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STANDING COMMITTEE ON LABOUR
(2007-08)

(FOURTEENTH LOK SABHA)

MINISTRY OF LABOUR AND EMPLOYMENT

THE PAYMENT OF GRATUITY (AMENDMENT) BILL, 2007

TWENTY-SIXTH REPORT

LOK SABHA SECRETARIAT
NEW DELHI

February/Phalguna, 1929 (Saka)

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Presented to Lok Sabha on 26.2.2008

Laid in Rajya Sabha on 26.2.2008

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February/Phalguna, 1929 (Saka)

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17. Shri Parasnath Yadav
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SECRETARIAT

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2. Shri N.K. Sapra - Joint Secretary
3. Shri R.K. Bajaj - Director
4. Shri N.K. Pandey - Deputy Secretary-II
5. Ms. Mili George - Senior Executive Assistant

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* Changed the nomination from Committee on Railways to Committee on Labour w.e.f. 21 August 2007.

** Nominated w.e.f. 14.9.2007

INTRODUCTION

I, the Chairman of the Standing Committee on Labour having been authorized by the Committee to submit the report on their behalf, present this Twenty-sixth Report on "The Payment of Gratuity (Amendment) Bill, 2007" of the Ministry of Labour and Employment.

2. The Payment of Gratuity (Amendment) Bill, 2007 as introduced in the Lok Sabha on 26.11.2007 was referred to the Standing Committee on Labour by the Hon'ble Speaker, Lok Sabha under Rule 331E (b) of the Rules of Procedure and Conduct of Business in Lok Sabha for examination and report within three months from the date of publication of the reference of the Bill in the Bulletin Part- II of Lok Sabha dated 10.12.2007.

3. The Bill seeks to extend the benefits of gratuity to the teachers in the country by amending the definition of 'employee' under Section 2(e) of the Payment of Gratuity Act, 1972.

4. The Committee sought written information regarding the origin of this Bill from the nodal Ministry, i.e. the Ministry of Labour and Employment. They submitted that the Central Government through a notification in the year 1997 extended the benefits of the Act to all educational institutions employing ten or more persons. However, subsequent to the Apex Court ruling in 2004, the teachers were excluded from the purview of the definition of the term 'employee' as enshrined in the Act. In order to overcome this situation, the Government propose to amend the Act and broad base the definition of the term 'employee' so as to bring the teachers of the private educational institutions within the purview of the Act.

5. The Committee took oral evidence of the representatives of the Ministries of Labour and Employment and Law and Justice on 28.12.2007 in connection with examination of the subject.

6. Taking into account the depositions made by the representatives of both the Ministries and the replies furnished, the Committee arrived on certain conclusions regarding various aspects of the proposed amendment in the Bill. The same are reproduced in the Report in the form of observations/recommendations of the Committee.

7. The Committee considered and adopted the draft report on the Bill at their sitting held on 19.02.2008.

8. The Committee wish to express their thanks to the representatives of the Ministries of Labour and Employment and Law and Justice for placing their views/comments on the Bill and also for making available valuable material and information which the Committee desired in connection with the examination of the Bill.

9. The Committee would also like to place on record their deep sense of appreciation of the commitment, dedication and valuable assistance rendered to them from time to time by the officials of the Lok Sabha Secretariat attached to the Committee.

10. For facility of reference and convenience, the observations/recommendations of the Committee have been printed in bold type in the body of the Report.

NEW DELHI;

19 February, 2008
30 Phalguna, 1929 (SAKA)

SURAVARAM SUDHAKAR REDDY,
CHAIRMAN,
STANDING COMMITTEE ON LABOUR

REPORT

PAYMENT OF GRATUITY (AMENDMENT) BILL, 2007

Background

1. Before the enactment of the Payment of Gratuity Act, 1972, there were two State Laws providing for payment of gratuity. These were the Kerala Industrial Employees 'Payment of Gratuity Act, 1970 and the West Bengal Employees' Payment of Gratuity Act, 1971. The question of having a Central Legislation on the subject was discussed in the Labour Ministers' Conference held in New Delhi on 24 and 25 August, 1971 as also the Indian Labour Conference held on 22 and 23 October 1971 and general consensus was reached for enacting a Central Legislation on payment of gratuity. Accordingly, a Central Law modeled largely on the pattern of West Bengal Employees' Payment of Gratuity Act, 1971 was enacted and is known as the Payment of Gratuity Act, 1972. It was brought into force with effect from the 16.9.1972 vide S.O. No.601 (E) dated 16.9.1972 and it extends to whole of India. The Act has been recently extended to the State of Sikkim w.e.f. 1.11.1995.

SALIENT FEATURES OF THE ACT:

2. (i) **OBJECT:**

The Act provides for scheme for payment of gratuity to the employees employed in factories, mines, oilfields, plantations, ports, railway companies, shops and other establishments and matters connected therewith or incidental thereto;

(ii) **EXTENT AND APPLICATION:**

The Act extends to whole of India except plantations in the State of Jammu and Kashmir. It applies at present 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; and

(c) such other establishments or class of establishments in which ten or more employees are employed, or were employed on any day of the preceding twelve months, as the Central Government may, by notification, specify in this behalf. In exercise of these powers, the Central Government have so far extended the provisions of the Act to the following classes of establishments, where ten or more persons are employed or were employed on any day of the preceding twelve months with effect from the dates indicated against each:-

Sl.No.	Particular of establishment	Date of effect
1.	Motor Transport Undertakings	20.04.1974
2.	Clubs	06.10.1979
3.	Chamber of Commerce and Industry and Associated/Federation of Chamber of Commerce and Industry	15.11.1980
4.	Inland Water Transport Establishments	10.01.1981
5.	Solicitor's Office	09.01.1982
6.	Local Bodies	23.01.1982
7.	Companies, Societies, Associations or troupes which give any circus performance in any area and require payment for admission into such exhibition or spectators or audience.	15.01.1983
8.	Educational Institutions	19.04.1997
9.	Societies & Trusts	06.09.1997

EXCLUDED CATEGORIES OF EMPLOYEES:

3. The definition of employee in Section 2(e) specifically excludes from the purview of the Act, any 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.

ELIGIBILITY CONDITIONS:

4. Gratuity is payable to every employee, other than an apprentice, in an establishment to which the provisions of the Act applies, on termination of his employment either due to superannuation or retirement or resignation, subject to completion of continuous service for not less than five years, Gratuity is also payable in case of termination of service due to death or disablement, due to accident or disease and there is no condition of service in these two contingencies.

QUANTUM OF GRATUITY:-

5. For every completed year of service or part thereof in excess of six months, the employees, other than the seasonal employees are entitled to gratuity at the rate of fifteen days' wages based on the rate of wages last drawn. The employees of seasonal establishment who do not work throughout the year are entitled to gratuity at the rate of seven days' wages for each season. These provisions do not, however, affect the right of an employee to receive better terms of gratuity under any award or agreement of contract with the employer.

