taken a decision and cut-off date has been fixed, it cannot be said to be arbitrary. It is stated that the gratuity is not included in the salary either under the Act of 1978 or the Act of 1975. It is further submitted that the State consciously has taken a liability from a cut-off date and because of the fact the liability has been taken from a particular date, it cannot be said to be arbitrary as it has financial implication. So the State is within its rights to take the decision of the like nature as laid down by the Supreme Court in case (supra).
10. Heard learned counsel for the parties and perused the documents. The challenge made in all these writ petitions are of two aspects, one by order of Controlling Authority/Appellate Authority under the Payment of Gratuity Act, 1972 whereby the payment of gratuity has been directed to be paid to the



employees by the institution, who retired prior to 01.04.2013 and further the Letter dated 07.06.2013 passed by the Special Officer, Finance Department, Chhattisgarh wherein a cut off date has been fixed as 01.04.2013 for payment of Gratuity Act. The said order of finance department reads as under :

छत्तीसगढ़ शासन
वित्त एवं योजना विभाग
मंत्रालय
महानदी भवन, नया रायपुर

क्रमांक 183/एफ-1005172 वित्त /नियम/चार/2013,
2013

नया रायपुर, दिनांक 7 जून,

प्रति,

1. सचिव
छत्तीसगढ़ शासन
स्कूल शिक्षा विभाग
मंत्रालय, नया रायपुर (छ0ग0)
2. सचिव
छत्तीसगढ़ शासन
अनुसूचित जाति एवं जनजाति विकास विभाग
मंत्रालय, नया रायपुर (छ0ग0)

विषय:- 100 प्रतिशत अनुदान प्राप्त शिक्षण संस्थाओं शिक्षक एवं अन्य कर्मचारियों को
उपादान (Gratuity) हेतु अनुदान।

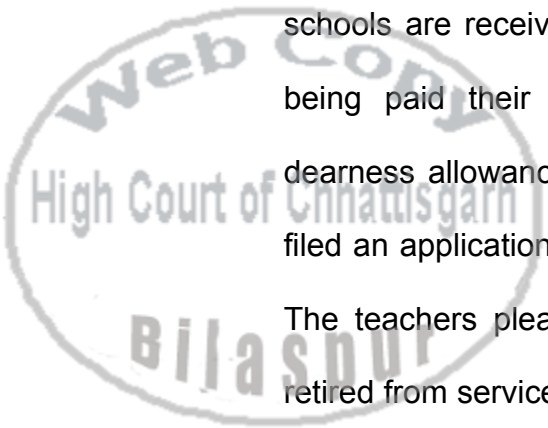
राज्य शासन द्वारा निर्णय लिया गया है कि राज्य शासन से शत प्रतिशत अनुदान प्राप्त शिक्षण संस्थाएं जो स्कूल शिक्षा एवं आदिम जाति कल्याण विभाग के अन्तर्गत संचालित हैं, जिनमें उपदान अधिनियम 1972 के अन्तर्गत निर्धारित सीमा से अधिक कर्मचारी कार्यरत हैं, के कर्मचारियों को उपदान अधिनियम के प्रावधानों के अनुरूप उपदान भुगतान हेतु राज्य शासन द्वारा अनुदान दिया जाएगा।

2/ यह अनुदान दिनांक 1.4.2013 के पश्चात् सेवानिवृत्त कर्मचारियों हेतु दिया जाएगा।

(आलोक कुमार राय)
विशेष कर्तव्यस्थ अधिकारी
छत्तीसगढ़ शासन
वित्त विभाग



11. As referred earlier, one of the challenge more particularly is to the order passed by the Controlling & Appellate Authority. U/s 7 of the Payment of Gratuity Act, 1972 whereby the gratuity has been directed to be paid by the petitioners' institutions to the teachers/employees, who retired prior to 01.04.2013. Subsequently the said order was subject of appeal before the appellate authority u/s 7 sub-section (7) of the Payment of Gratuity Act. The appellate authority thereafter has passed the order to pay the gratuity by the petitioners' institutions. The aforesaid challenge is cumulatively made in all the writ petitions. The common submission of the petitioners is that the petitioners' schools are receiving 100% grant-in-aid and the employees of the school are being paid their salary along-with increment, provident fund contribution, dearness allowance etc., by the State Government. Few of the teachers had filed an application under section 4 and 7 of the Payment of Gratuity Act 1972. The teachers pleaded that they worked for a considerable period and have retired from service on attaining the age of superannuation and they are entitled for gratuity. It was stated by the petitioners that though the payment and all other emoluments were paid by the State through the petitioners' schools being 100% aided institution, however, the gratuity on retirement was not paid. Consequently, the claim was made against the institution. The controlling authority ordered to pay the gratuity by the institution on the basis of Letter of Finance Department to the employees who retired before cut-off date of 01.4.2013. Subsequently when it was subject of challenge, the appellate authority too affirmed the same. The appellate authority in all the cases held that the teachers would be within the definition of section 2(e) of the Act, 1972 and it made a reference to the letter of Government dated 07.06.2013 wherein the State has prescribed a cut-off date that the persons who retired before 01.04.2013, their liability would not be owned by the State. By such Letter, the





State accepted their liability to pay gratuity to the persons who retired after 01.04.2013. Consequently, the liability has been fastened on the petitioners' institutions with respect to teachers who retired before 01.04.2013. On the contrary, the petitioners contended that the institution is 100% government aided school, therefore, the teachers for whom the gratuity was directed to be paid who retired prior to 01.04.2013, the State cannot make distinction to disown the liability by a bifurcation.

