

LL.B. Three Year Course (Second Year) IVth Semester Paper IV Labour Laws-II

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Unit- II

### **Payment of Gratuity Act, 1972**

The Payment of Gratuity Act, 1972 as a measure of social security.

An Act to provide for a scheme for the payment of gratuity to employees engaged in factories, mines, oilfields, plantations, ports, railway companies, shops or other establishments and for matters connected therewith or incidental thereto.

1. Delhi Cloth and General Mills Co. Ltd. Vs. Workmen, 1970 AIR 919 (S.C.)
2. D. S. Nakara and Others vs. Union of India, 1983 AIR 130 (S.C.)
3. Krishna Kumar and Others vs. Union of India and Others, 1990 AIR 1782 (S.C.)

Section-1(3) It shall apply to-

- (a) every factory, mine, oilfield, plantation, port and railway company,
  - (b) every shop or establishment within the meaning of any law for the time being in force in relation to shops and establishments in a State, in which **ten or more persons** are employed, or were employed, on any day of the preceding twelve months,
  - (c) such other establishments or class of establishments, in which **ten or more** employees are employed, or were employed, on any day of the preceding twelve months, as the Central Government may, by notification, specify in this behalf.
- Section-1(3A) A shop or establishment to which this Act has become applicable shall continue to be governed by this Act notwithstanding that the number of persons employed therein at any time after it has become so applicable falls below ten.

1(3A) A shop or establishment to which this Act has become applicable shall continue to be governed by this Act notwithstanding that the number of persons employed therein at any time after it has become so applicable falls below ten.

Cases-

1-D. Laxmi vs Andhra Pradesh Agricultural University, (2002) 1 Lab. L. J. 69 (Andhra Pradesh)

2-Head Mistress (Ms. P. D'Souza), Fatimadevi English High School vs Nymphia Pereira (Smt.), (2003) 1 Lab. L. J. 619 (Bombay High Court)

### **Section- 2(h) define Family -**

‘family’ in relation to an employee, shall be deemed to consist of-

- (i) in the case of a **male employee**, himself, his wife, his children, whether married or unmarried, his dependent parents and the dependent parents of his wife and the widow and children of his predeceased son, if any,

- (ii) in the case of a **female employee**, herself, her husband, her children, whether married or unmarried, her dependent parents and the dependent parents of her husband and the widow and children of her predeceased son, if any.

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 family, and 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.

### **Controlling authority-Section- 3**

The appropriate Government may, by notification, appoint any officer to be a controlling authority, who shall be responsible for the administration of this Act and different controlling authorities may be appointed for different areas.

### **Payment of gratuity-Section- 4**

(1) 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**,

- (a) on his superannuation, or
- (b) on his retirement or resignation, or
- (c) on his death or disablement due to accident or disease.

Provided that the completion of continuous service of five years shall not be necessary where the termination of the employment of any employee is due to **death or disablement**.

Provided further that in the case of death of the employee, gratuity payable to him shall be paid to **his nominee** or, if no nomination has been made, to his **heirs**, and where any such nominees or heirs is a minor, the share of such minor, shall be deposited with the controlling authority who shall invest the same for the benefit of such minor in such bank or other financial institution, as may be prescribed, **until such minor attains majority**.

For the purposes 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.

Cases-

1-State Of Punjab vs Labour Court, Jullundur & Ors, 1979 AIR 1981

2-Bakshish Singh vs Darshan Engineering Works, 1994 AIR 251

## **Rate of Gratuity**

(2) For every completed year of service or part thereof in excess of six months, the employer shall pay gratuity to an employee at the rate of **fifteen days' wages** based on the rate of wages last drawn by the employee concerned.

Provided that in the case of a piece-rated employee, daily wages shall be computed on the average of the total wages received by him for a period of **three months** immediately preceding the termination of his employment, and, for this purpose, the wages paid for any overtime work shall not be taken into account.

Provided further that in the case of an employee who is employed in a **seasonal establishment** and who is not so employed throughout the year, the employer shall pay the gratuity at the rate of **seven days' wages for each season**.

