

3.8 THE PAYMENT OF GRATUITY ACT, 1972

1. APPLICABILITY OF THE ACT

Initial Applicability (Sec.1(3))	Continued Applicability [Sec.1(3A)]
<p>The Act applies to –</p> <p>(a) Every Factory, Mine, Oilfield, Plantation, Port and Railway Company,</p> <p>(b) Every Shop or Establishment within the meaning of any law for the time being in relation to shops and establishments in a State, in which 10 or more persons are employed, or were employed, on any day of the preceding 12 months,</p> <p>(c) Such other establishments or class of establishments, in which 10 or more employee are employed, or were employed, on any day of the preceding 12 months, as specified by Central Government Notification.</p>	<p>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 10.</p>

➤ **Right to receive gratuity**

An employee is eligible to receive gratuity under the Act, if -

- He is employed in an establishment to which the Act applies (Sec.1)
- He is an employee as per Sec.2(e).
- He has been in continuous service of 5 years – subject to some exceptions.

2. DEFINITIONS

(Sec.2)

➤ **Appropriate Government [Sec. 2(a)]**

- *In relation to any of the following establishment, AG means CG:*
 - (i) An establishment belonging to, or under the control of, CG.
 - (ii) An establishment, being a factory, belonging to, or under the control of, CG.
 - (iii) An establishment connected with a railway company, a major port, a mine or an oil field.
 - (iv) An establishment having branches in more than one state.
- *In relation to any other establishment, AG means SG.*

➤ **Family [Sec.2(h)]**

In the case of a male employee, family means-	In the case of a female employee, family means –
<ul style="list-style-type: none"> • The employee himself • Wife of employee • Children of employee (whether married or unmarried) • Dependent parents of employee 	<ul style="list-style-type: none"> • The employee herself • Husband of employee • Children of employee (whether married or unmarried) • Dependent parents of employee

<ul style="list-style-type: none"> • Dependent parents of wife of employee • Widow and children of predeceased son of employee 	<ul style="list-style-type: none"> • Dependent parents of husband of employee • Widow and children of predeceased son of employee.
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If – the personal law of an employee permits adoption by him/her of a child; and
 - the employee lawfully adopts a child

Then – the 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 the person making such adoption permits such adoption

Then – such child shall be deemed to be excluded from his/her family.

➤ **Factory [Sec.2(g)]**

'Factory' means -	'Factory' does not include -
<p>Any premises including the precincts (adjoining area) thereof –</p> <p>(i) wherein 10 or more workers are working or were working on any day of the preceding 12 months, and in any part of which a manufacturing process is being carried on with the aid of power, or is ordinarily so carried on; or</p> <p>(ii) wherein 20 more workers are working or were working on any day of the preceding 12 months, and in any part of which a manufacturing process is being carried on without the aid of power, or is ordinarily so carried on.</p>	<p>(i) a mine covered under the Mines Act, 1952;</p> <p>(ii) mobile unit belonging to the armed forces of the Union;</p> <p>(iii) a railway running shed;</p> <p>(iv) a hotel, restaurant or eating place.</p>

➤ **Employee [Sec. 2(e)]**

Employee means –

- Any person (other than an apprentice)
- Employed on wages
- In any establishment, factory, mine, oilfield, plantation, port or railway company or shop
- To do any work (i.e. skilled, unskilled, manual, supervisory, technical or clerical)
- Whether the terms of employment are express or implied
- Whether or not he is employed in a managerial or administrative capacity.

Employee does not include –

- A person who holds a post under CG or SG
- If he is governed by any other Act or by any Rules providing for payment of gratuity:

➤ **Employer [Sec.2(f)]**

- In relation to any establishment, factory, mine, oilfield, plantation, port or railway company or shop belonging to or under the control of the CG or SG, employer means