12. In ***Ahmadabad Private Primary Teachers Association Versus The Administrative Officer reported (2004) 1 SCC 755***, the Court ruled that the teachers would not be covered within the definitions of the employee under section 2(e) of the Act of 1972. The decision rendered in *Ahmadabad Private Primary Teachers Association (supra)* led the parliament to amend the definition of the employee. The object and reason has been squarely dealt with and reiterated by the Supreme Court in ***(2019) 4 SCC 513***, wherein at Paras 21 to 24 considering the object of the amendment, it was held that the teachers were entitled to claim the gratuity under the payment of Gratuity Act from their employer with effect from 03.04.1997, a retrospective date. For the sake of convenience, Paras 21 to 24 of the Judgment are quoted below :

“21. It is clear from the statement of Objects and Reasons of the Payment of Gratuity (Amendment) Bill, 2009 introduced in the *Lok Sabha* on 24.02.2009, which reads as under :

“State of Objects and Reasons”

The Payment of Gratuity Act, 1972 provides for payment of gratuity to employees engaged in factories, mines, oilfields, plantations, ports, railway companies, shops or other establishment and for matters connected therewith or incidental thereto Clause (c) of sub-section (3) of Section 1 of the said Act empowers the Central Government to apply the provisions of the said Act by notification in the Official



Gazette to such other establishments or class of establishments in which ten or more employees are employed, or were employed on any day preceding twelve months. Accordingly, the Central Government had extended the provisions of the said Act to the educational institutions employing ten or more persons by notification of the Government of India in the Ministry of Labour and Employment vide number S.O. 1080, dated 3-4-1997.

2. The Hon'ble Supreme Court in its judgement in Ahmedabad Private Primary Teachers Assn. v. Administrative Officer had held that if it was extended to cover in the definition of 'employee', all kind of employees, it could have as well used such wide language as is contained in clause (f) of Section 2 of the Employees Provident Funds and Miscellaneous Provisions Act, 1952 which defines 'employee' to mean any person who is employed for wages in any kind of work, manual or otherwise, in or in connection with the work of an establishment. It had been held that non-use of such wide language in the definition of 'employee' under clause (e) of Section 2 of the Payment of Gratuity Act, 1972 reinforces the conclusion that teachers are clearly not covered in the said definition.

3. Keeping in view the observations of the Hon'ble Supreme Court, it is proposed to widen the definition of 'employee' under the said Act in order to extend the benefit of gratuity to the teachers. Accordingly, the Payment of Gratuity (Amendment) Bill, 2007 was introduced in Lok Sabha on 26-11-2007 and same was referred to the Standing Committee on Labour which made certain recommendations. After examining those recommendations, it was decided to give effect to the amendment retrospectively with effect from 3-4-1997, the date on which the provisions of the said Act were made applicable to educational institutions.

4. Accordingly, the Payment of Gratuity (Amendment) Bill, 2007 was withdrawn and a new Bill, namely, this Payment of Gratuity (Amendment) Bill, 2009 having





retrospective effect was introduced in the Lok Sabha on 24-2-2009. However, due to dissolution of the Fourteenth Lok Sabha, the said Bill lapsed. In view of the above, it is considered necessary to bring the present bill.

5. The Bill seeks to achieve the above objectives.

New Delhi;

The 12-11-2009.”

“Mallikarjun Kharge”

22. The definition of “employee” as defined under Section 2(e) was accordingly amended with effect from 03.04.1997 retrospectively vide Payment of Gratuity (Amendment) Act, 2009 published on 31.12.2009. the amended definition reads as under :

“2. (e) “employee” means any person (other than an apprentice) who is employed for wages, whether the terms of such employment are express or implied, in any kind of work, manual or otherwise, in or in connection with the work of a factory, mine, Oilfield, plantation, port, railway company, shop or other establishment to which this Act applied, 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.”

23. In the light of the amendment made in the definition of the word “employee” as defined in Section 2(e) of the Act by Amending Act 47 of 2009 with retrospective effect from 03.04.1997, the benefit of the Payment of Gratuity Act was also extended to the teachers from 03.04.1997. In other words, the teachers were brought within the purview of “employee” as defined in Section 2(e) of the Payment of Gratuity Act by Amending Act 47 of 2009 with retrospective effect from 03.04.1997.

24. The effect of the amendment made in the Payment of Gratuity Act vide Amending Act 47 of 2009 on 31.12.2009 was twofold. First, the law laid down by this Court in *Ahmedabad Private Primary Teachers' Assn. (2004) 1 SCC 755*, was no longer held entitled to claim the amount of gratuity under the Payment of Gratuity Act from their employer with effect from 03-4-1997.”





13. Since this issue has been settled that the teachers are entitled for gratuity, the primary question which comes to fore is as to who will pay the gratuity. Is it the State as the institutions are 100% government aided or is it to be borne by the Institution as according to the State the grants-in-aid do not include the gratuity. The State urged that since the financial liability is to be incurred, it has right to lay down a cut-off date to own or disown the liability under the Payment of Gratuity Act 1972, by letter dated 07.06.2013. This is not in dispute that the petitioners are receiving the grants-in-aid to the extent of 100% with respect to the payment to such teachers/employees for which the gratuity has been ordered to be paid. In order to get the aid, the institution has to be recognized.

Therefore, the recognition is a requisite condition to be fulfilled.

14. The "recognition" is governed by the Chhattisgarh *Ashaskiya School Viniyaman Adhiniyam, 1975 (33 of 1975)*. Section 6 deals with Recognition of Schools. The object of the Act is to provide for regulation of non-government Schools in the State for their better organisation and development and matters connected therewith or incidental thereto. Section 6(1) of the Act provides that the Appropriate Authority may, on an application made to it in the prescribed form and in the prescribed manner, recognize any school or grant permission for opening of a higher class in any existing school. The conditions however have been prescribed from 6 (1)(a) to 6(1)(f) which reads as under:

(a) has adequate funds to ensure its financial stability for a period of not less than three years;

(b) has a scheme of management of the school in accordance with the rules made in this behalf ;

(c) has suitable and adequate accommodation and sanitary facilities having regard, among other factors, to the number, age and sex of the pupils attending it;

(d) provides for courses of study, use of books and efficient instruction as may be laid down by or under any other law for the time being in force;



(e) has teachers possessing such qualifications as may be prescribed;

(f) has facilities as may be prescribed for physical education, library service, laboratory work, workshop practice and other curricular activities.”

15. Section 7 of the Adhiniyam 1975 controls the aid to the recognized schools which reads as under:

7. Aid to Recognised Schools :-

(1) The State Government may, subject to such conditions as may be prescribed, grant aid to recognised schools to such extent as it may consider necessary.