In the case of a monthly rated employee, the fifteen days' wages shall be calculated by dividing the monthly rate of wages last drawn by him **by twenty-six** and multiplying the quotient by **fifteen**.

## **Maximum Gratuity Amount**

(3) The amount of gratuity payable to an employee shall **not exceed** such amount as may be notified by the Central Government from time to time.

Therefore, considering the inflation and wage increase even in case of employees engaged in private sector, this Government decided that the entitlement of gratuity should also be revised in respect of employees who are covered under the Payment of Gratuity Act, 1972. Accordingly, the Government initiated the process for amendment to Payment of Gratuity Act, 1972 to increase the maximum limit of gratuity to such amount as may be notified by the Central Government from time to time. Now, the Government has issued the notification specifying the maximum limit to Rs. 20 Lakh. [<https://pib.gov.in/newsite/PrintRelease.aspx?relid=178218> Press Information Bureau, Payment of Gratuity (Amendment) Act, 2018 brought in force on 29th March, 2018. Dated- 02.04.2020, Time- 08.15 AM]

## **Disablement Employee**

(4) For the purpose of computing the gratuity payable to an employee who is employed, after his disablement, on **reduced wages**, his wages for the period preceding his disablement shall be taken to be the wages received by him during that period, and his wages for the period subsequent to his disablement shall be taken to be the wages as so reduced.

(5) Nothing in this section shall affect the right of an employee receive **better terms of gratuity** under any award or agreement or contract with the employer.

## **Forfeited of Gratuity**

- (6) Notwithstanding anything contained in sub-section (1),-
- (a) the gratuity of an employee, whose services have been terminated for any act, **wilful omission or negligence** causing any damage or loss to, or **destruction of, property** belonging to the employer, shall be forfeited to the **extent of the damage or loss so caused**,
  - (b) the gratuity payable 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**.

## **Compulsory insurance- Section- 4A**

(1)-With effect from such date as may be notified by the appropriate Government in this behalf, every employer, other than an employer or an establishment belonging to, or under the control of, the Central Government or a State Government, shall, subject to the provisions of sub-section (2), obtain an insurance in the manner prescribed, for his **liability** for payment towards the gratuity under this Act, **from the Life Insurance Corporation of India** established under the Life Insurance Corporation of India Act, 1956 (31 of 1956) or any other **prescribed insurer**.

Provided that different dates may be appointed for different establishments or class of establishments or for different areas.

(2) The appropriate Government may, subject to such conditions as may be prescribed, exempt every employer who had already established an **approved gratuity fund** in respect of his employees and who desires to continue such arrangement, and every employer employing **five hundred or more persons** who establishes an approved gratuity fund in the manner prescribed from the provisions of sub-section (1).

## **Registration**

(3) For the purpose of effectively implementing the provisions of this section, every employer shall within such time as may be prescribed get his establishment **registered** with the controlling authority in the prescribed manner and no employer shall be registered under the provisions of this section unless he has taken an **insurance** referred to in sub-section (1) or has established an **approved gratuity fund** referred to in sub-section (2).

## **Board of Trustees**

(4) The appropriate Government may, by notification, make rules to give effect to the provisions of this section and such rules may provide for the composition of the **Board of Trustees** of the approved gratuity fund and for the **recovery** by the controlling authority of the amount of the gratuity payable to an employee from the Life Insurance Corporation of India or any other insurer with whom an insurance has been taken under sub-section (1), or as the case may be, the Board of Trustees of the approved gratuity fund.

## **Liability of Employer**

(5) Where an employer fails to make any payment by way of premium to the insurance referred to in sub-section (1) or by way of contribution to an approved gratuity fund referred to in sub-section (2), **he shall be liable** to pay the amount of gratuity due under this Act (including interest, if any, for delayed payments) forthwith to the controlling authority.

## **Penalty-**

(6) Whoever contravenes the provisions of sub-section (5) shall be punishable with fine which may extend to **ten thousand rupees** and in the case of a continuing offence with a further fine which may extend to **one thousand rupees for each day** during which the offence continues.

