

10. PAYMENT OF GRATUITY ACT, 1972

INTRODUCTION:

- *Payment of Gratuity Act, 1972 extends to whole of India.*
- *If it is a plantation or a port then the Act shall not be applicable to the state of Jammu & Kashmir.*
- *The Act came into force with effect from 16-09-1972.*
- Gratuity is a word derived from a Latin word 'Gratuitas' which simply means a 'Gift.'
- *Gratuity will be paid at the time of retirement or superannuation or when he leaves the establishment (Superannuation is defined in the last question).*
- *Gratuity shall not be liable to attachment, by an order of any court (Sec.13).*

Q.No.1. Establishments covered under the Payment of Gratuity Act? (A)

(SM)

ESTABLISHMENTS COVERED UNDER THE ACT:

Initial Applicability	Continued Applicability
<p>The Act applies to:</p> <p>a. Every Factory, Mine, Oilfield, Plantation, Port and Railway Company,</p> <p>b. Every Shop or Establishment, in which <u>10 or more employees</u> are/were employed, on any day of the <u>preceding 12 months</u>.</p> <p>c. Such Other or Class of Establishments, in which <u>10 or more employees</u> are/were employed, on any day of the <u>preceding 12 months</u>, as notified by Central Government [Note]</p>	<p>A Shop or Establishment shall continue to be governed by this Act, even though the number of employees falls below 10 [Sec 1(3A)].</p>

Application of the Act to an employee depends on:

1. He should be employed in an establishment to which the Act applies, and
2. He should be an "Employee" u/s 2(e) of the Act.

Note:

1. The CG has notified the following establishments and made gratuity Act applicable to them:
 - Motor Transport Undertakings,
 - Clubs,
 - Chambers of Commerce & Industry,
 - Inland Water Transport Establishments,
 - Solicitors Officers,
 - Local Bodies, and
 - Circus Industry, in which 10 or more persons are/were employed on any day of the preceding 12 months.
2. The provisions of the Act shall be applicable to Municipal Board also. (Municipal Board Vs. Union of India)

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Q.No.2. The Appropriate Government is empowered to exempt establishments and / or employees from the Payment of Gratuity Act. Explain [Sec.5]. (B)

(SM)

The Appropriate Government may,

- By notification, And subject to specified conditions,

- Exempt any establishment and /or employees
- From the applicability of this Act,

As under:

Exemption granted to	Condition
1. Any Establishment, Factory, Mine, Oilfield, Plantation, Port, Railway Company or Shop to which this Act applies. (Employer)	If the Appropriate Government is of the opinion that the employee or class of employees are in receipt of gratuity benefits which are more favourable than the benefits conferred under the Act.
2. Any Employee or class of Employees employed in any Establishment, Factory, Mine, Oilfield, etc. to which this Act applies. (Employee)	

Such notification may be issued retrospectively, subject to the following conditions:

- Can't be issued from a date earlier than the date of commencement of this Act &
- Shall not be issued against any one's interest.

Q.NO.3. Eligibility and payment of Gratuity [Sec.4 (1)] (Or) When is Gratuity payable? To whom it is payable? By whom it is payable. (A) (PM) (M12, N13, M16 - 4M)

ELIGIBILITY / WHEN IT IS PAYABLE: Gratuity shall be payable to an employee

- On the termination of his employment after he has rendered continuous service for not less than 5 years:
- On his retirement or
- On his superannuation or resignation or
- On his death or disablement due to accident or disease

Note:

- The condition of the completion of 5 years continuous service is not essential in case of the termination of the employment of any employee due to death or disablement.
- An employee who is re-employed without any break in service (re-instated employee) & a retrenched employee will be eligible for Gratuity.

PAYEE / TO WHOM IT IS PAYABLE: Gratuity is payable to the

- Employee himself.
- However, it is payable to the following persons in the situations given below:

Situation	Gratuity Payable to
Death of employee & nomination was made	Nominee (s).
Death of employee & <u>no</u> nomination was made	Legal Heir (s).
Where Nominee (s)/Legal Heir(s) is a <u>Minor</u>	Deposited with <u>Controlling Authority</u> , who shall <u>invest</u> the same for the benefit of such <u>Minor</u> in <u>Term deposit with SBI</u> or its subsidiaries or any Nationalized bank <u>until</u> such minor <u>attains</u> <u>majority</u> .

BY WHOM IT IS PAYABLE: Employer.

Note:

- The payability of gratuity to the employee is his right as well as obligation of the employer.
- It is a statutory right given to the employees [Balbir kaur v.SAIL].

3. It becomes payable to an employee on the date of termination of his employment. [Rashtriya Mill Mazdoor Sangh vs. NTC].
4. By the change of ownership,
 - a) The relationship of employer and employees subsist and
 - b) The new employer cannot escape from the liability of payment of gratuity to the employees.
 - c) It was held in the case of Pattathurila K. Damodaran Vs M.Kassim Kanju.
5. An employee resigning from service is also entitled to gratuity; (Texmaco Ltd. Vs Sri Ram Dhan)
6. And non acceptance of the resignation is no hurdle in the way of an employee to claim gratuity. (Mathur Spinning Mills Vs. Deputy Commissioner of Labour)

(IMMEDIATELY REFER PRACTICAL QUESTION NO. 1, 2, 3 & 4)

SIMILAR QUESTION:

1. Where an employee's resignation has not been accepted then that employee is not eligible to claim gratuity. (True / False) (RTP - M14, M16 - 4M)
- A. This statement is false as it was held that non acceptance of the resignation is no hurdle in the way of an employee to claim Gratuity. In other words he can claim Gratuity. An employee resigning from service is also entitled to gratuity; (*Texmaco Ltd. Vs Sri Ram Dhan*) and non acceptance of the resignation is no hurdle in the way of an employee to claim gratuity. (*Mettur Spinning Mills vs. Deputy Commissioner of Labour*)

Q.No.4. Write about the computation of Gratuity amount payable (Or) Explain the manner in which the gratuity is payable to employees in a seasonal as well as other establishments as is calculated under the payment of Gratuity Act, 1972. Also state the maximum amount of Gratuity payable under the Act. [Sec.4 (2)] (A) (PM, N12 – 4M, RTP – M15 & N13)

Establishment	Computation of Gratuity Amount
Est. other than seasonal Est. (General case)	<ul style="list-style-type: none"> • In case of monthly rated employees: $15/26 \times \text{Last Drawn Salary} \times \text{No. of completed years of service or part thereof in excess of 6 months}$. O.T Wages shall <u>not</u> be included. • In case of Piece Rate Employee, wage shall be computed on the <u>average</u> of the total wages of the <u>3 months preceding the termination</u> of employment.
Seasonal Establishment	<ul style="list-style-type: none"> • Those who Work throughout the year: $15/26$ rule as above • Those who Work only during the season: <u>7 days</u> wages shall be paid as gratuity for <u>each season</u>.