(2) Every existing school receiving aid, immediately before the commencement of this Act, shall be eligible for continuance of such aid so long as it fulfils the conditions for receiving aid prescribed under sub-section (1)

16. Under Chapter 3, terms and conditions of service of employees are also prescribed in Section 9 which reads as under:

“9. Terms and Conditions of Service of Employees :-

(1) The State Government may make rules regulating the minimum qualifications for recruitment and the conditions of service of employees of recognised school :

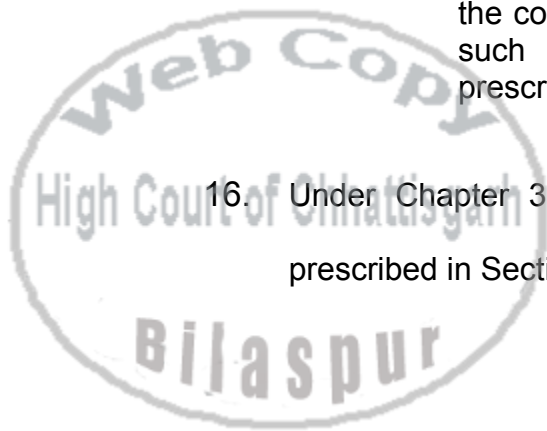
Provided that neither the salary nor the rights in respect of leave of absence and pension of an employee in the employment of an existing school at the commencement of this Act shall be varied to the disadvantages of such employees :

Provided further that every such employee shall be entitled to opt for terms and conditions of service as they were applicable to him immediately before the commencement of this Act.

(2) No existing employee or employee of a recognised school shall be dismissed removed or reduced in rank nor shall his services be otherwise terminated save in accordance with the rules made in this behalf;

(3) Any existing employee or employee of a recognised school who is dismissed, removed or reduced in rank may within thirty days from the date of communication to him of the order of such dismissal, removal or reduction in rank, appeal against such order to the Tribunal constituted under Section 11.

(4) If an existing employee or employee who is placed under suspension, continues to be so for more than three months he may make an application for revision to the Director. After giving opportunity of being heard to the parties concerned, the Director shall pass such orders thereon as he may deem fit.





(5) Notwithstanding anything contained in sub-section (2), sub-section (3) or sub-section (4), the provisions of these sub-sections shall not apply to the employees of schools established and administered by local bodies.”

17. Likewise the **C.G. Ashaskiya Sikshan Sanstha (Anudan Ka Pradaya)**

Adhiniyam, 1978 was promulgated with the following object :

“An Act to make provision for regulating payment of salaries to teachers and other employees of Non-Government Schools receiving grant in aid from the State Government and Non-Government Educational Institutions for Higher Education receiving grants from the *Madhya Pradesh Uchcha Shiksha Anudan Ayog* and other matters ancillary thereto”.

18. In the Act of 1978, section 2(d) defines the 'employee' and 2(e) defines

'institution' and 2(i) defines “teacher” which are as under :

2 (d) “Employee” means an employee of institution other than a teacher shown on the pay roll of the institution against a post as being in the employment as such but does not include an employee whose appointment is disapproved under clause (c) of section 6;

2 (e) “Institution” means a non Government School or non government Educational Institution for higher education for the time being receiving maintenance grant from the State Government or from the Madhya Pradesh Uchcha Shiksha Anudan Ayog as the case may be, established; administered and managed by a society registered or deemed to be registered under the *Madhya Pradesh Society Registrikaran Adhiniyam, 1973 (No.44 of 1973)* but does not include an institution established, administered and managed by

- (i) the Central government; or
- (ii) the State Government; or
- (iii) a local authority; or
- (iv) any agency managed, controlled, approved or sponsored by the Central Government or the State Government, as the State Government may, by notification, specify;
- (v) a non-trading corporation formed and registered under the Madhya Pradesh Non-Trading Corporation Act, 1962 (No.20 of 1962) or deemed to have been registered thereunder ;

2 (i) “Teacher” means a teacher of an institution employed in fulfillment of the conditions of recognition/affiliation of an institution or of a new subject or a higher class or a new section in the existing class by the Mahdya Pradesh Board of Secondary Education or any University or the Ayog, as the case may be, and



shown on the pay roll of the institution against a post as being in the employment as such but does not include a teacher whose appointment is disapproved under clause (c) of section 6;

19. Section 5 of the Act of 1978 would also be relevant and is quoted below :

“5. Constitution of Institutional fund for payment of salaries of teachers, etc., and amounts to be deposited therein.

(1) There shall be opened in a nationalised bank, a separate account which shall be constituted as a separate fund for the Institution (hereinafter referred to as the Institutional Fund) in accordance with the rules made in this behalf.

(2) The grant as fixed by the State Government from time to time shall be payable to the Institution as a block grant. The grant shall be given to the institution after furnishing by it the utilization certificate of the previous grant alongwith detailed audited account and annual account statement.

(3) The management shall place at the credit of the institutional fund by the last day of every month the total amount of fees recovered from the students of the Institution.

(4) In addition to the fee deposited under sub-section (3), the management shall place to the credit of the Institutional Fund by the 10th of every month for payment of salary to teachers and employees of the institution for the preceding month such further sums as may be required to make the 1/12th of the total amount credited under sub-section (2) together with amount credited under sub-section (3) equivalent to 1/12th of the total salary payable to teachers and employees of the Institution with institutions contribution to the provident fund account of those teachers and employees per annum.

(5) No money credited to the institutional fund shall be applied for any purpose except the following, namely :-

(a) Payment of salaries falling due for any period after the approved date;

(b) Credit of the institutions contribution, if any, to the provident fund accounts of the teachers and employees”.

20. Sub-section (5) of section 5 would show that no money credited to the institutional fund shall be applied or utilised for any purpose except payment of salaries and credit of the institutions contributions if any to the P.F. A/c of the teachers and employees. Section 6 deals with prohibition on creation of posts and appointments of staff and termination of services. Reading of language of section 6 shows that the management of any institution shall not create posts of



teacher or employee or cannot recruit them without following the procedure and that too the teachers or employees of the institution should fulfill the criteria of minimum qualification as prescribed. It further shows that no teacher or employee shall be dismissed/removed from service except by an order passed after following such procedure as may be prescribed.

21. A conjoint reading of the Adhinyam 1975 and Adhinyam 1978 contemplates the supervision and control of the State over the teachers in a recognized aided institution. In the Payment of Gratuity Act 1972 which is a central legislation, section 1(3)(c) purports that the Central Government is the authority to make applicability of the Gratuity Act, to any establishment or class of establishment.

For the sake of brevity, section 1(3)(c) is reproduced herein-below :



1. Short title, extent, application and commencement :-

(1)

(2)

(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".

