

# **THE PAYMENT OF GRATUITY ACT, 1972**

## **INTRODUCTION**

The Working journalists (Conditions of Service) and Miscellaneous Provisions Act, 1955 (45 of 1955) under section 5 provided for the payment of gratuity to the journalist. But there was no other Central Act which provide for the payment of gratuity to industrial workers. The Government of Kerala enacted legislation for payment of gratuity to workers employed in factories, plantations, shops and establishments. The Governor of West Bengal promulgated an Ordinance on 3rd June, 1971 wherein a scheme for payment of gratuity was enacted. The Ordinance was later replaced by the West Bengal Employees' Payment of Compulsory Gratuity Act, 1971 enacted by the president on 28th August 1971. Gratuity was also being paid by some employers to their workers under Awards and Agreements. Since the enactment of the Kerala and West Bengal Acts, some other State Governments also wanted to enact similar measures. Taking into account the intention of the State Governments it was felt necessary to have a Central law on the subject so as to ensure a uniform pattern of payment of gratuity to the employees throughout the country. The proposal for Central legislation on gratuity was discussed in the Labour ministers' Conference held at New Delhi on 24th and 25th August, 1971 and also in the Indian labour conference at its session held on 22nd and 23rd October, 1971. There was general agreement at the Labour Ministers, conference and the Indian Labour Conference that Central legislation on payment of gratuity might be under taken at the earliest. Accordingly, the Payment of Gratuity Bill was introduced in the Parliament.

## **STATEMENT OF OBJECT AND REASONS**

There is at present no Central Act to regulate the payment of gratuity to industrial workers, except the Working Journalists (Conditions of Service) and Miscellaneous Provisions Act, 1955. The Government of Kerala enacted legislation last year for payment of gratuity to workers employed in factories, plantations, shops and establishments. The West Bengal Governor Promulgated an Ordinance on the 3rd June, 1971 prescribing a similar scheme of gratuity. This ordinance has since been replaced by the West Bengal Employees' Payment of Compulsory Gratuity Act, 1971, enacted by the President on 28 the August, 1971. Gratuity is also Being paid by some employers to their workers under Awards and Agreements.

Since the enactment of the Kerala and the West Bengal Acts, some other State Governments have also voiced their intention of enacting similar measures in their respective States. It has become necessary, therefore, to have a Central law on the subject so as to ensure a uniform pattern of payment of gratuity to the employees throughout the country. The enactment of a Central law would also avoid different treatment to the employees of establishments having branches in more than one State when, under the conditions of their service, the employees are liable to transfer from one State to another.

The proposal for Central legislation on gratuity was discussed in the Labour Ministers' Conference held at New Delhi on 24th and 25 the August, 1971 and also in the Indian Labour Conference at its session held on the 22nd and 23rd October, 1971.

There was general agreement at the Labour Minister' Conference and the Indian Labour Conference that Central legislation on payment of gratuity might be under taken as early as possible. It is accordingly proposed to undertake such legislation.

In enacting the President's act for west Bengal in August 1971, care has been taken to so design its provisions that they could serve as far as possible as norms for the Central law. the Bill has, therefore, been drafted on the lines of the West Bengal Employees' Payment of Compulsory Gratuity Act, 1971 with some modifications which have been made in the light of the views expressed at the Indian Labour Conference relating to forfeiture of gratuity in cases of dismissal for gross misconduct.

The Bill provides for gratuity to employees drawing wages up to Rs. 270/- per month in factories, plantations, shops, establishments and mines, in the event of superannuation, retirement, resignation and death or total disablement due to accident or disease, the quantum of gratuity payable will be 15 days' wages based on the rate of wages last drawn by the employees concerned for every completed year of service or part thereof in the excess of six months subject to a maximum of 15 months 'wages. The term "wages" will mean "basic wages plus dearness allowances".

It is proposed that the appropriate Government for administering the Act in relation to establishment belonging to or under the control of the Central Government or a railway company, or mine, a major port and oilfield or in relation to establishments having departments or branches in more than one State, will be Central Government, and in relation to other establishments, the State Government.

The Bill seeks to give effect to the above proposals.