In this section “approved gratuity fund” shall have the same meaning as in clause (5) of section 2 of the Income-tax Act, 1961 (43 of 1961).

## **Power to exempt- Section- 5**

### **Establishment**

(1) The appropriate Government may, by notification, and subject to such conditions as may be specified in the notification, exempt any establishment, factory, mine, oilfield, plantation, port, railway company or shop to which this Act applies from the operation of the provisions of this Act if, in the opinion of the appropriate Government, the employees in such establishment, factory, mine, oilfield, plantation, port, railway company or shop are in receipt of gratuity or pensionary benefits **not less favourable than the benefits conferred under this Act**.

### **Employee**

(2) The appropriate Government may, by notification and subject to such conditions as may be specified in the notification, exempt any employee or class of employees employed in any establishment, factory, mine, oilfield, plantation, port, railway company or shop to which this Act applies from the operation of the provisions of this

Act, if, in the opinion of the appropriate Government, such employee or class of employees are in receipt of gratuity or pensionary benefits **not less favourable than the benefits conferred under this Act.**

(3) A notification issued under sub-section (1) or sub-section (2) may be issued retrospectively a date not earlier than the date of commencement of this Act, but no such notification shall be issued so as to **prejudicially affect the interests of any person.**

#### **Nomination- Section- 6**

(1) Each employee, who has **completed one year of service**, shall make, within such time, in such form and in such manner, as may be prescribed, nomination for the purpose of the second proviso to sub-section (1) of section 4.

(2) An employee may, in his nomination, distribute the amount of gratuity payable to him under this Act amongst more than one nominee.

#### **Nomination in favour of family members**

(3) If an employee has a family at the time of making a nomination, the nomination shall be made in favour of one or more members of his family, and any nomination made by such employee in favour of a person **who is not a member of his family shall be void.**

(4) If at the time of making a nomination the employee has no family, the nomination may be made **in favour of any person or persons** but if the employee subsequently acquires a family, such nomination shall forthwith become invalid and the employee shall make, within such time as may be prescribed, **a fresh nomination** in favour of one or more **members of his family.**

#### **Modification**

(5) A nomination may, subject to the provisions of sub-sections (3) and (4), be modified by an employee at any time, after giving to his employer a written notice in such form and in such manner as may be prescribed, of his intention to do so.

(6) If a nominee predeceases the employee, the interest of the nominee shall revert to the employee who shall make a **fresh nomination**, in the prescribed form, in respect of such interest.

(7) Every nomination, fresh nomination or alteration 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.**

#### **Determination of the amount of gratuity- Section- 7**

(1) A **person** who is eligible for payment of gratuity under this Act or any person authorised, in writing, to act on his behalf shall send a written application to the

employer, within such time and in such form, as may be prescribed, for payment of such gratuity.

(2) As soon as gratuity becomes payable, the employer shall, whether an application referred to in sub-section (1) has been made or not, determine the amount of gratuity and give notice in writing to the person to whom the gratuity is payable and also to the controlling authority specifying the amount of gratuity so determined.

(3) The employer shall arrange to pay the amount of gratuity within thirty days from the date it becomes payable to the person to whom the gratuity is payable.

### **Simple Interest**

(3A) If the amount of gratuity payable under sub-section (3) is not paid by the employer within the period specified in sub-section (3), the employer shall pay, from the date on which the gratuity becomes payable to the date on which it is paid, simple interest at such rate, not exceeding the rate notified by the Central Government from time to time for repayment of long-term deposits, as that Government may, by notification specify.

### **Fault of the Employee**

Provided that no such interest shall be payable if the delay in the payment is due to the fault of the employee and the employer has obtained permission in writing from the controlling authority for the delayed payment on this ground.

### **Dispute related to gratuity**

(4)(a) If there is any dispute as to the amount of gratuity payable to an employee under this Act or as to the admissibility of any claim of, or in relation to, an employee for payment of gratuity, or as to the person entitled to receive the gratuity, the employer shall deposit with the controlling authority such amount as he admits to be payable by him as gratuity.