E.g.: Thus, if the last drawn wage of an employee, who has served for 30 years is Rs.2,000 p.m. then his gratuity shall be:

$$\frac{2,000 \times 15 \times 30}{26} = \text{Rs.}34,615$$

MAXIMUM STATUTORY LIMIT OF GRATUITY PAYABLE TO AN EMPLOYEE: It shall not exceed Rs.10,00,000 [As per Sec.4(3)]

DISABLED EMPLOYEE: [As per Sec.4(4)] When an employee becomes disabled due to any accident or disease and is not in a position to do the same work and re-employed on reduced wages on some other job, the gratuity will be calculated in 2 parts:

- a) For the period preceding the disablement - on the basis of wages last drawn at the time of disablement.

b) For the period **subsequent to the disablement** - on the basis of the reduced wages as drawn by him at the time of termination of services.

Better terms:

1. Sec.4 shall not affect the right of an employee to receive better gratuity [*Bharat Commerce and Industries Vs Ram Prasad*].
2. However, the maximum statutory limit u/s 4(3) cannot be reduced by mutual agreement.

(IMMEDIATELY REFER PRACTICAL QUESTION NO. 5 & 6)

SIMILAR QUESTION:

1. When an employee becomes disabled due to any accident or disease and is unable to do the same work and re-employed on some reduced wages, how the gratuity of such employee shall be computed under the provisions of the Act? (RTP N17 N15)

A. Payment to "Disabled Employee" - Refer above.

Q.No.5. Write about the word "Continuous service" U/s 2A of the Payment of Gratuity Act, 1972 (A) (SM) (M13, M15, N16 - 4M)

Sec.2(c) defines Continuous service to mean "Continuous service" as defined in Sec.2A. It means service without interruption or break.

Meaning - Sec.2A(1)	Permissible Interruptions
<p>An Employee shall be said to be in continuous service for a period if he has, for that period, been in <u>uninterrupted service or service with permissible interruptions</u>. (Whether such service was rendered before or after commencement of the Act).</p>	<ul style="list-style-type: none"> • Sickness, • Accident, • Leave, • Absence from duty <u>without</u> leave (not being an absence in respect of which an order treating the absence as break in service was passed), • Lay-off (as per agreement or standing order), • Strike or Lock-out not due to any fault of the employee.

Sec.2 (b): Completed year of Service means Continuous Service for one year

DEEMED CONTINUOUS SERVICE [(SEC.2A(2))]:

Where an employee is not in continuous service as defined above, he shall be deemed to be in continuous service for 1 year, if the employee has, during immediately preceding 12 calendar months, preceding the date with reference to which calculation is to be made, actually worked under the employer, for not less than

Seasonal Establishments	Other than Seasonal Establishments	
	For 1 year period	For 6 months period
<u>Not less than 75%</u> of the number of <u>days</u> on which the establishment was <u>in operation</u> during such period.	<ul style="list-style-type: none"> • 190 days, in the case of <ul style="list-style-type: none"> ✓ any employee employed <u>below the ground</u> in <u>mine</u> or ✓ in an establishment which works for <u>less than 6 days</u> in a <u>week</u>, and • 240 days, in any <u>other case</u>. 	<ul style="list-style-type: none"> • <u>95 days</u> & • <u>120 days</u>.

INCLUSION OF CERTAIN DAYS FOR WHICH GRATUITY PAYABLE:

For the purposes of Sec.2A (2), the number of days on which an employee has actually worked under an employer shall include the days on which:

1. He has been laid-off under an agreement or by an order made under the Industrial Employment (Standing Orders) Act, 1946, or under the Industrial Disputes Act, 1947,
2. He has been on leave with full wages earned in the previous year,
3. He has been absent due to temporary disablement caused by accident arising out of and in the course of his employment, and
4. In the case of a female, she has been on maternity leave (not exceeding 12 weeks).

LEGAL DECISIONS

<i>An employee who is re-employed without any break in service will be eligible for gratuity and he can not be denied to get the gratuity simply on the ground of the change in employment.</i>	<i>Jeevan Lal (1929) Ltd. Vs controlling authority</i>
<i>A retrenched employee is also entitled for gratuity.</i>	<i>State of Punjab Vs Labour Court</i>
<i>Wherever a partnership is converted into a registered company, there the employees are entitled to gratuity on the basis of length of service under both the establishments taken together.</i>	<i>Bommidala Bros. v. Authority, the Payment of Gratuity Act(1989)</i>

(IMMEDIATELY REFER PRACTICAL QUESTION NO. 7, 8 & 9)

SIMILAR QUESTION:

1. State whether Gratuity is payable to an employee for the period during which he does not actually work in the organization. Explain the manner in which gratuity is calculated for regular employees.
 - A. Inclusion of Certain days though employee does not actually work – Refer above question.
 - Manner of calculation of gratuity for regular employees – Refer Q.No:5 above.

Q.No.6. Discuss briefly the duties of employer regarding the payment of gratuity. (B)

(SM)

THE FOLLOWING ARE THE DUTIES OF EMPLOYER'S REGARDING THE PAYMENT OF GRATUITY:

1. **Determination & Intimation [Sec 7(2)]:**
 - a) Immediately after the gratuity becomes payable, the employer shall,
 - b) Determine the amount of gratuity and
 - c) Give notice in writing to the
 - d) Recipient and also to the Controlling Authority,
 - e) Specifying the amount of gratuity so determined (Irrespective of the fact whether an application for payment of gratuity has been made or not).
 - f) The employer shall arrange to pay the amount of gratuity **within 30 days from the date of its becoming due / payable** to the person to whom it is payable [Sec.7(3)]
2. **Notice / Intimation for Payment of Gratuity to applicant:**
 - a) The employer shall issue a notice (either by person or by RPAD),
 - to the applicant (employee, nominee or legal heir),
 - with a copy endorsed to the Controlling Authority,
 - within 15 days of the receipt of application for payment of Gratuity
 - b) If the claim is found **admissible** on verification - in Form L,

- Specifying the gratuity amount payable and
- Fixing a date,
- Not beyond 30 days after the date of the application, for payment thereof.

c) If the claim is **not found admissible** - in Form M, Specifying the reasons for the same.

d) If the claimant for gratuity is a **Nominee or a Legal Heir**:

- i) The employer may ask any evidence for establishing his identity.
- ii) The time limit for issuance of notices shall be calculated from the date such evidence is made available.

e) **Service of notices to applicant:** (Rule 8) The notices on Form 'L' or 'M' shall be served on the applicant either by personal service after taking receipt or by RPAD.

