2026:AHC:45150-DB

HIGH COURT OF JUDICATURE AT ALLAHABAD

WRIT - C No. - 6098 of 2016

AFR

Reserved on 19.11.2025

Delivered on 27.02.2026

Benara Udyog Ltd.

…..Petitioner(s)

Versus

Union of India and 3 others

…..Respondent(s)

Counsel for Petitioner(s)	:	Anshul Kumar Singhal, Vinod Kumar Agarwal
Counsel for Respondent(s)	:	A.S.G.I., Arvind Kumar Goswami, C.S.C., Santosh Kumar Shukla

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Along with :

1. **Writ - C No. 10861 of 2016:**
M/s Uflex Ltd.
Versus
Union of India and 2 others

2. **Writ - C No. 13869 of 2016:**
Aqua Plumbings Pvt. Ltd.
Versus
Union of India and 3 others

3. **Writ - C No. 15535 of 2016:**
Dh Ltd.
Versus
Union of India and 3 others

4. **Writ - C No. 16861 of 2016:**
M/s Kanhaiya Hotels Pvt. Ltd. and another
Versus
Union of India and 3 others

5. **Writ - C No. 15374 of 2016:**
M/s Harso Steels Pvt. Ltd.
Versus

Union of India and 3 others

Writ - C No. 15533 of 2016:

6. M/s Landcraft Developers Pvt. Ltd.

Versus

Union of India and 3 others

Writ - C No. 15590 of 2016:

7. M/s Eco Cement India Ltd. and 3 others

Versus

Union of India and 3 others

Writ - C No. 11480 of 2016:

8. M/s Sahaha India and another

Versus

Union of India and 2 others

Writ - C No. 11481 of 2016:

9. Sahara India L.I.C. Ltd. and another

Versus

Union of India and 2 others

Writ - C No. 13870 of 2016:

10. Vinay Iron Foundary

Versus

Union of India and 3 others

Writ - C No. 16172 of 2016:

11. M/s Mahavir Jute Mills Ltd. and another

Versus

Union of India and 3 others

Writ - C No. 44109 of 2016:

12. Benara International

Versus

Union of India Thru Secy. and 4 others

Writ - C No. 8995 of 2016:

13. Shriram Pistons and Rings Ltd. and another

Versus

Union of India and 3 others

Writ - C No. 15383 of 2016:

14. M/s Hi Tech Pipes Ltd.

Versus

Union of India and 3 others

Writ - C No. 16168 of 2016:

15. M/s Agra Machine Tools Pvt. Ltd. and 5 others

Versus

Union of India and 5 others

16. **Writ - C No. 28048 of 2016:**

Rungta Projects Limited

Versus

Union of India and 3 others

Writ - C No. 58324 of 2016:

17. Cauvery Aqua Pvt. Limited

Versus

Union of India and 3 others

Writ - C No. 10915 of 2016:

18. Sahara Credit Cooperative Society Ltd. and another

Versus

Union of India and 2 others

Writ - C No. 17781 of 2016:

19. Triveni Engineering and Industries Ltd.

Versus

Union of India and 3 Ors.

Writ - C No. 13873 of 2016:

20. Benara Bearings and Pistons Ltd.

Versus

Union of India and 3 others

Writ - C No. 28047 of 2016:

21. Rpl Projects Limited

Versus

Union of India and 3 others

Writ - C No. 44316 of 2016:

22. M/s General Plumbings

Versus

Union of India and 3 others

Writ - C No. 13871 of 2016:

23. Trafo Power and Electricals Pvt. Ltd.

Versus

Union of India and 3 others

Writ - C No. 14039 of 2016:

24. Ms. Leiner Shoes Pvt. Ltd.

Versus

Union of India and 4 others

Writ - C No. 14653 of 2016:

25. M/s Merino Industries Ltd.

Versus

Union of India and 3 others

Writ - C No. 15388 of 2016:

26. M/s Rama Steels Tubes Ltd.

Versus

Union of India and 3 others

27. **Writ - C No. 20911 of 2016:**

M/s Bitufelt Private Limited and 3 others

Versus

Union of India Thru Secy. and 2 others

Writ - C No. 44313 of 2016:

28. M/s Vacmet India Ltd.

Versus

Union of India and 3 others

Writ - C No. 58321 of 2016:

29. Windsor Distributors Pvt. Ltd.

Versus

Union of India and 3 others

Writ - C No. 58323 of 2016:

30. Brindavan Beverages Pvt. Limited

Versus

Union of India and 3 others

HON'BLE SARAL SRIVASTAVA, J.
HON'BLE SUDHANSHU CHAUHAN, J.

(Delivered by Hon'ble Saral Srivastava,J.)

1. Heard learned counsel for the petitioners, Sri Shashi Prakash Singh, learned Additional Solicitor General of India assisted by Sri Arvind Kumar Goswami, Sri Purnendu Kumar Singh, Sri Ved Mani Tiwari, Ms. Sujata Choudhary & Sri Ravi Prakash Singh, learned counsels for respondent-Union of India and Sri Rajeshwar Tripathi, learned Chief Standing Counsel-II for the State-respondent.

2. The petitioners in this bunch of writ petitions have prayed for a writ of mandamus declaring the Payment of Bonus (Amendment) Act, 2015 (herein-after referred to as 'Amendment Act, 2015') published in the Gazette of India dated 01.01.2016 as ultra-vires, and have further prayed for quashing of the impugned recovery issued in pursuance of Amendment Act, 2015.

3. For convenience, the facts have been delineated from Writ-C No.6098 of 2016 (Benara Udyog Ltd. Vs. Union of India and Others)

4. The petitioner is an Engineering Industrial Unit established in the vicinity of District Agra and is involved in manufacturing of products like disc-brake pads, bushing, pistons of motorcycle. The petitioner

states that since the establishment of petitioner's unit, due care has been taken of welfare and rights and benefits of the employees employed in the petitioner's company. The petitioner's company has paid wages, bonus, increments and other statutory emoluments to its employees from time to time.

5. It is stated that Payment of Bonus Act, 1965 (hereinafter referred to as 'Act, 1965') was enacted with a view to provide for payment of bonus to persons employed in certain establishments on the basis of profits or on the basis of production or productivity.

6. The President of India was informed about the subject matter of Amendment Act, 2015. The President of India recommended the introduction and consideration of Bill, 2015 in the House under Clause (1) & (3) of Article 117 of the Constitution of India.

7. The Bill, 2015 was introduced in Lok Sabha on 07.12.2015 and was passed on 22.12.2015. The Bill, 2015 (Bill No.265-C of 2015) was passed by Rajya Sabha on 23.12.2015 and thereafter, the Bill, 2015 received assent of President of India.

8. The Act, 1965 is applicable to all business establishments which has employed 20 employees or more. As per Section 2(13) of Act, 1965, an 'employee' who was employed on a salary or wages not exceeding Rs.10,000/- per mensem in any industry to do any skilled or unskilled manual, supervisory, managerial, administrative, technical or clerical work or for hire or reward and has worked for not less than thirty days in an accounting year was eligible for bonus with a ceiling limit of minimum 8.33% of salary payable to him and a maximum cap of 20% of the salary. The Amendment Act, 2015 by amending Section 2(13) which defines 'employee' has brought the eligibility limit from Rs.10,000/- to Rs.21,000/-.

9. The Amendment Act, 2015 has further raised the ceiling provided under Section 12 of the Act, 1965 for payment of bonus from Rs.3500/- to Rs.7,000/- or the minimum wage for scheduled employment as fixed by the Government, whichever is higher.

10. It is stated that inclusion of minimum wage component in Section 12 of the Act, 1965 in calculating bonus will hinder the accounting policy of companies. The petitioner states that by the Amendment Act, 2015, the employers have not been provided with any specified time frame to factor the increased cost in their accounts in order to comply with retrospective applicability of the Amendment Act, 2015.

11. According to pleadings in the writ petition, further grievance of the petitioner by the Amendment Act, 2015 is that significant financial burden on the establishment ought to have been taken into consideration by the respondents while amending the Act, 1965. The petitioner states that Bill No.265 of 2015 has been introduced in the Lok Sabha vide Clause 1(2) to enforce the Bill from 1st day of April, 2015, which has not been done, and the Amendment Act, 2015 has been made effective retrospectively w.e.f. 1st day of April, 2014.

12. It is stated that by enforcement of Amendment Act, 2015 retrospectively, the petitioner would face difficulties inasmuch as allocable surplus would required to be re-assessed to account in the increased pool for eligible employees and the bonus eligibility based upon the Amendment Act, 2015. According to petitioner, the price fixation of the product has already been done, and the books of accounts have already been closed, and the product has been launched in the market, therefore, it is impossible to re-fix it's price or to recover the enhanced price.

13. Further difficulty, which is faced by the establishment is that fiscal deficit incurred by virtue of Amendment Act, 2015 cannot be extracted under any of the heads of the account except adding it to the liabilities of the establishment resulting into decrease in profits or by variation of price in the commodity market.

14. It is stated that by the Amendment Act, 2015 there would be an increase in the financial burden and greater accounting complexities for employers.