LIMIT FOR PAYMENT OF GRATUITY:-

6. The employers have to pay the gratuity within thirty days from the date it becomes due, if the gratuity is not paid within the prescribed time limit, the employer is required to pay the amount of gratuity with interest as specified by the Government from time to time.

GRANT OF EXEMPTION:

7. Section 5(1) of the Payment of Gratuity Act gives power to the appropriate Government to exempt any establishment, factory, mine, oilfield, plantation, port, railway company or shop from the operation of the provisions of this Act, if in the opinion of the appropriate Government, employees of such shop etc. are in receipt of gratuity or pensionary benefits not less favourable than the benefits conferred under this Act. There is a similar provision for grant of exemption to a class of employees in Section 5 (2) of the Act.

ADMINISTRATION OF THE ACT

8. The Central Government is responsible for administration of the Act in relation to the following:-

(a) factories or establishments belonging to or under the control of the Central Government;
(b) establishments having branches in more than one State; and
(c) major ports, mine oilfields or railway companies.

The State Government is responsible for administration of the Act in all other cases.

The Central Government have appointed Chief Labour Commissioner (Central) and Regional Labour Commissioner (Central) and Assistant Labour Commissioners (Central) as the Controlling/Appellate Authorities under the Act for their respective areas.

PROCEDURE FOR THE SETTLEMENT OF DISPUTE, RELATING TO PAYMENT OF GRATUITY:

9. If there is any dispute about the amount of gratuity payable to an employee, the employee may make an application to the Controlling Authority of the area for taking necessary action. The Controlling Authority shall issue a certificate for the amount of gratuity dues to the Collector who shall recover the same as arrears of land revenue and pay the same to the person entitled to receive the gratuity. Any person aggrieved by the order passed by the Controlling Authority can prefer an appeal to the Appellate Authority.

PENALTIES FOR NON-PAYMENT OF GRATUITY:

10. Where the offence relates to non-payment of gratuity payable under the Act, the employer shall be punishable with imprisonment for a term which shall not be less than three months but which may extend to one year or fine which shall not be less than 10 thousand rupees but extend to twenty thousand rupees or both.

AMENDMENTS IN THE ACT:

11. Mainly, the Act has been amended five times so far. The amendments made are as given below:-

(i) The first amendment made by the Payment of Gratuity (Amendment) Act, 1984 inter alia provides for raising the wage limit for coverage from Rs.1000/- to Rs.1600/- per month and appointment of Inspectors. This amendment was brought into force w.e.f. 1.7.1984.

(ii) The second amendment made by the Payment of Gratuity (Second Amendment) Act, 1984 inter alia re-defined the term 'continuous service' and provided for grant of exemption to a class of employees from the operation of the Act. This amendment came into force from 18.5.1984.

(iii) The third amendment made by the Payment of Gratuity (Amendment) Act, 1987 inter alia provided for:-

(a) raising the wage limit for coverage from Rs.1,600/- to Rs.2,500/- per month, which was further raised to Rs.3,500/- p.m. w.e.f. 1.12.1992.
(b) replacing the ceiling of twenty month's wages for payment of gratuity by a monetary ceiling of Rs.50,000/-
(c) making it obligatory for the employers to pay simple interest at a specified rate if the gratuity is not paid within 30 days from the date it falls due.
(d) Compulsory insurance/setting of gratuity fund for payment of gratuity.

The amendments at (a) to (c) above were brought into force w.e.f. 1.10.1987. The amendment at (d) has not been brought into force so far. In fact, this particular provision is being reviewed in view of certain subsequent developments. The rate of simple interest mentioned at (c) above has been fixed at 10% per annum w.e.f. 1.10.1987.

(iv) The fourth amendment made by the Payment of Gratuity (Amendment) Act, 1994 inter alia provided for:-

(a) Doing away with the wage ceiling altogether for coverage under the Payment of Gratuity Act, 1972;
(b) Enhancing the ceiling of the maximum amount of gratuity from Rs.50,000/- to Rs. one lakh.

This amendment came into force w.e.f. 24.5.1994.

(v) The Fifth Amendment made by the Payment of Gratuity (Amendment) Act, 1998 has enhanced the ceiling on maximum amount of gratuity from Rs. one lakh to Rs.3.50 lakh with effect from 24.9.1997.

BACKGROUND OF THE PRESENT PROPOSAL

12. The Payment of Gratuity Act, 1972 (No.39 of 1972) was enacted and brought into force from 16 September 1972. The Act provides for payment of gratuity to employees employed in any factory, mine, oilfield, plantation, port, Railway Company and in any shop or establishment employing ten or more workers. It has also been extended to motor transport undertakings employing ten or more workers.

13. Under the Act, gratuity is payable at the rate of fifteen days' wages for every completed year of service or part thereof in excess of six months subject to a monetary ceiling of Rs.3.50 lakh. In case of employees' employed in seasonal establishments, gratuity is payable at the rate of seven days' wages. A worker is entitled to gratuity in the contingency of superannuation, retirement, resignation, death or disablement due to accident or disease, subject to completion of five years continuous service. The condition of five years is however, not applicable in case of death or disablement. Further, it does not make any discrimination between casual, contract, temporary and permanent worker who has completed the prescribed period of five years continuous service as defined in section 2A of the Act. The liability for payment of gratuity vests in the employer. Gratuity is payable in addition to pension or contributory provident fund, if any.

14. The Payment of Gratuity Act, 1972 was made applicable to local bodies with effect from 8.1.1982. Therefore, the schools under the control of local bodies were covered under the Act with effect from 8.1.1982 itself. However, the employees of other educational institutions were facing denial of gratuity as they were not covered under the Act. The employees of the Government schools are already entitled to gratuity under the extant rules of the Government governing gratuity and pension but the employees of the private schools were having no legal entitlement to gratuity. As gratuity is an old age retiral social security benefit, it was considered desirable to extend the benefit of the Payment of Gratuity Act, 1972 to all employees employed in all educational institutions having ten or more persons.

15. Accordingly, the Central Government extended the provisions of Payment of Gratuity Act, 1972 to the educational institutions employing 10 or more persons vide the Ministry of Labour and Employment Notification No. S.O. 1080 dated 3 April 1997. The Notification came into force w.e.f 19.4.1997, date when it was published in the Gazette of India.

16. In its judgment dated 13.1.2004 in Civil Appeal No.6369 of 2001 filed by Ahmedabad Private Primary Teachers' Association, Hon'ble Supreme Court of India ruled that teachers are not entitled to gratuity under the payment of Gratuity Act, 1972 in view of the fact that teachers do not answer description of definition of "employee" under section 2 (e) of the Payment of Gratuity Act, 1972. The ruling also, inter alia, states that non-use of wide language similar to definition of "employee" as is contained in section 2(f) of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 reinforces the conclusion that teachers are not covered in the definition.

17. In this context , para 26 of the said judgment is quoted as follows:-

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

18. Keeping in view the observations of the Supreme Court as mentioned above the definition of "employee" under section 2(e) in the existing Act has been proposed to be widened in keeping with the spirit of the Act.

