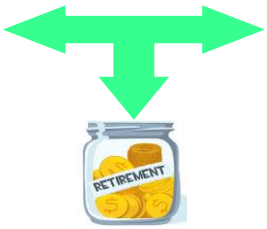
Make Your Own Notes

Chapter 2: The Payment of Gratuity Act, 1972

What does Gratuity mean?

Gratuity

It is a word derived from a Latin word 'Gratuitas' which simply means a 'Gift.'



Treated as a gift from the employer to his employee for the services rendered to establishment by him.

It is paid by an employer to his employee for his past services when the employment comes to an end due to the retirement or superannuation of the workers.

History

History

1950

Gratuity as a scheme was introduced:
- Where the employers were so kind and generous to the workers or
- Where agreement between the employers and the workers.

1970

The Government of Kerala enacted the Kerala Industrial Employees Payment of Gratuity Act, 1970 making gratuity a statutory right of the employees.

1971

West Bengal Government enacted the West Bengal Employees Payment of Gratuity Act, 1971 relating to the subject.

1972

Central Government realized & passed central legislation on the Payment of gratuity. Accordingly, the Payments of Gratuity Act, 1972 was enacted, largely based on the West Bengal legislation, which was come into force on 16th September, 1972.

Extent

The Act 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 & Kashmir. [Section1 (2)]

This act extends to → The whole of INDIA

→ **Except the State of *Jammu & Kashmir***

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	K. Gangadhar Vs The Appellate Authority, (1993) The expression '**law'** used in Section 1(3)(b) means any law in respect of shops, establishments - commercial or non- commercial.
	Municipal Board Vs Union of India (1993) The provisions of Section 1(3)(b) of the Act are very much comprehensive. It also includes **Municipal Board.**

What is the applicability and extent of the act?

Applicability

The Act provides scheme for payment of gratuity to employees engaged in:-

Factory

Mine

Oilfield

Plantation

Port

Railway Co.

Every shop or establishment

in which → **10 or more** persons are employed, or were employed → on any day of the preceding ***twelve*** months

Such other establishments or class of establishments, in which **10 or more** employees are employed, or were employed on any day of the preceding twelve months, as the ***Central Government*** may specify in this behalf. [Section 1(3)]

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***.[Section1 (3 A)]

Important Definitions

Appropriate Government

In relation to an establishment -

- belonging to, or under the control of the Central Government,
- having branches in more than one state,
- of a factory belonging to, or under the control of the Central Government,
- of a major port, mine, oilfield or railway company, the Central Government,

In any other case, the State Government: [Section 2 (a)]

Here only CG shall have control

Establishments under CG

Establishments under SG
(For e.g. Maharashtra SG)

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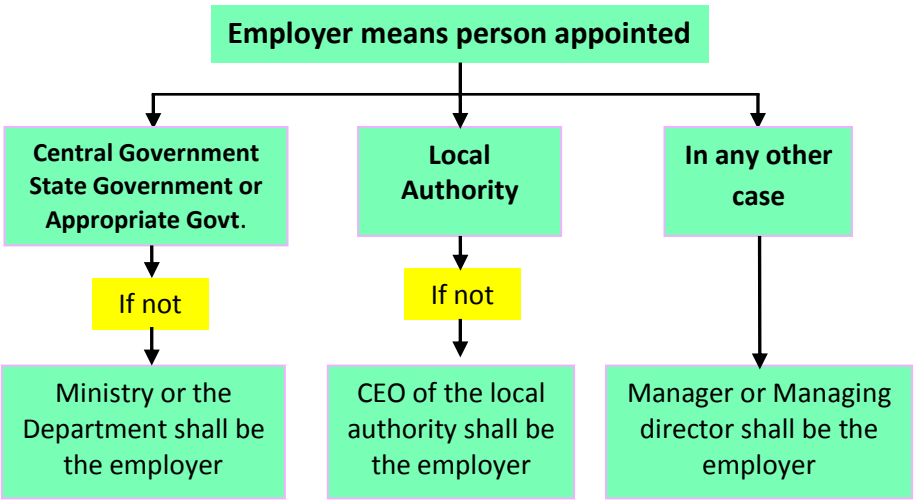
Employer

In relation to any establishment, factory, mine, oilfield, plantation, port, railway company or shop employer means

