

THE PAYMENT OF GRATUITY ACT, 1972 AND RULES, 1984

The Payment of Gratuity Act came into force on 16th September 1972. It provides for the payment of Gratuity to persons employed in factories, mines oil fields, plantation, ports, Railway, Companies, Shops and other establishments belongs to State or Central Government or local authorities, this Act covers all establishments employing ten or more persons. As per various court verdicts it applies to insurance Company, Firm of Architects, Municipal Corporations, Institutions run on grant-in-aid, which employ ten or more workers. It is a terminal lump sum benefit paid to an employee on the termination of his employment after he has rendered continuous service for not less than Five years a) on his superannuation, b) on his retirement or resignation, c) on his death or disablement due to accident. The Supreme Court held that the existence of other retiring benefits such as Provident Fund and Retrenchment compensation and other benefits did not destroy the claims to Gratuity. It provides further for recovery of the amount and contain an especial provision that compound interest at such specified rate will be payable on delayed payment. This Act administered and enforced by the Controlling Authority appointed under Section 3 of the Act. In the regions of Pondicherry, Mahe, Yanam the Labour Officer (Enforcement) is declared as Controlling Authority under Section 3 of the payment of Gratuity Act 1972 to administer and to enforce the statutory provisions under this Act. Labour Court under the Industries Dispute Act has no jurisdiction to entertain an dispose of the application under this Act. The Act has since been amended in 1984 and further in 1987, 1994, 1997 and 1998. The major changes made are:-

1. As per the amended provision of this Act, also applied to establishments, where the number of employees employed therein falls below ten.
2. The coverage of the Act extent to all persons employed in Administration and Managerial capacity.
3. Controlling authorities have no powers to decide a dispute regarding the admissibility of a claim as well as other statutory matters.
 1. "In the case of death of the employee, gratuity payable to him shall be paid to his nominee, or if no nomination has been made, to his heirs, and where any such nominees or heirs is a minor, the share of such minor, shall be deposited with the controlling authority who shall invest the same for the benefit of such minor in such bank or other financial institution, as may be prescribed until such minor attains majority.>
 2. "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 last drawn by the employee concerned: Provided further that in the case of an employee who is employed in a seasonal establishment, and who is not so employed throughout the year the employer shall pay the gratuity at the rate of seven days' wages for each season. In the case of a monthly rated employee, the fifteen days' wages shall be calculated by dividing the monthly rate of wages last drawn by him by twenty-six and multiplying the quotient by fifteen."
 3. "The amount of gratuity payable to an employee shall not exceed three lakhs and fifty thousand rupees".
 4. "For the purpose of computing the gratuity payable to an employee who is employed, after his disablement, on reduced wages, his wages for the period preceding his disablement shall be taken to be the wages received by him during that period, and his wages for the period subsequent to his disablement shall be taken to be the wages as so reduced".
 5. "Nothing in this section shall affect the right of an employee to receive better terms of gratuity under any award or agreement or contract with the employer.
 6. (a) of Section 4, "the Gratuity of an employee, whose services have been terminated for any act, willful 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;

(b) The gratuity payable to an employee may be wholly or partially forfeited.

1. if the services of such employees have been terminated for his riotous or disorderly conduct or any other act of violence on his part, or
2. If the services 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 course of his employment.
4. Compulsory Insurance of employee's liability to pay Gratuity or getting up of Gratuity fund to the establishment employing 500 or more.
5. Payment of simple interest at a specified rate payable, if gratuity not payable within 30 days from the date it becomes payable.
6. Penalties are made more stringent.

Under this Act, the controlling authority for the purpose of conducting an inquiry under Sub-Section (4) shall have the same powers as are vested in court. while trying a suit under the Civil Procedure Code 1908 in respect of enforcing the attendance on examining the production of documents receiving the evidence on affidavit, issuing commissions for the examination of witnesses. Any enquiry under this Act shall be a judicial proceeding within the meaning of Section 193 and 228 and for the purpose of 196 of the CPC (45/1960).

Any aggrieved persons by the order passed by the controlling authority under Sub-Section 4 may within 60 days prefer an appeal from the date of the receipt of the order to the Appellate authority or appropriate Government or such other authorities. The Inspectors are appointed under Section 7(a) of the Act.

An employee who is eligible for payment of gratuity may file an application within 30 days from the date in which the gratuity payable in FORM-I to the Employer under Section 7(1) of this Act. Legal heir shall apply ordinarily within 1 year in Form V under Rule 7(3) to the employer. The employer within 15 days of the receipt of applications shall issue notice in FORM-L if the claim is found admissible on verification in Form-M if the claim for gratuity is not found admissible to the applicant. The Gratuity payable shall be in cash or in Demand Draft or Bank Cheque to the employee/nominee or legal heir. If an employer refuses to entertain the application under rule 7 the claimant employee nominee or legal heir shall apply in Form - K to the controlling authority under Rule 7(3) within 90 days of the cause of action for issuing direction under Section 7(4). The applicant under Section 7 shall submit Form-Q Rule 15(1) particulars of applicant to issue summons or notice. Application for recovery of Gratuity before the controlling authority shall be filed in Form-T under Rule 19. Application for direction for the payment of Gratuity before the controlling authority under Section 7(4) Rule 10(1) in Form-N to be filed by the applicant within 90 days from the date of cause of action and any delay may be condoned within sufficient cause. The legal heir of the deceased employee may submit application in Form - K to claim Gratuity. Under this Act every employer shall display an abstract of Act and Rules in Form - U in English and in the Regional language in the main entrance of establishments. An employer who contravenes, or makes default in complying with, any of the provisions of this Act, or any rule or order made thereunder shall be punishable with imprisonment for a term which shall not be less than three months but which may extend to one year, or with fine which shall not be less than ten thousand rupees but which may extend to twenty thousand rupees, or with both. Provided that where the offence relates to non-payment of any gratuity payable under this Act, the employer shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to two years 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. Under Section 8 of this Act, "If the amount of gratuity payable under this Act is not paid by the employer, within the prescribed time, to the person entitled thereto, the 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 such rate as the Central Government may, by notification, specify from the date of expiry of the prescribed time, as arrears of land revenue and pay the same to the person entitled

thereto. Provided that the Controlling authority shall before issuing a certificate under this section give the employer a reasonable opportunity of showing cause against the issue of such certificate: Provided further that the amount of interest payable under this section, shall in no case, exceed the amount of gratuity payable under this Act. Under this Act, prescribed Forms are notified as detailed below

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| 1. Controlling authority under the Act | - | Labour Officer |
| | | Deputy |
| 2. Appellate Authority under the Act | - | Labour Commissioner |
| 3. Application for Gratuity claim by legal heir | - | <u>FORM K</u> |
| 4. Notice for payment of Gratuity | - | <u>FORM L</u> |
| 5. Particulars of application under Section 7 | - | Form Q |
| 6. Application for recovery of Gratuity | - | Form T |
| 7. Application for Gratuity claim by applicant | - | Form N |

Limitation: 90 days from the date of cause of action in Form - N Appeal: 60 days from the receipt of the Order under Section 7(8) of the Act.