The Payment of Gratuity Act, 1972

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The Payment of Gratuity Act, 1972

[Act 39 of 1972[1] as amended by Acts 25 of 1984[2], 26 of 1984[3], 22 of 1987[4], 34 of 1994[5], 11 of 1998[6], 47 of 2009[7], 15 of 2010[8] and 12 of 2018[9]]

[*21st August, 1972*]

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

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

Statement of Objects and Reasons.—(1) 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. The Ordinance has since been replaced by the West Bengal Employees' Payment of Compulsory Gratuity Act, 1971, enacted by the President on 28th August, 1971. Gratuity is also being paid by some employers to their workers under awards and agreements.

(2) 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.

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1. Received the assent of the President on Aug. 21, 1972 and published in the Gaz. of India, Extra., Pt. II, S. 1, dt. 22-8-1972, pp. 661-70.
2. Received the assent of the President on May 18, 1984 and published in the Gaz. of India, Extra., Pt. II, S. 1, dt. 18-5-1984, Sl. 33. It came into force on 1-7-1984, *vide* Noti. No. S. 70012/2/84-FPG, dt. 14-6-1984.
3. Received the assent of the President on May 18, 1984 and published in the Gaz. of India, Extra., Pt. II, S. 1, dt. 18-5-1984, Sl. 34.
4. Received the assent of the President on Aug. 12, 1987 and published in the Gaz. of India, Extra., Pt. II, S. 1, dt. Aug. 13, 1987 dates of enforcement *vide* S.O. 873(E), dt. 1-10-1987 and S.O. 402 dt. 22-1-1991.
5. Received the assent of the President on May 24, 1994 and published in the Gaz. of India, Extra., Pt. II, dt. 24-5-1994, Sl. 49.
6. Received the assent of the President on June 22, 1998 and published in the Gaz. of India, Extra., Pt. II, S. 1, dt. 23-6-1998, P.I. No. 26.
7. Received the assent of the President on December 31, 2009 and published in the Gazette of India, Extra., Part II, Section 1, dated 31st December, 2009, pp. 1-2, No. 54.
8. Received the assent of the President on May 17, 2010 and published in the Gazette of India, Extra., Part II, Section 1, dated 18th May, 2010, No. 20.
9. Received the assent of the President on March 28, 2018 and published in the Gazette of India, Extra., Part II, Section 1, dated 29th March, 2018, No. 16.

(3) The proposal for Central legislation on gratuity was discussed in the Labour Ministers' Conference held at New Delhi on the 24th and 25th 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 Ministers' Conference and the Indian Labour Conference that Central legislation on payment of gratuity might be undertaken as early as possible. It is accordingly proposed to undertake such legislation.

(4) 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.

(5) The Bill provides for payment of gratuity to employees drawing wages upto Rs. 750 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 excess of six months subject to a maximum of 15 months' wages. The term "wages" will mean basic wage plus dearness allowance.

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

Statement of Objects and Reasons of Amendment Act 25 of 1984.—(1) The Payment of Gratuity Act, 1972 provides for payment of gratuity to the employees employed in factories, mines, oilfields, plantations, ports, railway companies, shops or other establishments and for matters connected therewith or incidental thereto.

(2) The Supreme Court had in its judgment in the case of *Lalappa Lingappa* v. *Lakshmi Vishnu Textile Mills, Sholapur*, [(1981) 2 SCC 238 : 1981 SCC (L&S) 316 : (1981) 1 LLJ 308] held that in terms of the existing definition of "continuous service" in Section 2(*c*) of the Act, the permanent employees were not entitled to payment of gratuity for the years they remained absent without leave and had actually worked for less than 240 days in a year. It has been represented that the enforcement of this ruling has resulted in denial of gratuity to a number of employees, whose short term absence had remained unregularised due to lack of appreciation of its significance for the purpose of working out their entitlement to gratuity. It is, therefore now proposed to amend the definition of "continuous service" suitably and to specifically provide that a period of absence in respect of which no punishment or penalty has been imposed would not operate to interrupt the continuity of service for the purpose of payment of gratuity. It is also proposed to amplify the definition of "continuous service" to provide,—

(*a*) that an employee working in an establishment which works for less than six days in a week and who is not in uninterrupted service for one year, shall be deemed to be in continuous service for a period of one year if he has actually worked for 190 days in the preceding year, and

(*b*) that for determining the continuous period of six months for the purpose of payment of gratuity, an employee should have completed half the number of days of actual work which constitute "continuous service" for a whole year.

(3) Opportunity is also being taken to provide that a shop or establishment once covered shall continue to be covered under the Act notwithstanding that the number of persons employed therein at any time falls below 10. This is intended to check the tendency among the employers to artificially reduce the number of employees so as to get out of the coverage under the Act. It is also proposed to provide for grant of exemption from the operation of the Act to any person or class of persons if

they are in receipt of gratuity or pensionary benefits not less favourable than the benefits conferred under the Act.

Statement of Objects and Reasons of Amendment Act 22 of 1987.—The Payment of Gratuity Act, 1972, provides for payment of gratuity to persons employed in factories, mines, oilfields, plantations, ports, railway companies, shops and certain other establishments employing ten or more persons and for matters connected therewith or incidental thereto. The Labour Ministers' Conference held in 1980 and 1982 had recommended *inter alia* that the time limit for payment of gratuity might be prescribed in the Act itself and that there should be a suitable provision for recovery of interest in cases where the payment of gratuity is delayed. The Indian Labour Conference held in November, 1985 had recommended that a provision for compulsory insurance of employers' liability and setting up of Gratuity Fund for payment of gratuity be incorporated in the Act. The Trade Unions have been representing for suitable enhancement in the wage limit for coverage and ceiling for payment of gratuity.

(2) Based on the above recommendations and representations, it is proposed to carry out certain amendments in the Act. Some of the more important amendments are:—

(*i*) The coverage of the Act is being extended to persons drawing wages upto Rs. 2500 per month and an enabling provision is being made for raising the wage limit for coverage from time to time;

(*ii*) Provision is being made for depositing the amount of gratuity payable to a minor with the controlling authority who shall invest the money in a bank or a financial institution for the benefit of minor;

(*iii*) The existing ceiling of 20 months' wages for payment of gratuity is being replaced by a monetary ceiling of Rs. 50,000;

(*iv*) Provision is being made for compulsory insurance of employer's liability to pay gratuity under the Act or in the alternative for the setting up of a gratuity fund under the provisions of the Act in relation to establishments employing five hundred or more employees;

(*v*) Provision is also being made for payment of simple interest at a specified rate, if the amount of gratuity is not paid within thirty days from the date it becomes payable;

(*vi*) Penalties prescribed under the Act are being made more stringent.

The other amendments proposed in the Bill are of a minor and consequential nature.

Statement of Objects and Reasons of Amendment Act 34 of 1994.—The Payment of Gratuity Act, 1972 provides for a Scheme for payment of gratuity to the employees engaged in factories, mines, oil fields, plantations, ports, railway companies, shops or other establishments and for matters connected therewith or incidental thereto. Under clause (*e*) of Section 2 of the Act, the term "employee" means any person employed on wages not exceeding two thousand and five hundred rupees per mensem or such higher amount as the Central Government may having regard to the general level of wages by notification specify. In exercise of the powers conferred by clause (*e*) of Section 2, the Central Government vide its notification dated the 26th November, 1992 specified with effect from the 1st day of December, 1992 three thousand and five hundred rupees per mensem as the higher amount of wage for definition of "employee" under the Act. There has been a demand for removal of the ceiling of wages for coverage of the Act, thus making all the employees eligible for gratuity irrespective of their wages. The Labour Ministers' Conference held in 1983 had also recommended for the removal of the wage limit for payment of gratuity.

(2) Sub-section (3) of Section 4 of the Act provides that the amount of gratuity payable to an employee shall not exceed fifty thousand rupees. This amount was fixed in 1987. There have been representations from trade unions to remove or enhance the ceiling on the maximum amount of gratuity.

(3) Based on the above-mentioned recommendations and representations, it is now proposed to carry out the following amendments in the Act:—

(*i*) The provisions of the Act are being extended to all the persons employed on wages in the establishments, etc., covered under the Act by removing the wage ceiling under clause (*e*) of Section 2 of the Act;

(*ii*) The existing ceiling of fifty thousand rupees on the amount of gratuity payable under sub-section (3) of Section 4 is being raised to one lakh rupees.

(4) The other amendments proposed in the Bill are of minor or consequential nature.

(5) The Bill seeks to give effect to the above proposals.

Statement of Objects and Reasons of Amendment Act 12 of 2018.—The Payment of Gratuity Act, 1972 (the Act) was enacted 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 who have rendered a minimum five years of continuous service with the establishment employing ten or more persons. The calculation of gratuity amount is based on a formula, which is fifteen days of wages for each year of completed service, subject to a ceiling. The present ceiling, as provided under Section 4 of the Act is Rupees Ten lakhs which was fixed in the year 2010.

2. The period of twelve weeks of maximum maternity leave presently provided in Section 2-A of the Act for the purpose of calculating continuous service under the Act is on the basis of period of maximum maternity leave as provided in the Maternity Benefit Act, 1961. The maximum maternity leave under the Maternity Benefit Act, 1961 has been enhanced from twelve weeks to twenty-six weeks by the Maternity Benefit (Amendment) Act, 2017. It is therefore proposed to empower the Central Government to enhance the period of existing twelve weeks to such period as may be notified by it.

3. The provisions contained in the Central Civil Services (Pension) Rules, 1972 for Central Government employees with regard to gratuity are similar to the provisions contained in the Act. After implementation of the 7th Central Pay Commission, the ceiling of gratuity for Central Government employees has been enhanced from Rupees Ten lakhs to Rupees Twenty lakhs. In the past, the ceiling amount of gratuity under the Act has followed the Central Pay Commission recommendations. Therefore, considering the inflation and wage increase even in case of employees engaged in private and public sector, the entitlement of gratuity is also required to be revised for employees who are covered under the Act. It has also been proposed to empower the Central Government to notify the ceiling proposed, instead of amending the said Act, so that the limit can be revised from time to time keeping in view the increase in wage and inflation, and future Pay Commissions.

4. The Payment of Gratuity (Amendment) Bill, 2017, inter alia, proposes to amend—

(*a*) Section 2-A of the Act so as to empower the Central Government to notify the period of maternity leave in case of female employee as deemed to be in continuous service in place of existing twelve weeks;

(*b*) Section 4 of the Act to substitute the words "ten lakh rupees" with the words "such amount as may be notified by the Central Government from time to time".

5. The Bill seeks to achieve the above objects.

CASE LAW ▸ Nature and Object of.—The Act is a piece of welfare legislation and its provisions are in the nature of social-security measures like employment insurance, provident fund and pension, *Ahmedabad Pvt. Primary Teachers' Assn.* v. *Administrative Officer*, (2004) 1 SCC 755.

Payment of Gratuity Act, 1972 is a social welfare legislation, introduced for purpose of social control and necessitated social interest. Aim of the act to achieve uniformity and reasonable degree of certainty, *Indian Commerce and Industries Co. Ltd.* v. *B.V.S.S. Mani*, (2012) 1 MWN (Civil) 419 (Mad).

▸ **Applicability.**—Payment of Gratuity Act, 1972 must prevail over Rules on Payment of Gratuity framed by employer, *Union Bank of India* v. *C.G. Ajay Babu*, (2018) 9 SCC 529.

► **Liability of employer**.—The payment of gratuity under the Payment of Gratuity Act, 1972, is the liability of the employer, *Empress Mills* v. *First Labour Court*, (2011) 4 Mah LJ 753 (Bom).

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

(2) It extends to 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[10].

(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.

[11][(3-A) 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 into force on such date[12] as the Central Government may, by notification, appoint.