15. It is further stated that insertion of 'minimum wage' under the Minimum Wages Act, 1948 by amendment in Section 12 to calculate bonus has created an additional challenge for the petitioner's company. It is stated that appropriate Government (State Government) and in different cases, Central Government fixed different minimum wages for various scheduled employment (skilled, unskilled and semi skilled) because of this fact, the petitioner would have to carry out separate assessment of applicable wage rate for different categories of employees to calculate statutory bonus payable. The petitioner has alleged that respondent has acted arbitrarily in enforcing the Amendment Act, 2015 retrospectively w.e.f. 01.04.2014.

16. Counter affidavit has been filed by the respondent-Union of India contending *inter-alia* that issues relating to amendment in the Act, 1965 was discussed before number of forums including tripartite consultation meetings with the representatives of various Departments of Central Government, State Labour Secretaries, Employers' Associations and Central Trade Union Organization. It is further stated that under the Chairmanship of the Minister for Labour and Employment, a tripartite consultation meeting was held on 20.10.2014 at New Delhi in which Employers' Association, Central Trade Union Organization, various Central Government Ministries and State Labour Secretaries had participated.

17. The respondents further stated that vide order dated 21.11.2014, an Inter Ministerial Group (IMG) was also set up to decide the revision in calculating ceiling and eligibility limit under the Act, 1965. It is stated that aforesaid Inter Managerial Group (IMG) for bonus held it's meeting on 03.12.2014 with the representatives of Employers' Associations to discuss the proposal relating to amendment in the Act, 1965.

18. It is also stated that the issue of amendment in the Act, 1965 was also discussed in the 46th Session of the Indian Labour Conference on 20-21 July, 2015 at New Delhi. It is further stated that there has been 111.67% increase in All India Consumer Price Index fixed for industrial

workers (Base 2001=100) from 120 in April, 2006 to 254 in March, 2015. Further it is the case of the respondent-Union of India that rise in Consumer Price Index for industrial workers has been taken into consideration in calculating ceiling which came to Rs.7408/- per month till March, 2015 which is higher than the ceiling of Rs.7,000/- per month under the Amendment Act, 2015.

19. It is stated that the object, which is sought to be achieved by the amendment is fulfilled by making the law which increases the eligibility limit to Rs.7000/- or minimum wage for the scheduled employment whichever is higher, and plea of invalidity of retrospectivity of amendment on the ground that it infringes Article 14 of the Constitution of India is misconceived.

20. It is further stated that since bonus has to be paid after determining profits and calculation of allocable surplus for that particular year, therefore, retrospective implementation of Amendment Act, 2015 is just and proper.

21. Respondents have also stated that necessary debit and credit is a routine in an establishement, which implies that there should be no difficulty as far as practical aspects in calculating bonus is concerned, therefore, problems indicated by the petitioner are not justified and there is no statutory bar in adjustment of the account books.

22. It is further stated that any provision, which has the effect of promoting or effectuating directive principles is presumed to be reasonable. Such provisions are to be construed in favour of beneficiary for achieving the purpose of enactment being a social benefit oriented legislation.

23. It is also stated that enforcement of Amendment Act, 2015 retrospectively does not violate any vested right of petitioner, which has accrued to him nor retrospective enforcement of Amendment Act, 2015 has taken away any vested right of the petitioner. According to the respondents, the legislature has power to enact an amendment with retrospective effect. It is stated that the legislature possesses the right to

make retrospective legislation, which creates new obligation in respect to the transactions already over and requires reopening of past, closed and completed transactions.

24. Respondents contend that no hurdle is faced by the establishment under the provisions of income tax, and other relevant statutes to ensure compliance of statutory liability. It is also stated that Section 15(2) of the Act, 1965 deals with a contingency where for any accounting year, if there is no available surplus or allocable surplus in respect of that year and falls short of the amount of minimum bonus payable to the employees in the establishment under Section 10 of the Act, 1965 and there is no amount or sufficient amount carried forward and set on in sub-section (1) of that section, which could be utilised for payment of minimum bonus, then such minimum amount or deficiency shall be carried forward for being set off in the succeeding accounting year and so on upto and inclusive of fourth accounting year.

25. The petitioner has filed rejoinder affidavit denying the averments made in the counter affidavit. The petitioner has confined the challenge to the Amendment Act, 2015 only to the extent it has been implemented with retrospective effect i.e. 01.04.2014 and also enhancement of ceiling for payment of bonus under Section 12 from Rs.3500/- to Rs.7000/- and insertion of minimum wages under the Minimum Wages Act, 1948 to calculate bonus under Section 12 of the Act, 1965.

26. Challenging the amendment, Sri Anshul Kumar Singhal, learned counsel for the petitioner has contended that if, the amendment in the Act, 1965 creates financial burden on a class of persons without offending the rights of other persons, such amendment is permissible, but if it offends the rights of other persons, the amendment cannot be enforced with retrospective effect.

27. Supporting the aforesaid contention, Sri Shakti Swaroop Nigam, learned Senior Counsel appearing in some petitions has contended that any amendment in Act, 1965 can be implemented prospectively and not

retrospectively as it violates Article 14 of the Constitution of India. He has relied upon the following judgements in support of his contention:-

(i). ***Remington Rand of India Ltd. Vs. The Workmen, AIR 1970 SC 1421;***

(ii). ***State of Gujarat & Another Vs. Raman Lal Keshav Lal Soni & Others 1983 (2) SCC 33;***

(iii). ***T.R. Kapur & Others Vs. State of Haryana & Others1986 (Supp.) SCC 584;***

(iv). ***Union of India & Others Vs. Tushar Ranjan Mohanty & Others (1994) 5 SCC 450.***

28. He further submits that since Amendment Act, 2015 created a financial liability, therefore, pre-decisional hearing before amending the Act, 1965 is mandatory. Accordingly, it is contended that since no pre-decisional hearing was given, therefore, Amendment Act is invalid. In support of the said contention, he has relied upon judgement of Apex Court in the case of ***Punjab State Co-operative Milk Producers Federation Ltd. & Another Vs. Balbir Kumar Walia & Others, 2021 (171) FLR 397.***

29. He submits that legislative declaration cannot be contrary to the judicial declaration. He submits that for the following two reasons, the said principle of law is attracted in the present case:-

(a). According to him, amendment in Act, 1965 is not a declaratory Act because it does not clarify anything embodied in the parent Act rather the amendment creates a new right and obligation upon the establishment;

(b). Act, 1965 is substantive law because it creates rights and liabilities upon the employer and the employees and any amendment in the parent Act i.e. Act, 1965 would create new rights and obligations.

30. Thus, for the aforesaid two reasons, he submits that Amendment Act, 2015 is not a declaratory law. In support of the said contention, he has placed reliance upon following judgements of the Apex Court:-

(i). ***Indra Sawhney Vs. Union of India & Others, 2000(1) SCC 168;***

(ii). ***State of Punjab & Others Vs. Bhajan Kaur & Others 2008 (12) SCC 112;***

(iii). ***Commissioner of Income Tax (Central)-I, New Delhi Vs. Vatika Township Private Limited, 2015 (1) SCC 1.***

31. He has further contended that financial burden cannot be applied retrospectively unless the legislature has expressly and unambiguously stated such an intent in the amendment

32. Sri Diptiman Singh, learned counsel appearing in some of the petitions submitted that the Bill No.265 of 2015 was introduced w.e.f 01.04.2015, the statement of object and reasons do not mention that it would be made effective retrospectively. He submits that financial memorandum mentions that the Bill does not involve, 'any other recurring or non-recurring expenditure'. He has referred to certain discussions on the Bill, which shall be considered at the appropriate stage, to contend that constitutional decisions cannot be taken on the whims and desires of the Government. He further submits that original bill was to be made effective from 01.04.2015 and no explanation or reason has been given in changing the date of implementation of the Bill and making it retrospective. He has placed reliance upon the judgement of Apex Court in the case of ***Jayam and Company Vs. Assistant Commissioner & Another 2016(15) SCC 125.***

33. Sri Sunil Kumar Tripathi, Advocate has addressed on the Amendment in Section 12 of the Act, 1965. He submits that amendment in Section 12 of the Act, 1965 in respect to increase in ceiling limit is based upon unreasonable classification. Therefore, it is violative of Article 14 of the Constitution of India.

34. Elaborating the said argument, he submits that industries notified as scheduled employment under Minimum Wages Act, 1948, monthly ceiling limit for calculation of bonus for this class of industry is the minimum wages under the Minimum Wages Act, 1948. He submits that at present minimum wages for unskilled workers is Rs.10,701/-, semi-

skilled workers is Rs.11,772/- and skilled workers is Rs.13,186/- and bonus is to be calculated on the aforesaid notified wages with respect to different classes of workers.

35. He submits that for industries, which have not been notified as scheduled employment under the Minimum Wages Act, 1948, monthly ceiling limit for this class of industries is Rs.7000/- per month for calculation of bonus. He submits that classification is unreasonable and discriminatory.