## **ACT 39 OF 1972**

The Payment of Gratuity Bill having been passed by both the Houses of Parliament received the assent of the President on 21st august, 1972. It came into force on 16th September, 1972 as THE PAYMENT OF GRATUITY ACT, 1972 (39 of 1972).

## **LIST OF AMENDING ACTS**

1. The Payment of Gratuity (Amendment) Act, 1984 (25of 1984).
2. The Payment of Gratuity (Second Amendment) Act, 1984 (26of 1984).
3. The Payment of Gratuity (Amendment) Act, 1987 (22of 1987).
4. The Payment of Gratuity (Amendment) Act, 1994 (34of 1994).
5. The Payment of Gratuity (Amendment) Act, 1998 (11of 1998).

**THE PAYMENT OF GRATUITY ACT,  
1972**

(39 of 1972)

[21st august, 1972]

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

BE it enacted by Parliament in the Twenty- third Year of the Republic of India as follows:-

**1. Short title, extent, application and commencement** - (1) This Act may be called the Payment of Gratuity Act, 1972.

(2) It extends of the whole of India.:

Provided that in so far as it relates to plantations or ports, it shall not extend to the State of Jammu and Kashmir.

(3) it shall apply to-

(a) every factory, mine, oilfields, plantation, port, railway company: -

(b) every shop or establishment within 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 or employed, or were employed, on any day of the preceding twelve months, as the Central Government may, by notification, specify in this behalf.

<sup>1</sup>[(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.]

(4) It shall come in to force on such date<sup>2</sup> as the Central Government may, by notification, ap point.

**COMMENTS**

(i) The expression “law” used in section 1(3) (b) means any law in respect of shops, establishments- commercial or non- commercial; K. Gangadhar v. The Appellate Authority under The Payment of Gratuity Act, (1993) 66 FLR 648 (AP).

(ii) The provisions of section 1(3) (b) of the Act are comprehensive. Municipal Board is covered under the act; Municipal Board v. Union of India, (1993) 67 FLR, 973 (All).

(iii) Payment of gratuity in a business cannot be regarded as ex gratia and such payment is, therefore, allowable as business expenditure for income-tax purposes; Commissioner of Income Tax v. Seshasayee Bros. (Pvt.) Ltd., (1982) 62 FLR 315 (Mad).

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1. Ins. by Act 26 of 1984, sec.2

2. Came into force on 16-9-1972, vide S.O.601 (E), dated 16th September, 1972, published in the Gazette of India, Extra., Pt. II, Sec. 3(ii), p. 1641.

**2. Definitions** - In this Act, unless the context otherwise requires,-

(a) “appropriate Government” means,-

(i) in relation to an establishment-

(a) belonging to, or under the control of, the Central Government,

(b) having branches in more than one State,

(c) of a factory belonging to, or under the control of, the Central Government,

(d) of a major port, mine, oil field or railway company, the Central Government,

(ii) in any other case, the State Government;

(b) “completed year of service” means continuous service for one year;

<sup>1</sup>[(c) “continuous service” means continuous service as defined in section 2A;]

(d) “controlling authority” means an authority appointed by the appropriate Government under section 3;

(e) “employee” means any person (other than an apprentice) employed on wages, <sup>2</sup>[\*\*\*]

in any establishment, factory, mine, oilfield, plantation, port, railway company or shop to do any skilled, semi-skilled, or unskilled, manual, supervisory, technical or clerical work, whether the terms of such person is employment are express or implied, <sup>3</sup>[and whether or not such person is employed in a managerial or administrative capacity, but does not include any such person who holds a post under the Central Government or a State Government and is governed by any other Act or by any rules providing for payment of gratuity].

<sup>4</sup>[\* \* \*]

(f) “employer” means, in relation to any establishment, factory, mine, oil-field, plantation, port, railway company or shop-

(i) belonging to, or under the control of, the Central Government or a State Government a person or authority appointed by the appropriate government for the supervision and control of employees, or where no person or authority has been so appointed, the head of the Ministry or Department concerned,

(ii) belonging to, or under the control of, any local authority, the person appointed by such authority for the supervision and control of employees or where no person has been so appointed, the chief executive officer of the local authority,

(iii) in any other case, the person, who, or the authority which, has the ultimate control over the affairs of the establishment, factory, mine, oilfield, plantation, port, railway company or shop, and where the said affairs are entrusted to any other person, whether called a manager, managing director or by any other name, such person;

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1. Subs by Act 26 of 1984, sec.3, for clause (c) (w.r.e.f. 11-12-1981).

