



## Social security benefits under the payment of gratuity ACT, 1972

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**Abstract:** The benefit gratuity is payable to an employee on cessation of employment (either by resignation, death, retirement or termination, etc) by taking the last drawn salary as the basis for the calculation. Gratuity is an important form of social security and is in the form of a gratitude provided by the employer to the employees in monetary terms for the services rendered by them to the organization

**Key words:** benefit gratuity, Industrial Employees, Central Law

### Introduction

Gratuity is a statutory benefit paid to the employees who have rendered continuous service for at least five years. It is a lump sum amount paid to an employee based on the duration of his total service. The benefit gratuity is payable to an employee on cessation of employment (either by resignation, death, retirement or termination, etc) by taking the last drawn salary as the basis for the calculation. Gratuity is an important form of social security and is in the form of a gratitude provided by the employer to the employees in monetary terms for the services rendered by them to the organization. It is a defined benefit plan and is one of the many retirement benefits offered by the employer to the employee upon leaving his job. Gratuity payment liability of the employer tends to increase with an increase in the salary and tenure of employment.

Payment of Gratuity Act, 1972 provides for a scheme for the payment of gratuity to employees engaged in Factories, Mines, Oilfields, Plantations, Ports, Railway Companies, Motor Transport Undertakings, Chamber Commerce and Industry And Associated/Federation of chamber of

commerce and Industry, In Land Water Transport Establishments, Solicitor's office, Local Bodies, Companies, Societies, Associations or Troupes with give any circus performance in any area and require payment for admission into such exhibition or Spectator's or audience, Educational Institutions, Trusts, Shops or other establishments.

### Background of the Gratuity Act, 1972:

Before the enactment of the Payment of Gratuity Act, 1972, there were two State Laws providing for payment of gratuity. These were the Kerala Industrial Employees 'Payment of Gratuity Act, 1970 and the West Bengal Employees' Payment of Gratuity Act, 1971. The question of having a Central Legislation on the subject was discussed in the Labour Ministers' Conference held in New Delhi on 24 and 25 August, 1971 as also the Indian Labour Conference held on 22 and 23 October 1971 and general consensus was reached for enacting a Central Legislation on payment of gratuity.

Accordingly, a Central Law modeled largely on the pattern of West Bengal Employees' Payment of Gratuity Act, 1971 was enacted and is known as



the Payment of Gratuity Act, 1972. It was brought into force with effect from the 16.9.1972 and it extends to whole of India.

**Extent and Application:**

The Act extends to whole of India except plantations in the State of Jammu and Kashmir. It applies at present 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; and

(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.

In exercise of these powers, the Central Government have so far extended the provisions of the Act to the following classes of establishments, where ten or more persons are employed or were employed on any day of the preceding twelve months with effect from the dates indicated against each:-

Sl.No.	Particular of establishment	Date of effect
1	Motor Transport Undertakings	20.04.1974
2	Clubs	06.10.1979
3	Chamber of Commerce and Industry and Associated/ Federation of Chamber of Commerce and Industry	15.11.1980
4	Inland Water Transport Establishments	10.01.1981
5	Solicitor's Office	09.01.1982
6	Local Bodies	23.01.1982
7	Companies, Societies, Associations or troupes which give any circus performance in any area and require payment for admission into such exhibition or spectators or audience.	15.01.1983
8	Educational Institutions	19.04.1997
9	Societies & Trusts	06.09.1997

**Excluded Categories of Employees:**

The definition of employee in Section 2(e) specifically excludes from the

purview of the Act, any 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.

**Eligibility Conditions:** Gratuity is payable to every employee, other than an apprentice, in an establishment to which the provisions of the Act applies, on termination of his employment either due to superannuation or retirement or resignation, subject to completion of continuous service for not less than five years, Gratuity is also payable in case of termination of service due to death or disablement, due to accident or disease and there is no condition of service in these two contingencies.

#### **Quantum of Gratuity:**

For every completed year of service or part thereof in excess of six months, the employees, other than the seasonal employees are entitled to gratuity at the rate of fifteen days' wages based on the rate of wages last drawn.

The employees of seasonal establishment who do not work throughout the year are entitled to gratuity at the rate of seven days' wages for each season. These provisions do not, however, affect the right of an employee to receive better terms of gratuity under any award or agreement of contract with the employer.

#### **Limit for Payment of Gratuity:**

The employers have to pay the gratuity within thirty days from the date it becomes due, if the gratuity is not paid within the prescribed time limit, the employer is required to pay the amount of gratuity with interest as specified by the Government from time to time.

#### **Grant of Exemption:**

Section 5(1) of the Payment of Gratuity Act gives power to the appropriate Government to exempt any establishment, factory, mine, oilfield, plantation, port, railway company or shop from the operation of the provisions of this Act, if in the opinion of the appropriate Government, employees of such shop etc. are in receipt of gratuity or pensionary benefits not less favourable than the benefits conferred under this Act.

There is a similar provision for grant of exemption to a class of employees in Section 5 (2) of the Act.

#### **Administration of the Act:**

The Central Government is responsible for administration of the Act in relation to the following:-

- (a) factories or establishments belonging to or under the control of the Central Government;
- (b) establishments having branches in more than one State; and
- (c) major ports, mine, oilfields or railway companies.

The State Government is responsible for administration of the Act in all other cases.

The Central Government have appointed Chief Labour Commissioner (Central) and Regional Labour Commissioner (Central) and Assistant Labour Commissioners (Central) as the Controlling/Appellate Authorities under the Act for their respective areas.