3. Payment of Gratuity:

- a) The Employer shall arrange to pay the amount of gratuity within 30 days from the date of its becoming payable (Sec 7(3)).
- b) If it is not paid so, the employer shall pay simple interest at the notified rate from due date to the actual date of payment (*These interest rates are notified by the Central Government from time to time at par with the rates applicable to repayment of Long Term Deposits*)(Sec 7(3A)).
- c) Interest shall not be payable if the delay is due to the fault of the employee and the employer has obtained permission from the Controlling Authority for delayed payment on this ground (Proviso to Sec 7(3A))

Q.NO.7. Write a short note on the following: (A)

(SM)

a) Mode of Payment of Gratuity

(M14 - 4M) (RTP M15)

b) Recovery of Gratuity in case of default in payment

c) Protection of Gratuity

1. MODE OF PAYMENT OF GRATUITY [RULE 9]:

- a) The gratuity shall be paid either
 - in cash or
 - in demand draft or
 - bank cheque to the claimant.
- b) If the claimant so desires and the amount of gratuity payable is less than one thousand rupees then
 - i) Payment may be made by postal money order after deducting the commission due to such postal money order from the amount payable.
 - ii) The intimation about the details of payment shall be given to the controlling authority by the employer.
- c) In case of the nominee or a legal heir, who is minor,
 - The controlling authority shall invest the gratuity amount deposited by him for the benefit of such minor in Term deposit with the SBI or any of its subsidiaries or any Nationalized Bank.

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2. RECOVERY OF GRATUITY IN CASE OF DEFAULT IN PAYMENT (SEC.8)

(N11 - 4M)

- a) Where an employer not paid the gratuity within the prescribed time or in accordance with the notice by the Controlling Authority,
- b) The employee / nominee / legal heir may apply to the Controlling Authority in Form 'T' for the recovery of gratuity.

c) On an application made by the aggrieved person,

- i) The Controlling Authority issue a certificate for the amount to the Collector to recover the same along with compound interest, as arrears of land revenue, and pay the same to the person entitled thereto.
- ii) The rate of interest will be notified by the CG from the date of expiry of the prescribed time.
- iii) Before issuing such certificate, the Controlling Authority shall give the employer an opportunity of being heard.
- iv) Interest payable U/s 8 shall not exceed the amount of gratuity payable under the Act.

3. **PROTECTION OF GRATUITY (SEC.13):** Gratuity shall not be liable to attachment, by an order of any court.

(IMMEDIATELY REFER PRACTICAL QUESTION NO. 10 & 11)

Q.No.8. Write a short notes on reduction and forfeiture of gratuity [Sec.4(6)]. (A) (PM)

REDUCTION AND FORFEITURE OF GRATUITY: [SEC.4(6)]

1. Forfeiture to the extent of the damage/ loss:

If the services of an employee have been terminated for-

- a) Any act,
- b) Willful omission, or
- c) Negligence

Causing any damage or loss to, or destruction of, property belonging to the employer- there the gratuity shall be forfeited to the extent of the damage or loss so caused;

2. Wholly or partially forfeiture of gratuity:

- a) Where if the services of such employee have been terminated for his riotous or disorderly conduct or any other act of violence on his part, or
- b) If the services of such employee have been terminated for any act which constitutes an offence involving moral turpitude.

Provided that such offence is committed by him in the course of his employment, there the gratuity payable to the employee may be wholly or partially forfeited.

LEGAL DECISIONS ON FORFEITURE (Imp. for Practical Questions)

<i>Right of the Employer to forfeit the amount of earned gratuity of an employee whose services were terminated for any Act, willful omission or negligence causing any damage to the employer, is limited to the extent of the damage, and the proof of such damage.</i>	<i>Parmali Wallance Limited Vs State of M.P.</i>
<i>Withholding of Gratuity is not permissible under any circumstances other than those enumerated u/s 4(6) of the Act and the right to gratuity is a statutory right and no one can be deprived from such right.</i>	<i>K.C.Mathew vs Plantation Corpn of Kerala Ltd</i>
<i>Any type of charge payable to the Employer by the Employee (e.g rent for housing quarters occupied by employee) not paid during the course of his service, can be adjusted from the gratuity of the employee. Only the net amount may be paid to the Employee.</i>	<i>Wazir Chand vs Union of India (N14 – 4M)</i>
<i>Refusal of Employee to surrender land belonging to the Employer is not a sufficient ground to withhold the gratuity.</i>	<i>Travancore Plywood Industries Ltd</i>

When an offence of theft involves moral turpitude, gratuity stands wholly forfeited in view of Sec.4(6)	Bharat Gold Mines Ltd
An employee, who has been given the benefit of probation u/s 3 of the probation of offenders Act, 1958, cannot be disqualified to receive the amount of his Gratuity.	S.N. Sunderson (Minerals) Ltd.

(IMMEDIATELY REFER PRACTICAL QUESTION NO. 12, 13, 14, 15, 16 & 17)

Q.No.9. Explain the provisions as to Nomination for gratuity. [Sec.6 Read with Rule 6 of The Payment of Gratuity (Central) Rules, 1972] (B) (Students self study) (SM) (RTP - M16)

PURPOSE:

In case of termination of service due to death of employee,

1. The gratuity should be paid to his Successors / Legal Heirs. In order to avoid controversies, the employee shall make a nomination.

THE PROVISIONS RELATING TO NOMINATION ARE:

1. **Nomination by the employee after the completion of 1 year of service:**
 - a) Each employee, who has completed 1 year of service, shall be eligible to make a nomination for the purpose of Sec.4 (1) (i.e. payment of gratuity to nominees).
 - b) It shall be made in Form F, in duplicate, within 30 days of completion of 1 year of service.
 - c) If it is filled belatedly, for a reasonable ground, it shall be accepted by the employer. (*In case of an employee who is already in employment for 1 year or more on the date of commencement of these rules within 90 days after commencement*).
2. **Multiple Nominees:** An Employee may in his nomination, distribute the amount of gratuity payable to him, among > 1 nominee.
3. **Family:** If an employee has a family at the time of making a nomination, the nomination shall be made in favour of members (s) of the family (*). Any nomination made by such employee in favour of a non family member is void.
4. **Acquiring a Family:**
 - a) If the employee has no family and made a nomination in favour of a non family member, the same will become invalid on his acquiring family and
 - b) Shall make a fresh nomination in favour of a family member, in Form G, in duplicate, within 90 days of acquiring a family.
5. **Notice of Modification:** It can be modified at any time, after giving a written notice to the employer. This is to be made in Form H and be in duplicate.
6. **Death of Nominee:** If a nominee pre-deceases the employee, the interest of the nominee shall revert back to employee, who shall file a fresh nomination (Form H and in duplicate).
7. **Nomination duly signed by the employee:** A nomination or a fresh nomination or a notice of modification of nomination shall be duly signed by the employee and if he is illiterate, shall bear the thumb impression of the employee in presence of two witnesses.
8. **Employer Custody:** Every nomination / fresh nomination / modified nomination shall be given by the employee to his employer, who shall keep the same in his safe custody.
9. **Effective Date of nomination:** Nomination comes into operation from the date of receipt of the same by the Employer.

(*) **Meaning of "Family" u/s 2(h):**

1. **For Male Employee:** Himself, his wife, his children whether married or unmarried, his dependent parents and the dependent parents of his wife, the widow and children of his pre-deceased son.