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- (a) the person or authority appointed by AG for the supervision and control of employers;
 - (b) head of the Ministry or the Department concerned, in case no person or authority is appointed by AG for the supervision and control of employees.
- ***In relation to any establishment, factory, mine, oilfield, plantation, port or railway company or shop belonging to or under the control of a local authority, employer means –***
 - (a) the person or authority appointed by the local authority for the supervision and control of employees.
 - (b) The Chief Executive Officer of the local authority, in case no person or authority is appointed by the local authority for the supervision and control of employees.
 - ***In any other case, employers means –***
 - (a) the person or the authority having the ultimate control over the affairs of the establishment;
 - (b) the manager or the managing director (or any other person by whatever name called) to whom the affairs of the establishment are entrusted.
- **Wages [Sec.2(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
 - Which are paid or payable to him in cash.
 - ***Wages includes***
 - Dearness allowance.
 - ***Wages does not include –***
 - Any bonus, commission, house rent allowance, overtime wages and other allowances.
- **Superannuation [Sec.2(r)]**
Superannuation means
- The attainment by the employee of such age.
 - as is fixed in the contract or conditions of service
 - As the age on attainment of which the employee shall vacate the employment.
- **Retirement [Sec.2(q)]**
Retirement means termination of service of an employee other than on superannuation.
- **Controlling authority [Sec.2(2) and 3]**
- Controlling authority means an authority appointed by AG u/s 3 [Sec.2(d)]
 - As per Sec.3, AG may, by notification in the official Gazette, appoint any officer to be a controlling authority, who shall be responsible for the administration of this Act. AG may appoint different controlling authorities for different areas.
- **Completed year of service [Sec. 2(b)]**
Completed year of service means continuous service for one year.
- **Meaning of Continuous Service [Sec. 2A(1):**

Meaning	Permissible interruptions
An employee shall be said to be in continuous service for a period if he has, for that period, been in uninterrupted service, or service with permissible interruptions, whether such uninterrupted or interrupted service was rendered before or after the commencement of this Act.	(a) Sickness, (b) Accident, (c) Leave, (d) 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, standing orders, rules or regulations governing the employees of the establishment), (e) Lay – off, (f) Strike or Lock – out or cessation of work not due to any fault of the employee.

- **Deemed Continuous Service:** Where an employee is not in continuous service as defined above, he shall be deemed to be in continuous service under the employer, if the following minimum working days conditions are satisfied –

Seasonal Establishments	Other than Seasonal Establishments [Sec.2A(2)]	
[Sec.2A(3)]	For 1 year period	For 6 months period
Not less than 75% of the number of days on which the establishment was in operation during such period.	<ul style="list-style-type: none"> • 190 days, in the case of any employee employed below, the ground in mine or in an establishment which works for less than 6 days in a week, and • 240 days, in any other case, out of 12 calendar months preceding the date of calculation. 	<ul style="list-style-type: none"> • 95 days, in the case of any employee employed below, the ground in mine or in an establishment which work for less than 6 days in a week, and • 120 days, in any other case, out of 6 calendar months preceding the date of calculation.

- **Inclusion of certain days:**

For the purposes of Sec.2A(2), the number of days on which an employee has actually worked under an employer shall include the days on which –

- (a) he has been laid –off under an agreement or as permitted by standing order made under the Industrial Employment (Standing Orders) Act, 1946, or under the Industrial Disputes Act, 1947, or under any other law applicable to the establishment,
- (b) he has been on leave with full wages, earned in the previous year,
- (c) he has been absent due to temporary disablement caused by accident arising out of and in the course of his employment, and
- (d) in the case of a female, she has been on maternity leave, however, the total period of such maternity leave does not exceed 12 weeks.

- **Notification [Sec.2(k)]**

- Notification means a Notification published in the Official Gazette.
- The Appropriate Government may by Notification, make Rules for the purpose of carrying the provisions of the Act. [Sec.15]

➤ **Prescribed [Sec.2(o)]**

Prescribed means prescribed by Rules made under this Act.

Note: (a) An employee who is re – employed without any break in service, (b) a retrenched employee, and (c) an employee resigning from service, will be eligible for Gratuity.

3. DETERMINATION AND PAYMENT OF GRATUITY

(Sec.7)

➤ **Application for payment of gratuity**

Application by whom?

- An employee who is eligible for payment of gratuity
- Any person authorised in writing by such employee
- Nominee of the employee (if the deceased employee had made a nomination)
- Legal heir of the employee (if the deceased employee had not made any nomination)1 years

Application to whom?