22. The definition of the employee under the Payment of Gratuity Act, 1972 has already been reproduced earlier in the preceding paragraphs. The 'employer' which is defined u/s 2(f) of the Payment of Gratuity Act 1972 reads as under :

“2(f) “**employer**” means, in relation to any establishment, factory, mine, Oilfield, plantation, port, railway company or shop-



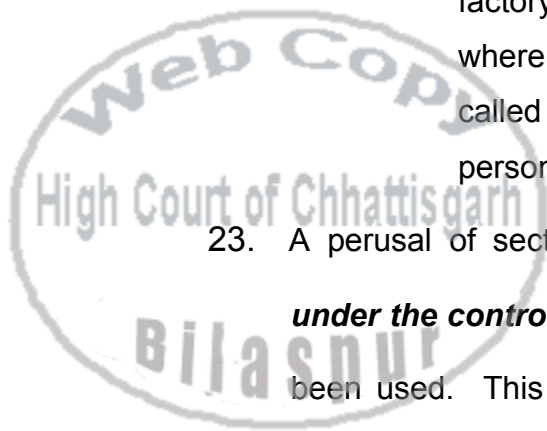
(i) **belonging to, or under the Control of**, the Central Government or a State Government, a person or authority appointed by the appropriate Government for the supervision and control of employees, or where no person or authority has been so appointed, the head of the Ministry or the Department concerned,

(ii) **belonging to, or under the control of**, any local authority, the person appointed by such authority for the supervision and control of employees or where no person has been so appointed, the chief executive officer of the local authority,

(iii) in any other case, the person, who, or the authority which, has the ultimate control over the affairs of the establishment, factory, mine, oilfield, plantation, port, railway company or shop, and where the said affairs are entrusted to any other person, whether called a manager, managing director or by any other name, such person”.

23. A perusal of section 2(f)(i) shows that the phraseology “**belonging to, or under the control of the Central Government or a State Government**” has been used. This needs to be interpreted whether the said definition can be applied in respect of the State to hold them within the definition of an employer. The Supreme Court in *Regional Provident Commissioner Vs. Sanatan Dharam Girls Secondary School (2007) 1 SCC 268 (supra)* had occasion to construe the specific words **belonging to** or **under the control of Central or State Government** while interpreting the Provident Fund Act with respect to the employer. Para 29 of the said judgment would be relevant and quoted below:

“29. In respect to the contention of the respondent that the establishment belonging to or under the control of the Central Government or a State Government, it was submitted that the establishments must either be (a) belonging to, or (b) under the control of the Central Government or the State Government. In our view, the two words used in the said section have different connotations. The words “belonging to” signify ownership i.e., the Government-owned institutions would





be covered under the said part and the words “under the control of” signify control other than ownership since ownership has already been covered under the words “belonging to”. It must also be noted that the two words are separated by the word “OR” and therefore these two words refer to two mutually exclusive categories of institutions. While the institutions “belonging” to the Central or the State Government would imply the control of the State but the privately-owned institutions can be “under the control of” the Government in various ways”.

24. At para 30 of the judgment, how the “control” is to be interpreted has been laid down. While interpreting the word “control” used in the State Act, certain functions prescribed therein were considered. For the sake of convenience, Para 30 is quoted below:

30. Under the State Act itself, the “control” by the State is in the following ways :

(a) Under section 3 of the State Act, the State Government grants recognition to the “non-government educational institutions”.

It was submitted that recognition by the State is of prime importance for running and operating an educational institution. The said recognition can be withdrawn on the failure of the institution to abide by the terms and conditions of the grant of recognition.

(b) Under Section 7 of the State Act, the State Government grants aid to only recognised educational institutions. The aid given by the State can be used only for the purpose for which the aid has been given. Under section 8, the institutions are thereafter required to keep accounts in the manner prescribed by the State. It was submitted that in such manner, the State exercises *financial control* over the institutions.

(c) Under Section 9, it has been prescribed that the institutions shall be governed by a managing committee and section 10 of the Act empowers the State to take over management of the





institutions “whenever it appears to the State that the Managing Committee has neglected to perform the duties assigned to it by or under the Act or the rules made thereunder.

(d) Chapter V of the Act relates to properties of the institutions and the manner in which the institutions can manage the properties of the institution. It was submitted that under Section 13 of the Act, the institutions have to apply and get the approval of the competent authority set up under the said Act before transferring the management of the institution. Under section 15, restrictions have been placed on the transfer of immovable properties of the institutions.

(e) Section 14 of the Act prohibits closure of any institution or its class or the teaching of any subject therein without any notice in writing to the competent authority. It was submitted that the Government thus has *functional control* over the institution.

(f) Chapter VI of the State Act deals with recruitment and removal, etc. of employees. Their salary, conditions of service, provident fund, code of conduct are all prescribed under the Act. The Act further prescribes setting up of a tribunal for resolution of the dispute whose decision is final and binding on the parties.

25. When such interpretation is compared with the provisions of C.G. Ashaskiya School Viniyaman Adhinyam, 1975 (33 of 1975) and Chhattisgarh Ashaskiya Sikshan Sanstha (Anudan Ka Pradaya) Adhinyam, 1978, the following tabulated chart comes out to interpret the word “control”.

S.No	Provisions discussed in Judgment reported in 2007 (1) SCC 268	Provisions of Adhinyam, 1975	Provisions of Adhinyam, 1978
01.	Para 30 (a) U/s 3 of the State Act the State Government grants recognition to the non-government educational institution.	Section 6 (1) of the Act provides that the appropriate authority may on an application made to it in the prescribed form, recognize any school or grant permission for opening of a higher class in any existing school subject to fulfilment	