2. Certain words omitted by Act 34 of 1994, sec.2 (w.e.f. 24-5-1994).

3. Subs. by Act 25 of 1984, sec.2, for certain words (w.e.f. 1-7-1984).

4. Explanation omitted by Act 34 of 1994, sec.2 (w.e.f. 24-5-1994).

(g) “factory” has the meaning assigned to it in clause (m) of section 2 of the Factories Act, 1948 (63 of 1948);

(h) “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 <sup>1</sup>[ 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,

<sup>2</sup>[\* \*

\*] Explanation.- 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 include 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;

(i) “major port” has the meaning assigned to it in clause (8) of section 3 of the Indian Ports Act, 1908 (15 of 1908);

(j) “mine” has the meaning assigned to it in clause (j) of sub-section (1) of section 2 of the Mines Act, 1952 (35 of 1952);

(k) “notification” means a notification published in the Official Gazette;

(l) “oilfield” has the meaning assigned to it in clause (e) of section 3 of the Oilfields (Regulation and Development) Act, 1948 (53 of 1948);

(m) “plantation” has the meaning assigned to it in clause (f) of section 2 of the Plantation Labour Act, 1951 (69 of 1951);

(n) “port” has the meaning assigned to it in clause (4) of section 3 of the Indian Ports Act, 1908 (15 of 1908);

(o) “prescribed” means prescribed by rules made under this Act;

(p) “railway company” has the meaning assigned to it in clause (5) of section 3 of the Indian railways Act, 1890 (9 of 1890);

(q) “retirement” means termination of the service of an employee otherwise than on superannuation;

<sup>3</sup>[(r) “superannuation”, in relation to an employee, means the attainment by the employee of such age as is fixed in the contract and conditions of service as the age on the attainment of which the employer shall vacate the employment;]

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1. Subs. by Act 22 of 1987, sec. 2, for “and the widow” (w.e.f. 1-10-1987).

2. The proviso omitted by Act 22 of 1987, sec. 2 (w.e.f. 1-10-1987).

3. Subs. by Act 25 of 1984, sec.2, for clause (r) (w.e.f. 1-7-1984).

(s) “wages” means all emoluments which are earned by an employee while on duty or on leave in accordance with the terms and conditions of his employments and which are paid or are payable to him in cash and includes dearness allowance but does not include any bonus, commission, house rent allowances, overtime wages and any other allowance.

### COMMENTS

(i) The phrase “under the control” in clause (a) (i) (a) is the deciding factor regarding “Appropriate Government”. The factor of the “control” is a question of facts and it would be decided in the merit of each case; *NTC v. Addl. Labour Commissioner*, (1987) 54 FLR 299 (All)

(ii) Service, whether rendered prior to, or after the commencement of the Act, has to be taken in to consideration for the purpose of section 2(c) of the Act; *Duncan Agro Industries Ltd. v. Subhann*, (1984) 1 LLJ 96 (AP).

(iii) If the main duties of an employee are only supervisory in nature, then certainly he cannot be excluded from the category of “employee” nor can he be deprived of the benefits of

this Act, even though for a short period he is required to discharged additional or incidental functions; *Vishwanath v. M.P.S.R.T. Corporation*, (1987) 55 FLR 1 (Summary) (MP).

(iv) Any workman engaged for work on temporary basis according to the availability of work is not an “employee” within the meaning of section 2(e); *K. Velukutty Achary v. Harrison's Malayalam Ltd.*, (1993) 66 FLR 423 (Ker) (DB).

(v) A workman who rolls beedis for his employer but at his own house is an “employee” within meaning of section 2(e) of the Act; *P.H. Ramlal & Co. v. Smt. Chand Bibi*, (1981) 1 LIC 790 (Guj).