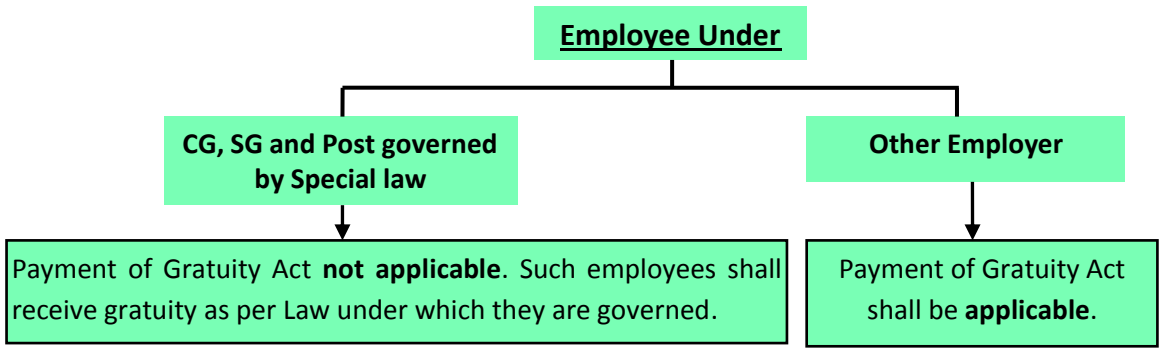
	Belonging to, or under the control of the **Central Government or a State Government** a person or authority appointed by the appropriate Government for the supervision and control of employees, or where no person or authority has been so appointed, the head of the Ministry or the Department concerned.
	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.
	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, - there such person shall be the employer.[Section 2 (f)]



Employee

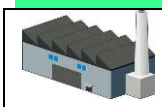
Employee means any person (other than an apprentice) who is –

- Employed for wages, whether the terms of such employment are express or implied,
- Employed in any kind of work, **manual or otherwise**,
- Employed 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
  - **Post which is governed by any other Act or by any rules providing for payment of gratuity.**

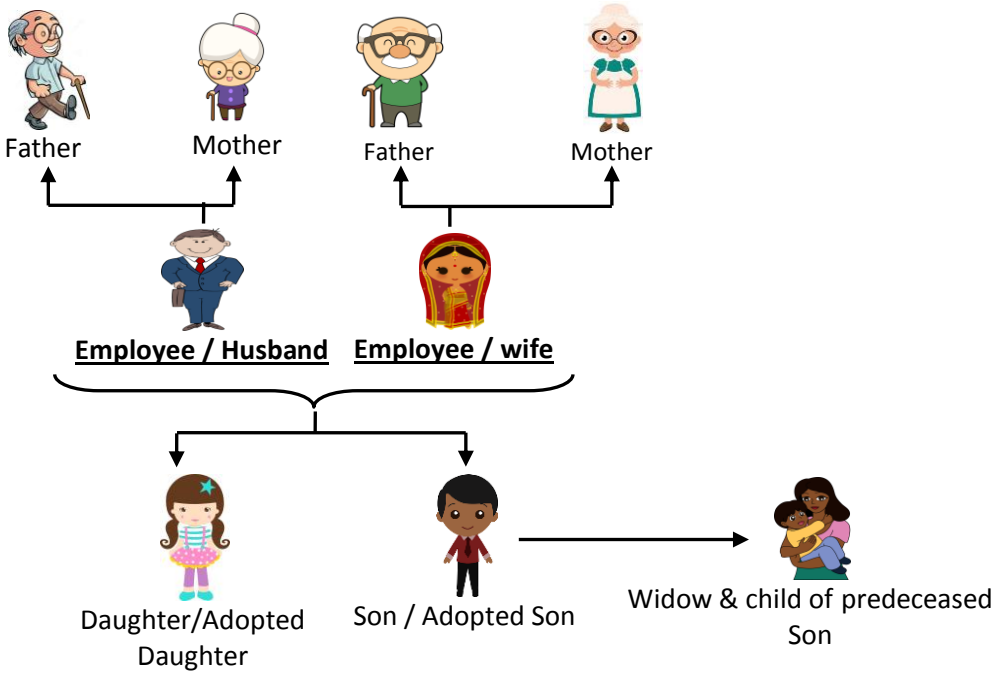


	Khanderan P. Rajopadhyee v. United Western Bank Ltd.(1984) Mere nomenclature of a post is not of much consequence and what is to be seen is the nature of the **duties performed by the employee** to conclude him as an employee within the meaning of section 2(e) of the Act.
	Monitron Securities (p) Ltd. v. Mukundlal Khushalchand(2002) A **company's director** not having the ultimate control over the affairs of management of the company will be considered as an employee under the Act.