NOTIFICATIONS

S.O. 837(E), dated October 12, 1995.—In exercise of the powers conferred by the President's Secretariat Notification Number S.O. 60(E), dated the 23rd January, 1995, published in the Gazette of India, Extraordinary, Part II, Section 3, sub-section (*ii*), dated the 27th January, 1995 at pages 1 to 4, the Central Government hereby appoints the day of 1st November, 1995, as the date on which the provisions of the Payment of Gratuity Act, 1972 (39 of 1972), shall come into force in the State of Sikkim.

Application of the Act—S. 1(3)(*c*).—The Act has been applied to following establishments in which ten or more persons are employed or were employed on any day of the preceding twelve months w.e.f. the dates and the notifications noted against each:—

(1)	Motor Transport	w.e.f. 8-4-1974	G.S.R. 415, dt. 8-4-1974
(2)	Clubs	w.e.f. 8-10-1979	G.S.R. 1255, dt. 17-9-1979
(3)	Chambers of Commerce and Industry and Associated/ Federation of Chambers of Commerce and Industry	w.e.f. 15-11-1980	S.O. 3203, dt. 30-10-1980
(4)	Inland Water Transport Establishments	w.e.f. 10-1-1981	S.O. 133, dt. 24-12-1980

10. Now made applicable to the Union Territory of Jammu and Kashmir and the Union Territory of Ladakh. [*Vide* S.O. 3912(E), dt. 30-10-2019 (w.e.f. 31-10-2019).].
11. *Ins.* by Act 26 of 1984, S. 2 (w.e.f. 18-5-1984).
12. 16-9-1972 [*vide* S.O. 601(E), dt. 16-9-1972.]

(5)	Local Bodies	w.e.f. 23-1-1982	S.O. 239, dt. 8-1-1982
(6)	Solicitors' offices	w.e.f. 9-1-1982	S.O. 111, dt. 28-12-1982.

F. No. S-42013/1/95-SS. II, dated April 3, 1997.—In exercise of the powers conferred by clause (*c*) of sub-section (3) of Section 1 of the Payment of Gratuity Act, 1972 (39 of 1972), the Central Government hereby specifies the educational institutions in which ten or more persons are employed or were employed on any day preceding 12 months as a class of establishments to which the said Act shall apply with effect from the date of publication of this notification:

Provided that nothing contained in this notification shall affect the operation of the notification of the Ministry of Labour, S.O. No. 239, dated 8th January, 1982 (*See* above).

S.O. 2218.—In exercise of the powers conferred by clause (*c*) of sub-section (3) of Section 1 of the Payment of Gratuity Act, 1972 (39 of 1972), the Central Government hereby specifies the trusts or societies, registered under the Societies Registration Act, 1860 (21 of 1860), or under any other law with respect to societies for the time being in force in any State, in which ten or more persons are employed or were employed for wages on any day of the preceding 12 months as a class of establishments to which the said Act shall apply with effect from the date of publication of this notification in the Official Gazette.

CASE LAW ▸ Object.—Object of the Act is to ensure that a workman is rewarded for the honest, efficient and faithful service that he renders for his employer's benefit. Any construction placed on the words and expressions used in this statute must advance the policy of the Act which is the payment of gratuity to workman employed for not less than five years with an employer. Thus any provision which seeks to impede this right of the workman must be construed by applying the principle of noscitur a sociis, *Jaya Hind Industries Ltd.* v. *Vilas Vithalrao Takale*, (2011) 3 Mah LJ 199 (Bom).

▸ **Applicability and scope.**—The word "establishment" in Section 1(3)(*b*) does not refer to "commercial establishments" alone, *State of Punjab* v. *Labour Court*, (1980) 1 SCC 4 : 1980 SCC (L&S) 123.

Beedi and Cigar Workers (Conditions of Employment) Act is a law relating to establishments operative in the State of Andhra Pradesh and as such comes within the purview of Section 1(3)(*b*) of the Payment of Gratuity Act, *K. Gangadhar* v. *Appellate Authority under Payment of Gratuity Act*, (1993) 1 LLJ 342 : (1994) 2 LLN 726 : (1993) 1 Cur LR 480 (AP).

Mineral Area Development Authority was created for the development of the coal mining areas and not for engaging in commercial activities relating to trade, business or profession is not an establishment under the Payment of Gratuity Act, *Mineral Area, Development Authority* v. *State of Bihar*, (2001) 2 LLJ 1375 : (2001) 2 LLN 1087 (Jhar)(DB), reversing *Mineral Area Development Authority* v. *State of Bihar*, (1998) 3 LLN 484 : (1998) 2 LLJ 54 : (1998) 78 FLR 260 (Pat).

Section 38(2) of the Beedi and Cigar Workers (Conditions of Employment) Act, 1966 does not bar the applicability of the Payment of Gratuity Act, *M.S.N. Sundarampillai & Co.* v. *N. Palaniswamy*, (1994) 2 LLJ 502 : (1994) 2 LLN 623 (Mad).

▸ **Entitlement to gratuity — Central Act vis-à-vis State Act.**—In terms of Section 3, U.P. Dookan Aur Vanijya Adhishthan Adhiniyam, 1962 (26 of 1962), 1972 Act inapplicable to Government or local bodies. Since Section 14 of 1972 Act has overriding effect, employees of Municipalities entitled to gratuity which is in interest of employees. Besides, Noti. dt. 8-1-1982 published by Central Government under Section 1(3)(c) of 1972 Act specifying local bodies in which 10 or more people were employed in preceding 12 months are to be amenable to applicability of Act, *Nagar Nigam, Kanpur* v. *Mujib Ullah Khan*, (2019) 6 SCC 103.

► **Educational institutions.**—So an educational institution covered by E.P.F. Act, 1952 and T.N. Payment of Subsistence Allowance Act, is covered, *S.I.E.T. Women's College* v. *Mohd. Ibrahim*, (1992) 1 LLJ 91 (Mad)(DB). A college run by a society registered under the Societies Registration Act is an establishment, *Gurudeo Ayurved Mahavidyalaya* v. *Madhav*, (1994) 2 LLN 551 : 1994 Lab IC 1542 (Bom).

School, whether aided or otherwise, is an establishment within the meaning of such expression as used in Section 1(3), *Habibia Girls Primary School* v. *Noorinisha*, (2004) 2 LLJ 398 (Mad).

Section 1(3)(*b*) of Gratuity Act will apply to educational institution even if the same is exempted from the operation of the Bombay Shops and Establishments Act, *Principal, Bhartiya Mahavidyalaya* v. *Ramkrishna*, (1994) 1 LLN 37 : 1994 Lab IC 404 : (1994) 2 LLJ 556 (Bom).

An educational institution is an establishment under Section 1(3)(*b*), *Ramgopal* v. *Mahesh Shikshan Sansthan, Jodhpur*, (1997) 1 LLJ 26 : (1996) 2 Cur LR 393 : (1996) 2 LLN 678 (Raj).

In view of the notification issued by the Central Government under Section 1(3)(*c*), education institutions will be covered under the Act, *Nitin A. Mehta* v. *Mehta Prafullaben Dalpatrai*, (2001) 2 LLN 1072 (Guj).

University that carried on an organised and systematic activity by employing more than ten persons, held to be 'establishment' within the meaning of Section 1(3)(*b*) of the Act, *Laxmi D.* v. *A.P. Agricultural University*, (2002) 1 LLJ 69 : (2002) 92 FLR 57 (AP)(DB).

A Polytechnic in which activity of imparting knowledge of training is carried on systematically would be an establishment within the meaning of Section 1(3)(*b*), *Venkateswara Rao V.* v. *S.M.V.M. Polytechnic*, (1998) 1 LLJ 181 : (1997) 2 LLN 1082 : 1997 Lab IC 2543 (AP)(DB).

► **Co-operative Union.**—U.P. Co-operative Union is an 'establishment', *U.P. Co-operative Union* v. *Prabhu Dayal Srivastava*, (1988) 2 LLN 625 : 57 FLR 70 (All)(DB).

► **Municipal Board.**—A Municipal Board is an establishment, *Municipal Board* v. *Controlling Authority*, (1987) 1 LLN 663 (Raj) : 1987 Lab IC 575. See also *Municipal Board, Khurja* v. *Appellate Authority*, (1963) 2 LLN (All) 887; *Municipal Corporation of Delhi* v. *Smt. V.T. Naresh*, (1986) 1 LLN 791 : (1986) 1 LLJ 323; *Chanan Lal* v. *Municipal Committees*, 1986 Lab IC 638; *Nagar Palika* v. *Appellate Authority*, (1990) 2 LLJ 156 : (1988) 1 LLN 962 (All); *Commissioner, Coimbatore M.E.U.* v. *A.V. Poulose*, (1991) 1 LLN 156 (Mad).

► **Cantonment Board.**—The Poona Cantonment Board is an establishment within the meaning of Section 2(1)(*e*)(*i*) of the Contract Labour (Regulation and Abolition) Act, 1970 which is law in force in Maharashtra in relation to shops and establishments and as such the Payment of Gratuity Act is applicable to it, *Poona Cantonment Board* v. *S.K. Das*, (1993) 2 LLJ 487 : (1993) 2 Cur LR 731 : 1993 Lab IC 1462 (Bom).

► **State Electricity Board.**—In view of Section 2(*viii*) of the Punjab Shops and Commercial Establishments Act, 1958, Haryana State Electricity Board is an establishment, *Haryana State Electricity Board* v. *Controlling Authority*, 1984 Lab IC 668 (P&H).

► **Labour Welfare Board.**—Gujarat State Labour Welfare Board is an establishment within the meaning of Section 1(3)(*b*) of 1972 Act, *Jayaben Suryakant Modi* v. *Welfare Commissioner Gujarat Welfare Board*, 1997 Lab IC 2581 (Guj).

► **Regional Commissioner's office.**—Office of Regional Commissioner is an establishment, *Regional P.F. Commissioner* v. *Regional Labour Commr. (Central)*, (1985) 1 LLN 675 (Kant) : (1985) 2 LLJ 63.

► **Temple.**—A temple is an establishment, *Administrator, Shri Jagannath Temple Puri* v. *Jagannath Padhi*, 1992 Lab IC 1621 : (1992) 2 LLJ 863 : (1992) 65 FLR 946 (Ori)(DB).

► **Solicitors' firm.**—A solicitors' firm is not a commercial establishment, *Dorab Pirojsha Siganporia* v. *Appellate Authority of I.T.*, (1986) 2 LLN 114 : (1986) 2 LLJ 501.

► **Bar Association.**—High Court Bar Association is not an establishment under Section 1(3)(*c*), *High Court Bar Association* v. *Dy. Labour Commissioner, Allahabad*, (2005) Lab IC 199 (All)(DB).

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, oilfield 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;

[13][(*c*) "continuous service" means continuous service as defined in Section 2-A;]

(*d*) "controlling authority" means an authority appointed by the appropriate Government under Section 3;

[14][(*e*) "employee" means any person (other than an apprentice) who is employed for wages, whether the terms of such employment are express or implied, in any kind of work, manual or otherwise, in or in connection with the work of a factory, mine, oilfield, plantation, port, railway company, shop or other establishment to which this Act applies, 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;]

(*f*) "employer" means, in relation to any establishment, factory, mine, oilfield, 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

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13. *Subs.* by Act 26 of 1984, S. 3 (w.r.e.f. 11-2-1981). *See also* S. 6 of Act 26 of 1984 in Annexure.