(vi) Home worker is very much a person working in the establishment within the meaning of section 2(e). since, the place where he rolled the beedis, though situated away from the Beedi factory, was nevertheless a part of the establishment within meaning of section 2(h) of the Beedi and Cigar Workers (Conditions of Employment) Act, 1966. Hence, Home maker is an employee of the establishment *M/s. Bagi Beedi Factory v. Appellate Authority*, 1998 LLR 23

(vii) After attaining the age of superannuation no employee is entitled, as a matter of right, to be in the employment in any establishment; *Sir J.P. Srivastava Group of Industries v. State of U.P.* (1993) 66 FLR 248 (All).

(viii) “Incentive wages” are included in the definition of “wages” under section 2(s) of the Act; *Anglo French Textile Ltd. v. P.O. Labour Court*, (1981) 58 FJR 252 (Mad).

**<sup>1</sup>[2A Continuous service.-** For the purposes of this Act,-

- (1) 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, absence from duty without leave (not being absence in respect of which an order 2[\* \* \*] treating the absence as break in service has been passed in accordance with the standing orders, rules or regulations governing the employees of the establishment), lay-off, strike or a lock-out or cessation of work not due to any fault of the employee, whether such uninterrupted or interrupted service was rendered before or after the commencement of this Act;
- (2) where an employee (not being an employee employed in a seasonal establishment) is not in continuous service with in 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-

1. Ins. by Act 26 of 1984, sec.4 (w.r.e.f. 11-12-1981)

2. The words “imposing a punishment or penalty or” omitted by Act 22 of 1987, se.3 (w.e.f. 1-10-1987).



(a) For the said period of one year, if the employee during the period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than-

(i) 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

(ii) two hundred and forty days, in any other case;

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

(i) ninety-five days, in the case of an employee employed below the ground in a mine or in an establishment which works for less than six days in a week; and

(ii) one hundred and twenty days, in any other case.

<sup>1</sup>[ Explanation.- For the purposes of clause (2) number of days on which an employee has actually worked under an employer shall include the days on which-

(i) he has been laid-off under an agreement or as permitted by standing orders made under the Industrial Employment (Standing Orders) Act, 1946 (20 of 1946), or under the Industrial Disputes Act, 1947 (14 of 1947), or under any other law applicable to the establishment;

(ii) he has been on leave with full wages, earned in the previous year;

(iii) he has been absent due to temporary disablement caused by accident arising out of and during the course of his employment; and

(iv) 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.]

(3) 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 seventy five percent, of the number of days on which the establishment was in operation during such period.]

### **COMMENTS**

Mere absence cannot be said to result in breach of continuity of service for the purpose of the Act; Kothari Industrial Corporation v. Appellate Authority (Deputy Commissioner of Labour), Karnool, 1998 LLR223.

**3. Controlling authority.-** 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 authorities may be appointed for different areas.

**4. Payment of gratuity.-** (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,-

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1. Added by Act 22 of 1987, sec.3 (w.e.f. 1-10-1987).

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

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:

1[ Provided further that in the case of the death of the employee, gratuity payable to him shall be paid to his nominee 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.]

Explanation.- 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.

(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 for paid any overtime work shall not be taken into account:

Provided further that in the case of 2[an employee who is employed in a seasonal establishment and who is not so employed through out the year], the employer shall pay the gratuity at the rate of seven days' wages for each season.

3[ Explanation.- 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.]

(3) The amount of gratuity payable to an employee shall not exceed 4[three lakhs and fifty thousand] rupees.

(4) For the purpose of computing the gratuity payable to an employee who is employed, after 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 to receive better terms of gratuity under any award or agreement or contract with the employer.

(6) Notwithstanding anything contained in sub-section (1),-

(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, property belonging to the employer' shall be forfeited to the extent of the damage or loss so caused;

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1. Subs. by Act 22 of 1987, sec. 4 (w.e.f. 2-2-1991).

2. Subs. by Act 25 of 1984, sec. 3 for "an employee employed in a seasonal establishment"(w.e.f. 1-7-1984). 3. Ins. by Act 22 of 1987, sec. 4 (w.e.f. 1-10-1987).

