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A REWARD FOR LOYALTY: A COMPREHENSIVE ANALYSIS OF THE PAYMENT OF GRATUITY ACT, 1972

- Asmaa Amatullah Khan¹

ABSTRACT

Even prior to industrialization, there has been various circumstances of cruelty inflicted upon labourers, workers, and employees. Despite being loyal and providing services they were mistreated and upon their retirement were left with no security.

Loyalty should be reciprocated and rewarded and hence the loyalty of employees should also be shown gratitude which led the Government of India to enact the Payment of Gratuity Act, 1972.

A retired individual faces various issues inter alia monetary issues upon retirement and hence such person should be protected from the said issues by rewarding them for their service and loyalty by the employer showing them gratitude which is usually in monetary form.

INTRODUCTION

The term 'Gratuity' has been derived from the Latin word 'gratuitus' denoting something given freely and could also mean something unwarranted. However, in the medieval French, the term 'gratuie' refers to something given freely or free of charge, but what does this term mean in the context of labour laws. In this context, it can be understood as a large sum of money given to an employee by the person who had employed him after the retirement on having provided service for a certain period of time. It can be seen as token of appreciation by the employer for the service provided by the employee and the appreciation that he has brought to him. In simple words it is a reward for service

¹ BBA. LL.B. (Hons)., School of Excellence in Law, Tamil Nadu Dr. Ambedkar Law University.

In India, the payment of gratuity is governed by the Payment of Gratuity Act, 1972. Even before the passage of this particular statute, the tribunals had upheld the right of industrial workers to receive gratuity. Attempts were even made by the Hon'ble Supreme Court to regulate it by the way of judicial decision and case laws, but still there were various controversies revolving around the rules and principles that were to be applicable in case of payment. Hence, the Government of India put an end to all these controversies after the passage of Payment of Gratuity Act, 1972.

OBJECT

The main purpose for the enactment of the Act was to provide retired workers with certain monetary benefits. It is for the purpose of ensuring welfare to the retiring employees. This gratuity acts as an asset for future. In the case of *Delhi Cloth and General Mills Co. Ltd v. Their Workmen*², the court stated that the object of this Act is to provide benefit in monetary form to retiring employees for bringing prosperity to the employer by providing long and unblemished service.³

APPLICABILITY OF THE ACT

The very first section of the Act discusses about the applicability and the scope under sub-section (3). It is applicable to and covers the following within its scope:

- a) 1.Factory- as defined in clause (m) of section 2 of the Factories Act, 1948⁴
- 2.Mine- as defined in clause (j) of sub-section (1) section 2 of the Mines Act, 1952⁵
- 3.Oil-field- as defined in clause (e) of section 3 of the Oilfields Act, 1948⁶
- 4.Plantation- as defined in clause (f) of section 2 of the Plantations Labour Act, 1951⁷
- 5.Port- as defined in clause (4) of section 3 of the Indian Ports Act, 1908⁸
- 6. Railway company- as defined in clause (5) of section 3 of the Indian Railways Act, 1890⁹

² *Delhi Cloth and General Mills Co. Ltd v. Their Workmen*, (1968) 36 FJR 247

³ S.N Mishra, "Labour and Industrial Law", 28th ed, Central Law publication

⁴ Section 2(g) of Payment of Gratuity Act, 1972

⁵ Section 2(j) of Payment of Gratuity Act, 1972

⁶ Section 2(l) of Payment of Gratuity Act, 1972

⁷ Section 2(m) of Payment of Gratuity Act, 1972

⁸ Section 2(n) of Payment of Gratuity Act, 1972

⁹ Section 2(p) of Payment of Gratuity Act, 1972

- b) Every shop and establishment (within the meaning of any law that is for time being in force)
- c) Any other establishment as notified by the Central Government.

Hence, it can be understood that the Act aims to cover all organized sectors.

In the case of *Municipal Corporation of Delhi v. Smt. V. T. Naresh and another*¹⁰,

- The question in this case was whether a local authority created under Delhi corporation by Delhi Municipal Corporation Act, 1957 is within the scope of Payment of Gratuity Act, 1972 or not.
- The corporation had its own regulations and rules regarding payment of gratuity to its retiring employees, can it still be under the scope of Payment of Gratuity Act, 1972?
- The court in this case held that merely because of the fact that the Municipal Corporation of Delhi is a local authority or body, it cannot be said that it is not an establishment. It was held that it is an establishment within the meaning of this Act.
- Dealing with the second issue in this case, the court stated that either the employee can seek benefit under the Act or the scheme of corporation, but still it cannot be said that it is not within the scope of Payment of Gratuity Act, 1972 because it has its own regulation or scheme. The employee cannot get complete benefits under both the Act and the scheme.