- Application shall be made to the employee.

Manner of making application

- The application shall be made in writing
- Ordinarily, the application shall be made within 30 days from the date gratuity becomes payable.
- If the date of superannuation or retirement of the employee is known in advance, the employee may apply to the employer before 30 days of date of superannuation or retirement.
- The application shall require the employer to pay the gratuity to the employee.

➤ **Determination of amount of gratuity**

Determination by employer

- As soon as the gratuity becomes payable, the employer shall determine the amount of gratuity.
- The employer shall give notice to the person to whom gratuity is payable as well as the controlling authority. The notice shall specify the amount of gratuity determined by the employer.
- The employer has to determine the gratuity, and give notice to the person to whom gratuity is payable and controlling authority irrespective of the fact whether an application for payment of gratuity has been made or not.

➤ **Payment of gratuity**

Time limit

Within 30 days of gratuity becoming payable, the employer shall pay the gratuity to the person to whom it is payable.

Consequences of default by employer

- If the employer fails to pay the gratuity within 30 days of gratuity becoming payable, he shall be liable to pay simple interest at such rate as may be notified by CG from time to time.

- The interest shall be paid for the period starting with the due date of payment of gratuity and ending with the actual date of payment of gratuity.

Consequences of default by employee

The employer shall not be liable to pay any interest, if –

- The delay in payment of gratuity is due to the fault of the employee; and
- The employer has obtained permission in writing from the controlling authority for delayed payment on such ground.

➤ **Dispute as to gratuity**

Nature of disputes

Dispute may arise as to –

- The amount of gratuity payable, or
- The admissibility of any claim of an employee for payment of gratuity: or
- The person entitled to receive the gratuity.

Duty of employer in case of dispute

In case of dispute, the employer shall deposit –

- with the controlling authority
- such amount as he admits to be payable by him.

Inquiry by controlling authority

- The controlling authority shall hold an inquiry. The proceedings before the controlling authority shall be deemed to be judicial proceedings.
- The controlling authority shall give a reasonable opportunity of being heard to the parties concerned.
- Thereafter, the controlling authority determines the gratuity payable. If amount determined by the controlling authority is more than the amount deposited by the employer, the controlling authority shall direct the employer to pay the balance amount.

Powers of controlling authority

For the purpose of concluding an inquiry, the controlling authority shall have the following powers vested in a civil court:

- (a) Summoning and enforcing the attendance of any person and examining him on oath.
- (b) Requiring the discovery and production of documents.
- (c) Receiving evidence on affidavits.
- (d) Issuing commission for the examination of witnesses or documents.

Appeal against the order of controlling authority

- Any person aggrieved by an order of the controlling authority may prefer an appeal with AG or such other authority as AG may specify in this behalf (hereinafter called as appellate authority).
- The appeal may be filed within 60 days of receipt of order of the controlling authority. However, if the appellate authority is satisfied that the applicant was prevented by sufficient cause from filing the appeal within the specified period of 60 days, it may admit the appeal within a further period of 60 days.
- Appeal by employer shall not be admitted unless at the time of preferring the appeal, the employer has deposited with the appellate authority a sum equal to the amount of gratuity determined by the controlling authority.

- The appellate authority shall give a reasonable opportunity of being heard to the parties concerned.
- Thereafter, the appellate authority may confirm, modify or reverse the decision of the controlling authority.

4. ELIGIBILITY FOR, AND AMOUNT OF GRATUITY (Sec.4)

➤ Eligibility

Gratuity shall be payable to an employee on the termination of his employment after he has rendered continuous service for not less than 5 years –

- On his superannuation, or
- On his retirement or resignation, or
- On his death or disablement due to accident or disease. [Here, the condition as to 5 years of continuous service is not applicable]

Note: Disablement means such disablement as incapacitates an employee for the work which he was capable of performing service is not applicable]

➤ Payee

Generally, Gratuity is payable to the employee himself, However, Gratuity is payable to the following persons in the situations given below –

Situation	Gratuity Payable to
Death of employee, and nomination has been made.	Nominee(s).
Death of employee, and no nomination has been made.	Heir(s)
Where Nominee(s) or Heir(s) is a Minor	Deposited with controlling Authority, who shall invest the same for the benefit of such Minor in term deposit with SBI or its Subsidiaries or any Nationalized Bank, till such Minor attains majority.