4. Subs. by Act 11 of 1998, sec. 2, for "one lakh".



(b) the gratuity payable to an employee <sup>1</sup>[ may be wholly or partially forfeited]-

(i) if the services of the such employee have been terminated for his riotous or disorderly conduct or any other act of violence on his part, or

(ii) if the services of such employee have been terminated for any act which constitutes by him in the course of his employment.

<sup>2</sup>[\* \* \*]

#### COMMENTS

(i) Gratuity can be withheld if the act for which the services are terminated has resulted in loss. The amount of gratuity withheld as damages for occupying the quarters of the bank has no connection with the conduct for which the petitioner's services were terminated. The amount cannot be withheld from the gratuity of the petitioner; *H. Rajendra Pal v. Canara Bank*, 1998 LLR 419.

(ii) Refusal of employees to surrender land belonging to the employer is not a ground withhold gratuity; *Travancore Plywood Industries Ltd. v. Regional Joint Labour Commissioner*, (1996) II LLJ 85 (Ker).

(iii) The 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 damage, with the proof of such damage and its extent being essential; *Permal Wallance Ltd. v. State of M.P.*, (1996) II LLJ 515 (MP).

(iv) The 5 years' minimum qualifying period of service for entitlement to gratuity is in conformity with the current reality; *Bakhsish Singh v. Darshan Engineering Works*, 1994 LLR 81 (SC).

(v) By change of ownership, the relationship of employer and employees subsists and the new employer cannot escape from the liability of payment of gratuity to the employees; *Pattathurila K. Damodaran v.*

*M. Kassim Kanju*, (1993) I LLJ 1211 (Ker).

(vi) An employee is entitled to gratuity at the rate of 15 days' wages for every completed year of service in terms of section 4(2) of this Act, *Binny Ltd. v. Appellate Authority*, (1984) 65 FJR 21 (Kant).

(vii) right to gratuity is a statutory right; *D.V.Kapoor v. Union of India*, Air 1990 SC 1923.

(viii) An employee should be regular one; *Velukutty Achhary v. Harrisons, Malayalam Ltd.*, (1992) 2 CLR 989 Ker.

(ix) An employee resigning from service is entitled to gratuity; *Texmaco Ltd. v. Shri ram Dhan*, 1992 LLR 369 (Del).

(x) Non-acceptance of the resignation is no hurdle in the way of an employee to claim gratuity; *Mettur Spinning Mills v. Deputy Commissioner of Labour*, (1983) II LLJ 188.

(xi) A retrenched employee is entitled to gratuity; *State of Punjab v. Labour Court*, (1980) 1 SCR 953.

(xii) Employer employed in a temple are entitled to gratuity; *In re; Administrator, Shree Jagannath Temple*, (1992) 65 FLR 946 (Ori).

(xiii) In order to arrive at the figure of daily wage for the purpose of section 4(2) of the Act, monthly wages is to be divided by 26 days; *Hindustan Lever Ltd. v. Kasargod Devidas Rao.*, (1990) 61 FLR 6 231 (Bom).

(xiv) when an offence under law involves moral turpitude, gratuity stands wholly forfeited in view of section 4(6) of the Act; *Bharat Gold Mines Ltd. v. Regional Labour Commissioner (Central)*, (1987) 70 FJR 11 (Karn).

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1. Sub. by Act 25 of 1984, sec.3, for "shall be wholly forfeited (w.e.f.1-7-1984).

2. Sub- section (7) ins. by Act 25 of 1984, sec.3 and omitted by Act 34 of 1994 (w.e.f. 24-5-1994).

(xv) An employee who is given the benefit of probation under section 3 of the Probation of Offenders Act, 1958, cannot be disqualified to receive the an amount of his gratuity; S.N. Sunderson(Minerals) Ltd. v. Appellate Authority -cum -Deputy Labour Commissioner, (1990) 60 FLR 6 (Summary ) (Mp).

(xvi) Theft amounts to moral turpitude; Bharat Gold Mines Ltd., v. regional Labour Commissioner, (1987) 1 LLN 308 (Karn).

(xvii) The nominee of an employee can make an application for gratuity without producing a succession certificate; Nagar Palika v. Appellate authority, (1989) lab IC 173 (All).