14. *Subs.* by Act 47 of 2009, S. 2 (w.r.e.f. 3-4-1997). Prior to substitution it read as:

'(*e*) "employee" means any person (other than an apprentice) employed on wages, 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 employment are express or implied, 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.'

of employees, or where no person or authority has been so appointed, the head of the Ministry or the 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;

(*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 [15][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:

[16][* * *]

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 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;

(*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);

[17][(*k*) "notification" means a notification published in the Official Gazette and the expression "notified" shall be construed accordingly;]

(*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 Plantations Labour Act, 1951 (69 of 1951);

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15. *Subs.* by Act 22 of 1987, S. 2 (w.e.f. 1-10-1987).
16. Proviso *omitted* by Act 22 of 1987, S. 2 (w.e.f. 1-10-1987).
17. *Subs.* by Act 12 of 2018, S. 2 (w.e.f. 29-3-2018). Prior to substitution it read as:
'(*k*) "notification" means a notification published in the Official Gazette;'

(*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;

[18][(*r*) "superannuation", in relation to an employee, means the attainment by the employee of such age as is fixed in the contract or conditions of service as the age on the attainment of which the employee shall vacate the employment;]

(*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 employment and which are paid or are payable to him in cash and includes dearness allowance but does not include any bonus, commission, house rent allowance, overtime wages and any other allowance.

CASE LAW ▸ Clause (*a*) Appropriate Government.—The Central Government is the appropriate government only in relation to an establishment having branches in more than one State. There is no like provision in relation to such an establishment having factories in different States, *Jeewanlal Ltd.* v. *Appellate Authority*, (1984) 4 SCC 356 : 1984 SCC (L&S) 753.

▸ **Clause (*c*) continuous service.**—Services rendered prior to re-employment cannot be treated as continuous service for claiming gratuity, *Dungerbhai Meghabhai* v. *Shri Arbuda Mills Ltd.*, (1996) 1 Cur LR 149 : 1996 Lab IC 262.

▸ **Constitutional validity.**—The constitutional validity of newly inserted Section 2(*e*) to cover the definition of "employee" to all kinds of employees, upheld, *Independent Schools' Federation of India (Regd.)* v. *Union of India*, 2022 SCC OnLine SC 1113.

▸ **Clause (*e*) employee.**—In *Ahmedabad Pvt. Primary Teachers' Assn.* v. *Administrative Officer*, (2004) 1 SCC 755, it was held that all the seven words "skilled", "semi-skilled" or "unskilled", "manual", "supervisory", "technical" or "clerical", because of the commas in between them, had to be read disjunctively and they all qualified the word "work". Whether a person was an employee, could be determined on the basis of his duties and not on the basis of his qualifications or hierarchy of the office, *Khanderao P. Rajopadhya* v. *United Western Bank*, (1985) 1 LLN 55 : 1984 Lab IC 1910 (Bom).

A trainee outside the Apprentices Act, 1961 is covered by the definition of "employee", *Orissa Mining Corporation Ltd* v. *Controlling Authority under Payment of Gratuity Act*, (1994) 2 LLN 1130 : (1994) 69 FLR 765 : (1995) 1 LLJ 381 (Ori)(DB).

Since the teacher cannot be called an employee under Section 2(*e*) of the Act because he is not doing any work which can be called as skilled, unskilled, manual, supervisory, technical or clerical work, he is not entitled to make any claim for gratuity, *Ahmedabad Pvt. Primary Teachers' Assn.* v. *Administrative Officer*, (2004) 1 SCC 755; *Shantiben L. Christian* v. *Administrative Officer, Ahmedabad Municipal School Board*, (2001) 2

18. *Subs.* by Act 25 of 1984, S. 2 (w.e.f. 1-7-1984).

Cur LR 1022 (Guj)(FB); *Seth Surajmal Jalan Balika Vidyalaya* v. *Controlling Authority*, (2001) 1 Cur LR 676 (Cal); *H.E. Education Society, Barkheda* v. *Appellate Authority under Payment of Gratuity Act*, 2000 Lab IC 3478; *Ved Prakash Pathak Nirala* v. *State of Bihar*, (1999) 2 LLJ 1420 : (1999) 1 Cur LR 947 (Pat); *Ramesh Chandra Shivlal Modi* v. *Appellate Authority*, (2003) 2 LLJ 104 (Guj). But see *General Education Academy, Chembur* v. *Sudha Vasudev Desai*, (2001) 2 Cur LR 79 (Bom); *Premlata Digambar Rao Deo* v. *Principal, St. Philomine's Convent High School, Nasik Road*, (1997) 1 LLN 608 : (1997) 2 LLJ 1050 : (1997) 1 Cur LR 569 (Bom)(DB).

Home workers not working in any establishment would be an employee under the Gratuity Act, *Bagi Beedi Factory* v. *Appellate Authority under Payment of Gratuity Act*, (1998) 1 LLN 582 : (1998) 93 FJR 416 : (1997) 77 FLR 971 (Kant).

A Director of a company not having ultimate control over the management of company will be an 'employee' to be entitled to gratuity under the Act, *Monitron Securities (P) Ltd.* v. *Mukundlal Khushal-chand Dhavan*, (2001) 1 Cur LR 507 (Guj).

An employee of U.P. Government Roadways on deputation to, but not absorbed by the U.P. State Road Transport Corporation continued to be a Government servant and did not become an employee of the Corporation. Hence, was not entitled to gratuity under the Act, *U.P. State Road Transport Corporation* v. *Asstt. Labour Commissioner*, (1994) 68 FLR 237 (All)(DB).

An employee who resigned from service of the Trust which is controlled by Government of Gujarat, cannot be said to have held any post under Government of Gujarat. He is covered by definition of "employee" under Section 2(*e*) of the Act and is entitled to gratuity under Section 4 of the Act, *Arasuri Ambajimata Mandir Devasthan Trust* v. *J.A. Patel*, (1997) 2 Cur LR 250 (Guj).

In *Wimco Ltd.* v. *Appellate Authority under the Payment of Gratuity Act*, 1972, (1997) 2 Cur LR 142 : (1997) 2 LLJ 15 : 1997 LLR 516, an employee retired on 2-1-1984. As he was drawing wages exceeding Rs 1600 (but less than Rs 2500) he was not eligible for gratuity. In 1987, by an amendment of Section 2(*e*), wage ceiling was raised from Rs 1600 to Rs 2500. The employee thereafter claimed gratuity and his claim was upheld. Employer challenged it in this writ petition. The Karnataka High Court held that the date on which cause of action arose viz., 2-1-1984, the amendment was not in force and hence the order upholding the claim cannot be sustained.

In *Kamal Narayan Singh* v. *Dy. Labour Commissioner*, (1998) 78 FLR 570 (MP), relying on *Wimco Ltd.* v. *Appellate Authority under the Payment of Gratuity Act, 1972*, (1997) 2 Cur LR 142 : (1997) 2 LLJ 15 : 1997 LLR 516 (Kant), on the relevant date i.e. the date of termination of the services of the employee on 14-9-1987 the wage ceiling was Rs 1600 per mensem and the petitioner was drawing a salary of Rs 2080 per month. He was, therefore, not covered by the definition contained in Section 2(*e*) of the Act as it stood prior to the increase of ceiling to Rs 2500 by Act 22 of 1987 with effect from 1-10-1987. He thus has no right to claim gratuity.

Under the definition of employee given under Section 2(*e*) of the Act even workers of seasonal establishments are employees. Same is the position under Section 20-A defining continuous service. The only difference is that by virtue of Section 4(2) second proviso, such employees are entitled to get gratuity at the rate of 7 days wages for each season (as against 15 days wages per year for other employees, *Maliana Cooperative Cane Development Union Ltd.* v. *Tej Ram Sharma*, (2009) 123 FLR 393 (All).

A conjoint reading of Section 4 read with Section 7 of the said Act coupled with the definition clause of the word "employee" as defined in Section 2(*e*) will make it absolutely clear that a Government employee

who is governed by separate Act and Rules relating to payment of gratuity is not entitled to file an application under the Payment of Gratuity Act, *State of U.P.* v. *Ram Chandra Ram*, (2009) 121 FLR 438 (All).

Teachers do not answer description of being employees falling in the either of the categories prescribed under Section 2(*e*) of the Act. The person not engaged to do any skilled, semi-skilled, manual, supervisory, technical or clerical work is not covered by the definition of 'employee', *Seth Govindraoji Ayurved, Mahavidyalaya* v. *Vimal S. Nagare*, (2006) 110 FLR 647 (Bom).

Under Payment of Gratuity Act persons employed in managerial or administrative cadre are treated as employees and are entitled to get gratuity which is more favourable either in terms of award, agreement or contract, *Chennai Central Coop. Bank Ltd.* v. *Joint Commr. of Labour*, (2007) 2 CTC 604.

Principal of Aided Non-Government Educational Institution would fall in the category of employee to be entitled to gratuity, *Administrator, Lahidhi Multipurpose Higher Secondary School, Chirmiri* v. *Vidyavati Chaturvedi*, (2006) 41 AIC 456 (Chhatt HC).

► **Teacher, whether "employee" within meaning of Section 2(e) and entitled to gratuity.**— Effect of amendment was twofold, firstly, law laid down by Supreme Court in Ahmedabad Private Primary Teachers' Assn., (2004) 1 SCC 755 was no longer applicable against teachers, and secondly teachers were entitled to claim gratuity, *Birla Institute of Technology* v. *State of Jharkhand*, (2019) 4 SCC 513.

► **Clause (*g*) Factory.**—Unlike other enactments, Section 2(*g*) has defined the term "employer" in a wider angle. The purpose of making such definition was to hold that the trade mark owner as the ultimate authority to pay gratuity and other amounts. When the constitutional validity of the provision was also challenged, the Supreme Court has upheld the same, *Seyadu Beedi Co.* v. *Appellate Authority under Payment of Gratuity Act, 1972*, (2009) 121 FLR 556 (Mad).

There is a distinction between the establishment and factories and branches are not included in the word "factory" and the factory is only covered by virtue of Section 2(*a*)(*i*)(*c*) and not by Section 2(*a*)(*i*)(*b*), *Metal Box India Ltd.* v. *B.R. Rangari*, (2007) 1 Mah LJ 36.

► **Clause (*q*) retirement.**—"Retirement" includes retrenchment, *State of Punjab* v. *Labour Court*, (1980) 1 SCC 4 : 1980 SCC (L&S) 123.

► **Clause (*s*) wages.**—The value of food supplied cannot be included in wages for payment of gratuity, *N. Sivadasan* v. *Appellate Authority under Payment of Gratuity Act (I), Madras*, (1992) 2 LLJ 794 : (1993) 1 LLN 443 : (1993) 1 Cur LR 39 (Mad). But see *Hotel Harinivas* v. *Gopalan Nair*, (1997) 2 LLN 359 : (1997) 2 Cur LR 263 (Mad); *N. Sivadasan* v. *Appellate Authority under the Payment of Gratuity Act*, (1998) 1 Cur LR 1058 : (1998) 78 FLR 359 : (1997) 1 LLJ 1155 (Mad)(DB).

Incentive bonus/production bonus cannot be included in wages for payment of gratuity, *Kirloskar Brothers Ltd.* v. *Appellate Authority (Under P.G. Act)*, (2003) 3 LLJ 1035 (MP)(DB); *Escorts Ltd.* v. *Reg. Dir., ESI Corpn.*, (2004) 3 LLJ 200 (Karn)(DB).

[19][**2-A. 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

19. *Ins.* by Act 26 of 1984, S. 4 (w.r.e.f. 11-2-1981). *See also* S. 6 of Act 26 of 1984 in Annexure.

an order [* * *][20] 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 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—

(*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 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*) 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;

[21][*Explanation.*—For the purposes of clause (2), the 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 in 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

20. *Omitted* by Act 22 of 1987, S. 3 (w.e.f. 1-10-1987).
21. *Ins.* by Act 22 of 1987, S. 3(*b*) (w.e.f. 1-10-1987).

not exceed [22][such period as may be notified[23] by the Central Government from time to time].]

(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 per cent of the number of days on which the establishment was in operation during such period.].

CASE LAW ▸ Computation of the period of employment.—Public Holidays and Sundays have to be included in computing the period of employment, *D.B.R. Mills* v. *Appellate Authority*, (1985) 1 LLN 622 : 1985 Lab IC 612 : (1985) 1 LLJ 181 (AP)(DB) [a case under former Section 2(*c*)].