36. He further submits that the classification of industries in two categories is arbitrary as the classification is not based on intelligible differentia. He contends that object sought to be achieved by classifying the industries in two categories is irrational because unorganised industries covered by scheduled employment have to pay higher bonus than the organised industries not covered by scheduled employment. He has placed reliance upon following judgements of Apex Court:-

(i) ***Sukanya Shantha Vs. Union of India and Others, 2024 SCC OnLine SC 2694;***

(ii) ***Bhikusa Yamasa Kshatriya & Another Vs. Sangamner Akola Taluka Bidi Kamgar Union & Others,AIR 1963 SC 806;***

(iii) ***U. Unichoyi & Others Vs. State of Kerala AIR 1962 SC 12.***

37. Rebutting the aforesaid contention, learned Additional Solicitor General submits that the Act, 1965 being a welfare legislation should be interpreted in a manner so as to achieve the object of the Act. He submits that power and competence of the Parliament to amend the statutory provision cannot be doubted, however, the only rider in amending the Act, 1965 retrospectively is that the Act, 1965 must be reasonable and not arbitrary and must not be violative of any of the fundamental rights guaranteed under the Constitution of India. He submits that Amendment Act, 2015 amending the Act, 1965 with retrospective effect is reasonable and has been introduced to achieve the object for which it has been introduced. Therefore, the Amendment Act, 2015 is neither arbitrary nor

is violative of any fundamental rights of the petitioner guaranteed under the Constitution of India.

38. It is contended that the Amendment Act, 2015 does not violate any vested right of the petitioner. He submits that Amendment Act, 2015 has been introduced for promoting and effectuating the Directive Principles of State Policy enshrined in the Constitution of India, therefore, the Amendment Act, 2015 cannot be said to be arbitrary and violative of any of the provisions of Constitution of India.

39. He further contends that Section 15(2) of the Act, 1965 provides for a situation where for any accounting year, if there is no available surplus or allocable surplus in respect to that year falls short of the amount of minimum bonus payable to the employees in the establishment under Section 10 of the Act, 1965, and there is no amount or sufficient amount carried forward and set on under sub-section (1) of that Section, which could be utilised for payment of minimum bonus, then such minimum amount or deficiency shall be carried forward for being set off in the succeeding accounting year and so on upto and inclusive of the fourth succeeding year. Therefore, the difficulty as pointed out by the petitioner in the writ petition in implementing the Amendment Act is non-existent in view of Section 15(2) of the Act, 1965.

40. He contends that proviso (b) to Section 19 of the Act, 1965 provides that time for payment can be extended. He submits that validity of Amendment Act has been upheld by Patna High Court in Civil Writ Jurisdiction Case No.15379 of 2017 and by Madras High Court in Writ Petition No.6958 of 2016.

41. He has further contended that there is no arbitrariness in including the concept of calculation on the basis of minimum wages under the Minimum Wages Act, 1948 for the purpose of payment of bonus. Accordingly, he submits that the contention advanced in this regard by the learned counsel for the petitioners is misconceived.

42. He further urges that the contention of learned counsel for the petitioner that statement of object of the Bill indicates that the Bill was to be implemented w.e.f. 01.04.2015 and its applicability cannot be made retrospectively on the whims and desires of the Government is not sustainable inasmuch as the Prime Minister of India has approved the proposal of the Ministry for moving official amendments through Amendment Act, 2015 as contained in para 8 of the proposal dated 22.12.2015 under Rule 12 of the Government of India (Transaction of Business) Rules, 1961.

43. Accordingly, he submits that petitioners have failed to make out any case calling for any interference by this Court in exercise of power under Article 226 of the Constitution of India and declaring the Amendment Act, 2015 as *ultra-vires* to the Constitution of India.

44. We have considered the rival submissions advanced by the learned counsel for the parties and perused the record.

45. Section 2(13) of the Act, 1965 which defines 'employee' as it stood prior to the Amendment Act, 2015 reads as under:

"2. ***Definitions-***

(13) "employee" means any person (other than an apprentice) employed on a salary or wage not exceeding [ten thousand rupees] per mensem in any industry to do any skilled or unskilled manual, supervisory, managerial, administrative, technical or clerical work for higher or reward, whether the terms of employment be express or implied."

46. Section 12 of the Act, 1965 as it prior to amendment provides for bonus payable to certain employees which reads as follows:-

"12. ***Calculation of bonus with respect to certain employees.-*** *Where the salary or wage of an employee exceeds [three thousand and five hundred rupees] per mensem, the bonus payable to such employee under section 10 or, as the case may be under section 11, shall be calculated as if his salary or wage were [three thousand and five hundred rupees] per mensem."*

47. By the Amendment Act, 2015 in Section 2(13) which defines expression “employee”, the ceiling on salary or wages has been enhanced from Rs.10,000/- per month to Rs.21,000/- per month.

48. As a result of amendment in Section 12 of Act, 1965, the amount of Rs.3500/- has been substituted by an amount of Rs.7000/- or the minimum wages for scheduled employment as fixed by the Government whichever is higher.

49. Section 19 of the Act, 1965 deals with the time limit for the payment of bonus which reads as under:

> *“19. **Time-limit for payment of bonus.**-[All amounts] payable to an employee by way of bonus under this Act shall be paid in cash by his employer-*
>
> *(a) where there is a dispute regarding payment of bonus pending before any authority under section 22, within a month from the date on which the award becomes enforceable or the settlement comes into operation, in respect of such dispute;*
>
> *(b) in any other case, within a period of eight months from the close of the accounting year:*
>
> *Provided that the appropriate Government or such authority as the appropriate Government may specify in this behalf may, upon an application made to it by the employer and for sufficient reasons, by order, extend the said period of eight months to such further period or periods as it thinks fit; so, however, that the total period so extended shall not in any case exceed two years.”*

50. According to the learned counsel for the petitioners that pre-decisional hearing to the petitioners was necessary inasmuch as retrospective operation of the Act has seriously prejudiced the vested rights of the petitioners and has created fiscal liability upon the petitioners. It is submitted that the petitioners as per Section 19 of the Act, 1965 have paid the bonus to their employees within the time frame provided under the said section, and the implementation of the Act with

retrospective effect has resulted in financial liability for the petitioner and has further created accounting complexities.

51. The respondent in the counter affidavit has stated that the issues relating to the Amendment in the Act, 1965 were discussed before a number of forums including tripartite consultation meetings with the representatives of the various departments of Central Government, State Labour Secretaries, Employers' Association and Central Trade Union Organization. It has also been stated that under the Chairmanship of the Minister for Labour and Employment, a tripartite consultation meeting was held on 20.10.2014 at New Delhi in which Employers' Association, the Central Trade Union Organization, various Central Government Ministries and State Labour Secretaries had participated.

52. The aforesaid averments have not been denied by the petitioners in their rejoinder affidavit. However, the petitioners have stated that mere fact that certain consultation meetings and groups formed and chaired by the government functionaries in respect of the Amendment Act, 2015 will not cure it's constitutional vices and infirmities.

53. The facts stated in the counter affidavit, referred above, with regard to consultation with various organizations by State Machinery establishes that pre-decisional hearing was given to the recognised organizations by the State Machinery before introduction of the Amendment Bill in the Parliament, which is in compliance of the principles of natural justice.

54. Further, the question as to whether before amending the Act, 1965 retrospectively, opportunity of hearing was required, we may state that in the facts of the present case for the reasons delineated above, the pre-decisional hearing for making the Act retrospective is not required, inasmuch as retrospective application of the Amendment Act has not prejudiced the rights of the petitioners. The reason why we say so shall be dealt with at the appropriate stage in the latter part of the judgement.

55. Sri Shakti Swaroop Nigam, learned Senior Counsel appearing for the petitioners in support of the contention that retrospective amendment

has put financial liability upon the petitioner has placed reliance upon the judgement in the case of ***Punjab State Co-operative Milk Producers Federation Ltd. (supra)*** wherein it has been held that economic viability or financial capacity of the employer is an important factor, which cannot be ignored while fixing wage structure. The said judgement is not applicable in the facts of the present case inasmuch as in the said case, the employees of the Milk Federation demanded the pay scale as revised by the Punjab Government Anomaly Committee w.e.f. 01.01.1986. The Federation was suffering from acute financial stringency, therefore, it granted revised pay scale from 01.01.1994 instead of 01.01.1986. The employees of the Federation raised protest for grant of revised pay scale w.e.f. 01.01.1986, therefore, a Committee was constituted to examine several issues that arose.

56. The judgement of the Apex Court considered the recommendations of the Committee in paragraph no.8 of the judgement, the Committee in it's recommendations found that large number of employees will be financially benefited and the financial burden will be of Rs.2 lacs per month, this was considered to be a huge liability. The Committee was also apprised that the liability of the arrears from 01.01.1986 to 31.08.1992 was still outstanding. The Committee after considering the above, as well as various other aspects, recommended that the improved pay scales may be implemented w.e.f. 01.01.1994 without giving the benefit of even notional pay fixation w.e.f. 01.01.1986, this would have saved the organization from a huge liability of the payment of arrears and would also give scope to the employees for placement in better pay scales and getting other benefits, which might accrue as a result of next revision of pay scale likely to be made from 01.01.1994 on the pattern of Punjab Government.

57. The report of the Committee was considered by the Board of Directors of Federation who approved the grant of revised pay scale w.e.f. 01.01.1994. Subsequently, the decision of the Board was approved by the Registrar (Cooperative Societies) on 29.04.1997.