EXISTING DEFINITION OF SECTION 2 (E) OF THE PAYMENT OF GRATUITY ACT, 1972:

19. '2(e) "employee" means any person (other than an apprentice) employed on wages in any establishment, factory, mine, oilfield, plantation, port, railway company or shop, to do any skilled, semi-skilled, or unskilled, manual, supervisory, technical or clerical work, whether the terms of such employment are express or implied, and whether or not such person is employed in a managerial or administrative capacity, but does not include any such person who holds a post under the Central Government or a State Government and is governed by any other Act or by any rules providing for payment of gratuity'.

20. The Ministry of Labour and Employment informed the Committee that it is proposed to retain the basic features of the definition of the term "employee" as given in the Payment of Gratuity Act, 1972, while widening its scope and adopt the definition of "employee" as follows:-

<u>PROPOSED DEFINITION:-</u>

> '2 (e) "employee" means any persons (other than an apprentice) who is employed for wages, whether the terms of such employment are express or implied, in any kind of work, manual or otherwise, in or in connection with the work of a factory, mine, oilfield, plantation, port, railway company, shop or other establishment to which this Act applies, but does not include any such person who holds a post under the Central Government or a State Government and is governed by any other Act or by any rules providing for payment of gratuity'.

21. The Act is applicable to factories and other establishments employing 10 or more persons. The coverage of the Act with respect to the private schools is wide as there are large number of schools in the private sector employing 10 or more persons. The responsibility for administration of the Act vests mainly in the State Governments. The liability for payment of gratuity vests in the employer. The employees of the Central Government and State Governments who are getting gratuity under any other Act/rules are not covered under the Payment of Gratuity Act, 1972.

22. Views of all the State Governments/Union Territories were called for on the proposed amendment. All the States/Union Territories except Haryana have agreed to the proposal. State Government of Haryana has not indicated any reason for its disagreement with the proposal.

23. The Committee, upon examining "The Payment of Gratuity (Amendment) Bill, 2007", express agreement with the broad objectives envisaged by the amendment. However, some of the amendments proposed/observations made by the Committee during the deliberations with the Ministries of Labour and Employment and Law and Justice are discussed in the subsequent paragraphs of the Report.

Definition of 'employee'

24. During the course of evidence when the Committee desired to know the reasons for not laying down clear and unambiguous term to cover the teachers of the private educational institutions, as the term establishment in the new definition would leave the scope for ambiguity in interpretation because it also included other institutions, the representative of the Ministry replied as under:-

> "This Act has been introduced for the whole educational institutions. What has happened was that categories of employees in the educational institutions, like clerks and others are already covered, but this particular category was being left out. If you were to see the proposed new definition, it is so wide ranging that it covers a whole lot of other employees also. …….There is no challenge to the educational institutions and the employees thereto. The only question that arose was with respect to teachers that too a limited thing and the Hon'ble Court itself gave a solution to the problem saying from a comparison of this definition as well as the EPF definition this appears to be narrow. Teaching profession is an extremely noble profession and it should be covered. Indirectly, they did say that and they said it is not for the courts to remedy it but for the legislatures to remedy it and so kindly go to the legislature. …….that only a narrow margin had been left out, that is teachers as such, whomsoever had been defined. The Court went to great length to find out how teachers could neither be defined as skilled or un-skilled because they are imparting knowledge. In a manner of speaking, it created confusion and that has to be repaired and that is why the legislation has come".

25. To the same question, the Ministry in their post evidence reply furnished as under:-

"There will not be any ambiguity in interpretation of the term 'establishment'. Hon'ble Supreme Court in its ruling dated 13-1-2004, *inter alia*, has observed that if it is intended to cover in the definition of 'employee' all kind of employees, it could have as well used such wide language as is contained in section 2(f) of Employees' Provident Funds & 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. The judgment further pronounces that non-use of wide language similar to definition of "employee" as is contained in section 2(f) of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 reinforces the conclusion that teachers are not covered in the definition. Keeping in view these observations of the Supreme Court, it is desirable that the definition of "employee" under section 2(e) in the existing Act is widened in keeping with the spirit of the Act. Further, Hon'ble Supreme Court has not excluded non-teaching staff from the purview of the Payment of Gratuity Act, 1972 and has not objected to the applicability of 'place of work' which means that existing term 'establishment' covers schools and other educational institutions also. On the other hand, beside the schools and other educational institutions, the proposed amendment can cover other similarly placed organizations".

26. The Committee observe that the extant amendment to the Payment of Gratuity Act, 1972 has been necessitated following the verdict of the Supreme Court adjudicating that teachers of private educational institutions do not answer description of definition of 'employee' under Section 2 (e) of the Payment of Gratuity Act, 1972. The connotation of 'employee' in the Payment of Gratuity Act, 1972 is not akin to the one given in Section 2(f) of the Employees' Provident Fund and Miscellaneous Provisions Act, 1952. Therefore, it was essential to widen the definition of 'employee' in order to extend the benefits of gratuity to teachers of private educational institutions. To achieve the above objective, the amendment has been proposed in the Bill. Although the Committee are broadly in agreement with the proposed amendment of Section 2 (e), they are apprehensive that the replacement of some portion of definition of 2(e) of the Payment of Gratuity Act with another portion of 2(f) of EPF & MP Act, 1952 is likely to leave some lacuna therein. The Committee, therefore, call upon the Government to ensure that the new definition of the 'employee' being proposed in the Bill, should be unambiguous, encompassing with clear reference to the targetted group, i.e. teachers of the private educational institutions in the definition itself so as to avoid any misinterpretation in future.

Applicability of Act

27. As per Section 3 of the Payment of Gratuity Act, 1972, it is applicable to all those establishments, which are employing ten or more persons.

28. When asked whether the Government have given any thought to the idea of implementing the Act on establishments which are employing less than ten workers keeping in view the advancement in technology and changing employment pattern, the representative of the Ministry of Labour and Employment replied during evidence as follows:-

> "….we are having problems with implementation of the Act even if there are more than 10 workers involved. It is perceived that institutions, which are having at least 10 workers, will be easy and tangible to spot. If better methods of evaluation and better methods of detection are there, we may perhaps be going to that at that point of time. Right now, we are trying to take up a practical view as to cover establishments that are tangible in size and not to hurt very small establishments, which may be of a transient nature. That is what we are trying to do".

29. On being further asked to explain the possibility of extending the benefits under the Act to as many people as possible in the phase of reducing number of workers in establishments due to changed type of work on account of computerization etc., the representative from the Ministry commented:

> "….would like to present a counter view for your kind consideration. The counter view is that if you were to reduce it to 5, then they will try to reduce it even further. What happens as a result of that is that the establishment becomes invisible. If they become invisible and they are not within the screen, then we are unable to implement various other measures also ".