Factory

	**Factory'** has the meaning assigned to it in clause (m) of Section 2 of **the Factories Act, 1948** (63 of 1948); [Section 2 (g)]

Family



In relation to an employee, family shall be deemed to consist of –

- In the **case of a male employee**, himself, his wife, his children, whether married or unmarried, his dependent parents (and the dependent parents of his wife) and the widow and children of his predeceased son, if any,
- 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

Note:-

- **If** the personal law of an employee permits the adoption by him/her of a child; and the employee lawfully **adopts the child**, **then** adopted child shall be deemed to be included in his/her family.
- **If** any child of the employee is **adopted by another person** and the personal law of person making adoption permits it, **then** such child shall be deemed to be excluded from his/her family.

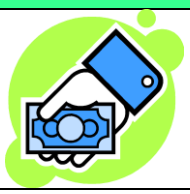
Retirement

	Retirement means **termination of the service of an employee** otherwise then on superannuation. **[Section 2 (q)]**

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** at the age on the attainment of which the employee shall vacate the employment.**Section2(r)]**

Wages



Wages means **all emoluments which are earned by an employee while on duty or on leave** in accordance with the terms and conditions of his employments and which are paid or are payable to him in cash and includes D.A. **but does not include any bonus, commission, house rent allowance, overtime wages and any other allowances.** [Section 2 (s)]

Wages under payment of Gratuity

Includes	Excludes
Basic Salary Dearness Allowance	Bonus, Commission HRA, Overtime wages All Other Allowances

N. Sivasadan v. Appellate Authority under the Payment of Gratuity Act (1997)

Free food supplied to an employee is merely an amenity. Hence its value cannot be included in the wages for the purpose of calculating the amount of gratuity payable under the Act

Continuous Service

Continuous Service

Include service interrupted by

Sickness

Accident

Leave

Lay off

Strike or Lock-out

Cessation of work **Not** due to Fault of employee

Excludes service interrupted by

Absence from duty without leave where absence is treated as break of service

Cessation of work due to fault of employee

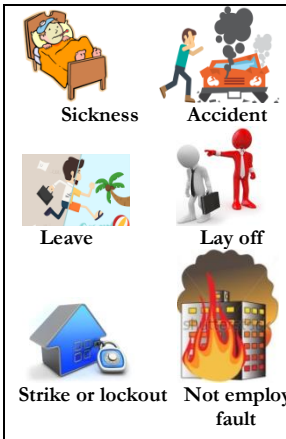
Now let us understand Deemed Continuous Service

Where an employee is not in continuous service as per above conditions, then he shall be deemed to be in continuous service under the employer if the employee during the period of 12 or 6 calendar months preceding the date with reference to which calculation is to be made has worked for:

In case of **12 months** **Sec 2A(2)**	In case of **6 months** **Sec 2A(2)**	In case of **seasonal establishment** **Sec 2A(3)**

190 days • If employee works below ground in mine • If establishment works for less than 6 days in week **240 days** • In case other than above	**95 days** • If employee works below ground in mine • If establishment works for less than 6 days in week **120days** • In case other than above	• If Employee works in seasonal establishment he should have worked for not less than **75%** of number of days for which the establishment was in operation.

Continuous service means service without interruption or break. [2A]



An employee shall be said to be in continuous service for a period if he has, for that period, been in uninterrupted service, including service which may be interrupted on account of sickness, accident, leave, absence from duty without leave (not being absence in respect of which an order 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;[Section 2A(1)]

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

Calculation Of Gratuity Amount Payable

1. Computation of Gratuity Amount [Sec 4(2)]

Establishment other than Seasonal Establishment	**15/26 × Last Drawn Salary × No. of completed years of service or part thereof in excess of 6 months** **Note:** In case of **Piece rate Employee**, Daily Wages shall be computed on the average of total wages of **3 months** preceding the termination of employment (wages for overtime work shall **not** be included)
Seasonal Establishment	Employee work throughout the year: **Above rule is applicable** Employee working only during season: **7 days instead of 15 to be taken in calculation**

2. Maximum Amount [Sec 4(3)]

Maximum amount of gratuity payable to an employee **shall not exceed Rs 10, 00,000**

Working day shall also include following days [2A(2)]

Working day shall also include following days [2A(2)]