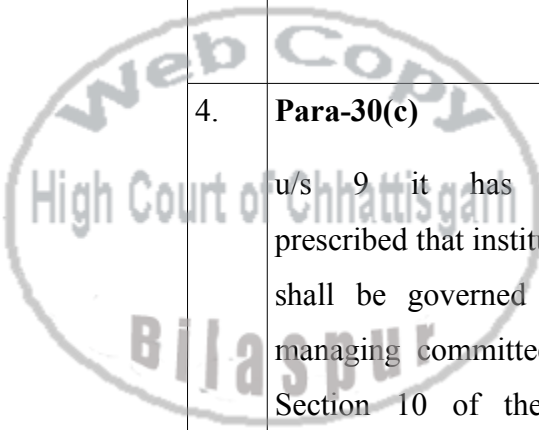




S.No	Provisions discussed in Judgment reported in 2007 (1) SCC 268	Provisions of Adhiniyam, 1975	Provisions of Adhiniyam, 1978
		<p>of the conditions mentioned in 6(1) (a) to (f).</p> <p>It further purports that the recognition shall not be given unless and until the institution fulfills the conditions of Section 6(1)(a) to (f) of the State Act.</p> <p>The said recognition can be withdrawn on the failure of the institution to abide by the terms and conditions of the grant of recognition.</p>	
2.	<p>Para 30 (a) sub-para</p> <p>The recognition can be withdrawn on the failure of the institution to abide by the terms and conditions of the grant of recognition</p>	Section 6(5)(b) of the Act provides that after obtaining recognition or permission if the management of a school fails to comply with any of the condition specified in the provision to sub-section(1), the appropriate authority may withdraw the recognition or permission.	
3.	<p>Para 30(b)</p> <p>U/s 7 of the State Act 1975 the State Government grants aid to only recognized educational institution and the aid given by the State can be used only for the purpose for which the aid has been given.</p>	Section 7 sub-section (1) of the Act provides that the State Government may subject to such condition as may be prescribed grant aid to the recognized schools to such an extent as it may consider necessary. Sub-section (2) of Section 7 provides that every existing school receiving the aid, immediately before the commencement of this Act shall be eligible for continuance of such aid so long as it fulfils the conditions for receiving the aid under sub-section (1).	

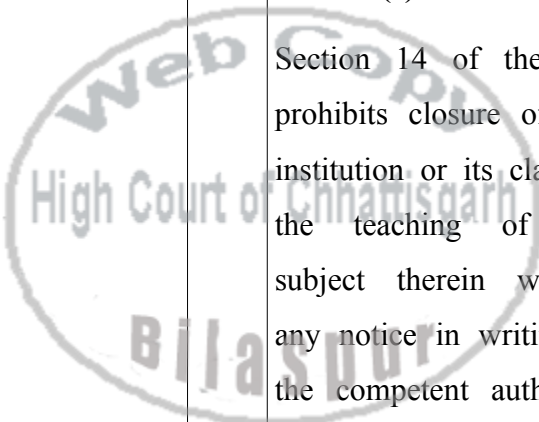


S.No	Provisions discussed in Judgment reported in 2007 (1) SCC 268	Provisions of Adhiniyam, 1975	Provisions of Adhiniyam, 1978
3(a)	<p>Para 30(b) U/s 8 the Institutions are thereafter required to keep the accounts in manner prescribed by the State it was submitted that in such manner the State exercises financial control over the institutions.</p>	<p>Chapter 5 Miscellaneous</p> <p>Section 17(3) of the Act provides that the management committee of every recognized school shall file every year with Director such duly audited financial and other returns as may be prescribed and such returns shall be audited by such authority as may be prescribed under the Act.</p>	
4.	<p>Para-30(c) u/s 9 it has been prescribed that institutions shall be governed by a managing committee and Section 10 of the Act empowers the State to take-over management of the Institution when the managing committee has neglected to perform the duties under the Act or Rules.</p>	<p>Chapter-IV Supersession of the Management of Recognised Schools</p> <p>Section 12(1) provides that whenever the State government is satisfied that the Managing Committee or Manager of any recognized school, has neglected to perform any of the duties imposed on it by or under this Act or any Rules made thereunder, it is expedient in the interest of the school education to take over the management of such school.</p> <p>After hearing the Management, the State Govt. can extend the control over the management from time to time for for a maximum period of 3 years and even beyond the period of 3 years. Sub-section (2) of S.12 purports that when the management is taken over, the Management would deliver the possession of the</p>	





S.No	Provisions discussed in Judgment reported in 2007 (1) SCC 268	Provisions of Adhiniyam, 1975	Provisions of Adhiniyam, 1978
		<p>School property to the State Government and sub-section (3) says that after taking- over the management, the State may arrange to manage the school affairs through the director or any other person duly authorised as “authorized officer”</p>	
6.	<p>Para 30(e)</p> <p>Section 14 of the Act prohibits closure of any institution or its class or the teaching of any subject therein without any notice in writing to the competent authority. It was submitted that the Government thus has <i>functional control</i> over the institution</p>	<p>Chapter 2 – Establishment and Recognition of School Education.</p> <p>Section 3 deals with power of the State Government to regulate the School Education. As per section 3 the State Government may regulate education in all the schools in the State. in the State</p> <p>Section 4(1) provides that after commencement of the Act the establishment of a new school or opening of a higher class in any existing school or closing down of school or class in any school in state shall be subject to the provisions of the Act.</p> <p>As per section 4(1) of the Act, 1975, the establishment of a new school or the opening of a higher class in any existing school or closing down of a school or a class in any school in the State shall be subject to the provisions of this Act and the higher classes opened or established otherwise in accordance</p>	





S.No	Provisions discussed in Judgment reported in 2007 (1) SCC 268	Provisions of Adhiniyam, 1975	Provisions of Adhiniyam, 1978
		with the provisions of the Act, shall not be recognized and if sub-section (2) of S.4 purports that the appropriate authority may by order in writing require the management of the school to satisfy the conditions of the recognition.	
7.	<p>Para-30(f) – Chapter VI of the State Act deals with recruitment and removal, etc. of employees. Their salary, conditions of service, provident fund, code of conduct are all prescribed under the Act. The Act further prescribes setting up of a tribunal for resolution of the disputes whose decision is final and binding on the parties.</p>	<p>Chapter 3 of the Adhiniyam, 1975</p> <p>Section 9 provides terms and conditions of service of employees.</p> <p>Sub-section(1) of section 9 contemplates that the State Government may make rules regulating the minimum qualifications for recruitment and conditions of service of employees of recognized schools and when the school is recognized, the salary and other benefits like leave, pension, shall not be varied to the advantage of the employee.</p> <p>Sub-section (2) of section 9 further says that no existing employee or employee of a recognized school shall be dismissed, removed or reduced in rank nor shall his services be otherwise terminated save in accordance with the rules made.</p> <p>Sub-section (3) of section 9 says that the existing employee of a recognized school who is dismissed, removed or reduced in rank may,</p>	