30. Questioned by the Committee on the same, the Ministry in their post evidence reply submitted as under:-

> "At present, the Payment of Gratuity Act, 1972 is applicable o establishments having ten or more persons. Other major Acts viz. the Payment of Bonus Act, 1965, Employees' Provident Funds & Miscellaneous Provisions Act, 1952, Employees' State Insurance Act, 1948 cover the establishments having twenty or more employees. At the time of introduction of the Payment of Gratuity Act in 1971 coverage of even ten employees were opposed by the employers. It may also be stated that before extending the provisions of the Act to establishments having less than 10 persons, we have to consider various aspects of the employers, viz., (i) the financial condition of the employer (ii) his profit making capacity and profit earned in the past (iii) extent of his reserves etc. Small employers have, therefore, been excluded from the purview of most of the labour and social legislations. Also, it may attract adverse implications on other labour acts. Hence, there is no proposal to extend the benefits of the Payment of Gratuity Act, 1972 to establishments having employees below ten".

31. The Committee take note of the fact that the Central Government had extended the provisions of the Payment of Gratuity Act, 1972 under Sub-Clause (c) of Clause (3) of Section 1 of the Act to the educational institutions employing ten or more persons through a Notification No.S-42013/1/95-58 II dated 3 April 1997. However, subsequent to a decision of the Hon'ble Supreme Court, the teachers of private schools are being denied the benefits of gratuity in view of the fact that teachers were not covered in accordance with the definition of 'employee' under Section 2 (e) of the Act. To restore the *status quo ante*, the amendment has been proposed in the Act, for extending again the benefits to the teachers who were deprived of it due to the court ruling. However, the Committee find that nowadays, most of the educational institutions and other establishments are being manned by less than ten persons. Hence the cap of ten or more persons will deprive most of the school teachers and other employees of the benefit the government proposes to extend to them. The Committee are not convinced with the plea of the Ministry that inclusion of less than 10 employees would be opposed by the employers and may attract adverse implications on other labour acts. In view of the advancement in technology and change in the employment pattern, the Committee, therefore, recommend that the ceiling of ten or more persons be done away with and the gratuity should be payable to all irrespective of the number of persons employed. The Government may suitably amend other labour laws, if need be.

Application of Act with retrospective effect

32. When the Committee enquired whether the benefit proposed to be given to the teachers in private educational institutions will be retrospective in nature to be effective from the date of enactment of the original Act or from 08.01.1982, when the Act was made applicable to local bodies and how the Government proposes to compensate the teachers who are divested of the benefits following the judgment of the Supreme Court, the representative of the Ministry of Labour and Employment during evidence stated as under:

> "…..I have a suspicion about the retrospective effect. I am not a legal expert. If you were to enact it with a retrospective effect, the courts may strike it down for the simple reason saying that the entire responsibility for payment of gratuity is reserved with that of the employers".

33. When asked to comment on the views of Law Ministry, Additional Government Counsel during evidence stated as under:-

> "Since no date has been fixed for the commencement of this Act, it will be prospective from the date it is assented to by the President of India. Whether it should be given prospective effect or not is clear from this. Retrospective policy decision should be taken by the Ministry concerned. Since it is social welfare legislation, it is for the policy makers to decide whether it should be given retrospective effect or not".

34. When the Committee enquired regarding the legal reaction of the Courts if the proposed amendment to the Act is to be implemented with retrospective effect, the Law Ministry representative further added:-

> "…..courts cannot go against us unless it is seriously challenged by the affected person's employers".

35. In their written post evidence reply to the question on this aspect, the Ministry of Labour and Employment submitted as follows:

> "The Central Government extended the provisions of the Payment of Gratuity Act, 1972 to the educational institutions employing 10 or more persons w.e.f. 3-4-1997 and Hon'ble Supreme Court delivered its judgment on 13-1-2004 ruling that teachers are not entitled to gratuity under the Payment of Gratuity Act, 1972. However, the present Payment of Gratuity (Amendment) Bill, 2007 does not mention any date implying that the amendment will have a prospective effect. With a view to compensate the teachers who were divested of the benefits following the judgment of the Supreme Court it has been decided that this amendment may be given effect from the date of judgment of the Apex Court i.e. w.e.f. 13-1-2004 itself since educational institutions were covered by the Government w.e.f. 3-4-1997 under the Payment of Gratuity Act, 1972".

36. The Committee find that the Payment of Gratuity Act, 1972 was made applicable to local bodies w.e.f 08.01.1982 thereby bringing all schools under the control of local bodies within the purview of the Act. But the employees of private educational institutions were facing denial of gratuity as they had not been covered under the Act. With a view to provide benefit of the Act to all employees in all educational institutions employing ten or more persons, the provisions of the Act were extended through a notification w.e.f. 19.04.1997 i.e. date when it was published in Gazette of India. However, the objective of providing the desired coverage under the Act was annulled following the judgement of the Hon'ble Supreme Court in the year 2004 excluding teachers from the ambit of the term 'employee' as given in the Act. To nullify the effect of the verdict of the Apex Court, it has been proposed to widen the definition of 'employee' in order to extend the benefits of gratuity to the teachers by amending the same. However, the amendment has been proposed to be made effective from the date of the judgement of the Apex Court, i.e., 13.01.2004 so as to compensate the teachers who were divested of the benefits. The Committee appreciate the steps taken by the Government, yet express their concern over the inadequacy of efforts in providing relief to teachers. The Committee note that the teachers in question were deprived of the benefits right from the beginning as the High Court of Gujarat was seized of the issue and delivered its judgement on 04.05.2001 in a Special Civil Application No.5272 of 1987 that teachers as a class do not fall within the definition of the term 'employee'. The Committee feel that implementing the law from the year 2004 will cause irreparable loss to a large number of teachers of the country, particularly to those who have already retired. The Committee, therefore, call upon the Government to make the law applicable with retrospective effect, i.e. from the date of notification in the year 1997. This will provide the needed succour as well as justice to all those affected persons who were denied their rightful benefits due to some technical flaw/legal lacuna in the definition of the term 'employee' as contained in Section 2 (e) of the Payment of Gratuity Act, 1972.

Covering of Contract Workers under the Act

37. During the evidence, when the Committee desired to know whether the contract workers are also covered under the Act, a representative of the Ministry of Labour and Employment commented on the issue as under:-

> "……if a person is contract labour,….. and the number exceeds ten, he would be included which includes teaching and non-teaching also. They shall be covered because contract workers are also to be covered. There is no doubt about this. The interpretation of the Act is fairly clear about this".

38. The Committee find that the contract labour system is prevalent virtually in every organization of the Government. The Committee further note that this system might perhaps be beneficial to the organisation and management, but definitely highly prejudicial to the workers as their basic rights, i.e. minimum wages, working conditions, social security, continuity of service, etc are systematically denied to them. Although the Payment of Gratuity Act *per se* does not make any discrimination among casual, contract, temporary and regular workers who have completed five years of continuous service, it is an established fact that contract workers are seldom given any social security coverage as is available to the regular workers. It has also come to the notice of the Committee that due to the practice of giving break in service, a contract labour can never be reckoned as having worked continuously for five years in an organization. Hence, he is deprived of payment of gratuity under the Act. The Committee are pained to note that the contract labour system may be a necessary evil today. They however, strongly feel that the genuine rights and interests of the contract labour should not continue to suffer. The Committee, therefore, are of the opinion that these workers must be brought within the purview of the Act by laying down specific provisions in the Act itself. The Committee recommend that if a contract worker has rendered five years of service, whether continuous or otherwise, in an organization be made entitled for Gratuity under the Act. The Committee, further recommend that the Government should not only make an overall assessment of the contract labour system but also review the systemic flaws and carry the possible reforms in the legislation.