Laid-off under any agreement

Leave with full salary

Temporary Disablement

Maternity Leave for 12 weeks

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Laid-off under any agreement	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.
Leave with full salary	He has been **on leave with full wages**, earned in the previous year.
Temporary Disablement	He has been **absent due to temporary disablement** caused by accident arising out of and in the course of his employment; and
Maternity Leave for 12 weeks	In the case of a female, she has been on **maternity leave**; so, however, that the total period of such maternity leave **does not exceed twelve weeks.**
	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

	Jeevan Lal (1929) Ltd. Vs controlling authority (1982) An employee who is **re-employed without any break in service** will be eligible for gratuity and he cannot be denied the gratuity simply on the ground of the change in employment.
	State of Punjab Vs Labour Court (1980) A **retrenched employee** is also entitled for gratuity.
	Bommidala Bros. v. Authority, the Payment of Gratuity Act (1989) Wherever a **partnership is converted into a registered company**, there the employees are entitled to gratuity on the basis of length of service under both the establishments taken together.

Examples

Mr Abhi Working in Ash Ltd for following years. Tell whether he is in continuous service or not? Whether he is eligible for gratuity? If yes how much?

Normal Undertaking								
Undertaking working for 6 days / Overground					Undertaking working for less than 6 days / Underground			
Year	Type of Year	Days of Work	Count		Year	Type of Year	Days of Work	Count
2031	Full	280			2031	Full	193	
2032	Full	260			2032	Full	200	
2033	Full	230			2033	Full	183	
2034	6 Mths	140			2034	6 Mths	99	
2035	6 mths	190			2035	6 mths	103	
2036	6 mths	100			2036	6 mths	87	
2037	Full	252			2037	Full	215	
2038	6 mths	124			2038	6 mths	96	
2039	3 mths	65			2039	9 mths	103	
Years to be counted					Years to be counted			

Calculation		Calculation

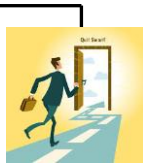
Controlling Authority

The **Appropriate Government** may, by notification, **appoint any officer** to be a controlling authority, who shall **be responsible for the administration** of this Act and different authorities may be appointed for different areas. [Section 3]

Eligibility and Payment of Gratuity [Sec 4(1)]

When to pay the gratuity?

Gratuity payment in case of

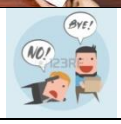
- **Condition of Continuous service for 5 Year is applicable**
  - On his Superannuation
  - On his Retirement
  -  On his Resignation
- **No such Condition is applicable**
  - On his Disablement
  - On his Death

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**.

Payment to gratuity to person other than employee

Case	Gratuity payable to
Death of employee but nomination is made	Nominee or Nominees
Death of employee but no nomination is made	Heir or Heirs
Nominee(s) or Heir(s) is a Minor	Amount of Gratuity is deposited by **Controlling Authority** in Term Deposit with SBI or Nationalised Bank, **till such Minor attains Majority.**

	Balbir kaur v.SAIL(2000) The **playability of Gratuity to the employee is his right** as well as the obligation of the employer. It is a statutory right given to the employees
	Rashtriya Mill Mazdoor Sangh v. NTC(1996) Gratuity becomes payable to an employee on the date of **termination of his employment**.
	Pattathurila K. Damodaran Vs M.Kassim Kanju By the change of ownership, the relationship of employer and employees subsists and the **new employer cannot escape** from the liability of payment of gratuity to the employees.

	Texmaco Ltd. Vs Sri Ram Dhan 1992 An **employee resigning** from service is also entitled to gratuity
	**Mettur Spinning Mills Vs Deputy Commissioner of Labour, (1983)** **Non-acceptance of the resignation** is no hurdle in the way of an employee to claim gratuity

Gratuity to Disabled Employees

Preceding to Disablement	Subsequent to Disablement
 For the period **preceding** to disablement, gratuity shall be calculated on the basis of **wages Last drawn** by the employee at the time of his disablement.	 For the period **subsequent** to disablement, gratuity shall be calculated on the basis of **reduced wages** as drawn by him at the time of termination of service.

	Bharat Commerce and Industries Vs Ram Prasad, 2001 If for the purposes of computation of quantum of the amount of gratuity the terms of agreement or settlement are **better than the Act, the employee is entitled for that benefit** but the maximum statutory ceiling limit as provided under Section 4(3) of the Act cannot be reduced by mutual settlement or agreement.