In the case of *D.S. Puruwar v. Elphinstone Spinning and Weaving Mills*¹¹

It was observed that wherein gratuity is payable by an agreement between the employer and the employee then such claim is not within the scope of the Payment of Gratuity Act, 1972.

ELIGIBILITY

Sub-section (1) of Section 4 of the Act states the eligibility that is to be fulfilled by the employees to receive gratuity.

- a) The gratuity becomes payable only on the termination of employment by way of superannuation, retirement, resignation, death or disablement due to accident or disease.
- b) A minimum of 5 years of continuous service shall be rendered by the employee. However, in case of death or disablement, the eligibility of minimum years of service is not applicable.

¹⁰ *Municipal Corporation of Delhi v. Smt. V. T. Naresh and another*, (1986) 1 LLJ 323 (Delhi)

¹¹ *D.S. Puruwar v. Elphinstone Spinning and Weaving Mills*, 1986 (53) FLR 600 (Bom)

- c) In case of death of the employee, the gratuity shall be payable to the nominee as provided under section 6 of the Act.

However, the employer is not liable to pay the full amount of gratuity at all times and has the right to forfeiture either in part or in whole or based on the circumstances as enumerated under sub-section (6) of section 4.

A. FORFEITURE TO THE EXTENT OF DAMAGE:

- When the employee having been terminated, causes any damage to the employer due to his wilful omission or negligence (or)
- Such terminated employee causes damage to any property belonging to the employer due to his wilful omission or negligence

Then in such circumstances, the employer can forfeit the amount of gratuity payable to the extent of damages caused due to the act of employee.

B. FORFEITURE PARTLY OR WHOLLY:

If during the course of employment, any employee who has shown any act of violence or commits offences of moral turpitude which results in his termination, then the employer can forfeit the gratuity payable in wholly or in part.

In the case of *Bharat Gold Mines Ltd v. Regional Labour Commissioner*¹², an employee had committed THEFT in the course of employment. It was observed that such act of theft amounted to offences of moral turpitude and hence his gratuity was forfeited.

DETERMINATION OF THE AMOUNT OF GRATUITY

Section 7 of the Act deals with the determination of the amount of gratuity. However, under this provision we find the procedure to pay gratuity rather than the calculation of gratuity payable. Before understanding the procedure, it is crucial to understand the calculation of amount payable, the extent to which it is payable, to whom it is payable, when it becomes payable and fulfilment of any other statutory obligation. We have already understood to whom the gratuity is payable and when it becomes payable. Now, let's understand the calculation of amount payable.

¹² *Bharat Gold Mines Ltd v. Regional Labour Commissioner*, (1986) 53 FLR 340 (Karn)

I. CALCULATION OF AMOUNT:

Under sub-section (2) of section 4, the act enumerates as to how the amount is to be calculated.

In simple words, the formula for calculation of amount payable is: $n*b*15/26$

- The 'n' denotes number of years of service completed. If the employee has worked for 7 years and 7 months, it shall be rounded to 8 years of service. If the employee has worked for 7 years and 4 months, it shall be rounded to 7 years.
- 'b' denotes the last drawn salary along with dearness allowance.
- Example: 'A' worked for a total period of 8 years and 9 months and his last basic pay was Rs.30,000 then in such circumstances, the gratuity shall be calculated as:
$$= n*b*15/26$$
$$= 9*30,000*15/26$$
$$= 2,70,000*15/26$$
$$= 4,05,000/26$$
$$= \text{Rs. } 1,55,769$$
- **Piece-rated Employee:** The daily wages will be calculated by computing the average of total wages that the employee received 3 months immediately prior to his termination. The amount received for working over-time is not included in the calculation.

II. **CEILING OF GRATUITY:** As of now, the upper ceiling of gratuity payable has been amended to twenty lakh rupees under sub-section (3) of section 4.

III. COMPULSARY INSURANCE:

- Every employer is mandated to undertake an insurance for the liability of payment of gratuity under Life Insurance Corporation or any other insurer as notified by the Government from the date as the appropriate government may notify.
- However, any employer or any establishment that is under the control of either the State Government or Central Government is not liable to be insured. In case, an employer has established an approved gratuity fund then in such circumstances he may be exempted from undertaking an insurance.
- The employer will be liable to pay interest along with gratuity payable if there is any delay or default in the payment of premium amount or delay in deposit in the gratuity fund and any contravention to pay such interest would result in payment of fine upto Rs.10,000.

