

# *THE PAYMENT OF GRATUITY*

*ACT, 1972*

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# *Meaning of word “Gratuity”*

- The word ‘Gratuity’ has been derived from the word “Gratuitous” which means ‘Gift’ or ‘Present’.



- It is a lump sum payment made by an employer as the retrial reward for his past service when his employment is terminated.

## *Extension of Gratuity Act, 1972*

- The Payment of Gratuity Act, 1972 applies to the whole India except State of Jammu & Kashmir in so far as it relates to ports and plantations.

# *Application of the Gratuity Act (Sec.1)*

- Every factory, mine, oilfield, plantation, port and Railway Company.
- Every shop or establishment within the meaning of any law for the time being in force in relation to shops and establishment in a State, in which 10 or more persons are or were employed on any day in the preceding 12 months.
- Such other establishments or class of establishment, in which 10 or more employees are or were employed on any day in the preceding 12 months, as notified by CG by way of a notification in the Official Gazette.

# *Continued Applicability & Right to receive gratuity (Sec.1)*

- If the provisions of the Act become applicable to a shop or establishment once, the Act shall continue to apply to such shop or establishment even if the no. of employees falls below 10 at any time in the future.
- An Employee is eligible to receive gratuity under the Act, if he :-
  - a) Is employed in an establishment to which the Act applies (Sec. 1)
  - b) Is an employee as per Sec. 2(e).
    - c) has been in Continuous Service of 5 Years – subject to some exceptions.

# *Employee [Sec. 2(e)]*

## Employee means :-

- Any person (*other than apprentice*)
- employed on wages
- in any establishment, factory, mine, oilfield, plantation, port or Railway Company or shop
- to do any work (*i.e., skilled, unskilled, manual supervisory, technical or clerical*)
- whether the terms of employment are expressed or implied
- whether or not he is employed in a managerial or administrative capacity.

## *Superannuation [Sec. 2(r)]*

- The attainment by the employee of such age
- as fixed in the contract and conditions of service
- as the age on attainment of which the employee shall vacate the employment.

## *Continuous Service (Sec. 2A)*

- “Continuous Service” means uninterrupted service which may be interrupted on account of sickness, accident, leave, absence from duty without leave (not being treated as break in service), lay-off, strike, lock-out or cessation of work not due to the fault of the employee.
- whether such uninterrupted or interrupted service was rendered before or after the commencement of the Act.

## Sec. 2A..... *Continue*

If an employee is not in continuous service for 1 year, he shall be deemed to be in continuous service for 1 year, if the employee has, during immediately preceding 12 calendar months, worked under the employer for *not less than* –

- **190 Days**, if the employee was employed below the ground in a mine
- **190 Days**, if the employee was employed in an establishment which works for less than 6 days in a week
- **240 Days**, in any other case.

## Sec. 2A..... *Continue*

- If an employee is not in continuous service for 6 months, he shall be deemed to be in continuous service for 6 months, if the employee has, during immediately preceding 6 calendar months worked under the employer for *not less than* –
- **95 Days**, if the employee was employed below the ground in a mine
- **95 Days**, if the employee was employed in an establishment which works for less than 6 days in a week
- **120 Days**, in any other case.

## Sec. 2A..... *Continue*

- If an employee of a seasonal establishment, is not in continuous service of 1 year or 6 months, he shall be deemed to be in continuous service for such period, if he has actually worked for not less than *75% of the No. of Days* on which the establishment was in operation during such period.

## Sec. 2A..... Continue

While computing the days on which the employee has actually worked following days shall be included when :-

- he has been laid-off under an agreement.
- he has been on leave with full wages.
- he has been absent due to temporary disablement caused by an accident arising out of and in the course of his employment.
- in the case of a female, she has been on maternity leave, so however, that the total period of such maternity leave does not exceed 12 weeks.

# *Application for the Payment of Gratuity (Sec.7)*

Application can be made by :-

- An employee who is eligible for payment of gratuity.
- Any person authorised in writing by such employee.
- Nominee of the employee (*if the deceased employee had made a nomination*)
- Legal heir of the employee (*if the deceased employee had not made any nomination*)

## *Application to whom and in what manner (Sec. 7)...*

- Application shall be made to the employer in writing *within 30 days* from the date gratuity becomes payable
- If the date of superannuation and retirement of the employee is known in advance , the employee may apply to the employer *before 30 days* of date of superannuation or retirement.

## *Determination by employer (Sec. 7)*

- As soon as the gratuity becomes payable the employer shall determine the amount of gratuity payable.
- The employer shall give notice specifying the amount of gratuity to controlling authority & employee.

**Note:** The employer has to determine the amount of gratuity & give notice irrespective of the fact whether an application for payment of gratuity has been made or not.