Forfeiture of Gratuity [Sec 4(6)]

Gratuity shall be forfeited for following reasons:-

Situation
For **(i) any act, (ii) wilful omission, (iii) Negligence** causing any damage or loss to, or destruction of, property belonging to the employer

→ →

Amount of Forfeiture
Forfeited to the **extent of damage or loss so caused**

Situation
For his **riotous or disorderly** or any act of violence on his part
For any act which constitutes an offence involving **moral turpitude**, where such offence is committed in course of his employment

→ →

Amount of Forfeiture
Wholly or partially forfeited

	Wazir Chand Vs Union of India 2001 If the **employer has to be paid any amount regarding any type of charge by the employee** and he has not paid the same during the course of his service then the **employer can adjust the amount from the gratuity of the employee at the time of the payment of the gratuity at the termination of his employment.** It was held that there was **no illegality in the amount of gratuity, which was paid by the employer**. The appellant even after superannuation continued to occupy the quarter and the government in

	accordance with the rules, charged the rent from him and after adjusting other dues in the gratuity amount offered to be paid.
	Travancore Plywood Industries Ltd. Vs Regional Joint Labour Commissioner, (1966) The **refusal of employees** to surrender land belonging to the employer is not a sufficient ground to withhold the gratuity
	Parmali Wallance Ltd Vs State of M.P., (1996) The right of the **employer to forfeit** the amount of earned gratuity of an employee whose services were terminated for any act, wilful omission or **negligence causing any damage** to the employer is limited to the extent of the damage, and the proof of such damage.
	Bharat Gold Mines Ltd. Vs Regional Labour Commissioner (Central),(1987) When an offence of theft under law involves moral turpitude, gratuity stands wholly forfeited in view of Section 4(6) of the Act
	S.N.Sunderson (Minerals) Ltd. Vs Appellate Authority-cum-Deputy Labour Commissioner,(1990) When an employee, who has been given the **benefit of probation** under Section 3 of the Probation of Offenders Act, 1958, cannot be disqualified to receive the amount of his gratuity.
	K.C.Mathew Vs Plantation Corporation of Kerala Ltd.(2001) Withholding of gratuity is not permissible under any circumstances other than those enumerated in Section 4(6) of the Act and the right to gratuity is a statutory right and none can be deprived from such right.

Compulsory Insurance [Sec 4(A)]

Employer's liability to obtain insurance

LIC भारतीय जीवन बीमा निगम LIFE INSURANCE CORPORATION OF INDIA	Every Employer shall obtain an insurance for his liability for payment of gratuity under the Act, from ✓ **LIC** ✓ **Ant other prescribed Insurer.**

However, the following categories of employers need not obtain such insurance cover –

- Employer of an establishment belonging to or under the control of **CG/SG**
- Any other Employer, who has established an **Approved Gratuity Fund** 4A(2)

Exemption to the employers from obtaining insurance

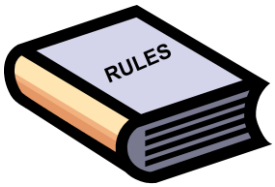
The **Appropriate Government** may exempt –

	Employers who have **already established** an Approved Gratuity fund in respect of employed who desire to continue with such arrangements.
	Employers having **500 or more** employees, who establishes an approved gratuity fund in the manner prescribed.

Employer to register his establishment with the controlling authority

	For the purposes of this Section, **every employer shall within a prescribed time get his establishment registered with the controlling authority** in the prescribed manner, and only those employers who have taken insurance as referred above or has established an approved gratuity fund shall be registered.

Appropriate government may make rules



To give effect to the provisions of this Section the **appropriate government may make rules providing for the composition of Board of Trustees of the approved gratuity fund,** and for the recovery by the controlling authority of the amount of gratuity payable to employees of LIC or any other insurer with whom an insurance has been taken, or as the case may be, the Board of Trustees of the approved gratuity fund.

Employer's failure to pay premium/ contribute to the gratuity fund

If the **employer fails to pay the premium to the insurance or to contribute to an approved gratuity fund**, he shall be **liable to pay** them an amount of gratuity including **interest**, if any, for delayed payments, to the controlling authority.

Penalty

The **contravention is punishable** with a fine up to ` **10000/-** and in the case of a **continuing offence** with a further fine which may extend to ` **1000/- per day** up to the duration the offence continues.

