

Bill No. 90 of 2007

THE PAYMENT OF GRATUITY (AMENDMENT) BILL, 2007

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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. Short title.

39 of 1972.

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

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;

OSCAR FERNANDES.

The 7th September, 2007.

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 ACT, 1972

(39 OF 1972)

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

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(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;

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further to amend the Payment of Gratuity Act, 1972.

(Shri Oscar Fernandes, Minister of Labour and Employment)