(xviii) An employee who is re-employed without any break in service will be eligible for gratuity; Jeevan Lal (1929) Ltd. v. controlling Authority; (1982) 1 LLN 217.

**<sup>1</sup>4A compulsory insurance.-** (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 belong- ing 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 payments toward the gratuity under this Act, from the Life Insurance Corporation of India established under the Life Insurance Company of India Act, 1956 (31 of 1956) or any other prescribed insurer:

Provided that different dates may be appointed for different establishment, 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 agreement, and every employer employing five hundred or more per- sons who establishes an approved gratuity fund in the manner prescribed from the provisions of sub- section (1).

(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).

(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 compensation of the Board of Trustees of the approved gratuity fund and for the recovery by the controlling authority of the amount of 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.

(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) to the controlling authority.

(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.

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1. Ins. by Act 22 of 1987, sec. 5 (w.e.f. date to be notified).

Explanation. 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).]

**5. Power to exempt.-**<sup>1</sup>[(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 establishments 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.

<sup>2</sup>[(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.]

<sup>3</sup>[(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.]

**6. Nomination.-** (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.

(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 person 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.

(5) A nomination may, subject to the provisions of sub-section (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, as the case may be, shall be sent by the employee to his employer, who shall keep the same in his safe custody.

**7. Determination of the amount of gratuity. -(1)** A person who is eligible for payment of gratuity under this Act or any person authorised, in writing to act on his

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1. Section 5 renumbered as sub- section (1) thereof by Act 26 of 1984, sec. 5.

2. Ins. by Act 26 of 1984, sec.5.

3. Ins by Act 22 of 1987, sec. 6 (w.e.f. 1-10-1987).

behalf shall send a written application to the employer, with in 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.

<sup>1</sup>[(3) The employer shall arrange to pay the amount of gratuity with in thirty days from the date it becomes payable to the person to whom the gratuity is payable.

(3A) If the amount of gratuity payable under sub-section (3) is not paid by the employer with in the period specified in sub-section (3), the employer shall pay, from the date on which the gratuity payable becomes 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 notifications specify:

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

(4)(a) If there is any dispute 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.

<sup>2</sup>[\*\*\*]

<sup>3</sup>[(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.]

<sup>4</sup>[(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 of 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.]

<sup>5</sup>[(d)] The controlling authority shall pay the amount deposited, including the excess amount, if any, deposited by the employer, to the person entitled thereto.

<sup>5</sup>[(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 amount where he is the employee; or
- (ii) where the applicant is not the employee, to the 6[nominee or, as the case may be, the guardian of such nominee or] heir of the employee if the controlling

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1 . Subs by Act 22 of 1987, sec.7, for sub-section (3) (w.e.f. 1-10-1987).

2. The Explanation omitted by Act 25 of 1984, sec.4 (w.e.f. 1-7-1984). 3. Ins. by Act 25 of 1984, sec.4, (w.e.f. 1-7-1984).

4. Subs. by Act 25 of 1984, sec.4, for clause (c) as re-lettered by that section (w.e.f. 1-7-1984).

5. Clause (c) and (d) re-lettered as clauses (d) and (e) by Act 25 of 1984, sec. 4 (w.e.f.1-7-1984). 6. Subs. by Act 25 of 1984, sec.4, “nominee or” (w.e.f. 1-7-1984).

authority is satisfied that there is no dispute as the right of the applicant to receive the amount of gratuity.

(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.

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

(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 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:

[Provide further 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.

#### COMMENTS

(i) Amendment to section 7 is prospective in operation; Charan Singh v. Birla Textiles, Air 1988 SC 2022.

(ii) While filing an appeal the appellant must deposit the amount of gratuity as ordered by the Controlling Authority; Sahaari Gamme Vikas Samiti Ltd. v. Controlling Authority, 1993 LLR 448 (All).

(iii) An application for condonation of delay in filing application under section 7(7) is not mandatory; Natraja Pillali v. Regional Jt. Labour Commissioner, (1993) 66 FLR 413 (Ker).