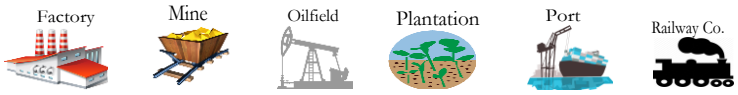
Power to Exempt [Sec 5]

Exemption given by whom?

The Exemption shall be given by **Appropriate Government**

Exemption given to whom?

Any **establishment, factory, mine, oilfield, plantation, port, railway company or shop** to which this Act applies.



Manner of giving Exemption

The exemption shall be given only by way of a **notification in the Official Gazette.**

Terms of Exemption

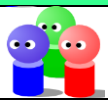
- The Exemption shall be subject to such conditions as may be prescribed in the notification.
- The exemption may be given **prospectively or retrospectively.**
- The exemption may be given from the operations of all or any of the provisions of the Act

Nominations for Gratuity [Sec 6]

1. Nomination Sec 6(1)

Each employee, who has completed **1 year** of service, shall make a nomination in **Form F**, in duplicate, within **30 days** of completion of 1 year of service. If is filed after specified period, but with reasonable ground of delay, it shall be valid and accepted by the employer.

2. Multiple Nominees Sec 6(2)



An employee may, in his nomination, distribute gratuity payable amongst **more than 1 nominee**

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3. Family Sec 6(3)

If employee has family at the time of making nomination, the nomination shall be made in favour of member(s) of his family. **Any nomination made by such employee, in favour of a person who is not a member of his family, shall be void.**

4. Acquiring a Family Sec 6(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 90 days a fresh nomination (Form G) in favour of one or more members of his family**.

5. Modification Sec 6(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 **Form H**.

6. Death of Nominee Sec 6(6)

If a **nominee predeceases** the employee, the interest of the nominee shall revert to the employee who shall make a **fresh nomination in form H**, in the prescribed form, in respect of such interest.

7. Custody Sec 6(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**.

Application for the Payment of Gratuity: [Sec 7 and Rule 7]

Application for payment of gratuity shall be made by following:-

Application made by	Employee	Nominee	Legal Heir
In Form No	Form I	Form J	Form K
Within period of	• Within **30 days of gratuity becoming payable.** • In case of superannuation or retirement application shall be made **before 30 days of superannuation or retirement.**	• In case of death of employee, a nominee shall apply **within 30 days of gratuity becoming payable.**	• If an employee dies without making nomination, his legal heir, shall apply **within 1 year of gratuity becoming payable.**

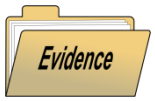
An application even after the prescribed period shall also be entertained by the employer, if the sufficient cause for delay has been mentioned in the application. **Any dispute in this regard shall be referred to the Controlling Authority for his decision.** In any case, **the claim for gratuity cannot be treated as invalid merely because the claimant failed to submit the application within the prescribed time. The application shall be presented to the employer either by personal service or by registered post with A/D. [Rule 7]**

Employer's Duty Regarding the Payment

Employer shall → Give Notice → To whom gratuity is payable → Within 30 days → If late employer shall pay

	Irrespective of the fact whether the application has been made, **the employer shall determine the amount of gratuity and give notice in writing to the person to whom the gratuity is payable** and controlling officer specifying the amount of gratuity [Sec 7(2)]
	The employer shall pay the amount determined **within 30 days from the date of gratuity becoming due** to the person concerned. [Sec 7(3)]
	If the amount **is not paid within 30 days, then the employer shall pay simple interest from the date of gratuity becoming payable to the date on which it is paid,** at the rate specified by the CG for long term deposit.
	The employer is not liable to pay interest **if the delay is due to the fault of the employee and the employer has obtained permission in writing** from the controlling authority. [Sec 7(3A)]

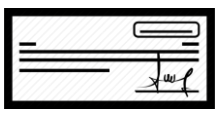
Notice for payment of gratuity

	If claim for gratuity **found to be admissible** on verification, the employer shall issue a notice in **Form 'L'** to the applicant employee, nominee or legal heir, as the case may be, specifying the amount of gratuity payable and fixing a date, for payment of gratuity.
	If the claim for gratuity is **not found admissible** than employer shall issue a notice in **Form 'M'** to the applicant specifying the reasons thereof.
	Such notice in either of the case has to be issued within **15 days** of the receipt of an application, to the applicant with the copy endorsed to the controlling authority.
	The notices on **Form 'L' or 'M'** shall be served on the applicant **either by personal service** after taking receipt or by **registered post** with A/D. (Rule 8)
	In case of applicant being a legal hire or nominee, the **employer shall ask for evidence establishing his identity** and time limit for issue of notice in this case, shall start from the date, such evidence is called for by the employer.