S.No	Provisions discussed in Judgment reported in 2007 (1) SCC 268	Provisions of Adhiniyam, 1975	Provisions of Adhiniyam, 1978
		<p>within thirty days from the date of communication to him of the order of such punishment, file appeal to the Tribunal constituted under Section 11.</p> <p>Section 10 purports that the Employees shall be governed by the Code of Conduct.</p>	
7(a)	<p>Para 30(f) The Act further prescribes setting up of tribunal for resolution of the disputes whose decision is final and binding on parties.</p>	<p>Section 11 provides that the State Government may, by notification, constitute such tribunal as the case may be.</p>	
8.	<p>Para 31 The State Govt., also exercise administrative control over the institution. Section 17 deals with the manner of recruitments and Section 18 deals with procedure by which the employee may be removed or dismissed or reduced in rank. Section 28 permits the government to prescribe the code of conduct of employees.</p>	<p>Section 9 deals with the manner of recruitment.</p> <p>Sub-sections (2) & (3) of section 9 purports that the employees of recognized schools shall be dismissed or removed or reduced in rank only in accordance with the rules.</p> <p>Section 10 lays down that the employees shall be govern by code of conduct prescribed by the government.</p>	<p>Section 6 of the Adhiniyam, 1978 provides prohibition on creation of posts and appointment of staff and termination of services.</p> <p>Section 6 (a)(i) purports that no post of a teacher or other employee shall be created and no teacher or other employee shall be recruited without following the procedure.</p> <p>Section 6(a)(ii) purports that the teachers and employees shall have such qualifications and experience as may be prescribed.</p> <p>Section 6 (a) (iii) purports that no teacher or employee shall be dismissed, removed or terminated except by an order passed after following</p>



S.No	Provisions discussed in Judgment reported in 2007 (1) SCC 268	Provisions of Adhiniyam, 1975	Provisions of Adhiniyam, 1978
			procedure prescribed by the government.

26. When the judgment rendered in *Regional Provident Fund Commissioner (2007) 1 SCC 268* is compared as against the existing 1975 Act & 1978 Act, which control the recognition and payment of salary to the teachers of the recognized aided schools, it signifies that even though the institutions are not owned by the State but the State Government exercises substantive control over the institution. While interpreting the words “*belong to or under the control of*” the Court has followed the earlier decisions wherein the word “control” has been defined. Para 33 & 34 of the judgment would be relevant and quoted below :

“33. However, this Court in *Shamrao Vithal Coop. Bank Ltd. V. Kasargod Pandhuranga Mallya (1972) 4 SCC 600* at page 604, para 6 has cited with approval the meaning of the word “control” as it appears at p.442 of *Words & Phrases, Vol.9, Permanent Edition* as under :

“The word 'control' is synonymous with superintendence, management or authority to direct, restrict or regulate.”

34. In *State of Mysore v. Allum Karibasappa (1974) 2 SCC 498* at Page 501, Para 16 this Court defined the word “control” as under :

“The word 'control' suggests check, restraint or influence. Control is intended to regulate and hold in check and restrain from action.”

27. If the aforesaid text laid by the Supreme Court is translated into the provisions of 1975 Act and 1978 Act, it clearly shows that the State Government has the power of superintendence or the authority to direct, restrict or regulate the functioning of the educational institutions, which would therefore be within the



meaning of “control” as defined under the Gratuity Act to be as an employee. In **Ashok Kumar v. Ved Prakash (2010) 2 SCC 264**, the Court has held that the decision concerning one legislation can always have a persuasive value for the Court while considering constitutionality of a very similar provision, albeit in a different legislation. Therefore, if the *ratio decidendi* in the judgment of Supreme Court reported in (2007) 1 SCC 268 (supra) which has interpreted the word “control” of State control over the institutions and by putting it in juxtaposition with the 1975 Act and 1978 Act it shows that the decision and its ratio would be applicable to interpret the word “control”. What is of the essence in a decision is its ratio. Not every observation found therein nor what logically flows from those observations is the *ratio decidendi*. Consequently, though the judgment of (2007) 1 SCC 268 (supra) was rendered in the back-drop of provident fund, but the wording 'under the control of “ has been defined which also finds place in the Payment of Gratuity Act, 1972 with context to the employer.

28. The similar question also came up for consideration as against the Gratuity Act before the High Court of Madhya Pradesh in **W.P. No. 5393 of 2016 (Brij Bihari Chauhan and others Vs. State of M.P)** and connected cases decided on 21.06.2017. It was a case of gratuity with respect to the teachers of the aided institutions. The Court while following the decision rendered in W.A.No.417/2009 (**J.C. Mills Educational Institutions Vs. Smt. Ashindra Tiwari**) held at paragraphs 10, 11 & 18 that :

“10. As far as grant of gratuity for teachers/employees of the grant in aid institutions is concerned, the same is no longer res integra in view of the order dated 30.07.2012 passed in J.C. Mills case (Supra) by the Division Bench of this Court wherein J.C. Mill was a 100% grant in aided institution and in case of its employees, it has been directed to the respondents/State to pay the gratuity to the teacher/employees of the grant in aid



institutions. Once, the Division Bench of this Court has granted the benefit of gratuity to the employee/teacher of the grant in aided institution and the same has attained the finality at the Apex level wherein special leave to appeal preferred by the State of M.P., has been dismissed, therefore, now no occasion arises for this Court to take a different view.

11. Respondents could not make out a case wherein factual differentiation could persuade this Court to take a different view. From the record, it appears that the petitioners are similarly situated employees vis a vis teachers/employees of J.C.Mills Educational Institution and similarly the status of the institution of J.C.Mills is also of grant in aided institution just like the case in hand therefore, considering the fact situation of the case the writ petition preferred by the petitioners is hereby allowed and petitioners are entitled to get the benefit of payment of gratuity as per the provisions of Payment of Gratuity Act, 1972 just like their counter part in the government schools/institutions.

18. Even otherwise, by the effect of Act of 1978 and Rules of 1983, grant in aided institutions are working as the extended arms of the State Government to impart higher education. A noble cause with a novel idea devised by the State Government in the field of higher education but off late, somehow given a decent burial by the compelling circumstances, still the employees/teachers who were appointed prior to 01.04.2000 cannot be left at the mercy of the management of the grant in aided institutions. State of M.P., has to pay the gratuity to the teachers/employees of grant in aided institutions like the present petitioners/employees/teachers who are appointed prior to 01.04.2000 under the Act of 1972. Resultantly, the petition preferred by the petitioners stands allowed and disposed of accordingly”.

