

THE PAYMENT OF GRATUITY ACT, 1972

Question 1

Explain the provisions of the Payment of Gratuity Act, 1972 relating to 'forfeiture of the amount of Gratuity' payable to an employee. (May 2007)

Answer

Forfeiture of gratuity: Section 4(6) of Payment of Gratuity Act, 1972 deals with cases in which gratuity payable to an employee may be forfeited.

According to it, 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.

The gratuity payable to an employee may be wholly or partially forfeited if the services of such employee have been terminated for –

- (i) his riotous or disorderly conduct or any other act of violence on his part or
- (ii) any act which constitutes an offence involving moral turpitude, provided that such offence is committed by him in the course of his employment.

Question 2

Explain the manner in which the gratuity payable to employees in a seasonal as well as other establishments is calculated under the Payment of Gratuity Act, 1972. State also the maximum amount of gratuity payable under the Act. (November 2007)

Answer

Computation of gratuity amount: Section 4 of the Payment of Gratuity Act, 1972 stipulates the manner in which the amount of gratuity payable to an employee will be calculated.

In the case of establishments other than seasonal establishments, the employer shall pay the gratuity to an employee at the rate of 15 days wages based on the rate of wages last drawn by the employee concerned for every completed year of service or part thereof in excess of 6 months. In the case of piece rated employees, daily wages, shall be computed

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on the average of the total wages received by him for a period of 3 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.

In the case of a monthly rated employee 15 days wages shall be calculated by dividing the monthly rate of wages last drawn by 26 and by multiplying the quotient by 15.

In the case of seasonal establishment the employees can be classified into 2 groups.

- (i) Those who work throughout the year and
- (ii) Those who work only during the season.

The former are entitled to get the gratuity at the rate of 15 days wages for every completed year of service or part thereof in excess of 6 months. The latter are entitled to receive gratuity at the rate of 7 days for each season.

The amount of gratuity payable shall not exceed Rs. 3,50,000.

Question 3

Examining the provisions of the Payment of Gratuity Act, 1972, state whether gratuity is payable to an employee for the periods when he does not actually work in the organisation. Explain the manner in which gratuity is calculated for regular employees.

(May 2008)

Answer

Periods for which Gratuity Payable: Manner of Calculation (The Payment of Gratuity Act, 1972).

Yes, the periods for which gratuity is payable to an employee even if he does not actually work in the organization are the following:

1. Lay off under the Industrial Disputes Act, 1947.
2. Leave with full wages.
3. Maternity leave for female employees.
4. Absence due to temporary disablement caused during employment.

Quantum of gratuity payable is 15 days' wages on the last drawn wages for every completed year of service subject to a maximum of 15 months' wages.

Question 4

E was an employee of Tea Estate Ltd. The whole of the undertaking of Tea Estate Ltd. was taken over by a new company - Asia Tea Estate Ltd. The services of E remained continuous in new company. After serving for one year E met with an accident and became permanently disabled. E applied to the new company for the payment of gratuity. The company refused to pay gratuity on the ground that E has served only for a year in the company.

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Examine the validity of the refusal of the directors in the light of the provisions of the Payment of Gratuity Act, 1972. (November 2008)

Answer

According to Section 4 (1) of the Payment of Gratuity Act, 1972, 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 on his superannuation, or, on his retirement or resignation or on his death or disablement due to accident or disease.

The condition of the completion of five years of continuous service is not essential in case of the termination of the employment of any employee due to death or disablement for the purpose 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.

The given problem fulfils all the requirements stated above. Therefore, E is entitled to recover gratuity after becoming permanently disabled, and continuous service of five years is not required in this case. Hence, the company can not refuse to pay gratuity on the ground that he has served only for a year.

Question 5

National Steels Limited decided to forfeit the amount of gratuity of its employees A,B and C on account of disorderly conduct and other acts which caused loss to the property belonging to the company. A, B and C, committed the following acts:

- (i) A refused to surrender the occupied land belonging to the company.*
- (ii) B committed theft under law involving offence of moral turpitude.*
- (iii) C after superannuation continued to occupy the quarter of the company for six months.*

Against the decision of the company, A,B and C applied to the appropriate authorities for relief. The company contented that the right to gratuity is not a statutory right and the forfeiture of the amount of gratuity was within the law.

Examine the contention of the company and the decision taken by the company to forfeit the amount of gratuity in the light of the Payment of Gratuity Act, 1972. (June 2009)

Answer

Forfeiture of Gratuity

In accordance with the provisions of Section 4(6) of the Payment of Gratuity Act, 1972, if the services of any employee have been terminated for any act, willful omission, or negligence causing any damage or loss to or destruction of, property belonging to the employer, the gratuity shall be forfeited to the extent of the damage or loss so caused; and if the services of such an employee have been terminated for any act which constitutes an offence involving moral turpitude, provided that such offence is committed

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by him in the course of his employment, the gratuity payable to the employee may be wholly or partially forfeited.