5. REDUCTION AND FORFEITURE OF GRATUITY [Sec.4(6)]

➤ Computation [Sec.4(2)]:

Establishment	Computation of Gratuity Amount
Establishment other than seasonal Establishment i.e. General Rule	$15/26 \times \text{Last Drawn Salary} \times \text{No. of completed years of service or part thereof in excess of 6 months.}$ In case of Piece Rate Employee, Daily Wages shall be computed on the average of the total wages of the 3 months preceding the termination of employment (Wages for Overtime work shall not be included)
Seasonal Establishment	<ul style="list-style-type: none"> • Those who work throughout the year: 15/26 rule as above. • Those who work only during the season: 7 days gratuity for each season.

➤ Maximum [Sec.4(3)]:

The amount of gratuity Payable to an employee shall not exceed Rs.1000000.

➤ **Disabled Employee [Sec.4(4)]:**

When an employee becomes disabled due to any accident or disease and is not in a position to do the same work and re-employed on reduced wages on some other job, the gratuity will be calculated in 2 parts –

- (a) For the period preceding the disablement: on the basis of wages last drawn by the employee at the time of his disablement.
- (b) For the period subsequent to the disablement; on the basis of the reduced wages as drawn by him at the time of the termination of services.

➤ **Better Terms [Sec.4(5)]:**

Sec.4 shall not affect the right of an employee to receive better gratuity under any award or agreement or contract with the employer. However, the maximum statutory limit u/s 4(3) cannot be reduced by mutual settlement or agreement.[Bharat Commerce and Industries vs Ram Prasad]

6. NOMINATION

(Sec.6)

In case of termination of service due to death of employee, the gratuity should be paid to his Successors/Heirs. To avoid complications and controversies in such payment, the employee shall make a nomination. The provisions relating to nomination are –

➤ **Nomination [Sec.6(1)]**

Each employee, who has completed 1 year of service, shall make a nomination for the purpose of the sec.4(1) Second Proviso. Nomination shall be made in Form F, in duplicate within 30 days of completion of 1 year of service. If the form is filed after the specified period, but with reasonable grounds of delay, it shall be valid and accepted by the employer.

➤ **Multiple Nominees [Sec.6(2)]:**

An employee may, in his nomination, distribute the amount of gratuity payable to him under this Act, amongst more than one nominee.

➤ **Family [Sec.6(3)]:**

If an employee has a family at the time of making a 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. [Sec Note below for “Family”]

➤ **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(s), but if the employee subsequently acquires a family, such nomination shall forthwith become invalid and the employee shall make a fresh nomination in favour of member(s) of his family. This fresh nomination should be made in Form G, in duplicate, within 90 days of acquiring a family.

➤ **Modification [Sec.6(5)]:**

A nomination may, subject to Sec.6(3) and 6(4), be modified by an employee at any time, after giving to his employer a written notice of his intention to do so. This modification should be made in Form H and be in duplicate.

➤ **Death of Nominee [Sec.6(6)]:**

If a nominee pre-deceases the employee, the interest of the nominee shall revert back to the employee, who shall file a fresh nomination, in respect of such interest. This modification should be made in Form H and be in duplicate.

➤ **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. The Employer shall verify the service particulars of the employee as given in the Nomination Form, and return one copy of the Form to the employee, as acknowledgement.

7. PROTECTION OF GRATUITY (Sec.13)

➤ **Nature of protection**

- Gratuity payable to an employee shall not be liable to attachment in execution of any decree or order of the Civil or Revenue or Criminal Court.
- It is immaterial as to whether the gratuity is payable to the employee –
 - (a) Under the Act: or
 - (b) In an establishment exempted u/s 5.

8. RECOVERY OF GRATUITY (Sec.8)

➤ **Recovery certificate**

- If the employer fails to pay the gratuity within the prescribed time (i.e. within 30 days of termination of employment), the controlling authority is empowered to issue a certificate to the collector to recover the amount of gratuity.
- Before issue to such certificate, the controlling authority shall give the employer a reasonable opportunity of being heard.