2. **For Female Employee:** Herself, her husband, her children whether married or unmarried, her dependent parents & the dependent parents of her husband, the widow and children of her predeceased son.
3. **Effect of Adoption:** Where the personal law of an employee permits the adoption by him of a child, any child lawfully adopted by him shall be deemed to be included in his/ her family. Where a child of an employee has been adopted by another person and such adoption is, under the personal law of the person making such adoption, lawful, such child shall be deemed to be excluded from the family of the employee.

Q.No.10. Explain the provisions in respect of disputes as to gratuity. [Sec. 7(4)-7(7)] (Or) State the nature of dispute as to gratuity that may be decided by the Controlling Authority? What action can be taken by the Controlling Authority on receipt of it? (Or) Explain how disputes are resolved under the Gratuity Act, 1972. (A) (SM) (RTP - M13)

1. **Filling of application to Controlling Authority on the dispute relating to the payment of gratuity:** In case of any dispute,
 - a) The employer, or
 - b) Employee or
 - c) Any other person raising the dispute,

May make an application to the Controlling Authority, for deciding the dispute.

Subject Matter of Dispute	Duty of the Employer
a. <u>Amount</u> of gratuity payable to an employee b. <u>Admissibility</u> of any claim of or in relation to, an employee for payment of gratuity. c. <u>Person</u> entitled to receive the gratuity	The <u>employer shall deposit</u> , such amount as he admits to be payable by him as gratuity, <u>to the Controlling Authority</u> .

2. **Payment of gratuity amount after Inquiry & Decision on Dispute:**
 - a) The Controlling Authority shall, after due inquiry and after giving a reasonable opportunity of being heard to the parties to the dispute, determine the matter (s) in dispute.
 - b) After such inquiry if any amount is found to be payable to the employee then the Controlling Authority shall direct the employer to pay such amount or the difference of amount so determined to the Controlling Authority.
 - c) As soon as the employer makes the said deposit, the Controlling Authority shall pay the amount:
 - i) To the applicant where he is the employee, or
 - ii) Where the applicant is not the employee, to the Nominee/Guardian of Nominee / Legal Heir of the employee, if he is satisfied that there is no dispute as to the right of the applicant to receive the amount of gratuity.

3. **Powers of Controlling Authority:**

- a) Inquiry U/s 7 by the Controlling Authority will be a "Judicial Proceeding".
- b) For conducting inquiry, the Controlling Authority shall have the same powers as are vested in the Court (like enforcing attendance, production of documents, receiving evidences on affidavits, and issuing commission for the examination of witnesses).

4. **Appeals to Appellate Authority[Sec 7(7)]:**

- a) A person aggrieved by an order of the Controlling Authority may, within 60 days from the date of receipt of the order, make an appeal to the Appellate Authority. The time limit may be extended by another 60 days.
- b) The Employer's appeal shall not be admitted unless the amount of gratuity is deposited either with the Controlling Authority or Appellate Authority.

- c) The Appellate Authority may confirm, modify or reverse the decision of the Controlling Authority.
- d) The Appellate Authority shall give reasonable opportunity of being heard to the parties concerned.

Note: All Assistant Labour Commissioners (Central) have been appointed as Controlling Authorities and all the Regional Labour Commissioners (Central) as Appellate Authorities.

Q.No.11. Describe the powers of inspectors under the Payment of Gratuity Act. (A)

(SM)

THE FOLLOWING ARE THE PROVISIONS RELATING TO APPOINTMENT AND POWERS OF INSPECTORS:

1. **Appointment [Sec 7A]:** Appropriate Government may appoint Inspectors as it deems fit, by notification in the official gazette. More than one inspector may be appointed by appropriate government with special orders and define the distribution of work among them.
2. Every Inspector shall be deemed to be a Public Servant.
3. **Powers of Inspectors [Sec 7B]:** An Inspector may exercise all or any of the following powers, for the purpose of deciding the compliance of this law:
 - a) Require an employer to furnish such information as he may require.
 - b) Enter and inspect, at all reasonable hours, any premises of or place in any Factory, Mine etc., for the purpose of examining any register, record or notice or other documents required to be kept or exhibited under this Act or Rules.
 - c) Examine the employer or any person whom he finds in such place and having a reasonable cause to believe, is an employee.
 - d) Make copies of, or take extracts from, any register, record etc., as he may consider relevant.
 - e) Where he believes that any offence under this Act has been committed by an employer, search and seize such records etc.
 - f) Exercise such other powers as may be prescribed.

Q.No.12. Definitions (C)

(SM)

Term	Definition	
Appropriate Government [Sec.2(a)]	<u>Central Government</u> in the case of an establishment <ul style="list-style-type: none"> • Belonging to, or under the control of the CG • Having branches in more than one State, • Factory belonging to/under the control of CG • <u>Major Port, Mine, Oilfield or Railway Company.</u> 	Any other case - <u>State Government.</u>
Superannuation & Retirement	<ul style="list-style-type: none"> • Sec.2(r): Superannuation, in relation to an employee, means the <u>attainment</u> by the employee of such <u>age as is fixed in the contract</u> of service, as the age of the retirement. • Sec.2(q): Retirement means <u>termination</u> of the employment <u>otherwise than on superannuation.</u> 	

QUESTIONS FOR ACADEMIC INTEREST ONLY

Q.No.13. Miscellaneous provisions under the Payment of Gratuity Act with respect to duties of employer. (C) (SM)

FOLLOWING ARE THE DUTIES OF EMPLOYER UNDER THE PAYMENT OF GRATUITY (CENTRAL) RULES, 1972 ARE:

1. **Display of notice:** The Employer shall display a notice at or near the main entrance of the establishment in bold letters, in English and in the language understood by the majority of the employees, specifying the name of the Officer with designation, authorised by the employer to receive notices under this Act, on his behalf.
2. **Display of abstract of the Act & Rules:** The Employer shall display an abstract of the Payment of Gratuity Act and the Rules made there under in English and in other language understood by the majority of the employees at the important place at or near the main entrance of the establishment, in Form U.
3. **Notice of Opening, Change or Closure of the establishment:** A notice shall be submitted by the Employer to the Controlling Authority of the area, within 30 days of any change in name, address, employer or nature of business. Where an employer intends to close down the business, he shall submit a notice to the Controlling Authority atleast 60 days before the intended closure.

Q.NO.14. Definitions. (C)

(SM)

Term	Definition
Controlling Authority [Sec.2(d) and 3]	Controlling Authority means an authority appointed by Appropriate Government u/s 3 [Sec.2(d)] The Appropriate Government may, by notification, appoint any Officer to be a Controlling Authority who shall be responsible for the administration of this Act. Different authorities may be appointed for different areas.
Factory [Section 2 (g)]	'Factory' has the meaning assigned to it in clause (m) of Section 2 of the Factories Act, 1948 (63 of 1948)
Notification [Sec.2(k)]	<ul style="list-style-type: none"> • Means a Notification published in the Official Gazette. • The Appropriate Government may by Notification, make Rules for the purpose of carrying the provisions of the Act. [Sec.15]
Prescribed [Se.2(o)]	Means prescribed by Rules made under this Act.