Sundays, national holidays and weekly off days have to be included in computing the period of 240 days, *Sri Ahilandeswari Mills Ltd., Salem* v. *Assistant Commissioner of Labour (Controlling Authority), Salem*, 1999 LLR 576 (Mad).

▸ **Continuous service, meaning.**—The definition of the expression "continuous service" in the Payment of Gratuity Act indicates that as long as employee is in service and his service has not been terminated, mere absence or not reporting for duty or ceasing to work for no fault of the employee, the employee is deemed to be in service. There should not be cessation of relationship of employer and employee. Section 2-A of Payment of Gratuity Act does not take into consideration a case where the services of a workman are terminated for whatsoever reason and the said termination had not been set aside or withdrawn. The employee had received gratuity for the earlier part of the service put in by him without demur or protest. There had been termination of the services of the workman with effect from 28-2-1982 and he had been freshly employed on June 6, 1983. It could not under the circumstances be said that the petitioner was in continuous service from the date of his first employment till his superannuation, *Baburam Rameshwar* v. *Phoenix Mills Ltd.*, (1998) 1 Cur LR 240 : (1998) 4 LLN 533 : (1998) 78 FLR 102 (Bom).

Section 2-A of the Act defines "continuous service" providing for break in service only if orders are passed by the Management in accordance with rules and regulations, governing services of the workman, directing the period of absence etc. as break in service and in the absence of such relevant material, the contention must necessarily fail, *Bangalore Metropolitan Transport Corpn.* v. *Labour Commr. and the Appellate Authority*, ILR 2012 KAR 453.

Mere absence from duty without leave cannot be said to result in breach of continuity of service for the purpose of the Act, *Kothari Industrial Corpn.* v. *Appellate Authority*, (1998) 1 LLN 121 : (1998) 1 Cur LR 235 : 1998 Lab IC 1149 (AP)(DB).

Having regularised services of appellant, State had no justifiable reason to deny benefit of gratuity to appellant which was his statutory right. Question as to from which date services were regularised was of no consequence for calculating total length of service for claiming gratuity once services were regularized. 1972 Act being welfare legislation meant for benefit of employees who serve their employer for long time, duty

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22. *Subs.* for "twelve weeks" by Act 12 of 2018, S. 3 (w.e.f. 29-3-2018).
23. In exercise of the powers conferred by clause (iv) of the Explanation to sub-section (2) of Section 2-A of the Payment of Gratuity Act, 1972 (39 of 1972), the Central Government hereby specifies for the purposes of the said clause that the total period of maternity leave in the case of a female employee shall not exceed twenty-six weeks. [*Vide* S.O. 1421(E), dated 29-3-2018].

of State to pay gratuity to employee rather than deny benefit on some technical ground and force employee to approach Court to get his genuine claim, *Netram Sahu* v. *State of Chhattisgarh*, (2018) 5 SCC 430.

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 controlling authorities may be appointed for different areas.

NOTIFICATION

Ministry of Labour and Employment, Noti. No. S.O. 4607(E), dated December 24, 2019 published in the Gazette of India, Extra., Part II, Section 3(ii), dated 24th December, 2019, pp. 3-4, No. 4122

In exercise of the powers conferred by Section 3 of the **Payment of Gratuity Act, 1972** (39 of 1972) and in supersession of the notification of the Government of India in the Ministry of Labour and Employment, number S.O. 2737, dated the 16th October, 2014, published in the Gazette of India, Part II, Section 3, sub-section (*ii*), dated the 16th October, 2014, except as respects things done or omitted to be done before such supersession, the Central Government hereby appoints the officers mentioned in column (2) of the following Table to the controlling authorities for the area of jurisdiction specified against them in column (3) of the said Table in relation to all establishments for which the Central Government is the appropriate Government under clause (*a*) of Section 2 of the said Act, namely—

TABLE

Serial Number	Officers	Jurisdiction
(1)	(2)	(3)
1.	All Assistant Labour Commissioner (Central) in the office of the Chief Labour Commissioner (Central), New Delhi.	Whole of India.
2.	Regional Labour Commissioner (Central), Vadodara and all Assistant Labour Commissioner (Central) in Ahmedabad region.	The State of Gujarat and the Union Territories of Dadra and Nagar Haveli and Daman and Diu.
3.	Regional Labour Commissioner (Central), Jaipur and all Assistant Labour Commissioner (Central) in Ajmer region.	The State of Rajasthan.
4.	All Assistant Labour Commissioner (Central) in Asansol region.	The civil districts of Burdwan, Birbhum, Bankura and Purulia in the State of West Bengal.
5.	Regional Labour Commissioner (Central), Bellary and all Assistant Labour Commissioners (Central) in Bangluru region.	The State of Karnataka.
6.	Regional Labour Commissioner (Central), Rourkela and all Assistant Labour Commissioners (Central) in Bhubaneshwar region.	The State of Odisha.
7.	Regional Labour Commissioner (Central), Pune and Vasco (Goa) and all Assistant Labour Commissioners (Central) in Mumbai region.	The State of Maharashtra (except the civil districts of Nagpur, Bhandara, Akola, Beed, Amaravati, Wardha, Buldhana, Jalgaon, Chandrapur, Nanded, Gaddchiroli, Parbhanai, Latur, Yeotmal,

		Osmanabad, Hingoli, Gondia and Washim) and the State of Goa.
8.	All Assistant Labour Commissioners (Central) in Kolkata region.	The State of West Bengal (except the civil districts of Burdwan, Birbhum, Bankura and Purulia), the State of Sikkim and the Union Territory of Andaman and Nicobar Islands.
9.	Regional Labour Commissioner (Central), Thiruvananthapuram and all Assistant Labour Commissioner (Central) in Cochin region.	The State of Kerala and Union Territory of Lakshadweep and Mahe in the Union Territory of Puducherry.
10.	Regional Labour Commissioner (Central), Jammu and all Assistant Labour Commissioner (Central) in Chandigarh region.	The State of Himachal Pradesh, Punjab, Haryana and Union Territories of Jammu and Kashmir, Ladakh and Chandigarh.
11.	Regional Labour Commissioner (Central), Ranchi and all Assistant Labour Commissioners (Central) in Dhanbad region.	The following districts of the State of Jharkhand, Dhanbad, Bokaro, Hazaribagh, Kodarma, Ranchi, Lohardaga, Gumla, Simdega, Chatra, East Singhbhum, West Singhbhum, Giridih, Deogarh, Saraikela (Kharsawan) and Jamtara.
12.	Regional Labour Commissioner (Central), Dibrugarh and all Assistant Labour Commissioners (Central) in Guwahati region.	The State of Assam, Nagaland, Meghalaya, Tripura, Manipur, Mizoram and Arunachal Pradesh.
13.	Regional Labour Commissioner (Central), Vishakhapatnam and all Assistant Labour Commissioners (Central) in Hyederabad region.	The State of Andhra Pradesh and Telengana and the area of Yanam in the Union Territory of Puducherry.
14.	Regional Labour Commissioner (Central), Bhopal and all Assistant Labour Commissioners (Central) in Jabalpur region.	The State of Madhya Pradesh.
15.	Regional Labour Commissioner (Central), Lucknow and all Assistant Labour Commissioners (Central) in Kanpur region.	The State of Uttar Pradesh [except the civil districts of Saharanpur, Bijnor, Meerut, Ghaziabad, Bulandshahar, Muzaffarnagar, Bareilly, Moradabad, Badaun, Jyotiba Phule Nagar (Amroha), Philibhit, Shahjahanpur, Rampur, Bhagpat, Hapur, Shamli and Gautam Budh Nagar].
16.	Regional Labour Commissioner (Central), Noida and all Assistant Labour Commissioners (Central) in Dehradun region.	The State of Uttarakhand and civil districts of Saharanpur, Bijnor, Meerut, Ghaziabad, Bulandshahar, Muzaffarnagar, Bareilly, Moradabad, Badaun, Jyotiba Phule Nagar (Amroha), Pilibhit, Shahjahanpur, Rampur, Bhagpat, Hapur, Shamli and Gautam Budh Nagar in the State of Uttar Pradesh.

17.	Regional Labour Commissioner (Central), Madurai and all Assistant Labour Commissioners (Central) in Chennai region.	The State of Tamil Nadu and the Union Territory of Puducherry (except Yanam and Mahe).
18.	All Assistant Labour Commissioners (Central) in Nagpur region.	The civil districts of Nagpur, Bhandara, Akola, Amaravati, Wardha Buldhana, Jalgaon, Chandrapur, Beed, Gaddchiroli, Nanded, Parbhani, Yeotmal, Osmanabad, Latur, Gondia, Washim and Hingoli in the State of Maharashtra.
19.	All Assistant Labour Commissioners (Central) in Delhi region.	National Capital Territory of Delhi.
20.	All Assistant Labour Commissioners (Central) in Patna region.	The State of Bihar and the civil districts of Garhwa, Latehar, Sahibganj, Pakur, Dumka, Palamu and Godda in the State of Jharkhand.
21.	Regional Labour Commissioner (Central), Bilaspur and all Assistant Labour Commissioners (Central) in Raipur region.	The State of Bihar Chhattisgarh.

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,—

(*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:

[24][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.]

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

24. *Subs.* by Act 22 of 1987, S. 4(*a*)(w.e.f. 1-2-1991).

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 [25][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.

[26][*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 [27][such amount as may be notified[28] by the Central Government from time to time].

(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 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, 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 [29][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 of 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.

(7) [30][* * *]

CASE LAW ▸ Nature and scope.—Section 4(1)(*b*) is constitutional and provides a minimum condition of service and imposes a reasonable restriction on the employer and does not violate Article 19(1)(*g*)

25. *Subs.* by Act 25 of 1984, S. 3 (w.e.f. 1-7-1984).
26. *Ins.* by Act 22 of 1987, S. 4(*b*)(w.e.f. 1-10-1987).
27. *Subs.* for "ten lakh rupees" by Act 12 of 2018, S. 4 (w.e.f. 29-3-2018).
28. In exercise of the powers conferred by sub-section (3) of Section 4 of the Payment of Gratuity Act, 1972 (39 of 1972), the Central Government hereby specifies that the amount of gratuity payable to an employee under the said Act shall not exceed twenty lakh rupees. [*Vide* S.O. 1420(E), dated 29-3-2018].
29. *Ins.* by Act 26 of 1984, S. 4 (w.r.e.f. 11-2-1981). *See also* S. 6 of Act 26 of 1984 in Annexure.
30. Sub-section (7) *omitted* by Act 34 of 1994, S. 3(*b*) (w.e.f. 24-5-1994).

being saved by Article 19(6). Hence employer obliged to comply with the requirements of Section 4(1)(*b*) irrespective of his financial capacity, *Bakshish Singh* v. *Darshan Engineering Works*, (1994) 1 SCC 9. *Darshan Engineering Works* v. *Controlling Authority*, (1984) 1 LLN 773 : 1983 Lab IC 1451 (P&H)(DB), *reversed*.

Termination of services in terms of Section 4(6) is imperative, *Jaswant Singh Gill* v. *Bharat Coking Coal Ltd.*, (2007) 1 SCC 663 : (2007) 1 SCC (L&S) 584.

► **Gratuity, what is.**—Gratuity under the Payment of Gratuity Act, 1972 is no longer in the realm of charity but a statutory right given to the employee, *Balbir Kaur* v. *Steel Authority of India Ltd.*, (2000) 6 SCC 493 : 2000 SCC (L&S) 767.

The special contribution to provident fund under Regulation 37 of the T.N. State Electricity Board Contributory Provident Fund Regulations is not the same thing as gratuity, *Katheeja Bai* v. *Superintending Engineer*, (1984) 3 SCC 518 : 1984 SCC (L&S) 564.

