

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)

O R D E R

On 07.01.2019 this Court delivered the judgment allowing the appeal and setting aside the order of the High Court impugned therein.

Today, we have listed the matter suo motu. The reason being that during the course of hearing of the appeal it was not brought to the notice of the Bench that the judgment of this Court in Ahmedabad Pvt. Primary Teachers Association vs. Administrative Officer & Ors. (2004) 1 SCC 755 on which the reliance was placed for allowing the appeal necessitated the Parliament to amend the definition of "employee" under Section 2(e) of the Payment of Gratuity Act by Amending Act No.47 of 2009 with retrospective effect from 03.04.1997.

In other words, though the definition was amended in 2009 by Act No.47 of 2009, yet the same was given retrospective effect from 03.04.1997 so as to bring the amended definition on Statute Book, from 03.04.1997.

Keeping in view the amendment made in the definition of Section 2(e), which as stated above was not brought to the notice of the Bench, this issue was not considered though had relevance for deciding the question involved in the appeal. It is for this reason, we *prima facie* find error in the judgment and, therefore, are inclined to stay the operation of our judgment dated 07.01.2019 passed in this appeal

The judgment dated 07.01.2019 shall not be given effect to till the matter is reheard finally by the appropriate Bench.

The Registry is directed to list this matter for rehearing before the appropriate Bench comprising of Hon'ble Mr.Justice Abhay Manohar Sapre and Hon'ble Ms.Justice Indu Malhotra as early as possible.

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

.....J.
[R.SUBHASH REDDY]

NEW DELHI
JANUARY 9, 2019

ITEM NO.6

COURT NO.7

SECTION XVII

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Civil Appeal No(s).2530/2012

BIRLA INSTITUTE OF TECHNOLOGY

APPELLANT(S)

VERSUS

THE STATE OF JHARKHAND & ORS.

RESPONDENT(S)

([FOR DIRECTIONS])

Date : 09-01-2019 This appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE ABHAY MANOHAR SAPRE
HON'BLE MR. JUSTICE R. SUBHASH REDDY

For Appellant(s)

Mr.Shambo Nandy, Adv.
Mr.Arijit Mazumdar, Adv.
Ms.N.Annapoorani, AOR

For Respondent(s)

Mr.Anil Kumar Jha, AOR
Mr.Sunil Roy, AOR

UPON hearing the counsel the Court made the following
O R D E R

In terms of signed order, the court has made the following observations:

"On 07.01.2019 this Court delivered the judgment allowing the appeal and setting aside the order of the High Court impugned therein.

Today, we have listed the matter suo motu. The reason being that during the course of hearing of the appeal it was not brought to the notice of the Bench that the judgment of this Court in Ahmedabad Pvt. Primary Teachers Association vs. Administrative Officer & Ors. (2004) 1 SCC 755 on which the reliance was placed for allowing the appeal necessitated the Parliament to amend the definition of "employee" under Section 2(e) of the Payment of Gratuity Act by Amending Act No.47 of 2009 with retrospective effect from 03.04.1997.

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Keeping in view the amendment made in the definition of Section 2(e), which as stated above was not brought to the notice of the Bench, this issue was not considered though had relevance for deciding the question involved in the appeal. It is for this reason, we *prima facie* find error in the judgment and, therefore, are inclined to stay the operation of our judgment dated 07.01.2019 passed in this appeal

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(Ashok Raj Singh)
Court Master

(Chander Bala)
Court Master

(Signed Order is placed in the file)