Q.NO.15. Explain the provisions in respect of 'an employer can charge another person as the actual offender' (Sec.10) (C) (SM)

EMPLOYER CAN CHARGE ANOTHER PERSON AS THE ACTUAL OFFENDER: (SEC.10)

- a) Where an employer is charged with an offence punishable under this Act,
- b) He shall be entitled, to have any other person charged as the actual offender and brought before the Court at the time appointed for hearing the charge; AND IF
- c) The employer proves to the satisfaction of the Court that he has used due diligence to enforce the execution of this Act; and

- d) That the said other person committed the offence in question without his knowledge, consent or connivance, then
- e) That other person shall be convicted of the offence; and
- f) Shall be liable to the same degree of punishment as if he were the employer and
- g) The employer shall be discharged from any liability under the Act in respect of such offence

As per proviso to sec.10, If the person charged as the actual offender by the employer cannot be brought before the Court at the time appointed for hearing the charge, the Court shall adjourn the hearing for a period not exceeding three months and if by the end of that period the person charged as the actual offender cannot still be brought before the Court, the Court shall proceed to hear the charge against the employer and shall, if the offence be proved, convict the employer.

PRACTICAL QUESTIONS

Q.No.1. Sukumar joined M/s. Reputed Manufacturing Ltd., on 25-12-1998 and superannuated on 31-5-2003. Determine Gratuity if his last salary was Rs. 7,000.00 per month. Comment.

(For student self study)

Gratuity is to be calculated on the basis of completed years of service or part thereof in excess of six months @ 15 days wages based on wages last drawn. However as Sukumar has not completed the minimum period of 5 years service, he is not qualified to receive gratuity.

Q.No.2. Gratuity is payable to an employee only on superannuation and within 3 months of its becoming due. Comment.

(For student self study)

No. Gratuity shall be payable to an employee on the termination of his employment after he has rendered continuous service for not less than 5 years:

- a) On his retirement or
- b) On his superannuation or
- c) On his death or disablement. [5 years of continuous service is not applicable].

Q.No.3. E was an employee of Tea Estate Ltd. The whole of the undertaking of Tea Estate Ltd. was taken over by a new company - Asia Tea Estate Ltd. The service of E remained continuous in new company. After serving for one year E met with an accident and became permanently disabled. E applied to the new company for the payment of gratuity. The company refused to pay gratuity on the ground that E has served only for a year in the company.

Examine the validity of the refusal of the directors in the light of the provisions of the Payment of Gratuity Act, 1972.

(PM) (RTP - N 13, 15) (Similar N15 - 4M)

Provisions of Law: Sec 4(1) – playability of gratuity.

Analysis: Accordingly to Sec 4(1) of the payment of Gratuity Act, 1972, gratuity shall be payable to an employee on the termination of his employment after he has rendered continuous service for not less than five years on his superannuation, or, on his retirement or resignation or on his death or disablement due to accident or disease.

The condition of the completion of five years of continuous service is not essential in case of the termination of the employment of an employee due to death or disablement for the purpose of this section. Disablement means such disablement as incapacitates an employee for the work which he was capable of performing before the accident or disease resulting in such disablement.

The given problem fulfills all its above requirements as stated. Therefore, E is entitled to recover gratuity after becoming permanently disabled and continuous service of five years is not required in this case.

Conclusion: The Company cannot refuse to pay gratuity on the ground that he has served only for a year.

Note: By the change of ownership, the relationship of Employer and Employees subsists and the new employer can't escape from the liability of payment of gratuity to the employees (Pattathurila K. Damodaran vs. M.Kassim Kanju)

Q.No.4. XYZ Ltd was amalgamated with ABC Corporation in the year 2014. Mr.ST who had rendered continuous service from the year 1993, first in XYZ and later in the amalgamated company, retire in 2015. ABC Corporation (the amalgamated company) declined to pay gratuity claiming that Mr.ST has worked for only one year in their company. Examine their contention with reference to the payment of gratuity Act, 1972. (RTP)

Provisions of Law: Sec 4(1) – playability of gratuity.

Analysis: Accordingly to Sec 4(1) of the payment of Gratuity Act, 1972, gratuity shall be payable to an employee on the termination of his employment after he has rendered continuous service for not less than five years on his superannuation, or, on his retirement or resignation or on his death or disablement due to accident or disease.

The given problem fulfills all its above requirements as stated. Therefore, Mr.ST is entitled to recover gratuity after his retirement.

Conclusion: The Company cannot escape from the liability of payment of gratuity to Mr.ST, in this case. on the ground that he has served only for a year.

Note: By the change of ownership, the relationship of Employer and Employees subsists and the new employer can't escape from the liability of payment of gratuity to the employees (Pattathurila K. Damodaran Vs. M.Kassim Kanju)

Q.No.5. Mr. Ram joined Bells Assam Ltd. on 26-11-1980 and superannuated on 31-5-2006. On the date of retirement, his monthly salary was Rs. 24,000/. He also received overtime of Rs.2,000. Calculate the amount of Gratuity.

Provisions of Law: Sec 2(4) – Calculation of gratuity amount payable.

Analysis: In the establishment other than seasonal establishment the employer shall pay the gratuity to an employee at the rate of 15 days wages based on the rate of wages last drawn by the employee concerned for every completed year of Service or part thereof in excess of 6 months. For this purpose, the wages paid for any overtime work shall not be taken into account.

In the given case,

Ram worked from 26-11-1980 to 31-5-06

$$= 25 \text{ years } 6 \text{ months } 6 \text{ days } = 26 \text{ years}$$

Since he has worked for more than 6 months, it is counted as 1 year.

$$\begin{aligned} \text{Amount payable to him} &= 15/26 \times 26 \text{ years} \times 24000 \\ &= 3,60,000 \end{aligned}$$

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Conclusion: Amount of gratuity has not exceeded maximum limit of Rs.10,00,000/- . So the amount payable is Rs. 3,60,000.

Q.No.6. Comment whether it is illegal to pay gratuity in excess of the limits prescribed in the Gratuity Act or not? (For student self study)

False. The payment of Gratuity Act specifies the minimum amount of gratuity payable but the right of an employee to receive better terms of gratuity under any award, or agreement or contract with the employer is protected.

Q.No.7. An employee is employed in a seasonal establishment. The establishment was in operation for four months only during the accounting year 1994. The employee is not in a continuous service during this period. However, he has worked only for eighty days. Giving reasons for your answer, decide:

(PM) (M 10 – 5M)

i. Whether the employee is entitled to gratuity payable under the Payment of Gratuity Act, 1972?

ii. Would your answer be different, incase the employee worked for 100 days (Or)

'N' is employed in ABC limited, a seasonal establishment. The factory was in operation from 1st March to 30th June during the financial year 2014-15. Though, 'N' was not in continuous service during this period, he had worked for 95 days. Referring to the provisions of the payment of Gratuity Act, 1972, decide whether 'N' is entitled to gratuity.