NEW DELHI;

19 February, 2008
30 Phalguna, 1929 (SAKA)

SURAVARAM SUDHAKAR REDDY,
CHAIRMAN,
STANDING COMMITTEE ON LABOUR

Annexure-I

Bill No.90 of 2007

Short title.

THE PAYMENT OF GRATUITY (AMENDMENT) BILL, 2007

A

BILL

further to amend the Payment of Gratuity Act, 1972.

BE it enacted by Parliament in the Fifty-eighth Year of the Republic of India as follows:—

1. (1) This Act may be called the Payment of Gratuity (Amendment) Act, 2007.

2. In the Payment of Gratuity Act, 1972, in section 2, for clause (e), the following clause shall be substituted, namely:—

'(e) "employee" means any person (other than an apprentice) who is employed for wages, whether the terms of such employment are express or implied, in any kind of work, manual or otherwise, in or in connection with the work of a factory, mine, oilfield, plantation, port, railway company, shop or other establishment, to which this Act applies, but does not include any such person who holds a post under the Central Government or a State Government and is governed by any other Act or by any rules providing for payment of gratuity;'.

Amendment of section 2.
39 of 1972.

STATEMENT OF OBJECTS AND REASONS

The Payment of Gratuity Act, 1972 (the Act) provides for payment of gratuity to employees employed in any establishment, factory, mine, oilfield, plantation, port, railway company or shop employing 10 or more workers.

2. The Central Government had extended the provisions of the Act to the educational institutions employing 10 or more persons *vide* this Ministry's notification No. S.O. 1080 dated 3rd April, 1997. The Hon'ble Supreme Court in its judgment dated 13th January, 2004, in Ahmedabad Private Primary Teachers Association Vs Administrative Officer [AIR 2004 (SC) 1426] held that teachers are not entitled to gratuity under the Act, in view of the fact that teachers do not answer description of "employee" who are "skilled", "semi-skilled" or "unskilled". The Supreme Court observed that non-use of wide language similar to definition of "employee" as is contained in section 2(f) of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952, reinforces the conclusion that teachers are not covered
in that definition. Para 26 of the said judgment reads as follows:—

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

3. Keeping in view the observations of the Hon'ble Supreme Court, it is proposed to widen the definition of "employee", in order to extend the benefits of gratuity to the teachers, by amending the same.

4. The Bill seeks to achieve the above objects.

NEW DELHI;
The 7th September, 2007.

OSCAR FERNANDES.

FINANCIAL MEMORANDUM

The Payment of Gratuity Act, 1972 (the Act) provides for payment of gratuity to employees employed in any establishment, factory, mine, oilfield, plantation, port, railway company or shop employing ten or more workers. The Bill amends the definition of "employee" in section 2(e) of the Act so that teachers shall also be entitled for payment of gratuity.

2. The responsibility for administration of the Act vests mainly in the State Governments and the liability for payment of gratuity vests in the employer. The employees of the Central Government and State Governments who are getting gratuity under any other Act or rules are not covered under the Act. However, as respects teachers employed by institutions aided by the Central Government, the liability on employers may involve expenditure from the Consolidated Fund of India. The exact expenditure to be incurred on this account cannot be estimated at this stage.

3. Apart from the above, no other expenditure of recurring or non-recurring nature from the Consolidated Fund of India is envisaged.

ANNEXURE

EXTRACT FROM THE PAYMENT OF GRATUITY A CT, 1972

(39 OF 1972)

* * * * *

2**.** In this Act, unless the context otherwise requires,—

* * * * *

(e) "employee" means any person (other than an apprentice) employed on wages in any establishment, factory, mine, oilfield, plantation, port, railway company or shop, to do any skilled, semi-skilled, or un-skilled, manual, supervisory, technical or clerical work, whether the terms of such employment are express or implied and whether or not such person is employed in a managerial or administrative capacity, but does not include
any such person who holds a post under the Central Government or a State Government and is governed by any other Act or by any rules providing for payment of gratuity;

* * * * *

— — — —

A

BILL

further to amend the Payment of Gratuity Act, 1972.

— — — —

(*Shri Oscar Fernandes, Minister of Labour and Employmen*t)

MGIPMRND—4594LS(S5)—19.11.2007.

ANNEXURE-II

Hon'ble Supreme Court' Judgement dated 13.1.2004

AIR 2004 SUPREME COURT 1426

SHIVARAJ V. PATIL AND D.M. DHARMADHIKARI, JJ.
Civil Appeal No.6369 of 2001
Date of Judgement 13.1.2004
Ahmedabad Pvt. Primary Teachers' Association….. Appellant
V/s
Administrative Officer and others…….Respondents

DHARMADHIKARI, J:- This appeal has been preferred by Ahmedabad Private Primary Teachers' Association. The Association complains that in the petition filed by an individual teacher (respondent No.2 herein) employed in a school run by Ahmedabad Municipal Corporation, the Full Bench of the High Court of Gujarat by impugned judgment dated 4.5.2001 in Special civil Application No.5272 of 1987 not only rejected the claim of the teacher for payment of gratuity under the provisions of Payment of Gratuity Act, 1972 (for short the Act) but has decided an important questions of law against the teachers as a class that they do not fall within the definition of 'employee' as contained in Section 2 (e) of the Act and hence can raise no claim to gratuity under the Act.

2. The definition of employee contained in Section 2 (e) of 1972 reads as under:-

'2 (e), 'employee' means any person (other than an apprentice) employed on wages, in any establishment, factory mine, oilfield, plantation, port railway company or shop to do any skilled, semi-skilled, or unskilled manual, supervisory, technical or clerical work, whether the terms of such employment are express or implied, and whether or not such person in employed in a managerial or administrative capacity, but does not include any such person who holds a post under the Central Government or a State Government and is governed by any other Act or by any rules providing for payment of gratuity.'

(Underlining giving emphasis)

3. One of the learned Judges of the High Court in his separate concurring opinion held that as gratuity payable to teachers employed in schools of Ahmedabad Municipal Corporation are governed by statutory regulations known as 'Gratuity Regulations of the Municipal Corporation of the city of Ahmedabad' framed by the Corporation under Section 465 (i) (h) of the Bombay Municipal Corporation Act, 1949, such teachers even if held to be covered by main part of definition of 'employee' are expressly excluded by the last exclusionary clause of definition shown by underlying it as above.