# *Payment of Gratuity*

- Time limit – *Within 30 days* of gratuity becoming payable
- Maximum Amount – The gratuity payable to an employee shall not exceed Rs. 3,50,000.
- Under the terms of an award, settlement or contract, an employee may be entitled to better terms of gratuity. Such an award, settlement or contract shall be valid & effectual.

# *Gratuity Disputes (Sec. 7)*

In case of dispute, the employer shall deposit :-

- With the controlling authority such amount as he admits to be payable by him.
- The controlling authority shall hold an enquiry and shall give reasonable opportunity of being heard to the parties concerned.
- Thereafter the controlling authority shall determine the gratuity payable .
- If amount determined by the controlling authority is more than the amount deposited by the employer , the controlling authority shall direct the employer to pay the balance amount.

## *Appeal against the order of Controlling Authority (Sec. 7)*

- Any person aggrieved by an order of the Controlling Authority may appeal with AG or such authority as AG may specify in this behalf (*hereinafter called as Appellate Authority*)
- The appeal may be filed *within 60 days* from the date of receipt of order of the controlling authority which may be further extended to 60 days more on sufficient cause.
- Appeal by the employer shall not be admitted unless he deposits with the appellate authority a sum equal to the amount of gratuity determined by controlling authority.

## *Appeal against the order of Controlling Authority (Sec. 7) .....*

- The appellate authority shall give a reasonable opportunity of being heard to the parties concerned.
- Thereafter, the appellate authority may confirm, modify or reverse the decision of the Controlling Authority.

## *Eligibility for Gratuity (Sec. 4)*

Gratuity shall be payable to an employee :-

Who has rendered continuous service for *not less than 5 years* on the termination of his employment :-

- on his superannuation; or
- on his retirement or resignation; or
- on his death or disablement due to accident or disease

**Note:-** The completion of continuous service of 5 years shall not be necessary where the termination of the employment of any employee is due to death or disablement due to accident or disease.

# Gratuity to whom...???

Gratuity shall be paid to :-

- The Employee
- Nominee of the Employee (*if deceased employee had made a nomination*)
- Legal heir of the Employee (*if deceased employee had not made any nomination*)
- If the nominee or legal heir is a minor, the amount of gratuity shall be deposited with controlling authority which shall invest the same for the benefit of minor in bank or financial institution, as may be prescribed, until such minor attains majority.

## *Calculation of the Amount of Gratuity (Sec. 4)*

- Monthly Rated Employee
- Piece Rated Employee
- Employee of a Seasonal Establishment.

## *Monthly Rated Employee*

- Last drawn wages  $\times 15/26 \times$  Completed years of Service (*incl. a part of year in excess of 6 months*)

### Note:

- Wages = Last Drawn
- Month = Period of 26 Days
- 15 days wages = Last drawn wages  $\times 15/26$

## *Piece-Rated Employee*

- Last drawn wages  $\times$  15/26  $\times$  Completed years of Service (*incl. a part of year in excess of 6 months*)

### Note:

- Last drawn Wages = Total wages received during 3 months immediately preceding termination /Days actually worked
- Last drawn wages shall not include overtime wages.

## *Seasonal Establishment*

- Such an employee shall be paid gratuity at the rate of *7 days wages* for each season.

## *Gratuity in case of disabled Employee (Sec. 4)*

- If an employee becomes disabled due to an accident or disease so that he becomes incapable of performing the work which he was performing before such accident or disease, but is re-employed on reduced wages on some other job, he shall be paid gratuity as follows:

## *Gratuity in case of disabled Employee ....*

- a) For the period preceding the disablement  
on the basis of wages last drawn by the employee  
at the time of disablement.
  
- b) For the period subsequent to disablement  
on the basis of reduced wages last drawn by the  
employee at the time of termination of service.

# *Mode of Payment of Gratuity*

- By Cash
- By DD or Cheque, if so desired by the payee.
- By Postal Money Order (*after deducting the commission payable*) if the payee so desires and the amount of gratuity payable is less than Rs. 1000.

Note: The details of payment shall be sent by the employer to the controlling authority.

## *Forfeiture of Gratuity to the extent of loss [Sec. 4(6)]*

- If the service of an employee are terminated
  - for any act, willful omission or negligence
  - resulting in damage or loss or destruction of the property of the employer.
- 
- Then the gratuity payable to the employee shall be forfeited to the extent of such damage or loss.

## *Forfeiture of whole amount of Gratuity [Sec. 4(6)]*

- If the services of an employee are terminated
- for his riotous or disorderly conduct or any other act of violence on his part, or for any act which constitutes an offence involving moral turpitude.
  
- Then the gratuity payable to the employee shall be wholly exempt.