(PM) (M15 - 4M)

Provisions of Law: Sec 2A – Continuous service.

Analysis: Sec 2A (3) of the Payment of Gratuity Act, 1972, provides that "where an employee employed in a seasonal establishment is not in a continuous service for a period of one year or six months he shall be deemed to be in continuous service under the employer for such period if he has actually worked for not less than 75% of the number of days on which the establishment was in operation during such period".

Considering the above provision, it may be understood that the employee should have worked for 75% of the number of days on which the establishment was in operation during that period for becoming entitled to get gratuity.

In the given problem,

$$\begin{array}{lcl} \text{Establishment was in operation for 4months} & = 120 \text{ days} \\ 75\% \text{ of } 120 \text{ days} & = 90 \text{ days} \end{array}$$

a) If employee worked for 80 days < 90 days

The employee worked for 80 days which is less than 75% of the number of days on which the establishment was in operation during the period.

b) If employee worked for 100 days > 90 days.

The employee worked for 100 days which is more than 75% of the number of days on which the establishment was in operation during the period.

1st Conclusion:

- a) The employee is not entitled to gratuity.
- b) The employee is entitled to gratuity.

2nd Conclusion: The factory was in operation for 4 months. 75% of total operational days = $75\% \times 120 \text{ days} = 90 \text{ days}$.

Actual no. of days worked = 95 days

N is eligible for gratuity as he worked for more than 90 days.

Q.No.8. S is employed in Golden ice-cream factory, a seasonal establishment. The factory was in operation for four months only during the financial year 2009-10. S was not in continuous service during this period. However, he has worked only for sixty days. Referring to the provisions of the Payment of Gratuity Act, 1972 decide whether S is entitled to gratuity payable under the Act. Would your answer be the same in case S works for 100 days? (M10)

Provisions of Law: Sec 2A – Continuous service.

Analysis: Sub section 3 of Section 2 A of the Payment of Gratuity Act, 1972 provides that where an employee, employed in a seasonal establishment, is not in continuous service within the meaning of clause (1), for any period of one year or six months, he shall be deemed to be in continuous service under the employer for such period if he has actually worked for not less than 75% of the number of days on which the establishment was in operation during such period.

Conclusion: In the given problem, as per above provision, S has worked only for sixty days that are less than 75% of number of days therefore, he shall not be eligible for getting any gratuity in first case.

In the second case, since the S has worked for 100 days that are more than 75% of no. of days therefore, he is entitled for gratuity.

Q.No.9. K is an employee of RST Limited, a software company which works five days in a week. K was not in continuous service during the financial year 2009-10. However, she worked only for 150 days because she was on maternity leave with full pay for 50 days. Referring to the provisions of the Payment of Gratuity Act, 1972 decide, whether K is entitled to gratuity payable under the Act? Will your answer remain same if RST Limited works six days in a week?

(PM) (N10 – 8M, N16 – 4M)

Provisions of Law: Section 2A- Continuous service

Analysis:

1. As per Sec.2A of the Payment of Gratuity Act, 1972 an employee shall be said to be in continuous service for a period if he has, for that period, been in uninterrupted service, including service which may be interrupted on account of sickness, accident, leave, lay-off, strike or lockout or cessation of work not due to any fault of an employee.
2. Where any employee (not being an employee employed in a seasonal establishment) is not in continuous service for any period of one year,

He shall be deemed to be in continuous service under the employer for the said period of one year,

if the employee during the period of 12 calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than

- a) One hundred and ninety days, in the case of any employee employed below the ground in a mine or in an establishment which works for less than six days in a week, and
- b) Two hundred and forty days, in any other case.
- c) For the purposes of calculating the number of days on which an employee has actually worked under an employer shall include the days on which 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 twelve weeks.

Conclusion: Thus, as per the above provisions:

1. **Case-I:** K is entitled for gratuity because she was in continuous service for 200 days (150 + 50) i.e. more than prescribed limit of 190 days in 2009-10.
2. **Case-II:** She (K) is not entitled for gratuity because RST Limited works for 6 days in a week and she worked only for 200 days i.e. less than prescribed limit of 240 days.

Q.No.10. Mr. X was an employee of Mutual Developers Limited. He retired from the company after completing 30 years of continuous service. He applied to the company for the payment of gratuity within the prescribed time. The company refused to pay the gratuity and contended that due to stringent financial condition the company is unable to pay the gratuity. Mr. X applied to the appropriate authority for the recovery of the amount of gratuity.

Examine the validity of the contention of the company and also state the provisions of law to recover the gratuity under the Payment of Gratuity Act, 1972.

(PM) (RTP - N17) (N09 - 6M, M14 – 4M) (For student self study)

- a) Gratuity shall be payable to an employee on the termination of his employment after he has rendered continuous service for not less than five years on his superannuation or on his retirement or resignation or on his death or disablement due to accident or disease under Section 4 (1) of the Payment of Gratuity Act, 1972
- b) Further, as soon as gratuity becomes payable, the employer shall whether the application for the payment of gratuity has been given or not by the employee, determine the amount of gratuity and give notice in writing to the person to whom the gratuity is payable under intimation to the controlling officer [Section 7 (2)].

The employer shall arrange to pay the amount of gratuity within 30 days for the date of its becoming due/payable to the person to whom it is payable [Section 7 (3)], along with simple interest if it is not paid within the period specified

However where the delay in the payment is due to the fault of the employee and the employer has obtained permission thereon from the controlling Authority than not liable for any interest [Section 7(3A)].

- c) If the gratuity payable under the Act is not paid by the employer within the prescribed time to the person entitled thereto, the controlling Authority shall issue a certificate for the amount to the Collector to recover the same along with compound interest at such rate as prescribed by the Central Government from the date of expiry of the prescribed time as land revenue arrears, to enable the person entitled to get the amount, after receiving the application from the aggrieved person (Section 8).

Before issuing the certificate for such recovery the Controlling Authority shall give the employer a reasonable opportunity of showing cause against the issue of such certificate. The amount of interest payable under the Section shall not exceed the amount of gratuity payable under this Act in no case (Section 8).

Therefore, Mr. X is entitled to recover gratuity as he has completed the service of 30 years. The company cannot take the plea of stringent financial conditions for not paying the gratuity to Mr. X. On the refusal by the company, Mr. X. can apply to the appropriate authority and the company will be liable to pay the gratuity along with interest as decided by such authority.

Q.No.11. Aswani who was an employee of Sun Televisions Limited, retired on 1st January 2013 after 30 years of continuous service. The company did not pay the amount of gratuity to Aswani till the end of December 2013. Now, Aswani claims the amount of gratuity along with interest. Decide, under the Payment of Gratuity Act, 1972, whether Aswani will succeed in his claim? **(M14 - 4M) (For student self study)**

Provisions of law: As per the provisions of section 4(1) of the Payment of Gratuity Act, 1972, gratuity shall be payable to an "employee" (defined in section 2(e) of the Act) on the termination of his employment after he has rendered continuous service for not less than five years –

- a) On his superannuation or
- b) On his retirement or resignation or
- c) On his death or disablement due to accident or disease;

Further, as per the provisions of section 7(3), the employer shall arrange to pay the amount of gratuity within thirty days from the date it becomes payable to the person as gratuity, whether the application for the payment of gratuity has been given or not by the employee.

