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MBA - III  
Labour & Employment

11.00 - 12.00  
A.M.

## PAYMENT OF GRATUITY ACT 1972

MD. FIROZ BY ALAM Guest faculty

- 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 at the retrieval reward for his past service when his employment is terminated.
  - This act is known as payment of gratuity act 1972,
  - It extends to the whole of India. It relates to plantations, ports,
- It shall apply to -
- (a) every factory, mine, oilfield, plantation, port and railway.
  - (b) every shop or establishment
  - (c) such other establishments or class of establishments, in which ten or more employees are employed.
- It shall come into force on such date as the central govt, may be notification.

### OBJECTIVES OF THE ACT:-

- To provide a scheme for the payment of Gratuity to employees
- To provide for matters for matters connected with the scheme for payment of gratuity.
- To provide retiring benefits to employees who have rendered continuous service to their employer
- To define the principles of payment of gratuity according to prescribed formula.
- To provide machinery for enforcement of liability for payment of gratuity.

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Payment of gratuityDefinitions

- Appropriate govt [Sec 2 (a)]
- Completed year of Service [Sec 2 (b)]
- Continuous service [Sec 2 (c)]
- Controlling Authority [Sec 2 (d)]
- Employee [Sec (e)]
- Employer [Sec (f)]
- Family [Sec 2 (h)]
- Retirement [Sec 2 (g)]
- Superannuation [Sec 2 (i)]
- Wages [Sec 2 (a)]

Controlling authority [Sec. 3]: The appropriate govt may notification, appoint any officer to be Controlling authority. Who shall be responsible for the administration of the act and different controlling authorities may be appointed for different areas.

PAYMENT OF GRATUITY:

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 superannuation or
- on his retirement or resignation
- on his death or disablement due to accident or diseases.
- provided that the employee of continuous service **5 years** shall not be necessary where the termination of the employment of any employee is due to death or disablement.

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## Payment of gratuity

- provided further that in the case of death of employee, gratuity payable to him shall be paid to his nominee.

### CALCULATION OF GRATUITY [Sec. 4(2)]

$$\text{Gratuity} = \frac{\text{Monthly Salary} \times 15 \text{ Number of yr service}}{26}$$

- i. Monthly salary = Last month drawn salary by the employee.
- ii. 26 = total number of working days in a month.
- iii. 15 = number of days in half

The maximum amount of gratuity payable to an employee not exceed 3,50,000 (According to the latest 2010 amendments the maximum gratuity payable amount was increased to Rupees 10,00,000 [Sec 4(3)].

### DEDUCTION OF GRATUITY :-

- Employee services have been terminated for any act, willful omission or negligence causing any damage or loss or destruction of property belonging to employer, shall be forfeited to the extent of the damage or loss so caused [Sec 4(6)(a)]
- Gratuity of employee wholly or partially lose in case of if the service of employee have been terminated for his riotous, or disorderly conduct or any act of violence on his part.
- If the service of employee terminated for any act offence involving moral turpitude, such offence during his service committed. [Sec 4(6) b]

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- Payment of gratuity is not applicable to those employee who has been dismissed from the service for the reason of misconduct or indiscipline.

## COMPULSORY INSURANCE [Sec 4A]

- Every employer or establishment belonging to under the control of central govt or a state govt, should obtain an insurance in the manner prescribed, for his liability for payment gratuity under this act, from the LIC of india or any other prescribed insurer.
- Employer who had already established an approved gratuity fund in respect of employees shall be exempted from above rule.
- No employer shall be registered under the provisions of this sec unless he has taken an insurance.
- Every ~~no~~ employer must pay the premium to the insurance company for his liability for payment. If employer fails to make any payment, shall be pay the amount of gratuity with interest due to delay in payment.

## POWER TO EXEMPT [Sec 5] AND NOMINATION [Sec 6]:

**POWER TO EXEMPT:** The govt of india having the power to exempt the any establishment under this act.

### NOMINATION:

- Every employee who completed one year of service can choose one or more nominees for payment of gratuity.

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(4c) The employee choice payment of gratuity can be nominal.