Supply of free food to employees is merely an amenity. Hence, its money equivalent cannot form part of wages for calculating the amount of gratuity, *Ambika Saw Mills* v. *Asstt. Labour Commr.*, (1987) 1 LLN 364 : 1986 Lab IC 1828 (Ori)(DB).

► **Entitlement to gratuity.**—Where employees getting wages in excess of the maximum limit prescribed in the definition of "employee" contained in Section 2(*e*) of the Payment of Gratuity Act, held entitled to gratuity under Section 40(3) of the A.P. Shops and Establishments Act, 1966 and not under the Payment of Gratuity Act, *E.I.D. Parry (I) Ltd.* v. *G. Omkar Murthy*, (2001) 4 SCC 68.

An employee will be entitled to gratuity only when he has been in the uninterrupted service for certain period, *Ramappa Bhimappa* v. *Phoenix Mills Ltd.*, (1999) 81 FLR 151 (Bom).

If due to strike in the entire textile industry, the employee could not attend his duties, though the strike was held illegal subsequently, in view of the definition of "continuous service" given in Section 2(*a*) of the Act of 1972, the employee could not be denied the benefit of continuity of service. He was held entitled to gratuity, *Ramchandra Ganpat Dalvi* v. *Phoenix Mills Ltd.*, (1997) 2 Cur LR 344 : (1997) 77 FLR 246 : 1997 LLR 958 (Bom).

Pendency of retiree's suit to avoid the order of his compulsory premature retirement does not disentitle him to gratuity, *Brundaban Sahu* v. *Orissa S.R.T.C. Ltd.*, 1992 Lab IC 1335 (Ori).

► **Denial of gratuity.**—Employees voluntarily resigning cannot be denied gratuity on merely that ground, *Texmaco Ltd.* v. *Ram Dhan*, (1993) 1 LLN 129 : (1992) 2 Cur LR 256 : (1992) 65 FLR 742 (Del).

In order to deny gratuity to an employee, mere fact that alleged misconduct of employee constitutes an offence involving moral turpitude as per the report of domestic inquiry, held, not sufficient. For denial of gratuity, there must be termination on account of alleged misconduct which constitutes an offence involving moral turpitude, *Jorsingh Govind Vanjari* v. *Maharashtra SRTC*, (2017) 2 SCC 12.

► **Claim to gratuity.**—An ex-worker's claim to gratuity under an agreement dehors the provisions of the Act can be enforced not under Section 4 of the Act but under Section 33-C(2) of the Industrial Disputes Act, 1947, *Dinkar Shankar Pawar* v. *Elphinstone Spg. & Wvg. Mills*, (1986) 2 LLN 1007 (Bom).

An employee who was getting the salary within statutory limit but subsequently drawing more than the statutory limit at the time of his retirement, he shall be entitled to payment of gratuity. He cannot be deprived of gratuity amount, *Mineral Area Development Authority* v. *State of Bihar*, (1998) 3 LLN 484 : (1998) 2 LLJ 54 : (1998) 78 FLR 260 (Pat).

The right to receive gratuity under the provisions of the Act cannot be defeated by any instrument or contract. Notwithstanding Desia and Shastry Awards and subsequent settlements, the members of the Employees' Association are entitled to avail benefit conferred upon them for payment of gratuity under the provisions of the Act. The employees cannot be deprived of their valuable statutory right conferred upon them to receive payment of gratuity, *Allahabad Bank* v. *All India Allahabad Bank Retired Employees Assn.*, (2010) 2 SCC 44.

► **Calculation of gratuity.**—An employee appointed or continuing in employment after the date of his superannuation is entitled to gratuity for the full period of service and not merely upto the age of superannuation, *Darshan Engineering Works* v. *Controlling Authority*, (1984) 1 LLN 773 : 1983 Lab IC 1451.

Incentive wages paid in respect of extra work done will not be includible in 'wages' for calculation of gratuity, *T.I. Cycles of India* v. *M.K. Gurumani*, (2001) 7 SCC 204.

The "rate of fifteen days' wages" of an employee mentioned in sub-section (2) has to be calculated by dividing the monthly wages last drawn by him by 26 and multiplying the quotient by 15, *Jeewanlal Ltd.* v. *Appellate Authority*, (1984) 4 SCC 356 : 1984 SCC (L&S) 753; *Shri Digvijay Woollen Mills* v. *Mahendra P. Buch*, (1980) 4 SCC 106 : 1980 SCC (L&S) 513.

In case of a monthly-rated employee the fifteen days' wages should be calculated by dividing the monthly rate of wages by twenty-six and multiplying the quotient by fifteen, *Guru Jambheshwar University* v. *Dharam Pal*, (2007) 2 SCC 265 : (2007) 1 SCC (L&S) 792.

► **Terms of gratuity.**—Section 4(5) covers future awards, agreements or contracts with the employer providing better terms of gratuity, *Workmen* v. *Metro Theatre Ltd.*, (1981) 3 SCC 596 : 1981 SCC (L&S) 546.

Section 4(5) is a beneficial provision which can be invoked only by the employee and not by the employer. It is for the employee to decide whether the terms of gratuity under the agreement with the employer are beneficial to him. The employer has no right to insist that the employee must accept the terms of gratuity under the agreement, *Raveendranatha Prabhu* v. *Rajappan*, (1998) 1 LLJ 204 : (1997) 2 Cur LR 554 : (1997) 77 FLR 39 (Ker).

There is no escape from payment of gratuity under the Act unless an establishment is granted exemption from operation of provisions of the Act by the appropriate Government. Gratuity being a statutory right cannot be taken away except in accordance with the provisions of the Act whereunder an exemption from such payment can be granted only by the appropriate Government under Section 5 of the Act which itself is a conditional power. No exemption could be granted by any government unless it is established that the employees are in receipt of gratuity or pension benefits which are more favourable than benefits conferred under the Act.

► **Gratuity and pension.**—A pension scheme which does not provide for payment of gratuity, cannot be compared with gratuity payable under the Act. Pension and gratuity are two separate elements of retirement benefits, *Allahabad Bank* v. *All India Allahabad Bank Retired Employees Assn.*, (2010) 2 SCC 44.

► **Forfeiture of gratuity.**—If a workman is guilty of a serious misconduct such as acts of violence against the management or other employees or riotous or disorderly behaviour in or near the place of employment, which though not directly causing damage, is conducive to grave indiscipline, then his gratuity can be forfeited in its entirety, (1973) 2 SCC 502 : 1973 SCC (L&S) 570.

An amount misappropriated by the employee cannot be recovered from gratuity, *Jagannath Barik* v. *Orissa Khadi & Village Industries Board*, 1995 Lab IC 923 (Ori)(DB).

Gratuity can be forfeited if an employee is dismissed for misappropriation of money, *Bank of India* v. *Kamlakar Vishwambhar Joshi*, (2001) 3 Cur LR 32 : 2001 Lab IC 3770 (Bom).

The employer should give a notice of the proposed action to the employee before forfeiting his gratuity, *J.B. Micheal D' Souza* v. *Appellate Authority under Payment of Gratuity Act, Bangalore*, (2002) 92 FLR 1200 (Karn).

Any decision to forfeit the gratuity under Section 4(6)(*b*) can be taken only after affording opportunity to the employee concerned, *Bharath Gold Mines Ltd.* v. *Regional Labour Commr.*, (1987) 1 LLN 303 (Kant)(DB).

Gratuity cannot be forfeited unless the quantum of loss or damage caused to management was established by evidence, *Bharat Motors, N.R. Private, Ltd.* v. *Presiding Officer, Labour Court*, (1998) 4 LLN 323 : (1998) 1 LLJ 907 (Mad).

Under Section 4(6)(*a*) and (*b*), if loss of property of employer neither quantified nor apportioned, forfeiture of gratuity was not justified, *Bopalaswamy (since deceased) by LRs* v. *Management of Usha Martin Industries*, (2001) 2 LLJ 1060 : (2001) 3 LLN 213 (Karn).

Gratuity cannot be forfeited for deduction of subsistence allowance, *P.D. Chiyanna* v. *Karnataka Agro Industries Corpn. Ltd.*, (2001) 2 LLN 571 : (2001) 3 Cur LR 486 (Karn).

The bona fide denial of an employee in not accepting the deficit amount offered by the concerned department cannot be construed as forfeiture of his right to receive the said amount or to claim the same by way of writ petition, *Tara Chand Chokdayat* v. *State of Rajasthan*, 1998 Lab IC 2373 (Raj).

Forfeiture of gratuity for disorderly conduct cannot be left to the whim or caprice of the employer. The terms "riotous conduct" any "any other act of violence" would mean behaviour which tends to disrupt the working of the establishment. Riotous or disorderly conduct which is violent in nature and causes a major disruption of the working in the establishment could result in the penalty of forfeiture of gratuity, *Jaya Hind Industries Ltd.* v. *Vilas Vithalrao Takale*, (2011) 3 Mah LJ 199 (Bom).

For forfeiture of gratuity, employer must establish that the services of the employee have been terminated for riotous or disorderly conduct, *Jaya Hind Industries Ltd.* v. *Vilas Vithalrao Takale*, (2011) 3 Mah LJ 199 (Bom).

The mandate of Section 4(1) is an absolute obligation on the employer to pay the gratuity and this is amplified by the provisions of Section 7(2). Section 4(6) is a non obstante provision under which a provision for forfeiture of gratuity has been enacted in specific and defined situations. Save and except in cases which fall under sub-section 4(6) and to the extent laid down therein, the employer cannot retain a vague and uncharted discretion to forfeit gratuity, *H. Jayarama Shetty* v. *Sangli Bank Ltd.*, (2005) 106 FLR 357 (Bom).

Upon the resignation of the petitioner it is bounden obligation of the employer to quantify and pay the gratuity. Employer cannot set up limitation as defence, *H. Jayarama Shetty* v. *Sangli Bank Ltd.*, (2006) 1 SLR 425 (Bom).

Gratuity of an employee whose services have been terminated for an act of wilful omission or negligence or loss or destruction of the employer's property can be forfeited to the extent of the damage or loss caused, *Maharashtra SRTC* v. *Maruti Ramchandra Mastud*, (2011) 3 Mah LJ 134 (Bom).

Forfeiture of gratuity on the ground of misconduct which constitutes an offence involving moral turpitude is permissible only if the person is convicted by a court of competent jurisdiction for the said offence, *Union Bank of India* v. *C.G. Ajay Babu*, (2018) 9 SCC 529.

► **Withholding of gratuity.**—Withholding of gratuity is permissible only in case of dismissal of an employee and not otherwise, *K.C. Mathew* v. *Plantation Corpn. of Kerala Ltd.*, (2000) 2 LLJ 637 : (2000) 4 LLN 450 (Ker)(DB).

Compensation of Rs 50,000 will be payable for withholding gratuity amount for three years, *Mohd. Zahiruddin Siddiqui* v. *Executive Council, A.M.U.*, (2000) 1 Cur LR 501 (SC).

When services of an employee are terminated on superannuation and not on account of wilful omission or loss caused to the employer, gratuity could not be withheld by invoking Section 4(6) of the Act, *M. Narasinga Rao* v. *District Co-op. Central Bank Ltd.*, (1998) 3 LLN 123 : (1998) 2 Cur LR 242 : 1998 LLR 850 (AP).

Mere holding back the possession of official premises does not justify withholding of gratuity, *Ramjilal Chimanlal Sharma* v. *Elphinstone Spg. & Wvg. Mills Co. Ltd.*, (1985) 1 LLN 228 : 1984 Lab IC 1703; *Binny Ltd.* v. *Appellate Authority*, (1981) 2 LLN 439 (Kant).