#### **Procedure for the Settlement of Dispute relating to Payment of Gratuity:**



If there is any dispute about the amount of gratuity payable to an employee, the employee may make an application to the Controlling Authority of the area for taking necessary action. The Controlling Authority shall issue a certificate for the amount of gratuity dues to the Collector who shall recover the same as arrears of land revenue and pay the same to the person entitled to receive the gratuity.

Any person aggrieved by the order passed by the Controlling Authority can prefer an appeal to the Appellate Authority.

#### **Penalties for Non-Payment of Gratuity:**

Where the offence relates to non-payment of gratuity payable under the Act, the employer shall be punishable with imprisonment for a term which shall not be less than three months but which may extend to one year or fine which shall not be less than 10 thousand rupees but extend to twenty thousand rupees or both.

#### **Amendments in the Act:**

Mainly, the Act has been amended five times so far. The amendments made are as given below:-

(i) The first amendment made by the Payment of Gratuity (Amendment) Act, 1984 inter alia provides for raising the wage limit for coverage from Rs.1000/- to Rs.1600/- per month and appointment of Inspectors. This amendment was brought into force w.e.f. 1.7.1984.

(ii) The second amendment made by the Payment of Gratuity (Second Amendment) Act, 1984 inter alia re-defined the term 'continuous service' and provided for grant of exemption to a class

of employees from the operation of the Act. This amendment came into force from 18.5.1984.

(iii) The third amendment made by the Payment of Gratuity (Amendment) Act, 1987

Inter alia provided for:-

- (a) raising the wage limit for coverage from Rs.1,600/- to Rs.2,500/- per month, which was further raised to Rs.3,500/- p.m. w.e.f. 1.12.1992.
- (b) replacing the ceiling of twenty month's wages for payment of gratuity by a monetary ceiling of Rs.50,000/-
- (c) making it obligatory for the employers to pay simple interest at a specified rate if the gratuity is not paid within 30 days from the date it falls due.
- (d) Compulsory insurance/setting of gratuity fund for payment

The amendments at (a) to (c) above were brought into force w.e.f. 1.10.1987. The amendment at (d) has not been brought into force so far. In fact, this particular provision is being reviewed in view of certain subsequent developments. The rate of simple interest mentioned at (c) above has been fixed at 10% per annum w.e.f. 1.10.1987.

(iv) The fourth amendment made by the Payment of Gratuity (Amendment) Act, 1994 Inter alia provided for:-

- (a) Doing away with the wage ceiling altogether for coverage under the Payment of Gratuity Act, 1972;
- (b) Enhancing the ceiling of the maximum amount of gratuity from Rs.50,000/- to Rs. one lakh.



This amendment came into force w.e.f. 24.5.1994.

(v) The Fifth Amendment made by the Payment of Gratuity (Amendment) Act, 1998 has enhanced the ceiling on maximum amount of gratuity from Rs. one lakh to Rs.3.50 lakh with effect from 24.9.1997.

(VI) The Sixth Amendment made by the payment of Gratuity (Amendment)

### **Forfeiture of Gratuity**

The gratuity of the following persons may be forfeited:

- 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.
- The gratuity payable to an employee may be wholly or partially forfeited:
  - a. 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.

### **Exemption From Tax:**

The gratuity received up to the limit of Rs. 3,50,000 is liable to be exempted from taxation under the

Act 2010 has enhanced the ceiling on maximum amount of gratuity from Rs.3,50,000/- to Rs.10,00,000/-.Now the maximum amount of Gratuity payable is Rupees Ten lakhs. After the amendment, the definition of Employee under section 2(e) has been broad based as to include any person, Employed to do any kind of work. Thus the definition includes a teacher has an employee under the act

Income Tax Act. The exemption is, however, not available for payment of gratuity when the employee is still in service. Gratuity received from a previous employer is to be pooled with gratuity received from the present employer for computing exemption limit. In case of any other employee, not covered under the Act, the gratuity received by an employee on retirement, death, termination, resignation or on his becoming incapacitated prior to his retirement is exempt from tax to the extent of the least of the following:-

- Rs. 3,50,000
- Gratuity actually received, or
- Half month's salary for each completed year of service.

### **Time Limit for Making Payment of Gratuity Amount:**

1. A person eligible for payment of gratuity can himself or through his authorized person shall send a written application to the employer for payment of such gratuity.
2. As soon as gratuity becomes payable the employer shall 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 gratuity so determined.
3. The employer must pay the amount of gratuity within thirty days from the date it becomes payable to the person to whom the gratuity is payable.
  4. If the amount of gratuity payable is not paid by the employer within the specified period, 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. No such interest shall be payable in case 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.

#### **Protection of Gratuity:**

The gratuity amount payable shall not be liable to attachment in execution of any decree or order of any civil, revenue or criminal court.

#### **Remedy in case the Employer does not pay Gratuity:**

If the amount of gratuity is not paid by the employer within the prescribed time to the person entitled thereto, the aggrieved person should

make an application to the Controlling Authority under the Payment of Gratuity Act within the area where the employer's establishment is situated or where the employee was working at the time of termination. The controlling authority shall 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.

#### **The Payment of Gratuity (Amendment) Bill, 2012:**

The amendment bill 2012 amends sub-section (2) of Section 4 of the Payment of Gratuity Act, 1972 provides for payment of gratuity to the employees at the rate of fifteen days' wages based on the rate of wages last drawn for every completed year of service.

In today's world of high prices and inflation, the gratuity of fifteen days wages for every completed year is too meager. At such a small rate, a person cannot get enough amount for post retirement settlement. It should therefore be at least at the rate of thirty days' salary for every completed year of service.