- Rules made by State Governments to regulate compulsory insurance:
- 1. Karnataka Compulsory Gratuity Insurance Rules, 2024
- 2. Andhra Pradesh Compulsory Gratuity Insurance Rules, 2011

IV. PROCEDURE TO OBTAIN GRATUITY PAYMENT:

- Section 7 of the Act provides the procedure of obtaining gratuity.
- When an employee becomes eligible for receiving gratuity, he shall send a notice in written in such a for as notified by the government.
- The employer should calculate the amount payable upon receiving such notice. Even when such notice is not given and the employer shall calculate the gratuity payable for employees who become eligible to claim the same.
- The employer has a period of 30 days from the date from which gratuity becomes payable and incase of any delay, the government imposes a simple interest to be paid by employer till he pays the amount. It is to be calculated from the date on which the gratuity becomes payable. However, if such delay is caused due to the employee and employer informs the same to the controlling authority then he is not liable to pay the interest on delay.

V. DISPUTE IN THE PAYMENT Of GRATUITY:

- Wherein there arises any dispute between the employer and the employee with regard to the amount of gratuity payable, then the controlling authority shall be the adjudicatory authority for that matter.
- Either the employer or the employee shall make an application to the controlling authority regarding the dispute.
- The employer shall deposit such amount that is to be payable with the controlling authority.
- The controlling authority has the powers of a civil court as provided under the Civil Procedure Code, 1908 in conducting the enquiry.
- During the enquiry, the controlling authority shall abide by the principles of natural justice.
- Wherein the controlling authority finds that the employee is entitled to receive the gratuity amount, he shall provide the same from the deposited amount.

VI. APPEAL:

- The period of limitation as provided under the Act is 60 days from the date of order. However, in case of delay if there was a genuine reason that prevented the appellant from making an appeal, then the same shall be permissible.
- Either the appropriate government or appellate authority act as adjudicatory authority as the case may be. The employer while making an appeal must show the appropriate government or appellate authority as the case may be that he had deposited the amount of gratuity with the employee or has to deposit the same with appropriate government or appellate authority.
- The appellate authority can either uphold the decision of the controlling authority or modify or amend the decision passed.

Bombay Gas Public Ltd v. Papa Akbar and other¹³,

- The main issue in this case was dealing with sub-section (3A) of section 7 dealing with payment of simple interest by employer in case of delay of payment of gratuity
- This sub-section was included by the way of Amendment which came into force in 1987
- Whether the benefit of interest be provided where an application was made before the amendment came into operation?
- The court held that such benefit can be provided for an application made after the amendment came into force and hence the benefit of interest shall not be provided to an application made before the amendment came into operation.

Gloster Jute Mills Ltd v. Deputy Secretary Labour Department,¹⁴

- The main issue in this case was whether an employer making an appeal is required to deposit entire amount that was directed by controlling authority or only the amount that the employer admits to be payable under clause (a) of sub-section (4) of section 7 of the Act?
- The court observed that according to clause (a) of sub-section (4) of section 7, the employer is only liable to deposit the amount that he admits to be payable.

¹³ Bombay Gas Public Ltd v. Papa Akbar and other, (1990) II LLJ 220 (Bom)

¹⁴ Gloster Jute Mills Ltd v. Deputy Secretary Labour Department, (2002) III LLJ 908 (Cal)

M.C.D V. Nandkishor,¹⁵

- In this case, as there was a delay in the payment of gratuity by the employer and so he made an application to the controlling authority. The employer was then directed to pay and addition of Rs. 47, 301 to the employee.
- The employer made an appeal and contended that the delay on part of employee was not taken into consideration. However, the court held that it cannot be the reason for the employer to not pay gratuity and the employer cannot take this as an excuse to remove himself from the liability to pay gratuity.

Gurunath Vithal Thamse v. National Textile Corporation (N.M)¹⁶

- The employee had made an application to the controlling authority after 3 years pf his superannuation to receive payment of gratuity.
- However, it was rejected by the controlling authority.
- On an appeal, the High Court had observed that there was no specific time or limitation regarding making an application to the controlling authority in the Act and hence the right of the employee to receive gratuity cannot be disregarded for the same.

CONCLUSION

The Payment of Gratuity Act is a welfare legislation for the welfare of employees. Since the employee receives a monetary benefit, it encourages them to be more productive as they are the backbone of every organization resulting in flourishing industries. It acts as a post-retirement benefit and helps them to lead a peaceful life and a token for their loyal service.

¹⁵M.C.D V. Nandkishor, (2003) II LLJ 56 (Del)

¹⁶ Gurunath Vithal Thamse v. National Textile Corporation, (2002) II LLJ 270 (Bom)