

MEPL CLASSES

FACTORIES ACT

WEBSITE - www.meplclasses.com

EMAIL-ID – d2hclasses@mohitsir.com

ADDRESS – 59, JATINDRA MOHAN AVENUE , SOVABAZAR, KOLKATA – 700005

(TIME ALLOTTED – 1 HOURS)

(MARKS ALLOTTED – 30 MARKS)

EACH QUESTION CARRIES 5 MARKS

Question 1.

State whether the following statements are true or false and give reasons therefore with reference to the Payment of Gratuity Act, 1972.

- i. The Payment of Gratuity Act, 1972 is largely based on Kerala Industrial Employees Payment of Gratuity Act, 1972.
- ii. A retrenched employee is also eligible for gratuity
- iii. Where an employee's resignation has not been accepted, then that employee is not eligible to claim gratuity
- iv. Where the negligence of employee causes loss to the employer, then the gratuity shall be wholly forfeited
- v. An appeal against the Controlling Authority's order must generally be made within 60 days.

Answer –

- i. This statement is false because the Payment of Gratuity Act, 1972 is largely based on West Bengal Employees' Payment of Compulsory Gratuity Act, 1971.
- ii. This statement is true because in the case of State of Punjab Vs. Labour Court (1986), it was held that a retrenched employee is also eligible for gratuity. Under section 4 of the Payment of Gratuity Act, 1972 gratuity is payable to every employee on the termination of his employment if he has completed 5 years of continuous service. Hence, in the case of a retrenched employee, he shall be eligible for gratuity upto the date of retrenchment if he has completed 5 years of service. It is assumed that he is retrenched in compliance with the applicable labour laws in this regard and has been paid the required compensation.

- iii. This statement is false as it was held in *Mettur Spinning Mills Vs. Deputy Commissioner of Labour*, (1983) II LLJ 188, that non acceptance of the resignation is no hurdle in the way of an employee to claim gratuity.
- iv. This statement is false because when loss is caused by the negligence of employee, there gratuity shall be forfeited to the extent of the damage or loss so caused as laid down in section 4(6) clause (a) of the Payment of Gratuity Act, 1972.
- v. This statement is true as an appeal against the Controlling Authority's order must be made within 60 days [Section 7 (7) of the Payment of Gratuity Act, 1972]

Question 2.

Explain provision relating to the notice for payment of gratuity.

Answer –

Notice for payment of gratuity

(1) Within fifteen days of the receipt of an application under rule 7 for payment of gratuity, the Employer shall-

- (i) if the claim is found admissible on verification, 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, not being later than the thirtieth day after the date of receipt of the application, for payment thereof, or
- (ii) if the claim for gratuity is not found admissible, issue a notice in Form „M“ to the applicant employee, nominee or legal heir, as the case may be, specifying the reasons why the claim for gratuity is not considered admissible. In either case a copy of the notice shall be endorsed to the controlling authority.

(2) In case payment of gratuity is due to be made in the employer's office, the date fixed for the purpose in the notice in Form „L“ under clause (1) of sub-rule (1) shall be re fixed by the employer, if a written application in this behalf is made by the payee explaining why it is not possible for him to be present in person on the date specified.

(3) If the claimant for gratuity is a nominee or a legal heir, the employer may ask for such witness or evidence as may be deemed relevant for establishing his identity or maintainability of his claim, as the case may be. In that „case, the time limit specified for issuance of notices under sub-rule

(1) shall be operative with effect from the date such witness or evidence, as the case may be, called for by the employer is furnished to the employer.

(4) A notice in Form „L“ or Form „M“ shall be served on the applicant either by personal service After taking receipt or by registered post with acknowledgement due.

(5) A notice under sub-section (2) of section 7 shall in Form “L”

Question 3.

What is the procedure of determining the amount of gratuity as per the Payment of Gratuity Act, 1972. ?

Answer –

Section 7 of the Payment of Gratuity Act, 1972 prescribes the procedure for determination of the amount of gratuity. As soon as the gratuity becomes payable the employer shall whether the employee has made application or not, determine the amount of gratuity. Then he isto give notice to the person to whom the gratuity is payable and also to the controlling authority, specifying the amount of gratuity so determined. The employer shall arrange to pay the amount of gratuity within 30 days from the date of it becoming payable to the person to whom it is payable. If it is not paid within stipulated period the employer is liable to pay interest at the rate of 10 % per annum. If the delay in payment is due to the fault of the employee and the employer has obtained permission in writing from the controlling authority for the delayed payment, on this ground, no interest is payable. If the claim for gratuity is not found admissible, issue a notice in Form „M“ to the applicant employee, nominee or legal heir, as the case may be, specifying the reasons why the claim for gratuity is not considered admissible. In either case a copy of the notice shall be endorsed to the controlling authority.

