

ABSTRACT OF PAYMENT OF GRATUITY ACT AND RULES

1. **EXTENT OF THE ACT** – 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. Section 1 (2)].
2. **TO WHOM THE ACT APPLIES**- The Act applies to : - (a) Every factory, mine, oilfield, plantation, port, and railway company;
(b) Every shop and establishment in the State, in the State, in which ten or more persons are employed, on any day of the proceeding twelve months. And
c) Such other Establishments are employed, or were employed. on any day of twelve proceeding months, as the Central Government may, by notification, specify in this behalf. [Section 1(3)].

3. DEFINITIONS- (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, oil field or railway company, of the Central Government, (ii) in any other case, the State Government. [Section2(a)]

b) " Completed year of Service "means continues service for one year [Section2(b)]

c) "Continues Service "means interrupted service and includes service which interrupted by sickness, accident, leave, lay-off, strike or a lock out or cessation of work not due to any fault of the employees concerned, whether such an un-interrupted or interrupted service was rendered before or after the commencement of this act.

Explanation-1- In the case of an employee who in not in uninterrupted service for one year, he shall be deemed to be continues service if he has been actually employed by an employer during the twelve months immediately preceding the year for not less than-

- i) 190 days if employed below the ground in mine, or (ii) 240 days, in other case, except when he is employed in a seasonal establishment.

Explanation-2- An employee of a seasonal establishment shall be deemed to be in continues service if he has actually worked for not less than seventy-five percent or the number of days on which the establishment was in operation during the year (Section-2.)

d) " Controlling authority" means an authority appointed by an appropriate Government under Section-3.(Section 2(d)

e) "Family", in relation to an employee, employee, shall be deemed to consist of-

i) in the case of male employee himself, his wife, his children, whether married or unmarried, his dependent. Parents and the widow and children, or his predeceased son, if any,

ii) in the case of female employee, herself, her husband, her children, whether married or unmarried, her depend parents and widow and children or her predeceased son, if any.....
Provided that if a female employee, by notice in writing to the controlling authority, express her desire to exclude her husband from her family, the husband and dependent parents shall no longer be deemed, for the purpose of this Act. To be included in the family of such female employee unless the said notice is subsequently withdrawn by such female employee.

Explanation-3- 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 Section-2(h)

4.NOMINATION- 1) Each employee, who has completed one year of service, after the commencement of the Payment of Gratuity (Central)

Rules 1972 shall make within thirty days of completion of one year of service, a nomination (Section6(1) read with rule 86 (1)

2) If an employee has a family at the time of making a nomination, the nomination shall be made in favour of one more member of his family and any nomination made by such employee in favour of a person who is not a member of the family shall be avoided. [Section 6(3)]

3) If at the time of making a nomination, the employee has no family, the nomination can be made in favour of any person or persons, but if the employee subsequently acquire a family, such nomination shall forthwith become invalid and the.

Within 90 days a fresh nomination in favour of one or more members of this family [Section 6(4) read with Rule 6(3)]

4) A nomination or a fresh nomination or a notice of modification of nomination shall be signed by the employee or , if illiterate, shall bear his thumb impression in the presence of two witnesses, who shall also sign declaration to that effect in that nomination, fresh nomination or notice of modification of nomination as the case may be [Rule6(5)].

5) A nomination may, subject to provisions of sub-section(3) and (4) of section 6 be modified by an employee any time after giving to his employer a written notice of his intention to do so. [Section 6(5)].

6) A nomination or fresh nomination or notice of modification of nomination shall take effect from the date of receipt of the same by the employer. [Rule 6(6)]

5.APPLICATION OF GRATUITY- i) An employee who is eligible for payment of Gratuity under this Act, or any person authorized, in writing , to act on his behalf , shall apply ordinarily

within thirty days from the date of Gratuity become payable, Provided that where the date of superannuation or retirement of an employee is known, the employee may apply to the employer before thirty days of superannuation or retirement [Rule 7 (1)].

ii) A nominee of an employee who is eligible for payment of gratuity shall apply, ordinarily within thirty days from the date the gratuity become payable to him, to the employer. [Rule 7(3)]

iii) A legal heir of an employee who is eligible for payment of gratuity shall apply ordinarily within one year from the date the gratuity became payable to him, to the employer. [Rule 7(3)].

iv) An application for payment of gratuity filed after the expiry of the period specified above shall also be entertained by the employer if the applicant adduces a sufficient reason for the delay. [Rule 7(5)].