### **Application to the Controlling Authority**

(b) Where there is a dispute with regard to any matter or matters specified in clause (a), the employer or employee or any other person raising the dispute may make an application to the controlling authority for deciding the dispute.

### **Determination of matter by Controller Authority**

(c) The controlling authority shall, after due inquiry and after giving the parties to the dispute a reasonable opportunity of being heard, determine the matter or matters in dispute and if, as a result of such inquiry any amount is found to be payable to the employee, the controlling authority shall direct the employer to pay such amount or,

as the case may be, such amount as reduced by the amount already deposited by the employer.

(d) The controlling authority shall pay the amount deposited, including the excess amount, if any, deposited by the employer, to the person entitled thereto.

(e) As soon as may be after a deposit is made under clause (a), the controlling authority shall pay the amount of the deposit-

(i) to the applicant where he is the **employee**, or

(ii) where the applicant is not the employee, to the **nominee** or, as the case may be, the **guardian** of such nominee or heir of the employee if the controlling authority is satisfied that there is no dispute as to the right of the applicant to receive the amount of gratuity.

### **Power of Controlling Authority**

(5) For the purpose of conducting an inquiry under sub-section (4), the controlling authority **shall have the same powers as are vested in a court**, while trying a suit, under the Code of Civil Procedure, 1908 (5 of 1908), in respect of the following matters, namely:—

- (a) enforcing the attendance of any person or examining him on oath,
- (b) requiring the discovery and production of documents,
- (c) receiving evidence on affidavits,
- (d) issuing commissions for the examination of witnesses.

### **Judicial Proceeding**

(6) Any inquiry under this section shall be a **judicial proceeding** within the meaning of sections 193 and 228, and for the purpose of section 196, of the Indian Penal Code (45 of 1860).

### **Appeal**

(7) Any person aggrieved by an order under sub-section (4) may, **within sixty days** from the date of the receipt of the order, prefer an appeal to the **Appropriate Government or such other authority** as may be specified by the appropriate Government in this behalf.

Provided that the appropriate Government or the appellate authority, as the case may be, may, if it is satisfied that the appellant was prevented by sufficient cause from preferring the appeal within the said period of sixty days, **extend the said period by a further period of sixty days**.

Provided further that no appeal by an employer shall be admitted unless at the time of preferring the appeal, the appellant either **produces a certificate** of the controlling authority to the effect that the appellant has deposited with him an amount equal to the amount of gratuity required to be **deposited under sub-section (4), or deposits with the appellate authority such amount.**

(8) The appropriate Government or the appellate authority, as the case may be, may, after giving the parties to the appeal a reasonable opportunity of being heard, **confirm, modify or reverse the decision of the controlling authority.**

### **Recovery of gratuity- Section- 8**

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.

### **Inspectors- Section- 7-A**

(1) The appropriate Government may, by notification, appoint as **many Inspectors**, as it deems fit, for the purposes of this Act.

(2) The appropriate Government may, by general or special order, define the area to which the authority of an Inspector so appointed shall extend and where two or more Inspectors are appointed for the same area, also provide by such order, for the distribution or allocation of work to be performed by them under this Act.

(3) Every Inspector shall be deemed to be a **public servant** within the meaning of section 21 of the Indian Penal Code (45 of 1860).

### **Powers of Inspectors- Section- 7-B**

(1) Subject to any rules made by the appropriate Government in this behalf, an Inspector may, for the purpose of ascertaining whether any of the provisions of this Act or the conditions, if any, of any exemption granted thereunder, have been complied with, exercise all or any of the following powers, namely-

