

SRRF Work shop

PAYMENT OF GRATUITY ACT 1972

INTRODUCTION

Historical Context

- ✘ Earliest concept of gratuity, came with Working Journalists (Conditions of service) & Misc. Prov. Act 1952 – still in use
- ✘ A few State Govts started enacting legislations providing for Gratuity
 - Kerala Industrial Employees Payment of Gratuity Act 1970
 - West Bengal Employees' Payment of Compulsory Gratuity Act 1971.
 - Even some labour courts had awarded Gratuity awards.
- ✘ Central Govt promulgated Payment of Gratuity Act in 1972

APPLICABILITY

- ✘ Every factory, mine, oilfield, plantation or port and railway company. In case of plantation & ports in J&K it will not be applicable.
- ✘ Shops & Establishments as specified by the State Govt. employing more than 10 persons
- ✘ Any other class of Shops & Establishments employing more than 10 persons specified by central Govt. Using this power, central Govt has made Act applicable to
 - all educational institutions employing 10 or more employees
 - all registered trusts & societies employing 10 or more persons (this has since been confirmed by a court decision)
 - Even temples are covered (Jagannath Temple Puri - 1992)
 - Motor transport undertakings
 - Clubs, Lawyer's offices employing 10 or more persons
 - Chamber of commerce & industry

APPLICABILITY.....

- ✘ Govt can issue exemption certificate, where it is proved that establishment has a scheme which is not in any way less favourable than this scheme
- ✘ Panchayats, local bodies not covered.
- ✘ In fact a court case of MCD stated that it was covered, subsequently in 2005 Govt issued notification exempting such bodies.

IMPORTANT DEFINITIONS

Eligibility

- ✘ Gratuity is payable to an employee who at the termination of employment has served 5 years' of continuous service.
- ✘ Termination could be due to superannuation, retirement, resignation or even removal. However if a person is removed on grounds of theft, fraud, dishonesty, behaviour amounting to moral turpitude (assault, rape, sexual abuse, etc.), then Gratuity can be withheld.
- ✘ 5 years' service condition not applicable in case of death / disablement due to accident / disease.

IMPORTANT DEFINITIONS....

Continuous Service

- ✘ Absence from duty because of sickness, accident, leave, layoff or strike, lockout, stoppage of work for which the employee is not at fault will not be considered to be an interruption or break in service.
- ✘ Employee has put in 240 days' work in 12 calendar months preceding the date of calculation, or 190 days if the establishment works less than 6 days a week or the employee works below ground in a mine.
- ✘ Employees in a seasonal establishment need to work for minimum of 75 per cent of the required attendance

CALCULATION OF GRATUITY PAYABLE

- ✘ 15 days wages for every completed year.
- ✘ A month to comprise of 26 days.
- ✘ Formula : $(\text{Basic} + \text{DA})$ of last drawn salary \times $15/26 \times$ No. of years completed service
- ✘ Maximum Gratuity payable is Rs 10 lakhs (S. 4(3))
- ✘ Tax exemption upto max. amount is exempted from tax.

OTHER IMPORTANT ISSUES

- ✘ Time served with an employer cannot be transferred to another employer. Confirmed by courts NS Krishna vs BHEL (1995)
- ✘ Section 4A authorises central Govt to make it compulsory to buy an insurance policy in this regard. However Govt has not used this power so far.
- ✘ Generally employers have started subscribimg to LIC policy in this regard.
- ✘ All employees covered irrespective of their salary level.
- ✘ This entitlement is irespective whether employer is in profits / losses.
- ✘ In case of dispute, employer will need to deposit gratuity payable with relevant labour authority.

✘ Questions ?