## *Nomination (Sec. 6)*

- Every employee, who has completed 1 year of service, is compulsorily required to make a nomination (Form F).
- The nomination must be made *within 30 days* of completion of one year of service.
- The nomination must be made in favour of one or more members of the family (*nomination shall be void if it is made in favour of a person who is not a member of his family*)

## *Nomination (Sec. 6) ...*

- If at the time of making nomination the employee does not have family, the nomination may be made in favour of any person.
- The employee may distribute the amount of gratuity amongst more than one nominee.
- The nomination made by an employee may be varied by him at anytime.

## *Nomination (Sec. 6) ...*

- If the nominee dies before the death of employee, the employee shall make a fresh nomination.
- Nomination comes into operation from the date of receipt of the same by the employer.
- Every nomination, fresh nomination or modification of nomination, as the case may be, shall be sent by the employee to his employer, who shall keep the same in his safe custody.

## *Protection of Gratuity (Sec. 13)*

- Gratuity payable to an employee shall not be liable to attachment in execution of any decree or order of any civil, revenue or criminal court.
- It is immaterial as to whether the gratuity is payable to the employee –
  - a) under the Act; or
  - b) in an establishment exempted *u/s* 5.

## *Recovery of Gratuity (Sec. 8)*

- If the employer fails to pay the gratuity within the prescribed time (*i.e., within 30 days of termination of employment*), the controlling authority is empowered to issue a certificate to the Collector to recover the amount of Gratuity.
- The employer shall also be liable to pay Compound Interest at such rate as may be notified by CG from time to time.
- The interest shall be paid from the date of expiry of the prescribed period & ending with actual date of payment of Gratuity.
- The interest payable shall not exceed the amount of Gratuity payable.

## *Consequences of default by employee*

The employer shall not be liable to pay any interest, if :-

- If delay in payment of gratuity is due to the fault of employee.
- the employer has obtained permission in writing from the controlling authority for delayed payment on such ground.

## *Compulsory Insurance (Sec. 4A)*

- Every employer shall get his establishment registered with the controlling authority.
- The registration shall be done within the prescribed time and in prescribed manner.
- An employer shall be required to be registered only if he has taken insurance or he has established an approved gratuity fund.
- Every employer shall take insurance against his liability for payment of gratuity under the Act.

## *Compulsory Insurance (Sec. 4A) ...*

- The insurance shall be taken from LIC or any other prescribed insurance company.
- However, employer of an establishment belonging to or under the control of CG or SG are exempted from the operations of Sec. 4A.

### AG may exempt :-

- An employer who has already established an approved gratuity fund in respect of his employees and who desires to continue such arrangement.
- An employer having 500 or more persons, who establishes an approved gratuity fund in the manner prescribed.

# *Exemption from Provisions of the Act (Sec. 5)*

## The exemption :-

- may be given by AG.
- can be given only by way of a notification in the Official Gazette.
- shall be subject to such conditions as may be specified in the notification.
- may be given prospectively or retrospectively

## *Inspectors [Sec. 7A & 7B]*

- The inspectors shall be appointed by AG by Notification in the Official Gazette
- Every Inspector shall be deemed to be a 'public servant' within the meaning of section 21 of IPC.
- Such number of inspectors may be appointed as AG may deem fit.
- AG may define the area to which the authority of an inspector shall extend. Where two or more inspectors are appointed for the same area, AG may distribute or allocate work to be performed by them (i.e., AG may define the limits within which the inspector shall exercise jurisdiction).

## *Sec. 7A & 7B...*

### Powers of Inspector :-

- To call such information from the employer as he considers necessary.
- To enter into or inspect, at all reasonable times, any premises of any establishment, factory, mine oilfield, plantation port or railway company or shop to which this Act applies, any books, registers, records, notices and other documents.
- To examine the employer and his servants.
- To make copies and take extracts of any books, registers, records, notices and other documents.
- To exercise such other powers as may be prescribed.

# *Inspectors [Sec. 7A & 7B] ...*

## Purpose of Appointment :-

- To ascertain whether or not the provisions of the Act have been complied with by an employer.

## Duties of Owners etc. :-

- To produce accounts, books, registers or other documents required by the inspector;
- To give information required by the Inspector.

## *Penalties (Sec. 9)*

- Knowingly making false statement/ false representation to avoid to make payment → imprisonment up to 06 months, or with fine which may extend to Rs.10,000/- or both.
- Failure to comply with any provision of this Act → Shall be punishable with imprisonment upto 1 year but will not be less than 3 months or with fine, which will not be less than Rs.10,000/- but may extend upto Rs. 20,000/- or with both.
- Any offence relating to Non-payment of any gratuity → Employer shall be punishable with imprisonment for a term which shall not be less than 6 months but may extend to 2 years, unless the court for reasons recorded decides for a lesser term of imprisonment or a fine, which would meet.