Gratuity cannot be withheld for not vacating the employer-company's quarters, *Texmaco Ltd.* v. *Ram Dhan*, (1993) 1 LLN 129 : (1992) 2 Cur LR 256 : (1992) 65 FLR 742 (Del); *Mohd. Shabbir Nadvi* v. *Jamia Milia Islamia*, 1995 LLR 5 Del; *Madan Mohan Laik* v. *Coal India Ltd.*, 1997 Lab IC 240 (Cal); *Swadeshi Cotton Mills* v. *Asstt. Labour Commr. (Central) & Controlling Authority under Payment of Gratuity Act, Allahabad*, (2000) 1 LLN 890 (All); *Air India Ltd.* v. *Appellate Authority under the Payment of Gratuity Act*, (1999) 81 FLR 900 (Bom).

Damages for occupying quarters cannot be withheld from gratuity, *Rajendra Pai H.* v. *Canara Bank*, (1998) 1 LLJ 577 : (1998) 78 FLR 650 : 1998 LLR 419 (Ker).

Gratuity of an employee cannot be withheld even if he fails to surrender employer's land, *Travancore Plywood Industries Ltd.* v. *Regional Joint Labour Commissioner*, (1996) 2 LLJ 85 : 1996 Lab IC 1403 : (1996) 1 Cur LR 770 (Ker).

Gratuity of an employee dismissed for wilful slowing down of work cannot be withheld since there is no such bar in the Act, *Permali Wallance Ltd.* v. *State of M.P.*, (1996) 1 Cur LR 1110 : (1996) 2 LLJ 515 : (1996) 88 FJR 652 (MP).

Gratuity of an employee cannot be withheld even if disciplinary proceeding is pending against him, *B.L. Gopalakrishna* v. *Karnataka Soap and Detergents Ltd.*, 1996 Lab IC 140 : (1996) 72 FLR 28 : (1996) 88 FJR 630 (Kant).

Gratuity of an employee cannot be withheld even if he gives an undertaking for making deductions, *Ram Ranjan Mukherjee* v. *Mining and Allied Machinery Corpn. Ltd.*, (2001) 1 Cur LR 893 : (2001) 2 LLN 749 : (2001) 1 LLJ 1020 (Cal).

Gratuity of an employee cannot be withheld on his retirement on the plea that there have been audit objections which were never communicated to such employees, *Jagdish Narain Chopra* v. *Allahabad District Cooperative Bank Ltd.*, (2000) 1 LLJ 181 (All).

Withholding of gratuity is not permissible under any circumstances except as enumerated in Section 4(6), *Amod Prasad Rai* v. *State of U.P.*, (2009) 123 FLR 202 (All).

► **Computation and limit of gratuity.**—Provisions of sub-section (5) of Section 4 have an overriding effect over other provisions of Section 4. An employee would be entitled to receive better terms of gratuity under any award, agreement or contract with employer. If terms of scheme for MOIL employees are better than the terms provided in Payment of Gratuity Act, said employees would have a right to receive

better terms of gratuity under scheme, *Moil Executive Assn.* v. *Union of India*, 2017 SCC OnLine Bom 4093 : (2017) 3 Mah LJ 152.

▸ **Protection under.**—Employee has right to make a choice of being governed by any alternative provision/instrument other than 1972 Act for receiving benefit of gratuity. If he does so, he would be entitled to statutory protection to receive better terms of gratuity under such provision/instrument, *Y.K. Singla* v. *Punjab National Bank*, (2013) 3 SCC 472 : (2013) 1 SCC (L&S) 640.

▸ **Delayed payment of retiral benefits.**—Pension and gratuity are not a bounty to be distributed by Government to its employees on their retirement, but are valuable rights and property in its hands, and any culpable delay in settlement and disbursement thereof is to be visited with penalty of payment of interest, *D.D. Tewari* v. *Uttar Haryana Bijli Vitran Nigam Ltd.*, (2014) 8 SCC 894 : (2014) 3 SCC (L&S) 128.

▸ **Right to receive gratuity.**—Respondent was dismissed from service on account of his absenteeism. Gratuity payable to him cannot be forfeited. It is only if services of an employee are terminated for any act, wilful omission or negligence resulting in any damage or loss to employer, then gratuity to the extent of damage so caused is liable to be forfeited, *Maharashtra State Coop. Tribal Development Corpn. Ltd.* v. *Purushottam*, 2015 SCC OnLine Bom 5022 (Bom) : (2015) 4 Mah LJ 342 (Bom).

[31][**4-A. 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 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).

(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 composition of the Board of Trustees of the approved gratuity fund and for the recovery by the

31. *Ins.* by Act 22 of 1987, S. 5 (w.e.f. 1-10-1987).

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.

(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.

(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.

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.—[32][(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.

[33][(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.]

[34][(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.

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32. *Ins.* by Act 26 of 1984, S. 5 (w.e.f. 18-5-1984).
33. *Ins.* by Act 26 of 1984, S. 5 (w.e.f. 18-5-1984).
34. *Ins.* by Act 22 of 1987, S. 6 (w.e.f. 1-10-1987).

(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 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.

(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.

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 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.

[35][(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.

(3-A) 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[36], 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:

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.]

35. Sub-sections (3) and (3-A) *subs.* by Act 22 of 1987, S. 7 (w.e.f. 1-10-1987).
36. Ten per cent per annum specified as the rate of simple interest *vide* S.O. 874(E), dt. 1-10-1987.

CASE LAW ▸ "Fault" —Meaning, in the context.—Withholding of gratuity in view of continuation of criminal proceedings, against employee and consequent delay in payment of gratuity, the same would be due to employee's fault if criminal proceedings conclude in his conviction, but would not be due to his fault if proceedings conclude in his acquittal, *Y.K. Singla* v. *Punjab National Bank*, (2013) 3 SCC 472 : (2013) 1 SCC (L&S) 640.

▸ **Payment of gratuity.**—Duty to make payment of gratuity within the time frame prescribed under the Act is a statutory duty. Performance of such duty cannot be denied or delayed by the Management in a manner inconsistent with the Act, *Tengapani Tea Estate* v. *Union of India*, 2017 SCC OnLine Gau 881 : (2017) 4 Gau LR 361.

▸ **Interest on delayed payment of gratuity.**—Benefit of interest on delayed payment of gratuity under Section 7(3-A), available also to employee who chooses to be governed by any other alternative provision/instrument so as to be entitled to get protection of better terms of gratuity envisaged under Section 4(5). In view of overriding effect of 1972 Act provided under Section 14 over all other enactments or instruments or contracts having force of law, 1972 Act conferring benefit of interest under Section 7(3-A) would be applicable to such employee, *Y.K. Singla* v. *Punjab National Bank*, (2013) 3 SCC 472 : (2013) 1 SCC (L&S) 640.

▸ **Payment of interest.**—Pension and gratuity are not any bounty to be distributed by Government to its employees on retirement but are valuable rights in their hands, and any culpable delay in disbursement thereof must be visited with penalty of payment of interest, *State of U.P.* v. *Dhirendra Pal Singh*, (2017) 1 SCC 49.

It is the right of a workman to receive gratuity including interest due to delayed payment thereof is a benefit under the Act. To succeed in the plea of waiver of claim of interest it must be established that the workman had waived such benefit at the time of signing of the memorandum of settlement and had elected to surrender his claim against the employer for recovery of interest due to delayed payment of gratuity. When issue regarding payment of interest due to delay in payment of gratuity not an issue included in the memorandum of settlement, workman cannot be precluded from instituting appropriate proceeding for recovery of such benefit which was available to him under the statute, *Tengapani Tea Estate* v. *Union of India*, 2017 SCC OnLine Gau 881 : (2017) 4 Gau LR 361.

(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.

Explanation.—[37][* * *]

[38][(*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.]

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37. *Omitted* by Act 25 of 1984, S. 4 (w.e.f. 1-7-1984).
38. *Ins.* by Act 25 of 1984, S. 4 (w.e.f. 1-7-1984).

[39][(*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.]

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

[41][(*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 [42][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.

(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 within the meaning of Sections 193 and 228, and for the purpose of Section 196, of the Indian Penal Code, 1860 (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 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.

[43][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

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39. *Subs.* by Act 25 of 1984, S. 4 (w.e.f. 1-7-1984).
40. *Subs.* by Act 25 of 1984, S. 4 (w.e.f. 1-7-1984).
41. *Subs.* by Act 25 of 1984, S. 4 (w.e.f. 1-7-1984).
42. *Subs.* by Act 25 of 1984, S. 4 (w.e.f. 1-7-1984).
43. *Ins.* by Act 25 of 1984, S. 4 (w.e.f. 1-7-1984).

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.

NOTIFICATION

Ministry of Labour and Employment, Noti. No. S.O. 4608(E), dated December 24, 2019 published in the Gazette of India, Extra., Part II, Section 3(ii), dated 24th December, 2019, pp. 6-7, No. 4122

In exercise of the powers conferred by sub-section (7) of Section 7 of the **Payment of Gratuity Act, 1972** (39 of 1972) and in supersession of the notification of the Government of India in the Ministry of Labour and Employment, number S.O. 2738, dated the 16th October, 2014, published in the Gazette of India, Part II, Section 3, sub-section (*ii*), dated the 18th October, 2014, except as respects things done or omitted to be done before such supersession, the Central Government hereby appoints the officers mentioned in column (2) of the following Table to be the appellate authorities for the area of jurisdiction as specified against them in column (3) of the said Table in relation to all establishments for which the Central Government is the appropriate Government under clause (*a*) of Section 2 of the said Act, namely—

TABLE

Serial Number	Officers	Jurisdiction
(1)	(2)	(3)
1.	All Deputy Labour Commissioner (Central) in the Head Quarters, Office of the Chief Labour Commissioner (Central), New Delhi	Whole of India.
2.	Deputy Chief Labour Commissioner (Central), Ahmedabad	The State of Gujarat and the Union Territories of Dadra and Nagar Haveli and Daman and Diu.
3.	Deputy Chief Labour Commissioner (Central), Ajmer	The State of Rajasthan.
4.	Deputy Chief Labour Commissioner (Central), Asansol	The civil districts of Burdwan, Birbhum, Bankura and Purulia in the State of West Bengal.
5.	Deputy Chief Labour Commissioner (Central), Bangluru	The State of Karnataka.
6.	Deputy Chief Labour Commissioner (Central), Bhubaneshwar	The State of Odisha.
7.	Deputy Chief Labour Commissioner (Central), Mumbai	The State of Maharashtra (except the civil districts of Nagpur, Bhandara, Akola, Beed, Amaravati, Wardha, Buldhana, Jalgaon, Chandrapur, Nanded, Gaddchiroli, Parbhanai, Latur, Yeotmal, Osmanabad, Hingoli, Gondia and Washim) and the State of Goa.
8.	Deputy Chief Labour Commissioner (Central), Kolkata	The State of West Bengal (except the civil districts of Burdwan, Birbhum, Bankura and Purulia in the State of West Bengal), the