58. The facts of the case noted above clearly discloses that the Apex Court in granting pay scale w.e.f. 01.01.1994 found that the same was in the interest of Federation as well as the employees of the Federation, inasmuch as, if the benefit of revised pay scale was granted w.e.f. 01.01.1994, the Federation could be saved from collapsing because of the huge financial liability likely to be incurred on the grant of revised pay scale w.e.f. 01.01.1986. On the other hand, the employees interest could also be protected, as that would help in extending the next revision of pay scale likely to be made w.e.f. 01.01.1994 on the pattern of Punjab Government.

59. In the present case, the petitioner has not disclosed any fact in the writ petition indicating that on account of the retrospective amendment, the liability is such, which would result in creating a huge financial liability which is detrimental to the interest of the employer.

60. Learned counsel for the petitioner has further relied upon the several judgements noted below on the issue that the amendment in Bonus Act, 1965 could apply prospectively and not retrospectively, as it violates Article 14 of the Constitution of India.

61. The first judgement relied upon by the learned counsel for the petitioners is the case of ***Remington Rand of India Ltd. (supra)***. The petitioners have placed reliance on paragraph no.1 of the said judgement with respect to the issue involved in the said case, which included the issue of grant of bonus for the year 1963-64. The said issue has been decided on concession given by the counsel for the workmen. Paragraph no.3 of the said judgement is reproduced herein-below:-

> "*3. As regards the bonus, the company had already paid to the workmen bonus at the rate of 4 months basic pay as against the demand for the maximum bonus calculated in accordance with the Payment of Bonus Act, 1965, and on consolidated as against the basic wages. The Tribunal conceded that demand and granted bonus at 20 percent of the consolidated wages. In view, however, of this Court's decision in Jalan Trading Co. v. Mill Mazdoor Union, 1967-1 SCR 15 (AIR 1967 SC 691), Mr. Ramamurthi for the workmen*

conceded that the Act cannot apply in respect of the year in question and that the bonus payable for that year will have to be calculated on the basis of the Full Bench Formula as approved by this Court. The award to that extent therefore, has to be set aside and remanded to the Tribunal for determining the bonus in accordance with the said Formula."

62. Accordingly, the aforesaid judgement of the Apex Court is not applicable to the facts of the present case.

63. So far as the judgement of the Apex Court in the case of ***State of Gujarat (supra)*** is concerned, the said judgement is not applicable as it was a case where personnel were drawn from different sources viz. government departments as well as local authorities or municipal services and were merged together to constitute a single integrated Civil Service (Panchayat Service) by a legislative enactment.

64. In the said case, a retroactive amendment of the enactment namely Gujarat Panchayats (Third Amendment) Act, 1978 created a differential classification in relation to the original position of the employees of different departments and the said amendment deprived the ex-municipal employees of their status of government servants.

65. In the aforesaid background, it was argued that the benefit acquired could not be taken away with retrospective effect. On the other hand, it was urged by the respondent that there was good reason for the classification, and that in the circumstances of the case, the classification was legitimately made with retrospective effect. In the said backdrop, the Apex Court in paragraph no.52 of the judgement had held as under:-

"52. The legislation is pure and simple, self-deceptive, if we may use such an expression with reference to a legislature-made law. The legislature is undoubtedly competent to legislate with retrospective effect to take away or impair any vested right acquired under existing laws but since the laws are made under a written Constitution, and have to conform to the dos and don'ts of the Constitution, neither prospective nor retrospective laws can be made so as to contravene fundamental rights. The law must satisfy the requirements of the Constitution today

taking into account the accrued or acquired rights of the parties today. The law cannot say, 20 years ago the parties had no rights, therefore, the requirements of the Constitution will be satisfied if the law is dated back by 20 years. We are concerned with today's rights and not yesterday's. A legislature cannot legislate today with reference to a situation that obtained 20 years ago and ignore the march of events and the constitutional rights accrued in the course of the 20 years. That would be most arbitrary, unreasonable and a negation of history. It was pointed out by a Constitution Bench of this Court in B.S. Yadav v. State of Haryana. Chandrachud, C.J. speaking for the Court held :(SCC head-note)

> *Since the Governor exercises the legislative power under the proviso to Article 309 of the Constitution, it is open to him to give retrospective operation to the rules made under that provision. But the date from which the rules are made to operate must be shown to bear either from the face of the rules or by extrinsic evidence, reasonable nexus with the provisions contained in the rules, especially when the retrospective effect extends over a long period as in this case.*

Today's equals cannot be made unequal by saying that they were unequal 20 years ago and we will restore that position by making a law today and making it retrospective. Constitutional rights, constitutional obligations and constitutional consequences cannot be tampered with that way. A law which if made today would be plainly invalid as offending constitutional provisions in the context of the existing situation cannot become valid by being made retrospective. Past virtue (constitutional) cannot be made to wipe out present vice (constitutional) by making retrospective laws. We are, therefore, firmly of the view that the Gujarat Panchayats (Third Amendment) Act, 1978 is unconstitutional, as it offends Articles 311 and 14 and is arbitrary and unreasonable. We have considered the question whether any provision of the Gujarat Panchayats (Third Amendment) Act, 1978 might be salvaged. We are afraid that the provisions are so intertwined with one another that it is well nigh impossible to consider any life-saving surgery. The whole of the Third Amendment Act must go. In the result

Writ Petitions Nos.4266-4270 of-1978 are allowed with costs quantified at Rs 15,000. The directions given by the High Court, which we have confirmed, should be complied with before June 30, 1983. In the meanwhile, the employees of the panchayats covered by the appeal and the writ petitions will receive a sum of Rs.200 per month over and above the emoluments they were receiving before February 1, 1978. This Order will be effective from February 1, 1983. The interim Order made on February 20, 1978 will be effective up to January 31, 1983. The amounts paid are to be adjusted later."

66. Since, the facts of the present case are different from the facts in the case of ***State of Gujarat (supra),*** therefore, the law laid down in the said case does not help the petitioners in the present case.

67. So far as the judgement of the Apex Court in the case of ***T.R. Kapur (supra)*** is concerned, the said judgement is also distinguishable on facts of the present case, therefore, it is of no help to the petitioners. In the said case, the petitioners being diploma holders were eligible for consideration for promotion on the post of Executive Engineer.

68. In the said case by a retrospective amendment in Rule 6 (b) of the Punjab Service of Engineers, Class-I, Public Works Department (Irrigation Branch) Rules, 1964, the right of petitioners, who were diploma holders, to be considered for promotion in Class-I service was taken away. In the said context, the Apex Court in paragraph no.16 had held as under:-

"16. It is well settled that the power to frame rules to regulate the conditions of service under the proviso to Article 309 of the Constitution carries with it the power to amend or alter the rules with a retrospective effect: B.S. Vadhera v. Union of India, Raj Kumar v. Union of India, K. Nagaraj v. State of A.P. and State of J & K v. Triloki Nath Khosa. It is equally well settled that any rule which affects the right of a person to be considered for promotion is a condition of service although mere chances of promotion may not be. It may further be stated that an authority competent to lay down qualifications for promotion, is also competent to change the qualifications. The rules defining qualifications and suitability for

promotion are conditions of service and they can be changed retrospectively. This rule is however subject to a well recognised principle that the benefits acquired under the existing rules cannot be taken away by an amendment with retrospective effect, that is to say, there is no power to make such a rule under the proviso to Article 309 which affects or impairs vested rights. Therefore, unless it is specifically provided in the rules, the employees who are already promoted before the amendment of the rules, cannot be reverted and their promotions cannot be recalled. In other words, such rules laying down qualifications for promotion made with retrospective effect must necessarily satisfy the tests of Articles 14 and 16(1) of the Constitution: State of Mysore v. M.N. Krishna Murty, B.S. Yadav v. State of Haryana, State of Gujarat v. Raman Lal Keshav Lal Soni and Ex-Captain K.C. Arora v. State of Haryana."

69. The judgement of ***T.R. Kapur (supra)*** is also rendered in a different factual backdrop, and therefore, the ratio laid down in the said judgement does not help the petitioners.

70. The judgement of the Apex Court in the case of ***Union of India (supra)*** is also not applicable in the present case inasmuch as by introducing the amendment, the legislature attempted to deprive the petitioners in the said case of an accrued right by enacting retrospective legislation. The ratio laid down in paragraph nos. 14 and 15 of the judgement, which has been relied upon by the learned counsel for the petitioners does not help the petitioners in the present case and is reproduced herein-below:-

"14. The legislatures and the competent authority under Article 309 of the Constitution of India have the power to make laws with retrospective effect. This power, however, cannot be used to justify the arbitrary, illegal or unconstitutional acts of the Executive. When a person is deprived of an accrued right vested in him under a statute or under the Constitution and he successfully challenges the same in the court of law, the legislature cannot render the said right and the relief obtained nugatory by enacting retrospective legislation.

15. Respectfully following the law laid down by this Court in the judgments referred to and quoted above, we are of the view that the retrospective operation of the amended Rule 13 cannot be sustained. We are satisfied that the retrospective amendment of Rule 13 of the Rules takes away the vested rights of Mohanty and other general category candidates senior to Respondents 2 to 9. We, therefore, declare amended Rule 13 to the extent it has been made operative retrospectively to be unreasonable, arbitrary and, as such, violative of Articles 14 and 16 of the Constitution of India. We strike down the retrospective operation of the rule. In the view we have taken on the point it is not necessary to deal with the other contentions raised by Mohanty."