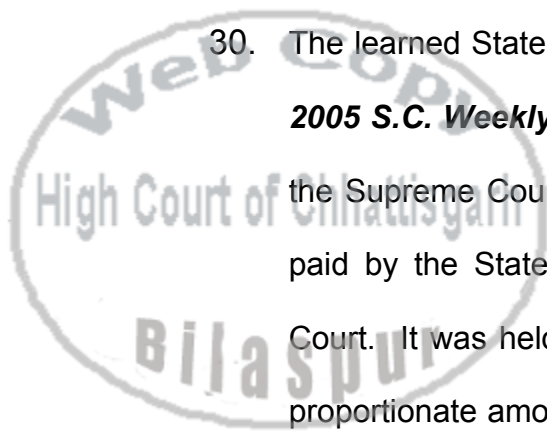
29. The Court finally held that by effect of the Act of 1978 and Rules 1983, the grant-in-aided institutions are working as the extended arms of the State Government to impart higher education. Therefore, the persons appointed in





the educational institutions whether employee or teacher are entitled to receive gratuity irrespective of their date of appointment. The initial order of J.C.Mills Educational Institution was subject of challenge before the Supreme Court in SLP No.16820/2014 and the Supreme Court dismissed the said petition whereby the finding that the gratuity would be payable to the employees of the grant-in-aided institutions was upheld. Therefore, considering the law laid down by the Supreme Court and the entire facts situation of the case, the State Government would be the employer for the purpose of Payment of Gratuity Act, 1972 which is an enactment of State Legislature.

30. The learned State Counsel has heavily relied on the judgment rendered in ***AIR 2005 S.C. Weekly, 1959***. In such case, the contention of the petitioner before the Supreme Court was that the gratuity is part of salary, therefore, should be paid by the State. The said proposition was not accepted by the Supreme Court. It was held that the educational institution is not entitled to include the proportionate amount of gratuity in the approved expenditure for the purpose of computation of grant-in-aid as per Rajasthan non-governmental institution (recognition of grant in aid service conditions etc) Rules. The said judgment was rendered in the different back-ground and more so when there was no amendment in The Gratuity Act, 1972, the amending Act No.47 of 2009 which was given the effect with retrospective date from 03.04.1997 which allows the payment of gratuity to teachers from back date. However, the judgment of 2005 (supra) was rendered on behalf of *Rajasthan Welfare Society* against the State of Rajasthan wherein the prayer was made by the Association on behalf of teachers that the Gratuity should also be paid to the teachers by including the same in the salary (i.e., grant). The Supreme Court in such facts situation held that the gratuity cannot come under the category of maintenance, consequently ordered that it cannot be made a part of recurring grant. So the

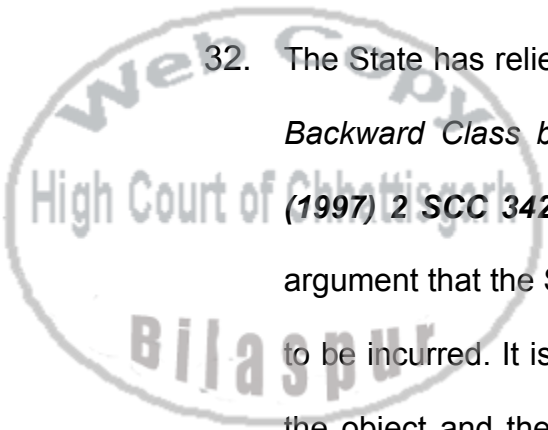




argument of the State that the grants-in-aid do not include the gratuity is not an issue to be considered here. Rather, as per the discussion made in the foregoing paragraphs and taking into consideration of words *control of Government* it is held that the State would be the employer within the definition of Gratuity Act, 1972. for the teachers of institutions receiving grant-in-aid.

31. The further submission is made by the petitioners that the cut-off date of 01.04.2013 as carved out by the communication dated 07th June, 2013 Special Officer Finance Department is unreasonable, arbitrary, discriminatory and violative of Article 14 of the Constitution of India and not legal.

32. The State has relied upon case laws in **(2004) 2 SCC 726 Ramarao v. All India Backward Class bank Employees Welfare Association**; **(2011) 2 SCC 575**; **(1997) 2 SCC 342 State of Rajasthan v. Amrit Lal Gandhi** to advance the argument that the State has right to fix up a cut-off date when financial liability is to be incurred. It is stated that such classification has a reasonable nexus with the object and the Government has prerogative to fix up a cut-off date in the case of incurring a financial liability. In this context, when the letter of finance Department dt. 07.6.2013 is seen, it shows that the State has taken a decision and liberally considered to grant gratuity to certain set of teachers who retired after 01.04.2013. When the letter communication dated 07th June, 2013 is perused, it shows that neither it is a notification nor issued under the Executive Instruction. Primarily, the executive instructions are passed under Article 166 of the Constitution of India in the name of Governor. The said letter was issued by one Special Officer of the Finance Department. Nothing is on record to justify the authority of such letter. The issue also can be considered with another angle that when a cut-off date is made with respect to applicability of Payment of Gratuity Act, it cannot be saved under Article 162 even under the extent of Executive Power of the State as the Article postulates that the State has power

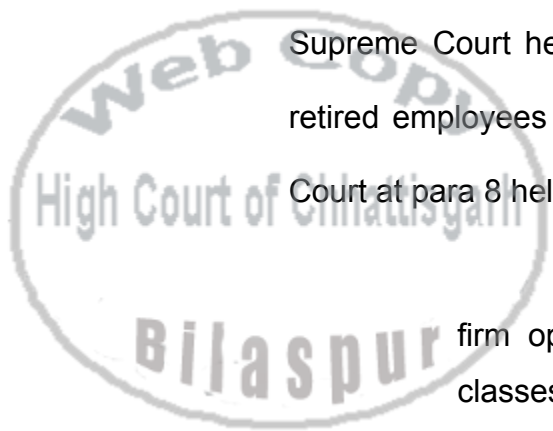




to issue instructions wherein it has power to legislate. The Gratuity Act, 1972 is a central Act. Section 1(3)(c) gives the power to the Central Government for application of the Act. Consequently the direction of the officer of the Finance Department dt. 07th June 2013 giving a cut off date not to grant gratuity to the teachers retired prior to 01.04.2013 appears to be without any jurisdiction.