4. As all the learned Judges have unanimously held that teachers are not covered by the definition of 'employee' under Section 2(e) of the Act, it has become necessary for this Court to consider the correctness of the view with regard to the applicability of the Act to the teachers as a class.

5. We have heard the learned counsel appearing for all contesting parties. As the legal question involved is general in nature affecting teachers as a class, on our request, senior advocate, Dr. Rajeev Dhawan appeared as Amicus Curiae. We are immensely benefited by his able assistance which we thankfully acknowledge.

6. The Act is a piece of social welfare legislation and deals with the payment of gratuity which is a kind of retrial benefit like pension, provident fund etc. As has been explained in the concurring opinion of one of the learned Judges of the High Court 'gratuity in its etymological sense is a gift, especially for services rendered, or return for favours received.' It has now been universally recognized that all persons in society need protection against loss of income due to unemployment arising out of incapacity to work due to invalidity, old age etc. For the wage earning population, security of income, when the worker becomes old or infirm, is of consequential importance. The provisions contained in the Act are in the nature of social security measures like employment insurance, provident fund and pension. The Act accepts, in principle, compulsory payment of gratuity as a social security measure to wage earning population in industries, factories and establishments.

7. Thus, the main purpose and concept of gratuity is to help the workman after retirement, whether, retirement is a result of rules of superannuation, or physical disablement or impairment of vital part of the body. The expression, 'gratuity' itself suggests that it is a gratuitous payment given to an employee or discharge, superannuation or death. Gratuity is a amount paid unconnected with any consideration and not resting upon it, and has to be considered as something given freely, voluntarily or without recompense. It is sort of financial assistance to tide over post-retiral hardships and inconveniences.

8. The following important words and expressions in the definition clause 2(e), are before us for consideration and interpretation in the light of the arguments advances which project different points of view:-

2)e). 'employee' means any person (other than an apprentice) employed on wages, in any establishment, factory, mine, oilfield, plantation, port, railway company or shop, to do any skilled, semi-skilled or unskilled, manual, supervisory, technical or clerical work… whether or not such person is employed in a managerial or administrative capacity.

(Underlining given emphasis)

9. The learned counsel appearing for the Teachers' Association and also the learned Amicus Curiae very strenuously urged that a beneficial, purposeful and wide interpretation should be placed on the definition of employee in Section 2(e) of the Act particularly in the light of the fact that earlier in the definition clause, there was an income limit of wages being not more than Rs. 2300/- per month, for extending coverage of gratuity benefit to the employees. That wages or salary limit has, however, been done away with by introducing amendment to the definition clause 2(e) of the Act. Now gratuity is payable to all employees irrespective of the quantum of salary or wages paid to them. It is, further, pointed out that in the unamended definition clause, employees working in managerial or administrative capacity were excluded from the definition of an 'employee' but after the amendment introduced with effect from 1-7-1984, even employees in managerial or administrative capacity and without any bar or limit or their salaries or wages are brought within the definition of 'employee' to extend the benefit of gratuity to them. Learned counsel appearing for the appellant and the learned Amicus Curiae, therefore, contended that a

very wide meaning has to be given to the work 'employee' in the definition contained in Section 2(e) of the Act.

10. On the other hand, learned senior counsel Shri R. F. Nariman contends that the Act is one of the labour welfare legislations. The words and expressions used in the provision of the Act should be considered in the light of the provisions contained in other labour legislations where similar expressions and definitions have been used. He has referred to the definition of 'employee' in Section 2(i) of the Minimum Wages Act, Section 2(13) of the Payment of Bonus Act and compared those provisions with definition of 'employee' in Section 2(f) of the Provident Funds Act. Reference is also made to definition of 'workman' under Section 2(s) of the Industrial Disputes Act. Thus, on comparative reading of the various definitions in different enactments in the field of labour legislation, the learned counsel appearing for the respondent argues that a teacher cannot be said to be employed either for skilled, semi-skilled, unskilled, manual, supervisory, technical or clerical work. He/She is also not employed in any managerial or administrative capacity. The teacher is engaged in imparting education for intellectual or moral development of students. He/She does not answer any of the above mentioned descriptions in the definition clause with regard to the nature of work.

11. The learned Amicus Curiae, in his counter reply, submitted that the words 'skilled', 'semi-skilled' or unskilled' do not qualify the worlds 'manual', 'supervisory' 'technical' or 'clerical'. It is contended that all the worlds 'skilled', 'semi-skilled', 'unskilled', 'manual', 'supervisory', 'technical', or 'clerical', because of the commas in between them have to be read disjunctively and they all qualify the word 'work' which is mentioned at the end of all these words.

12. We have critically examined the definition clause in the light of the arguments advanced on either side and have compared it with the definitions given in other labour enactments. On the doctrine of 'pari materia', reference to other statutes dealing with the same subject of forming part of the same system is a permissible aid to the construction of provisions in statute. See the following observations contained in Principles of Statutory Interpretation by G. P. Singh (8th Ed.) Synopsis 4 at pp. 235 to 239:-

"Statues in pari material:- It has been already been seen that a statute must be read as a whole as works are to be understood in their context. Extension off this rule of context permits reference to other statues in pari material, i.e. statutes dealing with the same subject matter or forming part of the same system. Viscount Simonds in a passage already noticed conceived it to be a right and duty to construe every world of a statute in its context and he used the world context in its widest sense including 'other statues in pari material. As stated by Lord Mansfield, 'where there are different statues in pari material though made at different times, or even expired, and not referring to each other, they shall be taken and construed together, as one system and as explanatory of each other……

The application of this rule of construction has the merit of avoiding any apparent contradiction between a series of statues dealing with the same subject, it allows the use of an earlier statue to throw light on the meaning of a phrase used in a later statue in the same context, it permits the raining of a presumption, in the absence of any context indicating a contrary intention, that the same meaning attaches to the same words in a later statute as in an earlier statue if the words are used in similar connection in the two statutes, and it enables the use of a later statue as parliamentary exposition of the meaning of ambiguous expressions in an earlier statute.'

13. The definition of 'workman' contained in section 2(s) of the Industrial Disputes Act, 1947 meaning 'any person employed in any industry to do any skilled or unskilled, manual, supervisory, technical, operational, manual, supervisory, technical, operational, or clerical work' came up for consideration before this Court when teachers claimed that they are covered by the definition of the industrial disputes Act. In the case of A Sundarambal v. Govt. of Goa, Daman and Die {1988 (4) SCC42}, this Court negatived the claim of teachers that they are covered by the definition of 'workman,' under Industrial Disputes Act thus:-

"Even though an educational institution has to be treated as an in 'industry,' teachers in an educational institution cannot be considered as workman.

The teachers employed by educational institutions whether the said institutions are imparting primary, secondary, graduate or post-graduate education cannot be called as 'workman' within the meaning of Section 2(s) of the Act. Imparting of education which is the main function of teachers cannot be considered as skilled or unskilled, manual work or supervisory work or technical work or clerical work. Imparting of education is in the nature of a mission or a noble vacation. The clerical work, if any, they may do, is only incidental to their principal work of teaching."