Analysis: Sec.8 of the Act deals with Recovery of gratuity – If the amount of gratuity payable under this Act is not paid by the employer, within the prescribed time, to the person entitled thereto, the controlling authority shall, on an application made to it in this behalf by the aggrieved person, issue a certificate for that amount to the Collector, who shall recover the same, together with compound interest thereon at such rate as the Central Government may, by notification, specify, from the date of expiry of the prescribed time, as arrears of land revenue and pay the same to the person entitled thereto provided that the controlling authority shall, before issuing a certificate under this section, give the employer a reasonable opportunity of showing cause against the issue of such certificate provided further that the amount of interest payable under this section shall, in no case exceed the amount of gratuity payable under this Act.

Conclusion: Applying the above provisions of law to the question, Mr. Aswani will succeed and the company M/s. Sun Television Ltd., is required to pay gratuity along with interest as per the application of section 8 of the Act.

Q.No.12. Ramesh was occupying service quarters of a company at the time of retirement. He did not vacate the house after retirement. The company withheld the payment of gratuity to the retired employee on this ground. Can Ramesh claim the payment of gratuity and succeed against the employer? **(For student self study)**

Sec. 4(6) of payment of Gratuity Act says that Any type of charge payable to the Employer by the Employee (e.g rent for housing quarters occupied by employee) not paid during the course of his service, can be adjusted from the gratuity of the employee. Only the net amount may be paid to the Employee. (Wazir Chand Vs Union of India). Yes, can claim the amount, after adjusting the rent due.

Q.No.13. Can the whole gratuity be forfeited if the services of an employee are terminated for any Act of willful omission causing any damage to or destruction property belonging to the employer?

No, As per Sec.4(6), The gratuity of an employee whose services have been terminated for any Act, willful omission or negligence causing any damage or loss to, or destruction of the property belonging to the employer shall be forfeited to the extent of the damage or loss so caused. Therefore the company cannot forfeit the whole gratuity payable to the employee.

Q.No.14. National Steels Limited decided to forfeit the amount of gratuity of its employees A,B and C on account of disorderly conduct and other acts which caused loss to the property belonging to the company, A,B and C committed the following acts:

- a. A refused to surrender the occupied land belonging to the company. **(PM)**
- b. B committed theft under law involving offence of moral turpitude'
- c. C after superannuation continued to occupy the quarter of the company for six months. Against the decision of the company, A, B and C applied to the appropriate authorities for relief. The company contented that the right to gratuity is not a statutory right and the forfeiture of the amount of gratuity was within the law.

Examine the contention of the company and the decision taken by the company to forfeit the amount of gratuity in the light of the Payment of Gratuity Act, 1972. **(N14 - 4M) (RTP – M16, N14, N13)**

Provision of Law: Sec 4(6) – Forfeiture of gratuity. Relevant case laws –

- a) K.C.Mathew Vs plantation corporation of Kerala Ltd. 2001 LLR (2) 9ker.
- b) Travancore plywood industries Ltd. Vs. Regional Joint Labour Commissioner (1966).
- c) Bharat Gold Mines Ltd Vs. Regional Labour Commissioners (1987).
- d) Wazir chand Vs. Union of India, 2001.

Analysis and Conclusion: In accordance with the provisions of Sec 4(6) of the Payment of Gratuity Act, 1972. If the services of any employee have been terminated for any Act, willful omission or negligence causing any damage or loss to or destruction of, property belonging to the employer, the gratuity shall be forfeited to the extent of the damage or loss so caused and if the services of such an employee have been terminated for any Act which constitutes an offence involving moral turpitude, provided that such offence is committed by him in the course of his employment, the gratuity payable to the employee may be wholly or partially forfeited.

According to Sec 4(1) of the Payment of Gratuity Act, 1972, gratuity shall be paid to the employee when he completes 5 years of continuous or resignation or on his death or disablement due to accident or disease. The condition of the completion of 5 years continuous services is not essential in case of the termination of the employment of any employee due to death or disablement.

Looking to the provisions of Sec 4(1) it is clear that withholding of gratuity is not permissible under any circumstances, except under those circumstance covered by Sec 4(6). The same was held in above mentioned 1st case.

Therefore the contention of National Steel Ltd. is wrong to that extent.

The correctness of the decision taken by National Steel Ltd. regarding forfeiture of the gratuity amount of its employees A, B and C may be tested in the light of Sec 4(6) of the Payment of Gratuity Act, 1972 as referred above.

a) The refusal of an employee to surrender the occupied land belonging to the company is not sufficient ground to withhold gratuity under sec 4(6) of the Payment of gratuity Act, 1972. The same was held in the above referred case (a).

Hence, A's gratuity cannot be withheld.

b) The offence of theft committed by B, under law involves moral turpitude and his gratuity stands wholly forfeited in view of Sec 4(6) of the Act the same has been held in above case(b)

c) If the employee has to be paid any amount regarding any type of charge by the employee and if he has not paid for the same during the course of his service, then the employer can adjust the amount from the gratuity of the employee. In the instant case C after superannuation continued to occupy the quarters of the company for 6 months therefore, the company is entitled to charge the rent from him and after adjusting other dues the remaining amount of gratuity may be paid. The same has been held in above case(c).

Q.No.15. Bhushan, who had put in 10 years of continuous service, was dismissed on the ground of misconduct and the amount of gratuity payable to him under the Payment of Gratuity Act, 1972 was forfeited in full. He was not given an opportunity of being heard and no show cause notice was served on him. He wants to institute a suit against the management. Will he succeed?

Provisions of Law: Sec 4(6) – Forfeiture of gratuity.

Analysis: Under Sec 4(6) of the payment of gratuity Act, 1972, it has been provided that.

a) The gratuity of an employee whose services have been terminated for any Act, willful omission or negligence causing any damage or loss to, or destruction of the property belonging to the employees shall be forfeited to the extent of the damage or loss so caused.

b) The gratuity to an employee may be wholly or partially forfeited:

- If the services of such employee have been terminated for his riotous or disorderly conduct or any other Act violence on his part or
- If the services of such employee have been terminated for any Act which constitutes an offence involving moral turpitude, provided that such offence is committed by him in the course of his employment.

It has been held that any decision to forfeit the gratuity under Sec 4(6)(b) can be taken only after affording an opportunity to the employee concerned. (Bharath Gold Mines Ltd Vs labour Commissioner)

In the given problem neither notice was given to Bhushan nor, he was not given an opportunity of being heard as well.

Conclusion: Bhushan can institute a suit against the management.