Question 4.

Who is deemed to be covered under 'family' of an employee under the provisions of the Payment of Gratuity Act, 1972? Can an adopted child be considered in terms of family under this Act?

Answer –

Family [Section 2(h) of the Payment of Gratuity Act,1972]:

In relation to an employee, 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;

Adopted child: 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/her family.

Question 5.

Azee Steel Ltd. decided to forfeit the amount of gratuity of its employees 'Artha' and 'Sun' on account of disorderly conduct and other acts which caused loss to the property belonging to the Company. 'Artha' and 'Sun' committed the following acts:

- (i) 'Artha' refused to surrender the occupied land belonging to the Company.
 - (ii) 'Sun' after superannuation continued to occupy the quarter of the Company for six months.
- Against the decision of the company, "Artha" and "Sun" applied to the appropriate authorities for relief. The company contented that the right to gratuity is not a statutory right and the forfeiture of the amount of gratuity was within the law. Examine the contention of the company and the decision taken by the company to forfeit the amount of gratuity in the light of the Payment of Gratuity Act, 1972.

Answer –

As per the provisions of section 4(1) of the Payment of Gratuity Act, 1972, gratuity is payable to an employee on 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.

Forfeiture of Gratuity: In accordance with the provisions of Section 4(6) of the Payment of Gratuity Act, 1972, if the services of any employee have been terminated for any act, willful omission, or negligence causing any damage or loss to or destruction of property belonging to the employer, the gratuity shall be forfeited to the extent of the damage or loss so caused. Further, if the services of such an 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, the gratuity payable to the employee may be wholly or partially forfeited. The correctness of the decision taken by Azee Steel Ltd .in the given case, regarding forfeiture of gratuity to its employees.

Artha and Sun may be tested in the light of Section 4(6) of the Payment of Gratuity Act, 1972 as referred above.

- (i) Artha, as per the given facts, refused to surrender the occupied land belonging to the company. This reflects unauthorized occupation or holding of land and deliberate appropriation of the company's property by him. This may be termed as disorderly conduct on the part of Artha. Hence, his gratuity may be forfeited by the company as per the provisions of section 4(6)the Payment of Gratuity Act, 1972
- (ii) Sun had wrongfully continued to occupy the company's quarter for six months after superannuation. Sun may have caused a deliberate loss to the company by his wrongful occupation for 6 months as the quarter could not be provided to another employee and the company may have incurred the cost of rent in such case. Hence, the company is entitled to charge rent from him and after adjusting other dues the remaining amount of gratuity if any, should be paid. In a similar case to the situation given in the question, [Wazir Chand vs. Union of India, 2001, LLR172 (SC)],the court has taken view that there is no illegality in

those rental dues being adjusted against the death-cum-retirement dues of the appellant.

Question 6.

Mr. Avdesh is an employee with Ameesha Limited which is governed by the Payment of Gratuity Act, 1972. One day the head of the accounts department observed that Mr. Avdesh has been committing theft of large amounts from the company in the course of employment. An enquiry was made into the matter wherein he was found guilty and consequently, his services were terminated. State in this connection, whether the gratuity payable to him shall wholly or partly be forfeited.

Answer to Question 6.

Reduction and forfeiture of Gratuity: Under Section 4(6)(a) of the Payment of Gratuity Act, 1972, in the case of damage, loss or destruction of property of employer, due to the willful omission or negligence of the employee, the amount of gratuity to the extent of loss or damage shall be forfeited by the employer. Further, under section 4(6)(b), the gratuity payable to an employee may be wholly or partially forfeited, where the services of an employee are terminated on the ground of:

- (i) riotous or disorderly conduct or act of violence; or
- (ii) committing an offence involving moral turpitude in the course of his employment. Theft is an offence involving moral turpitude and consequently, if the services of an employee had been terminated for committing theft in the course of his employment, the gratuity payable to him under the provisions of the Act shall be wholly forfeited in view of Section 4(6)(b)(ii).

[Bharat Gold Mines Ltd. Vs Regional Labour Commissioner (Central)] In the given question, Mr. Avdesh has committed theft. Theft leads to indiscipline and is an offence involving moral turpitude. Also, Mr. Avdesh was found guilty of theft of large amounts and hence his services has been terminated. Thus, the gratuity payable to him can be wholly forfeited.

Question 7.