71. Further, the aforesaid judgements do not help the petitioners inasmuch as though the petitioners claim that retrospective amendment has infringed their vested rights but the petitioners have failed to establish that by the retrospective amendment, which of their vested rights have been infringed.

72. The Apex Court in the case of ***J.S.Yadav Vs. State of Uttar Pradesh & Another 2011 (6) SCC 570*** has defined the words 'vested right'. Paragraph nos.20 to 22 of the said judgement are reproduced herein-below:

"20 . "17. The word 'vested' is defined in Black's Law Dictionary (6th Edn.) at p. 1563, as:

> *'Vested; fixed; accrued; settled; absolute; complete. Having the character or given the rights of absolute ownership; not contingent; not subject to be defeated by a condition precedent.'*

Rights are 'vested' when right to enjoyment, present or prospective, has become property of some particular person or persons as present interest; mere expectancy of future benefits, or contingent interest in property founded on anticipated continuance of existing laws, does not constitute vested rights. In Webster's Comprehensive Dictionary (International Edn.) at p. 1397, 'vested' is defined as:

'Law held by a tenure subject to no contingency; complete; established by law as a permanent right; vested interests.'"

(See Bibi Sayeeda v. State of Bihar at SCC p. 527, para 17.)

21. The word "vest" is normally used where an immediate fixed right in present or future enjoyment in respect of a property is created. With the long usage the said word "vest" has also acquired a meaning as "an absolute or indefeasible right". It had a "legitimate" or "settled expectation" to obtain right to enjoy the property, etc. Such "settled expectation" can be rendered impossible of fulfilment due to change in law by the legislature. Besides this, such a "settled expectation" or the so-called "vested right" cannot be countenanced against public interest and convenience which are sought to be served by amendment of the law. (Vide Howrah Municipal Corpn. v. Ganges Rope Co. Ltd.)

22. Thus, "vested right" is a right independent of any contingency. Such a right can arise from a contract, statute or by operation of law. A vested right can be taken away only if the law specifically or by necessary implication provides for such a course"

73. The necessary corollary, which comes out from the reading of the aforesaid judgement is that a right is considered vested, absolute, when it is not dependent on any future event; it is generally immune from subsequent changes in law that would impair it.

74. The payment of bonus is a statutory liability upon the employer emanating from the Act, 1965. The employer is statutorily bound to pay the bonus to the employees in compliance of statutory obligations posed upon it by the Act, 1965, therefore, to say that the petitioners' vested right by implementing Amendment Act, 2015 retrospectively has been infringed is not justified for the reason that the vested right is a right independent of any contingency whereas the petitioners are obligated to pay bonus by virtue of Section 10 of the Act, 2015.

75. The petitioners in the instant case have failed to demonstrate that petitioners cannot be asked to pay bonus with retrospective effect since such an amendment infringes their vested right.

76. At this stage, it is pertinent to note that the Apex Court in paragraph no.19 of the judgement in the case of ***M/S. Jalan Trading Company Private Ltd. Vs. Mill Mazdoor Sabha AIR 1967 SC 691*** has held that there is a presumption of constitutionality in favour of the statute and the onus of proving it unconstitutional lies upon the person who challenges it.

77. In the case of ***R.C. Tobacco Pvt. Ltd. and Another Vs. Union of India and Another, AIR 2005 SC 4203***, the Apex Court held that a liability cannot be declared to be unreasonable because it merely operates retrospectively. The Apex Court further in paragraph no.23 of the judgement laid down the factors which are generally considered in considering the challenge to an enactment because of its retrospective implementation. Paragraph nos.22 and 23 of the said judgement are reproduced herein below:-

> *"22. A law cannot be held to be unreasonable merely because it operates retrospectively. Indeed even judicial decisions are in a sense retrospective. When a statute is interpreted by a Court, the interpretation is, by fiction of law, deemed to be part of the statute from the date of its enactment. The unreasonability must lie in some other additional factors. The retrospective operation of a fiscal statute would have to be found to be unduly oppressive and confiscatory before it can be held to be so unreasonable as to violate constitutional norms. "Where for instance it appears that the taxing statute is plainly discriminatory or provides no procedural machinery for assessment and levy of the tax, or that it is confiscatory, Courts would be justified in striking down the impugned statute as unconstitutional. In such cases, the character of the material provisions of the impugned statute is such that the Court would feel justified in taking the view that, in substance, the taxing statute is a cloak adopted by the legislature for achieving its confiscatory purposes". (Rai Ramkrishna v. State of Bihar: AIR 1963 SC 1667). The question to be answered therefore is whether Section 154, which is in terms retrospective, is ex facie discriminartoy, or so unreasonable or confiscatory that it violates Articles 14 and 19 of the Constitution.*

23. The factors which are generally considered relevant in answering this question are (i) the context in which retrospectivity was contemplated, (ii) the period of such retrospectivity, and (iii) the degree of any unforeseen or unforeseeable financial burden imposed for the past period."

78. In the light of the factors laid down by the Apex Court in the aforesaid judgement while considering the validity of the retrospective application of an Act, the contention of the learned counsel for the petitioners that the legislative declaration cannot be contrary to judicial declaration shall be considered by this Court.

79. The aforesaid proposition has been raised by the learned counsel for the petitioners on the ground that the amendment in Principal Act i.e. Act, 1965 is not a declaratory Act because it does not clarify anything embodied in the parent Act i.e. Act, 1965 rather retrospective enactment of the Amendment Act, creates new rights and obligations upon the parties which is not permissible in law.

80. Further it is submitted that the Act, 1965 is substantive law because it creates rights and liabilities upon the employers and the employees and any amendment in the Principal Act, i.e. Act, 1965 which creates new rights and obligations upon the employers is not a declaratory law. In this regard, reliance has been placed upon the judgements already referred above.

81. It is pointed out that paragraph no.43 of the judgement in the case of ***Indra Sawhney (supra)*** relied upon by the learned counsel for the petitioners in support of aforesaid contention has been rendered in a peculiar factual background. The case of ***Indra Sawhney (supra)*** requires 'creamy layer' to be identified and excluded. The State of Kerala did not identify the creamy layer in the backward class in compliance of the judgement of ***Indra Sawhney (supra)***. The Apex Court held that State of Kerala represented by its Chief Secretary was guilty of contempt but the Apex Court gave further opportunity to the

State to purge the contempt by implementing the directions of the Apex Court in the case of ***Indra Sawhney (supra).***

82. The State of Kerala sought time to appoint a Commission to identify the creamy layer. However, the legislature of State of Kerala suddenly promulgated Kerala State Backward Classes (Reservation of Appointments or Posts in the Services under the State) Act, 1995, which declares that there was no creamy layer in the State of Kerala. Sections 3, 4 & 6 of the said Act contained provisions, which were contrary to law laid down in the case of ***Indra Sawhney (supra)***. The validity of the said Act was challenged before the Apex Court.

83. The Apex Court keeping in view, the fact that the State Government had failed to appoint a Commission as directed in the case of ***Indra Sawhney (supra)*** requested the Chief Justice of Kerala High Court to appoint a retired Judge to be the Chairman of a High Level Committee for gathering necessary information regarding creamy layer. The Committee submitted it's report identifying the creamy layer in the backward classes of State of Kerala and it is in this backdrop, the Apex Court held that the Amendment Act, 1995 was unrelated to the facts in existence. The Apex Court has further held in paragraph no.42 that the said Act had shut it's eyes to the realities and facts and it came up with a declaration in clause (a) of Section 3, which had no factual basis inspite of the word used, 'known facts'. In such backdrop, the Apex Court held in paragraph no.43 of the judgement as under:-

> *"43. In view of the facts and circumstances referred to above, we hold that the declaration in clause (a) of Section 3 made by the legislature has no factual basis in spite of the use of the words "known facts". The facts and circumstances, on the other hand, indicate to the contrary. In our opinion, the declaration is a mere cloak and is unrelated to facts in existence. The declaration in Section 3(a) is, in addition, contrary to the principles laid down by this Court in Indra Sawhney and in Ashoka Kumar Thakur. It is, therefore, violative of Articles 14 and 16(1) of the Constitution of India. Clause (a) of Section 3 is, therefore, declared unconstitutional.*

(viii) Clause (b) of Section 3-inadequate representation: Section 3(b) mixes up two different concepts."

84. The said judgement on facts is clearly distinguishable and does not help the petitioners.

85. So far as the judgement of the Apex Court in the case of ***Bhajan Kaur (supra)*** relied upon by the learned counsel for the petitioners is concerned, it was a case where the accident had taken place on 08.01.1983. The claim petition was filed in relation to the said accident purported to be in terms of Section 110-A of the Motor Vehicles Act, 1939.

86. The claim petition was dismissed by an Award dated 12.10.1984. The appeal preferred against the said award was disposed off by the learned Single Judge awarding a sum of Rs.15,000/- as compensation by way of 'no fault liability'. In intra-court appeal, the Appellate Court enhanced the awarded amount to Rs.50,000/- under 'no fault liability'. It is by virtue of an Amendment Act 54 of 1994, amending Section 140 of the Motor Vehicles Act, 1988 came into force w.e.f. 14.11.1994. In such backdrop, the Apex Court held that the Division Bench had erred in law by enhancing the compensation to Rs.50,000/- under the Motor Vehicles Act, 1988.