		State of Sikkim and the Union Territory of Andaman and Nicobar Islands.
9.	Deputy Chief Labour Commissioner (Central), Cochin	The State of kerala and Union Territory of Lakshadweep and Mahe in the Union Territory of Puducherry.
10.	Deputy Chief Labour Commissioner (Central), Chandigarh	The State of Himachal Pradesh, Punjab, Haryana and Union Territories of Jammu and Kashmir, Ladakh and Chandigarh.
11.	Deputy Chief Labour Commissioner (Central), Dhanbad	The following districts of the State of Jharkhand-Dhanbad, Bokaro, Hazaribagh, Koderma, Ranchi, Lohardaga, Gumla, Simdega, Chatra, East Singhbhum West Singhbhum, Giridih, Deogarh, Saraikela (Kharsawan) and Jamtara.
12.	Deputy Chief Labour Commissioner (Central), Guwahati	The State of Assam, Nagaland, Meghalaya, Tripura, Manipur, Mizoram and Arunachal Pradesh.
13.	Deputy Chief Labour Commissioner (Central), Hyderabad	The State of Andhra Pradesh and Telangana and the area of Yanam in the Union Territory of Puducherry.
14.	Deputy Chief Labour Commissioner (Central), Jabalpur	The State of Madhya Pradesh.
15.	Deputy Chief Labour Commissioner (Central), Kanpur	The State of Uttar Pradesh [except the civil districts of Saharanpur, Bijnor, Meerut, Ghaziabad, Bulandshahar, Bareilly, Muzaffarnagar, Badaun, Moradabad, Jyotiba Phule Nagar (Amroha), Pilibhit, Shahjahanpur, Rampur, Baghpat, Hapur, Shamli and Gautam Budh Nagar].
16.	Deputy Chief Labour Commissioner (Central), Dehradun	The State of Uttarakhand and civil districts of Saharanpur, Bijnor, Meerut, Ghaziabad, Bulandshahar, Bareilly, Muzaffarnagar, Moradabad, Jyotiba Phule Nagar (Amroha), Pilibhit, Shahjahanpur, Badaun, Rampur, Baghpat, Hapur, Shamli and Gautam Budh Nagar in the State of Uttar Pradesh.
17.	Deputy Chief Labour Commissioner (Central), Chennai	The State of Tamil Nadu and the Union Territory of Puducherry (except Yanam and Mahe).
18.	Deputy Chief Labour Commissioner (Central), Nagpur	The civil districts of Nagpur, Bhandara, Akola, Amaravati, Wardha Buldhana, Jalgaon, Chandrapur, Beed, Nanded, Gaddchiroli, Parbhani, Latur, Yeotmal, Osmanabad, Gondia, Washim and Hingoli in the State of Maharashtra.
19.	Deputy Chief Labour Commissioner (Central), Delhi	National Capital Territory of Delhi.

20.	Deputy Chief Labour Commissioner (Central), Patna	The State of Bihar and the civil districts of Garhwa, Latehar, Sahibganj, Pakur, Dumka, Palamu and Godda in the State of Jharkhand.
21.	Deputy Chief Labour Commissioner (Central), Raipur	The State of Chhattisgarh.

CASE LAW ▸ Nature and scope.—Section 7(4)(*a*) does not exclude a dispute relating to limitation or raising a jurisdictional issue from being referred to the controlling authority, *Binny Ltd.* v. *H.K. Madiah*, (1986) 2 LLN 530 : 1987 Lab IC 931 (Kant).

An application claiming gratuity under a settlement at a rate higher than the statutory rate is maintainable under the provisions of the Act, *Ramjilal Chimanlal Sharma* v. *Elphinstone Spg. & Wvg. Mills Co. Ltd.*, (1985) 1 LLN 228 : 1984 Lab IC 1703.

▸ **"Determine the amount of gratuity", meaning.**—The expression "determine the amount of gratuity" includes the determination of any liability to pay gratuity, *Madar Union Sanitorium and Hospital* v. *M.B. Sathe*, (1986) 1 LLN 916 : (1986) 2 LLJ 135 (Raj).

▸ **Payment of interest.**—Prior to introduction of Section 7(3-A) there was no provision for payment of interest on delayed payment of gratuity. The controlling authority was not a court and therefore could not invoke Section 34 of the C.P.C. to award interest. Section 7(3-A) is only prospective, *Charan Singh* v. *Birla Textiles*, (1988) 4 SCC 212 : 1988 SCC (L&S) 947.

Interest can be claimed by employee by way of damages, *Rajasthan Welfare Society* v. *Director, Primary and Secondary Education*, 1998 Lab IC 2433 (Raj).

▸ **Condonation of delay.**—The appellate authority cannot invoke Section 5 of the Limitation Act, 1963 to condone a delay of more than 120 days in preferring the appeal, *City College, Calcutta* v. *State of W.B.*, (1986) 2 LLN 134 : (1987) 1 LLJ 41 (Cal)(DB); *Gurudeo Ayurved Mahavidyalaya* v. *Madhav*, (1994) 2 LLN 551 : 1994 Lab IC 1542 (Bom); *Western Coalfields Ltd.* v. *Controlling Authority*, (2000) 86 FLR 312 (MP) : (2000) 2 LLJ 965 : (2000) 3 Cur LR 399].

An order refusing to condone the delay in making an application under Section 7(4) claiming areas for difference of gratuity due to an employee is appealable under Section 7(7) of the Act, *R. Jagannathan* v. *Deputy Commissioner of Labour, Madras*, (2002) 1 LLJ 305 : 2002 Lab IC 431 (Mad).

Appellate authority under the Act cannot entertain appeal against an order under Section 7(4) determining the amount of gratuity beyond 120 days from the date of receipt of the order, *J.L. Morrison India Ltd.* v. *Dy. Commr. of Labour*, (2007) 6 Mah LJ 393 (Bom).

It is not necessary that an independent separate order should be passed for condonation of delay and on merits. A composite order dealing with an application for condonation of delay as also on merits will satisfy requirement of law, *Canara Motor Transport Co., Koppa, Chickmangalur* v. *K.M. Aboobakkar*, (1998) 1 Cur LR 379 (Kant).

▸ **Power to order remand.**—Under Section 7(8) of the Payment of Gratuity Act, the appellate authority has no power to remand the matter to controlling authority for fresh disposal, *Tiruchengode Agricultural Producers Co-operative Marketing Society Ltd.* v. *Appellate Authority under Payment of Gratuity Act*, (2002) 1 LLJ 1105 : (2002) 100 FJR 141 (Mad). But see *East India Company Ltd.* v. *Appellate Authority under Payment of Gratuity Act*, (1993) 1 LLN 831 (AP).

► **Order of Controlling Authority.**—If there is an error in the order passed by the Controlling Authority under the Act, the remedy is appeal and not writ petition, *Canara Motor Transport Co., Koppa, Chickmangalur* v. *K.M. Aboobakkar*, (1998) 1 Cur LR 370 (Kant).

Entitlement of the employee to gratuity must be worked out by the authority for the period the employee continued in service. If there is any order of termination by which the relationship is brought to an end, the validity of the said order must be challenged before appropriate and competent forum. Provisions of the Act does not permit the controlling authority to declare the order of termination to be illegal or non est and to treat the employee as continued in service, *Western Coalfields Ltd.* v. *Appellate Authority under Payment of Gratuity Act, 1972*, (2009) 2 Mah LJ 290.

► **Deposit of gratuity amount.**—As per the second proviso to sub-section (7) of Section 7 of the Act, the gratuity amount admitted or adjudicated by the controlling authority is required to be deposited by the employer before filing an appeal, *Christian Medical College and Hospital* v. *Dy. Commr. of Labour*, (2001) 1 LLJ 1674 (Mad).

Payment or deposit of an amount equal to the amount of gratuity cannot be postponed beyond the period of 120 days. Appellate authority has no jurisdiction to entertain the appeal if such deposit is not made within the period of 120 days from the date of receipt of the copy of the order, *Pharma Base India (P) Ltd.* v. *State of Maharashtra*, (2009) 1 Mah LJ 688.

► **Payable amount of gratuity.**—Sub-section (4)(*a*) relates to a dispute regarding the quantum or amount of gratuity payable which is distinct and separate from the question of payment of interest under Section 7(3-A) for belated payment of gratuity. It is, thus, clear that 'interest' cannot from part of gratuity' payable. Sub-sections (3-A) and (4)(*a*) have different applications in different spheres, *Auckland International Ltd. Unit-Auckland Jute Mill* v. *State of W.B.*, (2006) 111 FLR 594 (Cal).

► **Prospective application of sub-section (3-A).**—The amendments made to Section 7 by incorporation of sub-section (3-A) does not have retrospective application but has prospective application, *D.C.M. Ltd.* v. *Ram Swaroop*, (2007) 113 FLR 858 (Del).

► **Right to receive gratuity.**—An obligation has been cast on employer to determine amount of gratuity. On failure on part of employer to comply with its obligation under Section 7(2), question of limitation for claiming gratuity would not arise, *Maharashtra State Coop. Tribal Development Corpn. Ltd.* v. *Purushottam*, 2015 SCC OnLine Bom 5022 (Bom) : (2015) 4 Mah LJ 342 (Bom).

[44][**7-A. Inspectors.**—(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).

7-B. Powers of Inspectors.—(1) Subject to any rules made by the appropriate Government in this behalf, an Inspector may, for the purpose of ascertaining

44. Ss. 7-A and 7-B *ins.* by Act 25 of 1984, S. 5 (w.e.f. 1-7-1984).

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 or 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.]

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 for that amount to the Collector, who shall recover the same, together with compound interest thereon [45][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.

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45. *Subs.* by Act 22 of 1987, S. 8 (w.e.f. 1-10-1987). The Govt. has specified 15% per annum as the rate of compound interest *vide* S.O. 1032(E), dt. 1-12-1987.

[46][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.]

CASE LAW ▸ Interest on delayed payment.—Interest on delayed payment of gratuity, held, mandatory and not discretionary if delay is not due to fault of the employee and employer has not obtained permission from controlling authority for delayed payment on that ground, *H. Gangahanume Gowda* v. *Karnataka Agro Industries Corpn. Ltd.*, (2003) 3 SCC 40, relying on *State of Kerala* v. *M. Padmanabhan Nair*, (1985) 1 SCC 429 : (1985) SCC (L&S) 278; *Charan Singh* v. *Birla Textiles*, (1988) 4 SCC 212 : 1988 SCC (L&S) 947.

The right to interest on delayed payment of gratuity is a statutory right and can be granted even in absence of an express claim for the same in the employee's application to the controlling authority, *Champaran Sugar Co. Ltd.* v. *Joint Labour Commr.*, 1987 Lab IC 47 : (1987) 1 LLN 270 (Pat)(FB); overruling *Patna Electricity Undertaking* v. *State of Bihar*, C.W.J.C. No. 14 of 1985, dt. 25-7-1985.

▸ **Recovery.**—It is only when the Collector issues a certificate for recovery of the dues as a public demand that interest as provided under Section 8 is admissible, *Charan Singh* v. *Birla Textiles*, (1988) 4 SCC 212 : 1988 SCC (L&S) 947.

▸ **Stay on recovery.**—The government has no power either to stay recovery or grant instalment facilities to employer in making payment, *N. Muraleedharan* v. *District Collector*, 1996 Lab IC 1986 (Ker).

▸ **Overriding effect.**—Provisions of the Payment of Gratuity Act has overriding effect over the State Legislation. Power to recover gratuity amount is a special power under the Act and can be recovered by the governmental agency when the amount is not paid which is neither inconsistent under Section 155 and not barred under Section 163 of the Maharashtra Cooperative Societies Act, 1960, *Jagdamba Sahakari Sakhar Karkhana Ltd.* v. *Tahsildar*, (2009) 4 Mah LJ 636.

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 [47][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 [48][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

46. *Ins.* by Act 22 of 1987, S. 8(*b*) (w.e.f. 1-10-1987).
47. *Subs.* by Act 22 of 1987, S. 9 (w.e.f. 1-10-1987) for "one thousand rupees".
48. *Subs.* by Act 22 of 1987, S. 9 (w.e.f. 1-10-1987).

which shall not be less than [49][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 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.

STATE AMENDMENT

SECTION 10-A and 10-B

GUJARAT.—In its application to the State of Gujarat, after Section 10 the following sections shall be *inserted*, namely:—

"10-A. *Compounding of offences.*—(1) Any offence punishable under sub-section (2) of Section 9 insofar as the contravention of the provisions of the Rules 3, 6(1), 8, and 10-A(7) of the Payment of Gratuity (Gujarat) Rules, 1973 is concerned, may, either before or after the institution of the prosecution, on an application by the alleged offender, be compounded by such officer or authority as the State Government may, by notification in the Official Gazette, specify in this behalf for such amount as specified in the Table below:

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49. *Subs.* by Act 22 of 1987, S. 9 (w.e.f. 1-10-1987).