- (1) The problem asked in the question is based on the above provisions and the provisions of Section 4(1) of the Payment of Gratuity Act, 1972. Accordingly, gratuity shall be paid to the employee when he completes five years of continuous service on his superannuation, or on his retirement or resignation, or on his death or disablement due to accident or disease. The condition of the completion of five years' continuous service is not essential in case of the termination of the employment of any employee due to death or disablement. Looking to the provisions of Section 4(1), it is clear that withholding of gratuity is not permissible under any circumstances, except under those circumstances covered by Section 4(6). In *K. C. Mathew vs. Plantation Corporation of Kerala Ltd.* 2001 LLR (2) (Ker), it was held that withholding of gratuity is not permissible except under those circumstances enumerated in Section 4(6) and that the right to gratuity is a statutory right and none can be deprived of it except as provided by the law. Therefore, the contention of National Steels Ltd. is wrong, to that extent.
- (2) The correctness of the decision taken by National Steels Ltd. regarding forfeiture of the gratuity amount of its employees A, B and C may be tested in the light of Section 4(6) of the Payment of Gratuity Act, 1972 as referred above.
 - (i) Accordingly, the refusal of an employee to surrender the occupied land belonging to the company is not sufficient ground to withhold gratuity under Section 4(6) of the Payment of Gratuity Act, 1972 (*Travancore Plywood Industries Ltd. vs. Regional Joint Labour Commissioner* [1966] II LLJ 85 Ker.). Hence, A's gratuity cannot be withheld.
 - (ii) The offence of theft committed by B, under law involves moral turpitude and his gratuity stands wholly forfeited in view of Section 4(6) of the Act (relevant case is *Bharat Gold Mines Ltd vs. Regional Labour Commissioner*, 1987, 70 FJR 11 (Karnataka)).
 - (iii) If the employer has to be paid any amount regarding any type of charge by the employee and if he has not paid for the same during the course of his service, then the employer can adjust the amount from the gratuity of the employee. In the instant case, C after superannuation continued to occupy the quarter of the company for six months. Therefore the company is entitled to charge the rent from him and after adjusting other dues the remaining amount of gratuity may be paid (relevant case is *Wazir Chand vs. Union of India* 2001, LLR172 (SC)).

Question 6

Mr. X was an employee of Mutual Developers Limited. He retired from the company after completing 30 years of continuous service. He applied to the company for the payment of gratuity within the prescribed time. The company refused to pay the gratuity and contended that due to stringent financial condition the company is unable to pay the

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gratuity. Mr. X applied to the appropriate authority for the recovery of the amount of gratuity.

Examine the validity of the contention of the company and also state the provisions of law to recover the gratuity under the Payment of Gratuity Act, 1972. (November 2009)

Answer

- (i) 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 on his superannuation or on his retirement or resignation or on his death or disablement due to accident or disease under Section 4(1) of the Payment of Gratuity Act, 1972. Further, as soon as gratuity becomes payable, the employer shall, whether the application for the payment of gratuity has been given or not by the employee, determine the amount of gratuity and give notice in writing to the person to whom the gratuity is payable under intimation to the controlling officer [Section 7(2)].

The employer shall arrange to pay the amount of gratuity within 30 days for the date of its becoming due/payable to the person to whom it is payable [Section 7(3)], along with simple interest if it is not paid within the period specified except where the delay in the payment is due to the fault of the employee and the employer has obtained permission thereon from the Controlling Authority [Section 7(3A)].

- (ii) If the gratuity payable under the Act is not paid by the employer within the prescribed time to the person entitled thereto, the Controlling Authority shall issue a certificate for the amount to the Collector to recover the same along with compound interest at such rate as prescribed by the Central Government from the date of expiry of the prescribed time as land revenue arrears, to enable the person entitled to get the amount, after receiving the application from the aggrieved person (Section 8).

Before issuing the certificate for such recovery the Controlling Authority shall give the employer a reasonable opportunity of showing cause against the issue of such certificate. The amount of interest payable under the Section shall not exceed the amount of gratuity payable under this Act in no case (Section 8).

In the given case the facts are commensurate with provisions of law as stated above under Sections 7 and 8 of the Payment of Gratuity Act, 1972. Therefore, Mr. X is entitled to recover gratuity as he has completed the service of 30 years. The company cannot take the plea of stringent financial conditions for not paying the gratuity to Mr. X. On the refusal by the company, Mr. X can apply to the appropriate authority and the company will be liable to pay the gratuity along with interest as decided by such authority.