87. The Court held that Section 92A of the Act, 1939 created a right and a liability on the owner of the vehicle being a statutory liability, as the right was created by an enactment. In the absence of a clear provision in the Motor Vehicles Act, 1988 that it is to be applied retrospectively, the Court held that a statute is presumed to be prospective, unless it is retrospective either expressly or by necessary implication. It was held that a substantive law is presumed to be prospective.

88. Learned counsel for the petitioners has also relied upon paragraph nos. 28 to 32 & 35 of the judgement of the Apex Court in the case of ***Commissioner of Income Tax (supra)*** which is reproduced herein-below:-

"28. Of the various rules guiding how a legislation has to be interpreted, one established rule is that unless a contrary intention appears, a legislation is presumed not to be intended to have a retrospective operation. The idea behind the rule is that a current law should govern current activities. Law passed today cannot apply to the events of the past. If we do something today, we do it keeping in view the law of today and in force and not tomorrow's backward adjustment of it. Our belief in the nature of the law is founded on the bedrock that every human being is entitled to arrange his affairs by relying on the existing law and should not find that his plans have been retrospectively upset. This principle of law is known as lex prospicit non respicit: law looks forward not backward. As was observed in Phillips v. Eyre, a retrospective legislation is contrary to the general principle that legislation by which the conduct of mankind is to be regulated when introduced for the first time to deal with future acts ought not to change the character of past transactions carried on upon the faith of the then existing law.

29. The obvious basis of the principle against retrospectivity is the principle of "fairness", which must be the basis of every legal rule as was observed in L'Office Cherifien des Phosphates v. Yamashita-Shinnihon Steamship Co. Lid. Thus, legislations which modified accrued rights or which impose obligations or impose new duties or attach a new disability have to be treated as prospective unless the legislative intent is clearly to give the enactment a retrospective effect; unless the legislation is for purpose of supplying an obvious omission in a former legisiation or to explain a former legislation. We need not note the cornucopia of case law available on the subject because aforesaid legal position clearly emerges from the various decisions and this legal position was conceded by the counsel for the parties. In any case, we shall refer to few judgments containing this dicta, a little later.

30. We would also like to point out, for the sake of completeness, that where a benefit is conferred by a legislation, the rule against a retrospective construction is different. If a legislation confers a benefit on some persons but without inflicting a corresponding

detriment on some other person or on the public generally, and where to confer such benefit appears to have been the legislators' object, then the presumption would be that such a legislation, giving it a purposive construction, would warrant it to be given a retrospective effect. This exactly is the justification to treat procedural provisions as retrospective. In Govt. of India v. Indian Tobacco Assn., the doctrine of fairness was held to be relevant factor to construe a statute conferring a benefit, in the context of it to be given a retrospective operation. The same doctrine of fairness, to hold that a statute was retrospective in nature, was applied in Vijay v. State of Maharashtra. It was held that where a law is enacted for the benefit of community as a whole, even in the absence of a provision the statute may be held to be retrospective in nature. However, we are (sic not) confronted with any such situation here.

31. In such cases, retrospectivity is attached to benefit the persons in contradistinction to the provision imposing some burden or liability where the presumption attaches towards prospectivity. In the instant case, the proviso added to Section 113 of the Act is not beneficial to the assessee. On the contrary, it is a provision which is onerous to the assessee. Therefore, in a case like this, we have to proceed with the normal rule of presumption against retrospective operation. Thus, the rule against retrospective operation is a fundamental rule of law that no statute shall be construed to have a retrospective operation unless such a construction appears very clearly in the terms of the Act, or arises by necessary and distinct implication. Dogmatically framed, the rule is no more than a presumption, and thus could be displaced by outweighing factors.

32. Let us sharpen the discussion a little more. We may note that under certain circumstances, a particular amendment can be treated as clarificatory or declaratory in nature. Such statutory provisions are labelled as "declaratory statutes". The circumstances under which provisions can be termed as "declaratory statutes" are explained by Justice G.P. Singh in the following manner:

"Declaratory statutes

The presumption against retrospective operation is not applicable to declaratory statutes. As stated in CRAIES and approved by the Supreme Court: 'For modern purposes a declaratory Act may be defined as an Act to remove doubts existing as to the common law, or the meaning or effect of any statute. Such Acts are usually held to be retrospective. The usual reason for passing a declaratory Act is to set aside what Parliament deems to have been a judicial error, whether in the statement of the common law or in the interpretation of statutes. Usually, if not invariably, such an Act contains a Preamble, and also the word "declared" as well as the word "enacted". But the use of the words 'it is declared' is not conclusive that the Act is declaratory for these words may, at times, be used to introduced new rules of law and the Act in the latter case will only be amending the law and will not necessarily be retrospective. In determining, therefore, the nature of the Act, regard must be had to the substance rather than to the form. If a new Act is 'to explain' an earlier Act, it would be without object unless construed retrospective. An explanatory Act is generally passed to supply an obvious emission or to clear up doubts as to the meaning of the previous Act. It is well settled that if a statute is curative or merely declaratory of the previous law retrospective operation is generally intended. The language 'shall be deemed always to have meant is declaratory, and is în plain terms retrospective. In the absence of clear words indicating that the amending Act is declaratory, it would not be so construed when the pre-amended provision was clear and unambiguous. An amending Act may be purely clarificatory to clear a meaning of a provision of the principal Act which was already implicit. A clarificatory amendment of this nature will have retrospective effect and, therefore, if the principal Act was existing law which the Constitution came into force, the amending Act also will be part of the existing law."

The above summing up is factually based on the judgments of this Court as well as English decisions.

35. We would also like to reproduce hereunder the following observations made by this Court in Govind Das v. ITO, while holding Section 171(6) of the Income Tax Act to be prospective and inapplicable for any assessment year prior to 1-4-1962, the date on which the Income Tax Act came into force: (SCC p. 914, para 11)

> *"11. Now it is a well-settled rule of interpretation hallowed by time and sanctified by judicial decisions that, unless the terms of a statute expressly so provide or necessarily require it, retrospective operation should not be given to a statute so as to take away or impair an existing right or create a new obligation or impose a new liability otherwise than as regards matters of procedure. The general rule as stated by Halsbury in Vol. 36 of the Laws of England (3rd Edn.) and reiterated in several decisions of this Court as well as English courts is that*
>
> > *'all statutes other than those which are merely declaratory or which relate only to matters of procedure or of evidence are prima facie prospective and retrospective operation should not be given to a statute so as to affect, alter or destroy an existing right or create a new liability or obligation unless that effect cannot be avoided without doing violence to the language of the enactment. If the enactment is expressed in language which is fairly capable either interpretation, it ought to be construed as prospective only."*

89. Similar proposition has been laid down by the Apex Court in the case of ***Jayam and Company (supra).*** There is no quarrel to the proposition of law laid down in the aforesaid judicial pronouncement by the Apex Court, but in the opinion of this Court, the law enunciated by the Apex Court in the aforesaid cases is not attracted in the present case for the reasons delineated below.

90. At this stage, it would be appropriate to refer to Sections 2(4) & (6) of the Act, 1965, which defines expression ‘allocable surplus’ and ‘available surplus’. Section 2(4) & (6) of the Act, 1965 are reproduced herein below:-

"2. ***Definitions.-***

(4). "allocable surplus" means –

(a). in relation to an employer, being a company [(other than a banking company)] which has not made the arrangements prescribed under the Income-tax Act for the declaration and payment within India of the dividends payable out of its profits in accordance with the provisions of section 194 of that Act, sixty-seven per cent of the available surplus in an accounting year;

(b). in any other case, sixty per cent of such available surplus.

(6). "available surplus" means the available surplus computed under section 5."

91. Section 15 of the Act, 1965 provides 'set on' and 'set off' of 'allocable surplus'. Section 15 of the Act, 1965 reads as under:-

"15. ***Set on and set off of allocable surplus****.-(1) Where for any accounting year, the allocable surplus exceeds the amount of maximum bonus payable to the employees in the establishment under section 11, then, the excess shall, subject to a limit of twenty per cent of the total salary or wage of the employees employed in the establishment in that accounting year, be carried forward for being set on in the succeeding accounting year and so on up to and inclusive of the fourth accounting year to be utilised for the purpose of payment of bonus in the manner illustrated in the Fourth Schedule.*

(2) Where for any accounting year, there is no available surplus or the allocable surplus in respect of that year falls short of the amount of minimum bonus payable to the employees in the establishment under section 10, and there is no amount or sufficient amount carried forward and set on under sub-section (1) which could be utilised for the purpose of payment of the minimum bonus, then, such minimum amount or the deficiency, as the case may be, shall be carried forward for being set off in the succeeding accounting year and so on up to and inclusive of the fourth accounting year in the manner illustrated in the Fourth Schedule.

(3) The principle of set on and set off as illustrated in the Fourth Schedule shall apply to all other cases not covered by sub-section (1) or sub-section (2) for the purpose of payment of bonus under this Act.

(4) Where in any accounting year any amount has been carried forward and set on or set off under this section, then, in calculating bonus for the succeeding accounting year, the amount of set on or set off carried forward from the earliest accounting year shall first be taken into account."