Mode of Payment of Gratuity

`Gratuity shall be paid in either of following ways

- **In Cash**
- **In Demand Draft**
- **In Bank Cheque**
- **If amount < Rs 1000 pay through postal order**



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The gratuity shall be paid either**: (i) in cash (ii) in demand draft, or (iii) bank cheque** to the claimant. If the claimant so desires and the amount **of gratuity payable is less than one thousand rupees, payment may be made by postal money order** after deducting the commission due to such postal money order from the amount payable. The intimation about the details of payment shall be given to the controlling authority by the employer.

Where nominee or a legal heir is a minor: The controlling authority shall invest the gratuity amount deposited with him for the benefit of such minor in term deposit with the State Bank of India or any of its subsidiaries or any Nationalized Bank. (Rule 9)

Disputes

Application to be sent to

Dispute between Employer and Person concerned

Application to Cont. Authority

The employer shall deposit amount with Controlling Authority

If there is **any dispute regarding the amount of gratuity payable** to an employee or to the person entitled to receive the gratuity, such amount as admitted to be payable by employer as gratuity shall be deposited with the **controlling authority.**

Inquiry made by Controlling Authority:-

The controlling authority shall, after due inquiry for the purpose of conducting inquiry:-

	Shall have the **same powers as are vested in the court**, while trying a suit, under the **Code of Civil Procedure, 1908.**
	The proceedings made by it will be the **'judicial proceedings'**
	The controlling authority shall avail all the powers like **enforcing the attendance, production of documents, receiving evidences on affidavits and issuing commission for the examination of witnesses.** [Sec 7(4)]

Settlement:-

The controlling authority shall, after giving **a reasonable opportunity of being heard to parties to the dispute**, determine the matter or matters in dispute.

if any amount is found to be payable to the employee, the controlling authority shall direct the employer to pay such amount or the difference of amount to the Controlling Authority (Difference means difference of amount determined by Controlling Authority and amount deposited) The controlling authority shall pay the amount deposited by the employer including the excess amount, if any, to the person entitled thereto

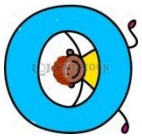
Opportunity of being heard

Employer to pay diff. to Cont. Authority

Controlling Authority pay to person entitled

Procedure for Dealing with Application for Direction

Issue of notice to appear before controlling authority:-

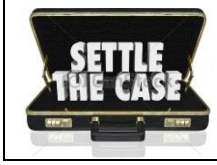


On receipt of an application for direction, the **controlling authority shall issue a notice in Form 'O'** and call applicant as well as the employer to appear before him **on a specified date, time and place, either by himself or through his authorized representative** along with all the relevant documents and witnesses, if any.

Representation on behalf of the employer/ claimant before the Controlling Authority:-

The controlling authority **shall grant or deny permission** to any person desiring to act on behalf of employer or applicant.

Employers or Applicant fail to appear:-



If the **Employer fails to appear** on the specified date without sufficient cause, the controlling authority **shall decide the case ex parte**. (i.e. Case decision shall be in interest of Applicant)

If the Applicant fails to appear on the specified date without sufficient cause, the controlling authority **may dismiss the application**.

Review of order:-

After completion of the hearing and enquiry, the **controlling authority shall record the findings as to whether any amount is payable under the act** and the same shall be given to the parties.

The order passed by controlling authority **may be reviewed within 30 days** of the said order and **the application can be re-heard after giving not less than 14 days** notice to the opposite party of the date fixed for rehearing of the application.

Record of particulars of case:-

The controlling authority shall record the particulars of each case in **Form 'Q'** and at the time of passing orders shall sign and date the particulars so recorded and **shall also record the findings** on the merits of the case and file it along with the memorandum of evidence with the order sheet.