### INSPECTORS [Sec 7A]

- The appropriate govt may be appoint as inspectors, as for the purpose of this act, also define the area of appointment of inspector.
- Every inspector shall be public servant as per sec 21 of IPC 1860.

### POWERS OF INSPECTORS: [Sec 7B]

- Inspectors has power to order employer to furnish the information which is needed.
- Inspector can examine the employer or employee concern to the gratuity matters.
- In case any offence is committed by the employer under this act, inspector can seize the all relevant records and register in respect of that offence.
- Inspector has the power to search and seize with the warrant under criminal code procedure.

### RECOVERY OF GRATUITY [Sec 8]

If the amount of gratuity is not paid by the employer in prescribed time period to the employee, then employee can make application to the controlling authority. on receipt of application by the controlling authority issue a certificate to the amount to the Collector for recovery of the amount with compound interest. But interest amount payable should not exceed the principle amount of gratuity payable.

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Payment of gratuity payment:

## EXEMPTION OF EMPLOYER FROM LIABILITY CERTAIN CASES [Sec 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 3 (three) clear days, notice in writing of his intention to do so, to have any other person whom the charges as the actual offender brought before court at the time of appointment of the Commission for hearing the charge. If after the Commission of the offence has been proved, the employer proves to the satisfaction of the Court.

## COGNIZANCE OF OFFENCES (Sec 11)

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 govt.

- No Court inferior to that Metropolitan Magistrate or judicial Magistrate of the first class shall try any offence punishable under this act.

## MISCELLANEOUS:

- Protection Action taken in Good faith [Sec 12]

No suit or other legal proceeding shall lie against the Controlling authority -

## Protection of gratuity [Sec 13]

No gratuity payable under this act, no gratuity payable to an employee employed in any establishment exempted under sec 5 shall be liable to attachment in execution of any decree or order of civil, revenue or Criminal Court.

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- An act override other enactments (Sec 14)

The provisions of this act or any rule made shall have effect any enactment other than this act.

Power to make Rules (Sec 15):

The appropriate govt may, by notification make rules for the purpose of carrying out the provisions of this act.

Every rule made by the central govt under this act shall be laid. Both houses agree to making any modification in the rule. Such modification shall be without prejudice to the validity of anything previously done under the rule.

Rules under the Act: Maintenance of records of cases by the Controlling authority under Sec 16.

The Controlling authority shall record the particulars of each case under sec 7, in form 'Q' at the time of passing orders shall sign and date of particulars so recorded.

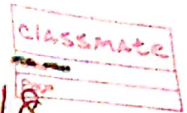
Direction of payment of gratuity under Sec 17.

If a finding is recorded under sub rule (4) of rule 11 that the applicant is entitled to payment of gratuity under the act, the Controlling authority shall issue a notice to the employer concerned in form 'R' specifying the amount payable and directing payment to the applicant under notice by the employer. Intimation to the Controlling authority within 30 days from the date of receipt of the notice by the employer. A copy of the notice shall be endorsed to the applicant employer, nominee or legal heir, as the case may be.

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Rules under the act appeal under Sec 18.

The memorandum of appeal under sub sec (7) of sec 7 of the act shall be submitted to the appellate authority with a copy thereof to 18 The payment of Gratuity (Central) Rules, 1972. Rule 19 the opposite party and the Controlling authority either through delivery in person or under registered post acknowledgment due. on the receipt of the copy of Memorandum of appeal, the Controlling authority shall forward records of the case to the appellate authority.

Application for Recovery of gratuity Sec 19.

Where an employer fails to pay the gratuity due under the act accordance with the notice by the Controlling authority under rule 17 or rule 18, as the case may be the employee concerned, his nominee or legal heir, as the case may be, to whom the gratuity is payable may apply to the Controlling authority in duplicate form "T" for recovery thereof under sec 8 of the act.

Display of Abstract of the act and Rule Sec 20.

The employer shall display an abstract of the act and the rules made thereunder in form "U" in english and in the language understood by the majority of the employee at conspicuous place at or near main entrance of the establishment -