92. Section 19 of the Act, 1965 provides for the time limit for payment of bonus.

93. In order to succeed in challenging the Act on the ground of retrospective enactment, the petitioner has to establish that by enacting the Amendment Act, 2015 retrospectively, the legislature has conferred benefit of bonus to the employees, which inflicts a corresponding detriment on the employer, which is not permissible as the legislature can confer the benefit on employees retrospectively without inflicting a corresponding detriment on the employer.

94. The law does not permit the legislature to take away or impair any existing right or create a new obligation or impose a new liability retrospectively. At this stage, it is pertinent to note that the payment of bonus is a statutory right given to the employees. The liability to pay the bonus lies upon the employer which emanates from the Act, 1965.

95. So by introducing the Amendment Act with retrospective effect, it neither impairs any existing right of the employer nor creates any new obligation upon the employer. The employer at the most can say that by retrospective operation of Amendment Act, 2015, additional liability to pay bonus upon the employer has been created. Thus, by Amendment Act, 2015, no new liability has been imposed upon the employer.

96. The employer is liable to pay bonus under Section 10 of the Act, 1965. The minimum bonus which the employer is liable to pay is 8.33% of the salary or wage earned by the employee during the accounting year

or one hundred rupees, whichever is higher, whether or not, the employer has any allocable surplus in the accounting year. The employer is liable to pay bonus to a maximum 20% of the salary or wage under Section 11 of the Act, 1965 subject to the existence of the conditions enumerated in Section 11 of the Act, 1965.

97. Now, various difficulties have been posed by the petitioner in the writ petition from paragraph nos.30 to 37 of the writ petition, which are reproduced herein-below:-

"30. That thus the fiscal deficit incurred by virtue of the impugned amendment act cannot be extracted under any of the heads of the account except adding it to the liabilities of the company resulting into the decrease in profits or variating the prices of the commodity market.

31. That by the impugned amendment there would be an increase in the financial burden and greater accounting complexities for employers.

32. That for the first time by the impugned amendment there has been a insertion of a reference to the minimum wage under the Minimum Wages Act 1948 to calculate bonus and thus it has created an additional challenge to the petitioner companies.

33. That it is relevant to mention that the appropriate government (i.e. the State Government) and in different cases the Central Government fix different minimum wages for various schedule employment (skilled, unskilled and semi skilled). Thus the petitioner would have to carry out a separate assessment of the applicable wage rate for different category of employees to calculate the statutory bonus payable.

34. That since there has been a different minimum wages in different states and further varying to different types of industries, therefore now the bonus calculation has to be done separately for each category.

35. That the General Principles concerning retrospectivity provides various rules guiding as to how a legislation has to be interpreted and one established rule is that unless a contrary intention appears, a

legislation is presumed not be intended to have a retrospective operation.

36. That the current law should govern the current activities while in the present matter the impugned amendment is directly having a consequence upon the activities done for past one year.

37. That the Principal of Law "Lex Prospicit non respicit" also provides for a law to look forward and not backward. Human being are entitled to arrange his affairs by relying upon the existing law and should not find that his plans have been retrospectively assets."

98. In order to appreciate the controversy in the light of facts, detailed by the petitioner in the writ petition in implementing the Amendment Act, 2015 retrospectively, the Court must remember that Act, 1965 is a social welfare legislation enacted with an object to achieve the principles enshrined in Articles 39 and 43 of the Constitution of India. Thus, the amendment, which has been implemented retrospectively has been made in a social welfare legislation.

99. The Apex Court in the case of ***M/s. Jalan Trading Company (supra)*** has also affirmed the judgement of Bombay High Court whereby the Bombay High Court has dismissed the petitions challenging the vires of Section 10 of the Act, 1965 on the ground that it is violative of Article 19(1)(g) and Article 302 of the Constitution of India, paragraph no.2 of the said judgement is reproduced herein below:-

"2. We are satisfied that the restriction imposed by the Bonus Act in compelling the employer to pay the statutory minimum bonus even in years where there has been a loss sustained by the management is reasonable or in public interest within the meaning of Articles 19(6) and 302. What is reasonable depends on a variety of circumstances, but what is important is that the Directive Principles of State Policy in Part IV of the Constitution are fundamental to the Governance of the country. Therefore, what is directed as State Policy by the founding fathers of the Constitution cannot be regarded as unreasonable or contrary to public interest even in the context of Article 19 or 302. It follows that payment of bonus, being in implementation of Articles 39

and 43 of the Constitution, is reasonable. We agree with the High Court and dismiss the appeal with costs quantified at Rs.2,000/-. The costs be paid to respondent No.2"

100. The law is settled that a benevolent provision should be interpreted liberally to achieve the purpose for which it has been enacted. In other words, the interpretation of beneficial legislation involves liberal and purposive construction to achieve the statute's underlying aim to ensure the welfare of the intended beneficiaries.

101. If we take a glance at Section 15 of the Act, 1965, we find the difficulty posed by the petitioners is eliminated in view of Section 15(2) of the Act, 1965, which provides for 'set on' and 'set off'.

102. Section 15(1) of the Act, 1965 provides for carry forward and set on and on it's plain terms, it comes into operation only when in a given accounting year, the allocable surplus exceeds the maximum bonus payable under the Act, so that after payment of maximum bonus, there is surplus left which can be carried forward and set on, subject, of course, to the limit of 20% of the total salary or wage.

103. Section 15 of the Act, 1965 provides for 'set on' and 'set off' to ensure a consistent payment of bonus over the years. If in a given case, allocable surplus exceeds the maximum bonus amount such surplus, subject to ceiling of 20%, shall have to be carried forward to the succeeding year upto and inclusive of fourth accounting year to be utilised for the purpose of payment of bonus.

104. The method to be followed in this behalf is set out in the Fourth Schedule of the Act, 1965. As per Section 15(2) of the Act, 1965, if in any succeeding accounting year, there is no available surplus or allocable surplus in respect of that year falls short of the amount of minimum bonus, the amount so carried forward has to be utilised for paying the bonus.

105. Thus, Section 15(2) of the Act, 1965 permits the employer that if, in any accounting year, there is no available surplus or allocable surplus

in respect of that year falls short of the amount of minimum bonus payable to the employees in the establishment under Section 10 and there is no amount or sufficient amount which is carried forward and set on under sub-section (1) that could be utilised for the purpose of payment of minimum bonus, then, such minimum amount or deficiency, as the case may be, shall be carried forward for being set off in the succeeding accounting year and so on upto and inclusive of the fourth accounting year in the manner illustrated in the Fourth Schedule.

106. So, in the absence of available surplus or allocable surplus in respect of that year and there is shortfall of the amount of the minimum bonus payable to the establishment under Section 10, and no amount or sufficient amount has been carried forward and has been set on under sub-section (1), which could be utilised for the purpose of payment of minimum bonus, the said sub-section permits the petitioner to set off the shortfall in the succeeding year upto and inclusive of fourth accounting year.

107. The petitioner though has posed difficulty in implementing the Act retrospectively, but has neither given any detail as to what available surplus or allocable surplus is available with the companies, which has been set on under Section 15(1) of the Act, 1965. The petitioner has not stated in the writ petition that there is no available surplus or allocable surplus in respect of that year, which falls short of minimum bonus payable to the employees in the establishment under Section 10. In the absence of any such detail in the writ petition, it is difficult to comprehend that by retrospective amendment in Section 2(13) of the Act, 1965, a huge financial liability has been inflicted upon the petitioner, which would be detrimental to the interests of the petitioner.

108. The legislature keeping in view the difficulty of the employer in providing the benefit of bonus to the employees has incorporated Section 15 of the Act, 1965 with a view to ease the employer in paying the bonus in case of non-availability of available surplus and shortfall of allocable surplus. Therefore, for the aforesaid reason, we do not find that the

difficulty posed by the petitioner in the writ petition as stated in the paragraphs, extracted above, are bonafide and genuine and a beneficial legislation can be rendered unconstitutional on the said grounds.

109. For the reasons given above, we do not find that any such liability has been imposed by implementing the Amendment Act retrospectively, which poses a serious financial threat to the establishment so as to close down the establishment because of such financial liability.

110. Sri Diptiman Singh, learned counsel for the petitioners in the rejoinder affidavit has pointed out that the liability of the petitioner is more than Rs.3 crores, but necessary facts have not been detailed in the writ petition in the light of Section 15 of the Act, 1965.

111. So far as the contention of learned counsel for the petitioners that as per Section 19, eight months period is provided to pay bonus and that period has expired and any payment of bonus after the expiry of period provided in Section 19 will entail penal consequences is concerned, the said contention is also misconceived inasmuch as the Competent Authority under the Proviso (b) to Section 19 has power to extend the period of payment of bonus upto two years.

112. It is also settled law that if the bonus is paid retrospectively by way of notification, no prosecution could be made or launched against the petitioners for non-payment of bonus or for delayed payment of bonus. Hence, when the Amendment Act, 2015 has not even seen the light of the day, the petitioners cannot be prosecuted for the year 2015-16 on the ground of delayed payment of bonus.

113. We have also perused the judgements cited by the learned counsel for the respondents of Patna High Court in Civil Writ Jurisdiction Case No.15379 of 2017 and Madras High Court in Writ Petition No.6958 of 2016 upholding the validity of Amendment Act with retrospective effect.

