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SUPREME COURT ON RETROSPECTIVE EFFECT OF AMENDMENT TO THE GRATUITY ACT

A. Introduction

The Supreme Court (**SC**), in the case of *Krishna Gopal Tiwary*,¹ opined that the amendment of 2010² to the Payment of Gratuity Act, 1972 (**PGA**) does not have retrospective effect.

B. Brief Facts:

1. Appeal was preferred before the SC by employees of Coal India Limited (“**Appellants**”) against the judgment of the Jharkhand High Court (**HC**). The HC declined the retrospective applicability of the Payment of Gratuity (Amendment) Act, 2010 (“**2010 Amendment**”).

The office memorandum of Government of India dated November 26, 2008 (**OM**) had raised the ceiling of gratuity in Central Sector Enterprises to Rs. 10 lakh w.e.f. January 1, 2007. Appellants were paid gratuity as per the OM.

2. This was paid subject to tax deduction at source (**TDS**) under the Income Tax Act, 1961 (“**IT Act**”). Later, the 2010 Amendment raised the ceiling on gratuity to Rs. 10 lakh, w.e.f. May 24, 2010³.
3. The Appellants’ grievance was that tax was deducted on gratuity paid to them, since they received gratuity before the 2010 Amendment. They challenged the date of commencement of the amendment and asserted that the effective date must be January 1, 2007. They relied on the fact that the amendment was made to grant liberalised benefits and therefore it must be retrospective.
4. They relied on the case of *D.S. Nakara*⁴ to contend that the cut-off date of May 24, 2010, created two categories of employees. Those:

¹ *Krishna Gopal Tiwary vs. Union of India* (13.08.2021 - SC) : MANU/SC/0530/2021 LL.

² Payment of Gratuity (Amendment) Act, 2010, available at: https://labour.gov.in/sites/default/files/SealingEnhancement_1.pdf.

³ The 2010 Amendment was made effective vide Government Notification dated May 24, 2010. Link to the same is available at: https://labour.gov.in/sites/default/files/SealingEnhancement_1.pdf.

⁴ *D.S. Nakara & Ors. v. Union of India* (1983) 1 SCC 305.

- a. who attained age of superannuation before the said date; and
- b. who superannuated on or after the said date.

It was submitted that such classification is illegal and arbitrary in nature.

C. Order and Reasoning:

In the judgement, the SC:

1. Relied on its judgement in *State Governments' Pensioners Association*⁵ to opine that the payment of gratuity from a specified date of retirement is not unconstitutional.
2. Held that gratuity paid to the Appellants on their retirement would fall under Section 4(5) of the PGA, which allows employees to receive better terms of gratuity under any award or contract with their employer with the objective to protect the rights of employees.
3. Explained that the IT Act grants tax exemption to gratuity to the extent that it does not exceed the amount prescribed under the PGA. The ceiling limit was increased to Rs. 10 lakh only after May 24, 2010 and therefore the Appellants are subject to TDS.
4. Held as follows: *“However, what is exempt from the Income Tax Act is the amount of gratuity received under the Gratuity Act to the extent it does not exceed an amount calculated in accordance with the provisions of sub-sections (2) and (3) of Section 4 of the Gratuity Act. The Gratuity Act contemplated rupees ten lakhs as the amount of gratuity only from 24.5.2010. Such gratuity is the amount payable only once. Thus, the cut-off date cannot be said to be illegal, it being one-time payment. Therefore, such amendment in the Gratuity Act cannot be treated to be retrospective. Therefore, the provisions of the statute cannot be said to be retrospective.”*

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⁵ *State Governments' Pensioners Association & Ors. v State of Andhra Pradesh* (1986) 3 SCC 501.