TABLE

Compounding amount				
2				
Number of employees employed in the establishment	Rule 3	Rule 6(1)	Rule 8	Rule 10-A(7)
1 to 50	₹ 5000	₹ 10,000	₹ 2000	₹ 3000
51 to 100	₹ 5000	₹ 15,000	₹ 2000	₹ 3000
101 to 500	₹ 5000	₹ 20,000	₹ 2000	₹ 3000
more than 500	₹ 5000	₹ 25,000	₹ 2000	₹ 3000

Provided that the State Government may, by notification in the Official Gazette, amend the compounding amount specified in the table above:

Provided further that the offence committed of the same nature shall be compoundable only for the first three offences:

Provided also that such offences shall be compounded only after the alleged offender has acted to the satisfaction of such officer or authority that such offence is not continued any further:

Provided also that when an offence is compounded on an application by the employer, then seventy-five per cent of the compounding amount received from him, shall be paid to the concerned employee or equally amongst the employees and if any employees are not identifiable, then the remaining amount shall be deposited in the Gujarat State Social Security Boara constituted under the Unorganised Workers' Social Security Act, 2008 (33 of 2008).

(2) Where an offence has been compounded under sub-section (1), no further proceedings shall be taken against the offender in respect of such offence and the offender, ifin custody, shall be discharged.

10-B. *Obligation of Employer.*—(1) Every employer in such class of establishments as may be notified by the State Government, taking into consideration the number of employees employed by him, shall get himself enrolled under the Self Certification cum Consolidated Annual Return Scheme as may be prescribed.

(2) The State Government shall prescribe the audit and assessment norms for compliance of labour laws and labour standards.

(3) The incentives to the employer for compliance of labour laws and labour standards shall be, subject to the outcome of audit and assessment, as may be prescribed.

(4) Any employer who complies with the provision of sub-section (2) shall be eligible for exemption from the inspections as provided under the Act.". [*Vide* Gujarat Act 29 of 2015, S. 22 (w.e.f. 1-1-2016)]

11. Cognizance of offences.—(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 [Metropolitan Magistrate or a Judicial Magistrate of the first class][50] 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 [51][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 order of any civil, revenue or criminal court.

[52][**13-A. Validation of payment of gratuity.**—Notwithstanding anything contained in any judgment, decree or order of any court, for the period commencing on and from the 3rd day of April, 1997 and ending on the day on which the Payment of Gratuity (Amendment) Act, 2009, receives the assent of the President, the gratuity shall be payable to an employee in pursuance of the notification of the Government of India in the Ministry of Labour and Employment vide Number S.O. 1080, dated the 3rd day of April, 1997 and the said notification shall be valid and shall be deemed always to have been valid as if the Payment of Gratuity (Amendment) Act, 2009 had been in force at all material times and the gratuity shall be payable accordingly:

Provided that nothing contained in this section shall extend, or be construed to extend, to affect any person with any punishment or penalty whatsoever by reason of the non-payment by him of the gratuity during the period specified in this section which shall become due in pursuance of the said notification.]

CASE LAW ▸ Constitutional validity.—Constitutional validity of Section 13-A as inserted vide Payment of Gratuity (Amendment) Act, 2009 with retrospective effect from 03-04-1997 to confer, with retrospective effect, benefit of gratuity to the teachers who have rendered continuous service for not less than 5 years, upheld, *Independent Schools' Federation of India (Regd.)* v. *Union of India*, 2022 SCC OnLine SC 1113.

▸ **Order of attachment.**—Gratuity to an employee cannot be attached by the court, *G. Narayana Rao* v. *V.R. Naginani*, 1997 Lab IC 902 : (1996) 72 FLR 25 : (1996) 74 FLR 2640 (Kant).

In view of the provisions of Section 60(1)(*g*) of Civil Procedure Code and also Section 4(1) read with Section 13 of the Act, gratuity payable under the Act to legal representatives of deceased Government employee does not lose its character and is not liable to attachment in execution of any decree of Civil Court, *D. Vimala* v. *Canara Bank, Mettuguda, Secunderabad*, (1998) 1 Cur LR 228 (AP).

A perusal of Section 13 of the Act would show that gratuity payable to an employee under the Act, is not liable to attachment in execution of any decree or order of any Civil Court, Revenue Court or Criminal Court. Section 13 does not prevent an employer from deducting excess amount already paid to an employee at the time of his retirement. An employer is supposed to pay all terminal benefits to an employee at the time

50. *Subs.* by Act 34 of 1994, S. 4 (w.e.f. 24-5-1994).
51. *Ins.* by Act 25 of 1984, S. 6 (w.e.f. 1-7-1984).
52. *Ins.* by Act 47 of 2009, S. 3 (w.r.e.f. 3-4-1997).

of retirement. If, at the time of retirement some excess amount has been paid against one head, the same can always be deducted out of balance payable, *State Farm Corpn. of India Ltd.* v. *Regional Labour Commr.*, (2007) 112 FLR 987 (Del).

Gratuity amount payable to an employee or to his legal representatives owing to his death or disablement due to accident or disease is exempted from attachment in execution of a decree, *Gudapati Hanumaiah* v. *Lakshminarasamma*, (2009) 79 AIC 71 (AP).

14. Act to override other enactments, etc.—The provisions 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.

CASE LAW ▸ Deduction from gratuity.—A regulation of a company providing for deduction from pension of the amount of gratuity paid under the Act is invalid, *Som Prakash Rekhi* v. *Union of India*, (1981) 1 SCC 449 : 1981 SCC (L&S) 200.

▸ **Non-granting of gratuity.**—Non-granting of gratuity to State Government employees who have resigned by virtue of Rule 46(1) of the Pension Rules, 1982 is arbitrary and in violation of Article 14. It would only be appropriate to read down Rule 46(1) of Pension Rules so as not to apply same to the payment of gratuity to a person only because he as resigned from service after 5 years. Non-granting of gratuity on giving of resignation by any employee after 5 years of service does amount to imposing the penalty without due process of law and arbitrarily, *Jeevan Kashinath Patil* v. *State of Maharashtra*, 2014 SCC OnLine Bom 653.

▸ **Provisions inconsistent with Act.**—Any specific rules for payment of gratuity, if inconsistent with the Act, shall, to the extent of such inconsistency, be ineffective, *Municipal Board* v. *Controlling Authority*, (1987) 1 LLN 663 (Raj) : 1987 Lab IC 575 (Raj).

Rule 4 of Orissa Mining Corporation Employees Gratuity Fund Rules, excluding 'Trainees' from entitlement to gratuity being inconsistent with the Payment of Gratuity was directed to be altered, *Orissa Mining Corporation Ltd.* v. *Controlling Authority under Payment of Gratuity Act III*, (1994) 2 LLN 1130 : (1994) 69 FLR 765 : (1995) 1 LLJ 381 (Ori)(DB).

Where the non-obstante provision of Section 7 read with Section 3(7) of the Textile Undertakings (Taking Over of Management) Act, 1983 applies, the non-obstante provision of Section 14 of the Payment of Gratuity Act will not apply, *National Textile Corporation Ltd.* v. *Bhagirathi Gopal Martal*, (1992) 2 LLJ 111 (Bom)(DB).

In the absence of exemption of the establishment of Delhi Municipal Corporation from the provisions of the Act under Section 5, the employees of the Corporation would be entitled to the payment of gratuity under the Act notwithstanding the fact that the provisions of the CCS (Pension) Rules have been made applicable to them for the purpose of determining the pension, *Municipal Corpn. of Delhi* v. *Dharam Prakash Sharma*, (1998) 3 LLN 898 : (1998) 2 LLJ 625 : (1998) 2 Cur LR 574 (SC).

▸ **Overriding effect.**—Payment of Gratuity Act is a self contained Code, under which, the amount of gratuity can be recovered by approaching the controlling authority. Only Section 14 of the Act gives an overriding effect upon the provisions contained in any other enactment, *K. Ramaseshu* v. *Labour Court, Guntur*, (2006) 110 FLR 457 (AP).

Section 14 of the Gratuity Act does not specifically override the provisions of Section 16 of the Working Journalists' Act, 1955, *Indian Express Madurai (P) Ltd.* v. *J.M. Jeswant*, (1998) 2 LLJ 916 : 1998 Lab IC 3062 (Kant)(DB).

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 or in two or more successive sessions, and if, before the expiry of the session 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.

STATE AMENDMENTS

Madhya Pradesh.—M.P. Act 21 of 2015, Part X, Part XI and Sections 17 and 18 in this regard provides w.e.f. 27-11-2015:

"PART X

EXEMPTION FROM MAINTAINING MULTIPLE REGISTERS SUBMISSION OF MULTIPLE RETURNS

17. Exemption from maintaining multiple registers and submission of multiple returns under certain Labour Laws in the State of Madhya Pradesh.—Notwithstanding anything contained in the provisions of the following Acts, namely—

(*i*) "Contract Labour (Regulation and Abolition) Act, 1970 (No. 37 of 1970);
(*ii*) Equal Remuneration Act, 1976 (No. 25 of 1976);
(*iii*) Factories Act, 1948 (No. 63 of 1948);
(*iv*) Industrial Disputes Act, 1947 (No. 14 of 1947);
(*v*) Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979 (No. 30 of 1979);
(*vi*) Labour Laws (Exemption from Furnishing Returns and Maintaining Registers by certain Establishments) Act, 1988 (No. 51 of 1988);
(*vii*) Maternity Benefit Act, 1961 (No. 53 of 1961);
(*viii*) Minimum Wages Act, 1948 (No. 11 of 1948);
(*ix*) Motor Transport Workers Act, 1961 (No. 27 of 1961);
(*x*) Payment of Bonus Act, 1965 (No. 21 of 1965);
(*xi*) Payment of Gratuity Act, 1972 (No. 39 of 1972);
(*xii*) Payment of Wages Act, 1936 (No. 4 of 1936);
(*xiii*) Sales Promotion Employees (Conditions of Service) Act, 1976 (No. 11 of 1976);

the State Government by order may devise or notify forms for maintaining registers and records and furnishing returns by an employer or establishment in lieu of the forms prescribed under the said Acts and the rules made thereunder:

Provided that the State Government may allow the registers and records to be maintained in computerised or digital formats.

PART XI

MISCELLANEOUS PROVISIONS

18. Power to make rules.—(1) The State Government, subject to the condition of previous publication, may make rules for the purpose of giving effect to the provisions of this Act.

(2) All rules made under this Act shall, as soon as after they are made, be laid on the table of the Legislative Assembly."

ANNEXURE

The Payment of Gratuity (Second Amendment) Act, 1984[53]

[Act 26 of 1984]

[*18th May, 1984*]

An Act further to amend the Payment of Gratuity Act, 1972

Be it enacted by Parliament in the Thirty-fifth Year of the Republic of India as follows:—

1. Short title.—This Act may be called the Payment of Gratuity (Second Amendment) Act, 1984.

2-5. [*Amendments incorporated*]

6. Validation.—The amendments made in the principal Act by Section 3 and Section 4 shall be deemed to have been made with effect from the 11th day of February, 1981 and accordingly any action or thing taken or done or purporting to have been taken or done under the principal Act on or after the said date and before the commencement of this Act, shall, notwithstanding anything contained in any judgment, decree or order of any court, tribunal or other authority, be deemed to be, and to have always been, for all purposes, as validly and effectively taken or done as if the said amendments had been in force at all material times.

Explanation.—For the removal of doubts, it is hereby declared that no act or omission on the part of any person, before the commencement of this Act, shall be punishable as an offence which would not have been so punishable if this Act had not come into force.

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53. Received the assent of the President on May 18, 1984 and published in the Gaz. of India, Extra., Pt. II, S. 1, dt. 18-5-1984, pp. 1-5.