114. For the reasons delineated above, we are in agreement with the judgement of Patna High Court as well as Madras High court.

115. One further submission has been raised by Sri Diptiman Singh, learned counsel for the petitioner that when the Amendment Bill was presented before the Lok Sabha at 16:04 hours on 22.12.2015, it is evident from the Lok Sabha discussion held on 22.12.2015, which is enclosed at page-31 of the rejoinder affidavit in Writ-C No.8995 of 2016, that the Amendment Bill was presented with a proposal that it should be made effective w.e.f. 1st day of April, 2015. However, without there being any further discussion, it was proposed that the proposed amendment may be made effective from the 1st day of April, 2014.

116. It is contended that since the Amendment Bill was presented with proposal to amend it w.e.f. 01.04.2015 and without there being any serious discussion, it was proposed to be made effective w.e.f. 1st day of April, 2014. Thus, it is contended that constitutional decisions cannot be made on the whims and desires of the Government. He further contends that while the initial Bill by which it was proposed that the Bill to be made effective w.e.f. 01.04.2015, the discussions had taken place with regard to the financial aspect of the matter, but the proposed amendment makes it's applicability retrospectively and does not consider the economic viability. Thus, it is evident that no proper discussion had taken place for making the amendment with retrospective effect, and the Amendment Act has been made effective retrospectively on the whims of the Government, which cannot be permitted in law, therefore, retrospective implementation of the Amendment Act, 2015 is bad in law and against the spirit of the Constitution of India.

117. The respondent has filed a supplementary counter affidavit annexing therewith the proposal relating to seeking approval of Hon'ble Prime Minister under Rule 12 of the Government of India (Transaction of Business) Rules, 1961 for moving an official amendment to the Payment of Bonus (Amendment) Bill, 2015. In paragraph nos.5 & 8 of the said proposal, the justification for making the Bill retrospective have been stated which are reproduced herein-below:-

> *"5.* ***JUSTIFICATION****: As it is evident from the above paragraph, changes in the two ceilings have been given retrospective effect,*

initially through ordinance, for providing actual benefit to the employees. On the same analogy, the date of implementation may be 1.4.2014. This will also help in meeting the expectations of the Trade Union and may be useful in improving the relation with workers. The competent authority to approve an official amendment to a Bill is the Cabinet. However, it may not be feasible to bring the proposal before the Cabinet at this stage.

*8.**APPROVAL**: In view of the above, Cabinet Secretariat is requested to convey the approval of the Hon'ble Prime Minister under Rule 12 of the Government of India (Transaction of Business) Rules, 1961 for moving an official amendment to the Payment of Bonus (Amendment) Bill, 2015(pending in Lok Sabha) for making the date of implementation as 1st day of April, 2014".*

118. Rule 12 of the Rules, 1961 is reproduced herein-below:-

"*12. **Departure from Rules**.-*
The Prime Minister may, in any case or classes or cases, permit or condone a departure from these rules to the extent he deems necessary."

119. From perusal of Rule 12 of the Rules, 1961, it is evident that the *Prime Minister may, in any case or classes or cases, permit or condone a departure from these rules to the extent he deems necessary.* The proposal to make the Rules, 1961 applicable has been duly approved by the Prime Minister under Rule 12 of the Rules, 1961. Therefore, in view of the aforesaid fact, the contention advanced by Sri Diptiman Singh, learned counsel for the petitioners lacks merit and is accordingly, rejected.

120. So far as the argument of Sri S.K. Tripathi that the amendment in Section 12 of the Act, 1965 in respect to increase in ceiling limit is based upon unreasonable classification is concerned, we find that the Madras High Court in ***Writ Petition No.6958 of 2016 (The Employers' Federation of Southern India and Others Vs. The Government of India & Others)*** has given elaborate reasons for upholding the validity of Section 12 of the Act, 1965, and has also dealt with the argument of

rationale and reasonable classification. Relevant extract of paragraph no.12 of the judgement of Madras High Court is reproduced herein below:-

“(o) While considering the classification, the Hon'ble Supreme Court considered the terms 'rationale and reasonable' in the judgment in Transport & Dock Workers Union & Ors vs Mumbai Port Trust & Anr (2011(2) SCC 575) and in paragraph 25, laid down the following test to determine what is reasonable or having rationale. The same is reproduced hereunder:

> *"25. In our opinion while it is true that a mathematically accurate classification cannot be done in this connection, there should be some broad guidelines. There may be several tests to decide whether a classification or differentiation is reasonable or not. One test which we are laying down and which will be useful in deciding this case, is : is it conducive to the functioning of modern society? If it is then it is certainly reasonable and rational."*

(p) Useful reference can also be made as to the re-statement of law in this regard to the judgment of the Hon'ble Supreme Court in State of Tamil Nadu & Anr vs. National South Indian River Interlinking Agriculturist Association, 2021 (15) SCC 534, more particularly, paragraphs 15 to 15.2 which read as under:

> *"15. The equality code in Article 14 of the Indian Constitution prescribes substantive and not formal equality. It is now a settled position that classification per se is not discriminatory and violative of Article 14. Article 14 only forbids class legislation and not reasonable classification. A classification is reasonable, when the twin tests as laid down by Justice SR Das in State of W.B v. Anwar Ali Sarkar (1952 SCR 284) are fulfilled:*
>
> *15.1 The classification must be based on an intelligible differentia which distinguishes persons or things that are grouped, from others left out of the group; and*
>
> *15.2 The differentia must have a rational relationship to the object sought to be achieved by the statute."*

(q) Thus, it is seen that the classification per se between the employees who are in scheduled employment receiving minimum wages and others by itself is not forbidden, provided the same is reasonable.

(r) The twin test for arriving at a finding as to the reasonability is that it should be based on an intelligible differentia, which distinguishes the persons or things that are grouped from the others left out of the group. In this case, it is the workmen who are poorer among the poor who are governed under the Minimum Wages Act, 1948 who are grouped from the others left out.

(s) The second essentiality is that such differentiation must have a rational relationship to the objects sought to be achieved by the statute. The object sought to be achieved by the statute viz., the original Act is to provide a reasonable amount of bonus. The object of the amending Act is to enhance/modify or vary the quantum according to the prevalent conditions. Taking into account the time it takes to make amendments, i.e., it can be seen that the last amendment was made in the year 2006 and it has taken almost another decade to review the amount and the vagaries of the price index, when at least in respect of one part of the employees an able mechanism is available in the form of minimum wages, adopting the same has a rational relationship to the objects sought to be achieved by the statute. Therefore, we are unable to agree with the contentions made on behalf of the petitioners that the impugned enactment amounts to class legislation and is discriminatory. Accordingly, the question is answered that the classification made is reasonable and has nexus to the purposes of the Act."

121. The judgements of ***Unichoyi (supra)*** & ***Bhikusa Yamasa Kshatriya (supra)*** have elaborated the object behind promulgating the Minimum Wages Act. The Apex Court in paragraph no.12 of the judgement in the case of ***Unichoyi (supra)*** has stated that "*The policy of the Act is to prevent the employment of such sweated labour in the interest of general public and so in prescribing the minimum wage rates, the capacity of the employer, need not be considered.*"

122. So the Apex Court while explaining the object behind the introduction of Minimum Wages Act has held that the capacity of employer is not to be considered as the welfare State assumes every employer must pay the minimum wages to its labour before employing them so as to prevent the exploitation of labours.

123. The Apex Court in the case of ***Sukanya Shantha (supra)*** has dealt with contours of Article 14 of the Constitution of India, and in paragraph no.34 of the judgement, the Apex Court has summarized the constitutional standard laid down by the Court under Article 14 of the Constitution of India. Paragraph no.34 of the said judgement is reproduced herein below:-

> *"34. The constitutional standards laid down by the Court under Article 14 can be summarized as follows. First, the Constitution permits classification if there is intelligible differentia and reasonable nexus with the object sought. Second, the classification test cannot be merely applied as a mathematical formula to reach a conclusion. A challenge under Article 14 has to take into account the substantive content of equality which mandates fair treatment of an individual. Third, in undertaking classification, a legislation or subordinate legislation cannot be manifestly arbitrary, i.e. courts must adjudicate whether the legislature or executive acted capriciously, irrationally and/or without adequate determining principle, or did something which is excessive and disproportionate. In applying this constitutional standard, courts must identify the "real purpose" of the statute rather than the "ostensible purpose" presented by the State, as summarized in ADR. Fourth, a provision can be found manifestly arbitrary even if it does not make a classification. Fifth, different constitutional standards have to be applied when testing the validity of legislation as compared to subordinate legislation."*

124. It is true that a law should satisfy the twin test as laid down by the Apex Court in order to pass the test of reasonable classification. However, the Madras High Court has categorically repelled the contention of employer that amendment in Section 12 of the Act, 1965 amounts to class legislation and is discriminatory. Therefore, the

judgement of Apex Court in the case of ***Sukanya Shantha (supra)*** is of no help to the petitioners.

125. Thus for the reasons given above, we are of the view that all the writ petitions lack merit and are, accordingly, ***dismissed*** with no order as to costs.

(Sudhanshu Chauhan,J.) (Saral Srivastava,J.)

27th February, 2026
Sattyarth/NS