(iv) Under section 7(7) of the Act an appeal is maintainable only against the final order of the Controlling Authority; Malbar Spg. & Wvg. Mills v. N.N.Nair, (1989) 74 FJR 1989 (Ker).

(v) The employee's right to interest on delayed payment is statutory; Champaran Sugar Co. Ltd. v. Joint Labour Commissioner and Appellate Authority, (1987) 54 FLR 60 (Pat) (FB).

**1[7A. Inspectors.-**(1) The appropriate Government may, by notification, appoint as many Inspectors, as it deems as fit, for the purposes of this Act.

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1. Ins. by Act 25 of 1984, sec.4, (w.e.f. 1-7-1984).



(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 of 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).

**7B. Powers of Inspectors.-** (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 assistance (if any), being persons in the service of the Government or local or any public authority, as he thinks fit, any premises 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 extract 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 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 the Code.]

**8. 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 that amount to the Collector who recover the same, together with compound interest thereon <sup>1</sup>[at such rate as the central Government may,

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1. Subs. by Act 22 of 1987, sec.8, for “at the rate of 9 percent per annum” (w.e.f.1-10-1987).



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:

1[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.]

#### COMMENTS

(i) If gratuity is not paid, it must be paid with compound interest at the rate prescribed under section 8 of the Act, calculating till the date of payment; Nagar palika v. controlling Authority, (1988) 57 FLR 425 (All).

(ii) Interest is admissible only if a certificate for recovery of dues as a public demand has been issued; Charan Singh v. Jt. Labour Commissioner-cum- Appellate Authority, Air 1907 Pat 96.

**9. Penalties.-** (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 2[tен thousand rupees] or with both.

(2) An employer who contravenes, or make 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 which fine 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 4[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.

**10. Exemption of employer from liability in certain cases.-** 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 day's 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 of the certification 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,

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1.Added by Act 22 of 1987, sec.8, (w.e.f. 1-10-1987).

2. Subs by Act 22 of 1987, sec.9, for "one thousand rupees" (w.e.f. 1-10-1987).

3. Subs by Act 22 of 1987, sec.9, for "certain words" (w.e.f. 1-10-1987).

4.Subs by Act 22 of 1987, sec.9, for "three months" (w.e.f. 1-10-1987).

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 afore said, the employer may be examined on oath and his evidence that if 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 before at the court 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.

**11. Cognizance of offence.-** (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, where upon 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 1[Metropolitan Magistrate or a judicial Magistrate of the first class] shall try any offence punishable under this Act.

**12. Protection of action taken in good faith.-** 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.

**13. Protection of gratuity.-** No gratuity payable under this Act 2[and no gratuity payable to an employee employed in any establishment, factory, mine, oilfield, plantation, port, railway company or shop exempted under section 5] shall be liable to attachment in execution of any decree or under of any civil, revenue or criminal court.

#### COMMENTS

(i) Gratuity cannot be attached; Chirsostm v. Federal Bank Ltd. (1993) 1 LLJ 422 (Ker).

(ii) This section gives total immunity to gratuity from attachment; Calcutta Dock Labour v. Smt. Sandhya Mitra, (1985) Lab IC 714 (SC).

**14. Act to override other enactments, etc. -** The provision of this Act or any rule made thereunder shall have effect notwithstanding anything inconsistent therewith contained in any enactment other than this Act or in any instrument or contract having effect by virtue of any enactment other than this Act.

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1. Subs. by Act 34 of 1994, sec.4, for "presidency Magistrate or a Magistrate of the first class" (w.e.f. 24-5-1994).

2. Ins. by Act 22 of 1984, sec.6 (w.e.f. 1-7-1984).

## COMMENTS

Pension scheme cannot defeat the benefit of gratuity; *C. Kuppuswami v. E.I.D. Parry (India) Ltd.*, (1989) 1 LLN 85 (Mad).

**15. Power to make rules.** - (1) The appropriate Government may, by notification, make rules for the purpose of carrying out the provisions of this Act.

(2) Every rule made by the Central Government under this Act shall be laid, as soon as may be after it is made, before each House of Parliament while it is in session, for a total period of thirty days which may be comprised in one session in two or more successive sessions, and if, before the expiry of the session the immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall, thereafter, have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

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