

Bill No. 109 of 2009

THE PAYMENT OF GRATUITY (AMENDMENT) BILL, 2009

A

BILL

further to amend the Payment of Gratuity Act, 1972.

BE it enacted by Parliament in the Sixtieth Year of the Republic of India as follows:—

1. (1) This Act may be called the Payment of Gratuity (Amendment) Act, 2009.

Short title and commencement.

(2) It shall be deemed to have come into force on the 3rd day of April, 1997.

39 of 1972.

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

Amendment of section 2.

10

‘(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;’.

Insertion of
new section
13A.

3. After section 13 of the principal Act, the following section shall be inserted, namely:—

Validation of
payment of
gratuity.

"13A. Notwithstanding anything contained in any judgment, decree or order of any court, for the period commencing on and from the 3rd day of April, 1997 and ending on the day on which the Payment of Gratuity (Amendment) Act, 2009, receives the assent of the President, the gratuity shall be payable to an employee in pursuance of the notification of the Government of India in the Ministry of Labour and Employment *vide* number S.O. 1080, dated the 3rd day of April, 1997 and the said notification shall be valid and shall be deemed always to have been valid as if the Payment of Gratuity (Amendment) Act, 2009 had been in force at all material times and the gratuity shall be payable accordingly:

Provided that nothing contained in this section shall extend, or be construed to extend, to affect any person with any punishment or penalty whatsoever by reason of the non-payment by him of the gratuity during the period specified in this section which shall become due in pursuance of the said notification."

STATEMENT 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 the 3rd April, 1997.

2. The Hon'ble Supreme Court in its judgment in Civil Appeal No. 6369 of 2001, dated the 13th January, 2004, in Ahmedabad Private Primary Teachers' Association *vs.* Administrative Officer and others [AIR 2004 Supreme Court 1426] 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 the 26th November, 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 the 3rd April, 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 24th February, 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;

MALLIKARJUN KHARGE.

The 12th November, 2009.

FINANCIAL MEMORANDUM

Clause 2 of the Bill seeks to substitute clause (e) of section 2 of the Payment of Gratuity Act, 1972 to bring teachers of the educational institutions within the provisions of the said Act for the purpose of payment of gratuity. It is the responsibility of the employer to pay gratuity to his employees. The employees of the Central Government and State Governments are not covered by the said Act. However, in respect of 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.

2. The Bill, if enacted, is not likely to involve any other recurring and non-recurring expenditure.

ANNEXURE

EXTRACT FROM THE PAYMENT OF GRATUITY ACT, 1972

(39 OF 1972)

* * * * *

Definitions. **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 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.

* * * * *

LOK SABHA

A

BILL

further to amend the Payment of Gratuity Act, 1972.

(Shri Mallikarjun Kharge, Minister of Labour and Employment)