➤ **Payment of interest**

- The employer shall also be liable to pay compound interest at such rate as may be notified by CG from time to time.
- The interest shall be paid starting from the date of expiry of prescribed period for payment of gratuity and ending with the actual date of payment of gratuity.
- However, the interest payable shall not exceed the amount of gratuity payable.

➤ **Recovery by collector**

The gratuity shall be recovered by the collector in the same manner as if it were arrears of land revenue. The gratuity so recovered shall be paid to the person entitled to payment of gratuity.

9. COMPULSORY INSURANCE (Sec. 4A)

➤ **Compulsory Insurance [Sec.4A(1)]:**

Every employer shall obtain insurance for his liability for payment of Gratuity under the Act, from – (a) the LIC, or (b) any other prescribed Insurer. However, the following categories of employers need not obtain such insurance cover –

- (a) Employer of an establishment belonging to or under the control of Central / State Government.
- (b) Any other Employer, who has established an Approved Gratuity Fund u/s 4A(2).

➤ **Approved Gratuity Fund [Sec.4A(2)]:**

The Appropriate Government may exempt-

- (a) Employers who have already established an Approved Gratuity Fund in respect of his employees and who desires to continue with such arrangement, and
- (b) Employers having 500 or more persons, and who establishes and Approved Gratuity Fund in the prescribed manner.

➤ **Registration [Sec.4A(3)]:**

Every employers shall get his establishment registered with the Controlling Authority. One those employers who have taken an insurance u/s4A(1) or have established an Approved Gratuity Fund u/s 4A(2), shall be registered.

➤ **Rules [Sec.4A(4)]:**

To give effect to Sec.4A, the Appropriate Government may make Rules including matters such as – (a) composition of Board of Trustees of the Approved Gratuity Fund, and (b) recovery by the Controlling Authority of the amount of gratuity payable to employee, from 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.

➤ **Default [Sec.4A(5) & (6)]:**

If the employer fails to pay the premium to the Insurer or to contribute to a Gratuity Fund, he shall be liable to pay the amount of gratuity including interest, if any, on delayed payments, to the Controlling Authority, Contravention thereof is punishable with fine upto Rs.10,000 and in case of continuing offence with a further fine of upto Rs.100 per day of default.

10. EXEMPTION FROM PROVISIONS OF THE ACT

(Sec.5)

➤ **Exemption by whom?**

The exemption may be given by AG.

➤ **Manner of giving exemption**

The exemption can 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 specified in the notification.
- The exemption may be given prospectively or retrospectively.
- The exemption may be given from the operation of all or any of the provisions of any Scheme.

➤ **Conditions for giving exemption**

The exemption may be given if AG is of the opinion that the employees are in receipt of gratuity not less favourable than the benefits provided under this Act.

11. INSPECTORS

(Sec.7A and 7B)

➤ **Manner of appointment**

- The inspectors shall be appointed by AG by Notification in the Official Gazette.
- Every inspector shall be deemed to be a 'public servant' within the meaning of Sec.21 of IPC.

➤ **Number and jurisdiction**

- Such number of inspectors may be appointed as AG may deem fit.
 - AG may define the area to which the authority of an inspector shall extend. Where two or more inspectors are appointed for the same area, AG may distribute or allocate work to be performed by them (i.e. AG may define the limits within which the inspectors shall exercise jurisdiction).
- **Power of inspector**
- (a) To call such information from the employer as he considers necessary.
 - (b) To enter into and inspect, at all reasonable times, any premises of any establishment, factory, mine, oilfield, plantation, port or railway company or shop to which this Act applies, any books, registers, records, notices and other documents.
 - (c) To examine the employer and his servants.
 - (d) To make copies and take extracts of any books, registers, records, notices and other documents.
 - (e) To exercise such other powers as may be prescribed.
- **Purpose of appointment**
- To ascertain whether or not the provisions of the Act have been complied with by an employer.
- **Duties of owners etc.**
- Any person required to produce any accounts, books, register or other documents or to give information by an Inspector shall be legally bound to-
- (a) produce accounts, books, register or other documents required by the Inspector;
 - (b) give information required by the Inspector.