14. The definition of 'employees' as contained in Section 2(i) of the Minimum Wages Act, 1948 came up for consideration before this Court in the case of Haryana Unrecognized Schools' Association Vs. State of Haryana {1996 (4) SCC 255}. In Section 2(i) of the Minimum Wages Act, the word 'employees' is defined to mean: 'any person who is employed for hire or reward to do any work skilled or unskilled, manual or clerical, in a scheduled employment in respect of which minimum rates of wages have been fixed.' This Court held that as teachers are not employed for any skilled or unskilled, manual or clerical work, it is not open to the State Government to include their employment as a scheduled employment under the Minimum Wages Act. The relevant observations need to be quoted:-

"A combined reading of Ss. 3, 2(i) and 27 of the Minimum Wages Act, 1948 and the Statement of Objects and reasons of the legislation makes it explicitly clear that the State Government can add to either part of the Schedule any employment where person are employed for hire or reward to do any work skilled or unskilled, manual or clerical. If the persons employed do not do the work of any skilled or unskilled or of a manual or clerical nature then it would not be possible for the State Government to include such an employment in the Schedule in exercise of power under S. 27 of the Act. Since the teachers of an educational institution are not employed to do any skilled or unskilled or manual or clerical work and therefore, could not be held to an employee under S. 2(i) of the Act, it is beyond the competence of the State Government to bring them under the purview of the Act by adding the employment in education institution in the Schedule in exercise of power under S. 27 of the Act. Hence, the State Government in exercise of powers under the Act is not entitled to fix the minimum wage of such teachers. The impugned notifications so far as the teachers of the educational institution are concerned are accordingly quashed."

(Emphasis added by underlining)

15. The definitions of 'employee' in other labour legislations which need to be considered for comparison are first S. 2(13) of the Payment of Bonus Act, 1965 where the definition reads as under:-

'2(13). 'Employee' means any person (other then an apprentice) employed on a salary or wage not exceeding (three thousand and five hundred rupees) per mensem in any industry to do any skilled or unskilled manual, supervisory, managerial, administrative, technical or clerical work for hire or reward, whether the terms of employment be express or implied.'

(Emphasis added)

16. Section 2(f) of the Employees' Provident Funds Act, 1952 defines 'employee' as under:-

'2(f). "employee" means any person who is employed for wages in any kind of work manual or otherwise, in or in connections with the work of an establishment and who gets his wages directly or indirectly from the employer.' (Emphasis added)

17. Learned counsel appearing for the Corporation does not dispute that definition of employee under the Employees' Provident Fund Act, 1952 is very wide and may include even a teacher in an educational establishment because the expression in the definition clause used is '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) and who gets his wages directly or indirectly from the employer.'

18. It is submitted that since such language of wide import inn defining 'employee' is not used in the Payment of Gratuity Act of 1972, the definition is restrictive and not expansive. It has to be understood as excluding 'teachers' who are not doing any kind of skilled or unskilled, manual, supervisory, managerial, administrative, technical or clerical work.

19. It is not disputed that by Notification dated 3rd April, 1997, 1997, issued in exercise of powers under s. 1(3) (c) of the Payment of Gratuity Act, 1972 the Gratuity Act is extended to educational institutions in which ten or more persons are employed or were employed on any day preceding 12 months. The relevant part of the Notification reads as under:-

APPLICABILITY OF THE PAYMENT OF GRATUITY ACT, 1972
IN
EDUCATIONAL INSTITUTIONS

'NOTIFICATION NO. 5-42013/1/95-ss.ii dated 3RD APRIL, 1997.-In exercise of the powers conferred by Cl. (c) of sub-clause (3) of S. 1 of the Payment of Gratuity Act, 1972 (39 of 1972), the Central Government hereby specifies the educational institutions in which ten or more persons are employed or were employed on any day preceding 12 month as a class of establishments to which the said Act shall apply with effect form the date of publication of this Notification.

Provided that nothing contained in this Notification shall affect the operation of the Notification of the Ministry of Labour S. O. 239 dated 8thh January, 1982.'

20. An educational institution, therefore, is an 'establishment' notified under S. 1(3) (c) of the Payment of Gratuity Act, 1972. On behalf of the Municipal Corporation, it is contended that the only beneficial effect of the Notification issued under S. 1(3) (c) of the Act of 1972, is that such non-teaching staff of educational institutions as answer the description of any of the employments contained in the definition Cl. 2(e), would be covered by provisions of the Act. The teaching staff being not covered by the definition of 'employee' can get no advantage merely because by Notification 'educational institutions' as establishments are covered by the provisions of the Act.

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

"Semi-skilled work. Work that may require some alertness and close attention such as inspecting items or machinery for irregularities, or guarding property or people against loss or injury.

Skilled work. Work requiring the worker to use judgement, deal with the public, analyses facts and figures, or work with abstract ideas at a high level of complexity.

Unskilled work. Work requiring little or no judgement, and involving simple tasks that can be learned quickly on the job.

22. In construing the above mentioned three word which are used in association with each other, the rule of construction noscitur a sociis may be applied. The meaning of each of these work is to be understood by the company it keeps. It is a legitimate rule of construction to construe words in an Act of Parliament with reference to words fund in immediate connection with them. The actual order of these three words in juxtaposition indicates that meaning of one takes colour from the other. The rule is explained differently: ' that meaning of doubtful world may be ascertained be reference to the meaning of words associated with it.' (See principle of Statutory Interpretation of Justice G. P. Singh (8th Ed.)' Syn. 8 at pg. 379).

23. The world 'unskilled' is opposite of the world 'skilled' and the word 'semi-skilled' seems to describe a person who falls between the two categories i.e. he is not fully skilled and also is not completely unskilled but has some amount of skill for the work for which he is employed. The words 'unskilled' cannot, therefore, be understood dissociated from the word 'skilled' and 'semi-skilled' to read and construe it to include in it all categories of employee irrespective of the nature of employment. If the Legislature intended to cover all categories of employees for extending benefit of gratuity under the Act, specific mention of categories of employment in the definition clause was no necessary at all. Any construction of definition clause which renders it superfluous or otiose has to be avoided.

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

25. The Legislature was alive to various kinds of definitions of word 'employee' contained in various previous labour enactments when the Act was passed in 1972. If it intended to cover in the definition of 'employee' all kinds of employees, it could have as well used such wide language as is contained in S. 2(f) the Employees Provident Funds Act 1952 which defines 'employee' to mean 'any per son who is employed for wages in any kind of work, manual or otherwise, in or in connection with the work of (an establishment)….Non-use of such wide language in the definition of 'employee' in S. 2(e) of the Act of 1972 reinforces our conclusion that teachers are clearly not covered in the definition.

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

27. In conclusion, we find no merit in this appeal. It is, hereby, dismissed but without any order as to costs.

Appeal dismissed.