Q.No.16. Rajiv, an employee of the stores department of a factory, had been in employment for six years. Two years back, he was suspended for one day due to misbehaviour with his supervisor. Subsequently, he was also alleged to have attempted to steal a few items of stores. On an enquiry, he was found guilty and his services were terminated. Is he entitled to the gratuity due to him? (PM)

Provisions of Law: Sec 4(6) - Forfeiture of gratuity relevant case Law – Bharat Gold Mines Ltd. Vs Regional Labour Commissioner

Analysis: Under Sec 4(6) of the payment of gratuity Act, 1972, it has been provided that.

- a) The gratuity of an employee whose services have been terminated for any Act, willful omission or negligence causing any damage or loss to, or destruction of the property belonging to the employees shall be forfeited to the extent of the damage or loss so caused
- b) The gratuity to an employee may be wholly or partially forfeited:
 - i) If the services of such employee have been terminated for his riotous or disorderly conduct or any other Act violence on his part or
 - ii) If the services of such employee have been terminated for any Act which constitutes an offence involving moral turpitude, provided that such offence is committed by him in the course of his employment.

In the given case, Rajiv was suspended for misbehavior and later attempted to steal few items in stores. Thus there is an offence of theft involving moral turpitude.

Conclusion: The entire amount of gratuity can be forfeited by employer.

Q.No.17. Wazir Chand happens to be a retired Railway servant who occupies the Government quarter, and even after superannuation continued to occupy the Government quarter. For such continuance, the Government, in accordance with Rules, has charged penal rent from the retired Wazir Chand and after adjusting the dues of the Government, the balance amount of the gratuity, which was payable, has been offered to be paid. Examine the contention of the Government and the decision taken by Government to adjust the amount of gratuity in the lights of the provision of the Payment of Gratuity Act, 1972. (PM) (N14 - 4M)

Provisions of law: Payment of Gratuity- According to Section 4(6) of the Payment of Gratuity Act, 1972, if the services of an employee have been terminated for;

- a) any act
- b) willful omission or
- c) negligence

Causing any damage or loss to, destruction of property belonging to the employer, then the gratuity shall be forfeited to the extent of damage or loss so caused.

Analysis: Wazir Chand even after superannuation continued to occupy the quarter and the Government in accordance with the rules, charged the penal rent from him and after adjusting other dues, the balance gratuity amount was offered to be paid to him.

Conclusion: In the case of Wazir Chand Vs Union of India, the Court has decided that Wazir Chand having un-authorisedly occupied the Government quarter, was liable to pay the penal rent in accordance with rules and therefore, there is no illegality in those dues being adjusted against the death-cum-retirement dues of the ex-employee.

Q.No.18. State whether the following statements are true or false and give reasons therefor with reference to the Payment of Gratuity Act, 1972. (PM)

- a) The Payment of Gratuity Act, 1972 is largely based on Kerala Industrial Employees Payment of Gratuity Act, 1972.
- b) A retrenched employee is also eligible for gratuity.
- c) Where an employee's resignation has not been accepted, then that employee is not eligible to claim gratuity.
- d) Where the negligence of employee causes loss to the employer, then the gratuity shall be wholly forfeited.
- e) An appeal against the Controlling Authority's order must generally be made within 60 days.

- a) This statement is **false** because the Payment of Gratuity Act, 1972 is largely based on West Bengal Employees' Payment of Compulsory Gratuity Act, 1971.
- b) This statement is **true** because in the case of State of Punjab Vs. Labour Court, it was held that a retrenched employee is also eligible for gratuity.
- c) This statement is **false** as it was held in Mettur Spinning Mills Vs. Deputy Commissioner of Labour, that non acceptance of the resignation is no hurdle in the way of an employee to claim gratuity.
- d) This statement is **false** because when loss is caused by the negligence of employee, there gratuity shall be forfeited to the extent of the damage or loss so caused.
- e) This statement is **true** as an appeal against the Controlling Authority's order must generally be made within 60 days (Section 7 of the Payment of Gratuity Act, 1972).

PENALTIES&PUNISHMENTS

<u>PARTICULARS</u>	<u>PENALTIES & PUNISHMENTS</u>
Penalty for avoiding of any payment to be made by himself or other person to avoid such payment, knowingly makes any false statement or false representation by any person who is responsible	Imprisonment for 6months , or Fine extended to Rs.10,000 , or Both
Penalty for contravention and default in compliance of any provisions, Rules, orders by an employer	Imprisonment for 3months to 1year or Fine 10,000 to 20,000 or Both
Penalty for non-payment of gratuity payable under the Act by employer	Imprisonment 6months to 2years unless court opinions for lesser time by reasons to be recorded in writing, or With Fine which would meet the ends of justice.
Penalty for fails to pay the premium to the Insurer or to contribute to a Gratuity Fund , by the employer.	<u>Liable</u> to pay the amount of <u>gratuity including interest</u> , to the Controlling Authority. Contravention thereof is punishable with fine upto Rs.10,000 and In case of <u>continuing offence</u> with a further fine of upto Rs.1,000 per day of default.

STATUTORY LIMITS

<u>PARTICULARS</u>	<u>PENALTY</u>
Maximum salary limit for payment of gratuity	It shall <u>not exceed</u> Rs.10,00,000 [as per sec.4(3)]

TIME PERIODS

<u>PARTICULARS</u>	<u>PENALTY</u>
Eligibility for payment of Gratuity	continuous service for not less than 5 years
Time of Application for payment of Gratuity	within 30 days from the due date of payment of gratuity.
Time for payment of Gratuity by employer	within 30 days from the due date of payment of gratuity.
Person aggrieved by an order of the Controlling Authority make an appeal to the Appellate Authority.	within 60 days from the date of receipt of the order. Time limit may be extended by another 60 days

TEST YOUR KNOWLEDGE

1. For calculation of gratuity under the Payment of Gratuity Act, 1972 the number of days in a month is to be taken as
a) Actual number of days on employment b) 26 days
c) 15 days d) 30 days
2. Forfeiture of Gratuity is possible under certain circumstances.
a) True b) False
3. The ceiling on the Gratuity amount is rupees_____.
4. Gratuity can be attached in execution of any decree or order of any civil, revenue or criminal court
a) True b) False
5. Mr. X was the owner of a factory to which the Payment of Gratuity Act, 1972 was applicable. Mr. X had appointed Ms. D as the Labour Officer for the Factory and given his specific instructions for deducting the employees' contribution as provided by the law. But Ms. D had manipulated the records and cheated the employees by making excessive deductions and pocketing the excess. The Inspector identified the irregularities and sent notice to Mr. X. Does he have a defense?
6. The ceiling on the gratuity amount is _____.
7. The Payment of Gratuity Act came into force on_____.
8. For calculation of gratuity under the payment of Gratuity Act, 1972 the number of days in a month is to be taken as_____.
9. An appeal to an order related to payment of gratuity shall be made to the appropriate government within_____.
10. Completed year of service means_____.

THE END