33. Further such direction to lay down a cut-off date would be against the principles laid down in ***All Manipur Pensioners Association v. State of Manipur AIR 2019 S.C. 3338***. In the aforesaid judgment where the specific cut off date was fixed to grant certain set of beneficiaries to avail pension depriving others, the Supreme Court held that two classes cannot be created with respect to the retired employees for the purpose of grant of revised pension. The Supreme Court at para 8 held as under :

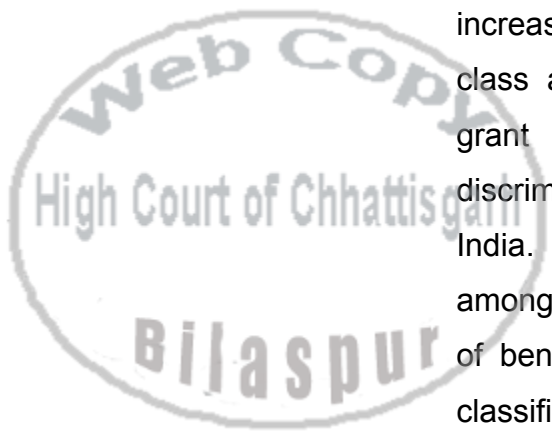
“8. Even otherwise on merits also, we are of the firm opinion that there is no valid justification to create two classes, viz., one who retired pre-1996 and another who retired post-1996, for the purpose of grant of revised pension. In our view, such a classification has no nexus with the object and purpose of grant of benefit of revised pension. All the pensioners form a one class who are entitled to pension as per the pension rules. Article 14 of the Constitution of India ensures to all equality before law and equal protection of laws. At this juncture, it is also necessary to examine the concept of valid classification. A valid classification is truly a valid discrimination. It is true that Article 16 of the Constitution of India permits a valid classification. However, a very classification must be based on a just objective. The result to be achieved by the just objective presupposes the choice of some for differential consideration/treatment over others. A classification to be valid must necessarily satisfy two tests. Firstly, the distinguishing rationale has to be based on a just objective and secondly, the choice of differentiating one set of persons from another, must have a reasonable nexus to the





objective sought to be achieved. The test for a valid classification may be summarised as a distinction based on a classification founded on an intelligible differential, which has a rational relationship with the object sought to be achieved. Therefore, whenever a cut-off date (as in the present controversy) is fixed to categorise one set of pensioners for favourable consideration over others, the twin test for valid classification or valid discrimination, therefore, must necessarily be satisfied. In the present case, the classification in question has no reasonable nexus to the objective sought to be achieved while revising the pension. As observed hereinabove, the object and purpose for revising the pension is due to the increase in the cost of living. All the pensioners form a single class and therefore such a classification for the purpose of grant of revised pension is unreasonable, arbitrary, discriminatory and violative of Article 14 of the Constitution of India. The State cannot arbitrarily pick and choose from amongst similarly situated persons, a cut-off date for extension of benefits especially pensionary benefits. There has to be classification founded on some rational principle when similarly situated class is differentiated for grant of any benefit.

8.1 As observed hereinabove, and even it is not in dispute that as such a decision has been taken by the State Government to revise the pension keeping in mind the increase in the cost of living. Increase in the cost of living would affect all the pensioners irrespective of whether they have retired pre-1996 or post-1996. As observed hereinabove, all the pensioners belong to one class. Therefore, by such a classification/cut-off date the equals are treated as unequals and therefore such a classification which has no nexus with the object and purpose of revision of pension is unreasonable, discriminatory and arbitrary and therefore the said classification was rightly set aside by the learned Single Judge of the High Court. At this stage, it is required to be observed that whenever a new benefit is granted and/or new scheme is introduced, it might be possible for the State to provide a cut-off date taking





into consideration its financial resources. But the same shall not be applicable with respect to one and single class of persons, the benefit to be given to the one class of persons, who are already otherwise getting the benefits and the question is with respect to revision”.

34. By application of the said proposition when the cut-off date has been fixed by a letter of the State Official to grant gratuity to the persons retired after 01.04.2013 and at the same time when the said benefit was denied to the persons who retired before 01.04.2013, two classes have been created and such classification has no nexus with the object and purpose of grant of benefit for which the Gratuity Act was amended by the Central Government in 2009. In the Letter, no justification was made as to why a cut off date has been fixed. The contention of the State Counsel that the State has prerogative to fix the cut-off date would offend the object of Article 14 of the Constitution of India, which ensures equality before the law and equal protection of law. The said classification is not based on the just objective and the just objective cannot be achieved for different consideration. Following the principles as laid down by the Supreme Court, therefore, all such employees who had retired before or after the cut-off date i.e., 01.04.2013 form only one class and there is no valid justification to create two classes for the purpose of payment of gratuity to one set of persons and deprive other. The said classification is neither rational nor justified and the choice of differentiating one set of person from another do not fulfill the reasonable nexus with the object sought to be achieved. Therefore, the said letter communication dated 07.06.2013 cannot be allowed to sustain and is quashed.

35. In view of the foregoing discussion, the petitions are allowed with the following directions/observations :



(i) The State would be employer within the definition of Payment of Gratuity Act, 1972 for the teachers/employees of aided educational institutions.

(ii) There cannot be unjustified classification between the two classes of teachers/employees for payment of gratuity before or after the cut-off date i.e., 01.04.2013 for whom grant-in-aid is received by institutions.

(iii) The judgments passed by the Controlling Authority and appellate authority whereby the institutions have been directed to pay gratuity on the basis of Letter dt. 07.06.2013 is set aside and the State is held to be liable to pay gratuity to the teachers even if they had retired prior to 01.04.2013.

(iv) The payments already made by the institutions pursuant to the order of the Controlling Authority or the Appellate Authority under the Gratuity Act, 1972 shall be reimbursed or made good to the institutions within a reasonable time of 6 months.

36. In the result, the petitions are allowed. No order as to cost.

Sd/-

(GOUTAM BHADURI)
JUDGE