- (a) require an employer to furnish such information as he may consider necessary,
- (b) enter and inspect, at all reasonable hours, with such assistants (if any), being persons in the service of the Government or local or any public authority, as he thinks fit, any premises of or place in any factory, mine, oilfield, plantation, port, railway company, shop or other establishment to which this Act, applies, for the purpose of examining any register, record or notice or other document required to be kept or exhibited under this Act or the rules made thereunder, or otherwise kept or exhibited in relation to the employment of any person or the payment of gratuity to the employees, and require the production thereof for inspection,
- (c) examine with respect to any matter relevant to any of the purposes aforesaid, the employer or any person whom he finds in such premises or place and who, he has reasonable cause to believe, is an employee employed therein,
- (d) make copies of, or take extracts from, any register, record, notice or other document, as he may consider relevant, and where he has reason to believe that any offence under this Act has been committed by an employer, **search and seize** with such assistance as he may think fit, such register, record, notice or other document as he may consider relevant in respect of that offence,
- (e) exercise such other powers as may be prescribed.

(2) Any person required to produce any **register, record, notice or other document** or to give any **information** by an Inspector under sub-section (1) **shall be deemed to be legally bound** to do so within the meaning of sections 175 and 176 of the Indian Penal Code (45 of 1860).

(3) The provisions of the Code of Criminal Procedure, 1973 (2 of 1974) shall so far as may be, apply to any search or seizure under this section as they apply to any search or seizure made under the authority of a warrant issued under section 94 of that Code.

### **Penalties- Section- 9**

(1) Whoever, for the purpose of **avoiding any payment** to be made by himself under this Act or of enabling any other person to avoid such payment, knowingly makes or causes to be made any **false statement or false representation** shall be punishable with **imprisonment** for a term which may **extend to six months**, or with fine which may extend to **ten thousand rupees, or with both**.

(2) An employer who **contravenes**, or **makes default in complying with**, any of the provisions of **this Act** or any rule or order made thereunder shall be punishable with **imprisonment** for a term which **shall not be less than three months** but which may **extend to one year**, or with fine which shall **not be less than ten thousand rupees** but which may extend to **twenty thousand rupees, or with both**.

Provided that where the offence relates to **non-payment of any gratuity** payable under this Act, the employer shall be punishable with imprisonment for a term which shall **not be less than six months** but which may **extend to two years** unless the Court trying the offence, for **reasons to be recorded** by it in writing, is of opinion that a lesser term of imprisonment or the imposition of a fine would meet the ends of justice.

### **Exemption of employer from liability in certain cases- Section- 10**

Where an employer is charged with an offence punishable under this Act, he shall be entitled, upon complaint duly made by him and on **giving to the complainant not less than three clear days'** notice in writing of his intention to do so, to have any other person whom he charges as the **actual offender brought before the court at the time appointed for hearing the charge**, and if, after the commission of the offence has been proved, the employer proves to the satisfaction of the court-

- (a) that he has used due diligence to enforce the execution of this Act, and
- (b) that the said other person committed the offence in question without his knowledge, consent or connivance, that other person shall be convicted of the offence and shall be liable to the like punishment as if he were the employer and the employer shall be discharged from any liability under this Act in respect of such offence.

Provided that in seeking to prove as aforesaid, the employer may be examined on oath and his evidence and that of any witness whom he calls in his support shall be subject to cross-examination on behalf of the person he charges as the actual offender and by the prosecutor.

Provided further that, 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 from time to time for a period not **exceeding three months** and if by the end of the said 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.**

### **Cognizance of offences- Section- 11**

- (1) No court shall take cognizance of any offence punishable under this Act save on a complaint made by or under the authority of the **appropriate Government.**

Provided that where the amount of gratuity has not been paid, or recovered, **within six months** from the expiry of the prescribed time, the appropriate Government shall authorise the **controlling authority to make a complaint against the employer**, whereupon the controlling authority shall, within fifteen days from the date of such

authorisation, make such complaint to a **magistrate having jurisdiction to try the offence.**

(2) No court inferior to that of a **Metropolitain magistrate** or a **Judicial Magistrate of the first class** shall try any offence punishable under this Act.

### **Protection of action taken in good faith- Section- 12**

No suit or other legal proceeding shall lie against the **controlling authority** or **any other person** in respect of anything which is in good faith done or intended to be done under this Act or any rule or order made thereunder.