6. PAYMENT OF GRATUITY- i) Gratuity shall be payable to the 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. Disablement means such disablement which incapacitates an employee for the work which he was capable of performing before the accident or disease resulting in such disablement [Section 4(i)]

ii) 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 drawn by the employee concerned : Provided that in the case of a piece rate employee, daily wages shall be computed on the average of the total wages received by him for a period of three 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 case of an employee employed in a seasonal establishment, the employer shall pay the gratuity at the rate of seven days' wages for each season. [Section 4(2)]

iii) The amount of Gratuity payable to an employee shall not exceed twenty months' wages. [Section 4(3)].

7. FORFEITURE OF GRATUITY- i) The gratuity of an employee, whose service has been terminated for any act, willful omission or negligence causing any damages or loss to, or destruction of, property belonging to the employer, shall be forfeited to the extent of the damage or loss so caused.

ii) The gratuity payable to an employee shall wholly be forfeited-

- a) if the service of such employee have been terminated for his riotous or disorderly conduct or any other act violence on his part, or
- b) if the service 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 corded of his employment. [Section4 (6)].

8.NOTICE OF OPENING ,CHANGE OR CLOSEURE OF THE ESTABLISHMENT-

- i) A notice shall be submitted the employer to the controlling authority of the area within thirty days of an change in the name, address, employer or nature of business. [Rule 3(3)].
- ii) Where an employer intends to close down in the business he shall submit a notice to the controlling author of the area atleast sixty days before the intended closure. [Rule3(3)].

9.APPLICATION TO CONTROLLING AUTHORITY FOR DIRECTION- if an employer-

- i) refuses to accept a nomination or entertain an application for payment of gratuity, or
- ii) issues a notice either specifying and amount of gratuity which is considered by the applicant less than what is payable or rejecting eligibility to payment of gratuity, or iii) having received an application for payment of gratuity, fails to issue notice within fifteen days, the claimant employee, nominee or legal heir , as the case may be may within ninety days of the occurrence of the cause for application, apply to the controlling Authority for issuing a direction under sub-section (4) of section-7 with as many as extra copies as are the opposite party; provided that the controlling Authority may accept any application on sufficient cause being shown by the applicant, after the expiry of the period of ninety days. (Rule -10)

10.APPELAL – Any person aggrieved by an order of the controlling authority may, within sixty days from the date of receipt of the order, prefer an appeal to the Regional Labour Commissioner (Central) by sufficient cause from preferring the appeal within the said period of sixty days, extent the said period by a further period of sixty days. [Section 7(7)].

11. MACHINERY FOR ENFORCEMENT OF THE ACT OR RULES IN CENTRAL GOVERNMENT SPHERE-

All Assistant Labour Commissioner (Central) have been appointed as Controlling Authorities and all the Regional Labour Commissioner (Central) as Appellate Authorities.

12. POWER OF CONTROLLING AUTHORITY – The Controlling Authority for the purpose of conducting an inquiry as to the amount of gratuity payable to an employee or as to the admissibility of any claim of , or in relation to, an employee for payment or gratuity , or as the person entitled to receive the gratuity shall have the same powers as are vested in a court, under the Code of Civil Procedure, 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; and

d) issuing commissions for the examination of witnesses.

[Section 7(5)].

13. RECOVERY OF GRATUITY – if the amount of gratuity payable is not paid by the employer, within the prescribed time, to the person entitled thereto 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 at the rate of nine percent per annum, from the date of expiry of the prescribed time, as arrears of land revenue and pay the same to the person entitled thereto. [Section 8]

14. PROTECTION OF GRATUITY – No gratuity payable under the payment of the Gratuity Act and the rules made there under shall be liable to attachment in execution of any decree or order of any civil, revenue or Criminal Court. [Section 9(1)].

15. PENALTIES FOR OFFENCES-i) Whoever, for the purpose of avoiding any payment to be made by himself or of annealing any proof persons 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 one thousand rupees or with both; [Section 9(1)].

ii) An employer who contravenes, or makes default in complying with, any of the provisions of the Act or any Rule or order made there under shall be punishable with imprisonment for a term which may extend to one year, or with fine which may extend to one thousand rupees or with both .

Provided that if the offence relates to non-payment of any gratuity payable under the Payment of the Gratuity Act. The employer shall be punishable with imprisonment for a term which shall not be less than three months 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. [Section 9(2)].

16,. DISPLAY OF NOTICE – The Employer shall display conspicuously a notice at or near the main entrance of the establishment in bold letters in English and in the language understood by the majority of the employees specifying the name of the officer with designation authorised by the employer to receive on his behalf notices under the Payment of Gratuity Act or the rules made there under. (Rule 4)

17,. DISPLAY OF AVSTRACT OF THE ACT AND RULES – The Employer Shall display an abstract of the Payment of the Gratuity Act and the Rules made there under in English and in the language understood by the majority of the employees at the conspicuous at or near the main entrance of the establishment. (Rule 20).