NOTIFICATION ON APPLICABILITY OF THE PAYMENT OF GRATUITY ACT, 1972 TO LOCAL BODIES

{PUBLISHED IN THE GAZETTE OF INDIA, PART-II, SECTION3, SUB-SECTION (ii) ON 23 RD JANUARY 1982}

Government of India/Bharat Sarkar

Ministry of Labour/Shram Mantralaya

****

New Delhi, The 8th January, 1982.

NOTIFICATION

S. O. No. 239…..-In exercise of the powers conferred by clause (c) of sub-section (3) of section 1 of the Payment of Gratuity Act, 1972 (39 of 1972), the Central Government hereby specified 'local bodies' in which ten or more persons are employed, or were employed, on any day preceding twelve months, as a class of establishments to which the said Act shall apply with effect from the date of publication of this notification in the Official Gazette.

Sd/.

(R. K. A. Subrahmanya)
Additional Secretary

(F. No. S-70020/16/77-FPG)

To,

The Manager,
Government of India Press,
Ring Road, Mayapuri Industrial Area,
New Delhi

NOTIFICATION OF APPLICABILITY OF THE PAYMENT OF GRATUITY ACT, 1972 TO EDUCATIONAL INSTITUTIONS

{PUBLISHED IN THE GAZETTE OF INDIA, PART-II SECTION 3(i) OF THE GAZETTE OF INDIA ON 19TH APRIL 1997}

Government of India/Bharat Sarkar
Ministry of Labour/Shram Mantralaya

New Delhi, the 3rd April, 1997.

NOTIFICATION

S.O. 1080….-In exercise of the powers conferred by clause (c) of sub-section (3) of section 1 of the Payment of Gratuity Act, 1972 (39 of 1972), the Central Government hereby specifies the educational institutions in which ten or more persons are employed or were employed on any day preceding 12 months as a class of establishments to which the said Act shall apply with effect from the date of publication of this notification.

Provided that nothing contained in this notification shall affect the operation of the notification of the Ministry of Labour S.O. 239 dated 8th January, 1982.'

(F. No. S-42013/1/95-SS.II)

Sd/.
(J. P. Shukla)
UNDER SECRETARY TO GOVERNMENT OF INDIA

To

The Manager,
Government of India Press,
Ring Road, Mayapuri,
New Delhi

MINUTES OF THE NINTH SITTING OF THE STANDING COMMITTEE ON LABOUR

The Committee sat on 28 December 2007 from 1400 hrs. to 1600 hrs. in Committee Room `C', Parliament House Annexe, New Delhi.

PRESENT

Shri Suravaram Sudhakar Reddy – CHAIRMAN

MEMBERS

LOK SABHA

2. Shri Furkan Ansari
3. Shri Santasri Chatterjee
4. Shri Thawar Chand Gehlot
5. Shri Mohammad Tahir Khan
6. Shri Virendra Kumar
7. Shri Bassangouda R. Patil
8. Smt. C.S. Sujatha
9. Shri Parasnath Yadav
10. Shri Ramdas Athawale

RAJYA SABHA

11. Shri Rudra Narayan Pany
12. Shri Narayan Singh Kesari
13. Shri K.Chandran Pillai
14. Ms. Pramila Bohidar

SECRETARIAT

1.	Shri S.K. Sharma	-	Additional Secretary
2.	Shri N. K. Sapra	-	Joint Secretary
3.	Shri R.K. Bajaj	-	Director
4.	Smt. Mamta Kemwal	-	Deputy Secretary-II

REPRESENTATIVES OF THE MINISTRY OF LABOUR & EMPLOYMENT

Sl. No.	Name of the Officer	Designation
1.	Shri S. Krishnan	Additional Secretary (L&E)
2.	Ms. Gurjot Kaur	Joint Secretary (SS)
3.	Shri S. K. Mukhopadhyay	CLC (C)
4.	Shri N.K. Prasad	Dy. CLC (C)
5.	Shri S. K. Verma	Director (SS)

REPRESENTATIVE OF THE MINISTRY OF LAW & JUSTICE (DEPARTMENT OF LEGAL AFFAIRS)

Sl. No.	Name of the Officer	Designation
1.	Shri M. K. Sharma	Additional Government Counsel

2. At the outset, the Chairman welcomed the representatives of the Ministries of Labour and Employment and the Ministry of Law & Justice (Department of Legal Affairs) to the sitting and drew their attention to Direction 55(1) of the Directions by the Speaker, Lok Sabha.

3. The Committee was then briefed by the representatives of the Ministries of Labour & Employment and Law & Justice on the proposed amendment sought by "The Payment of Gratuity (Amendment) Bill, 2007" which was referred to the Standing Committee on Labour for examination and report within three months as per notification in Bulletin Part-II dated 10.12.2007.

4. Thereafter, the Members raised queries which were replied to by the witnesses. The Chairman then directed the officials of the Ministries of Labour & Employment and Law & Justice to furnish replies to questions for which the replies were not readily available with them during the briefing within a week to the Committee.

The witnesses then withdrew.

A verbatim record of the briefing has been kept.

The Committee then adjourned.

MINUTES OF THE TWELFTH SITTING OF THE STANDING COMMITTEE ON LABOUR

The Committee sat on 19 February 2008 from 1430 hrs. to 1530 hrs. in Committee Room `B', Parliament House Annexe, New Delhi.

PRESENT

Shri Suravaram Sudhakar Reddy – CHAIRMAN

MEMBERS
LOK SABHA

2. Shri Furkan Ansari
3. Shri Thawar Chand Gehlot
4. Shri Virendra Kumar
5. Shri Bassangouda R. Patil
6. Shri Devidas Pingle
7. Shri Chandradev Prasad Rajbhar
8. Shri Kamla Prasad Rawat
9. Smt. C.S. Sujatha
10. Shri Parasnath Yadav

RAJYA SABHA

11. Shri Rudra Narayan Pany
12. Shri Narayan Singh Kesari
13. Shri K.Chandran Pillai
14. Shri Gandhi Azad

SECRETARIAT

1.	Shri N. K. Sapra	-	Joint Secretary
2.	Shri R.K. Bajaj	-	Director
3.	Shri N. K. Pandey	-	Deputy Secretary-II
4.	Smt. Mamta Kemwal	-	Deputy Secretary-II

2. At the outset, the Hon'ble Chairman welcomed the Members to the sitting and apprised them about the draft Twenty-sixth report on "The Payment of Gratuity (Amendment) Bill, 2007".

3. The Committee then took up the draft Twenty-sixth report for consideration and adoption. After detailed discussion on all the recommendations, the Committee adopted the report with the following modifications:

(i) Page No.19, Para No.38, Line 5 from bottom: Insert " continuously" after "worked".

(ii) Page No.20, Para No.38, Line 3 from the top: Insert "The Committee recommend that if a contract worker has rendered five years of service, whether continuous or otherwise, in an organization be made entitled for Gratuity under the Act" after "itself".

4. The Committee then authorised the Chairman to finalise the above Report and present the same to the Parliament on their behalf.

The Committee then adjourned.