Direction For payment

If the order entitles the applicant for the payment of gratuity under the act, the controlling authority shall issue a notice to the employer in **Form 'R'** directing payment within **30 days** from the date of receipt of notice. A copy of the notice shall be endorsed to the applicant

Appeals

Appeal to an order

Any person **aggrieved by an order made by the Controlling Authority** may, within **60 days** from the receipt of the order, **appeal to the appropriate Government** or authority in this behalf. After being satisfied with sufficient cause, he may **extend this period by a further period of 60 days.**

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Aggrieved by order of Controlling Authority

Within 60 days

Shall make appeal to Appropriate Government

Modification of an order

After hearing to the parties, the Appellate Authority may **confirm modify or reverse the decision of the Controlling Authority.**

Admission of appeal on the production of the certificate of deposit of gratuity:-

The employer's appeal shall **not be admitted without producing the certificate of deposit of gratuity amount issued by the Controlling Authority** or the deposit of the said amount with Appellate Authority [Section 7 (7)].

Appointment of Inspectors

The **appropriate Government may appoint as many Inspectors**, as it deems fit, for the purposes of the Act. It may also define the **area to be covered by such inspectors** and where two or more inspectors are appointed for the same area, it shall provide for distribution and allocation of work by general or special order.

Powers of inspectors

	To require an **employer to furnish such information** as he may consider necessary
	To **enter and inspect, at all reasonable hours**, 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 documents required** to be kept or exhibited under this Act or the rules made there under.
	To **examine 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.**
	To **make copies of, or take extracts from, any register, record, notice or other document, as he may consider relevant**, and where he has reason to believe that any offence under this Act has been committed by an employer, search and seize with such assistance as he may think fit, such register, record, notice or other document as he may consider relevant in respect of that offence
	And **to exercise such other powers as may be prescribed**.

Recovery

If the **employer does not pay the gratuity** within said time, the employee concerned, his nominee or his legal heir, as the case may be to whom the gratuity is payable may apply to the Controlling Authority in duplicate in **Form 'T'**

	for the recovery of gratuity. **[Rule 19]**
	The Controlling Authority on receiving application from the aggrieved party shall issue a **certificate for that amount to the Collector to recover the same along with the 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
	The Controlling Authority shall give the **employer a reasonable opportunity of being heard**
	The **amount of interest** payable under this Section **shall not exceed** the amount of **gratuity payable** under this Act.

Penalties [Sec 9]

Penalty for avoiding of any payment to be made:-

Any person who is **responsible for the purpose of avoiding any payment** to be made by himself 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 of 6 months

OR

Fine of Rs 10000

OR

Fine + Imprisonment BOTH

Penalty for contravention and default in compliance of any provision

An employer, **who contravenes or makes default in complying with, any of the provisions of this Act or any rule** or order made there under shall be punishable with:-

Imprisonment for 3 months to 1 year

OR

Fine of Rs. 10000 to 20000

OR

With BOTH

Penalty for non-payment of gratuity payable under the Act

If the offence **relates to non-payment of any gratuity payable** under the Act, the employer shall be punishable with **Imprisonment for 6 months to 2 years.**

The **court trying the offence**, may if it is of the opinion that a **lesser term of imprisonment or the imposition of a fine** would meet the ends of justice, can so do for the reasons to be recorded by it in writing, [Section 9]

Exemption of Employer from Liability [Sec 10]

	Where an employer is charged with an offence punishable under this Act, he can, **after giving <u>three days clear notice</u> of his intention to do so, bring any other person whom he charges as the actual offender**, before the court at the time fixed for hearing the charge
	Employer proves to the satisfaction of the court that- **(i) he has used due diligence to enforce the execution of this Act, and (ii) the said person committed the offence in question without his**

	(employer's) knowledge, consent or connivance.
	There the **other person responsible** for the occurrence **shall be convicted of the offences and shall be liable to the like punishment** as if he were the employer and the **employer shall be discharged from any liability** under the Act in respect of such offence. [Section 10]

Cognizance of Offences [Sec 11]

	No Court shall take cognizance of any offence punishable under this Act except on a complaint made by or under the authority of the appropriate Government.
	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 authorize the Controlling Authority to make a complaint against the employer.**
	The **Controlling Authority shall within <u>15 days</u> from the date of such authorization, make such complaint** to a magistrate having jurisdiction to try the offence and no court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the first class shall try any offence punishable under this Act. [Section 11]

Protection against Action taken in Good Faith [Sec 12]

	If a Controlling Authority or any other person in respect of anything, takes any action which is done in good faith or intended to be done under this Act or any Rule - **in such case no suit or other legal proceedings can be instituted against him** because it will be presumed that he has taken all the actions to implement or comply the provisions of the Act on behalf of Government. [Section 12].

Protection of Gratuity [Sec 13]

In any case, gratuity **cannot be attached in execution of any decree or order** of any civil, revenue or criminal court. [Section 13]