Giza Limited is a company dealing in the manufacture of fine crockeries made of very good quality ceramic. Due to the pandemic the production has been reduced by 10%. Mr. Gagan (who has been working with the company since last 6 years) has to be retrenched. Advise the company about the payment of gratuity to Mr. Gagan. Give your answer as per the provisions of the Payment of Gratuity Act, 1972.

Answer to Question 7.

According to section 4 of the Payment of Gratuity Act, 1972 gratuity is payable to every employee on the termination of his employment if he has completed 5 years of continuous service. Also, as per the case of State of Punjab Vs. Labour Court (1986), it was held that a retrenched employee is also eligible for gratuity. Hence, in the case of a retrenched employee, he shall be eligible for gratuity upto the date of retrenchment if he has completed 5 years of service. In the given question, since Mr. Gagan has completed 5 years of service and it is assumed that he is retrenched in compliance with the applicable labour laws in this regard and has been paid the required compensation, so he will be eligible to receive the gratuity.

Question 8.

X is due to retire as a factory manager from a Paint Manufacturing Company and his present salary is ₹ 40,000. He has worked in the factory for about 22 years and was on leave for 6 months in the 15th year due to an injury suffered at the factory. After recovery he resumed his duty as a Chief Supervisor and worked for 7 years. Please calculate the amount of gratuity payable to him.

Answer to Question 8.

Calculation of Gratuity amount: [Section 4(2) of the Payment of Gratuity Act, 1972] 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. 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.

Mr. X is entitled to get the gratuity for the full period of 22 years which he worked in the factory. The layoff is due to an injury suffered by him at the factory only and is considered as an injury during employment. Therefore, he is eligible for full gratuity as per the provisions of the Gratuity Act, 1972. Accordingly, gratuity shall be calculated as follows: Facts given states that X, retired from his 22 years of service with present salary ₹ 40, 000 (wages last drawn). Accordingly, gratuity shall be calculated as

a) Present salary	₹ 40,000
b) No. of years of eligible service	22 years
c) Eligible amount of gratuity as per Sec. 4(2) ₹ 40,000/- x 22 years x 15/26	₹ 5,07,692.31

Question 9.

K is an employee of RST Limited, a software company which works five days, in a week. K was not in continuous service during the financial year 2009-10. However, she worked only for 150 days because she was on maternity leave with full pay for 50 days. Referring to the provisions of the Payment of Gratuity Act, 1972 decide, whether K is entitled to gratuity payable under the Act?

Answer to Question 9.

As per sub section 1 of Section 2 A of the Payment of Gratuity Act, 1972 an employee shall be said to be in continuous service for a period if he has, for that period, been in uninterrupted service. This uninterrupted service will include the period during which the employee could not work on account of sickness, accident, leave, lay-off, strike or a lockout or cessation of work not due to any fault of an employee.

Further sub section 2 of section 2A states that where any employee (not being an employee employed in a seasonal establishment) is not in continuous service (as defined in sub section 1) for any period of one year he shall be deemed to be in continuous service under the employer for the said period of one year, if the employee during the period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than

- (i) one hundred and ninety days, in the case of any employee employed below the ground in a mine or in an establishment which works for less than six days in a week, and
- (iii) two hundred and forty days, in any other case.

The explanation to section 2A 2 clarifies that for the purposes of calculating the number of days on which an employee has actually worked under an employer shall include the days on which 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.

Thus, as per the above provisions K will be considered to be in continuous employment during the year for a period she worked +

the period for which she was on maternity leave = $150 + 50 = 200$ days. Since, she worked in an establishment which works for five days in a week for more than 190 days, so she will be entitled to gratuity.

Question 10.

Mention any 5 purposes for which the ESI fund may be expended?

Answer –

Section 28 of the Employees State Insurance Act, 1948 provides the Central Government may utilize the State Insurance Fund for several specific purposes, few of them are listed below:

✚ payment of benefits and provision of medical treatment and attendance to insured persons

and, where the medical benefit is extended to their families, the provision of such medical benefit to their families in accordance with the provisions of this Act and defraying the charges and costs in connection therewith;

✚ payment of salaries, leave and joining time allowances, travelling and compensatory allowances, gratuities and compassionate allowances, pensions, contributions to provident or other benefit fund of officers and servants of the Corporation and meeting the expenditure in respect of offices and other services set up for the purpose of giving effect to the provisions of this Act;

✚ establishment and maintenance of hospitals, dispensaries and other institutions and the provision of medical and other ancillary services for the benefit of insured persons and, where the medical benefit is extended to their families;

✚ payment of contributions to any State Government, local authority or any private body or individual, towards the cost of medical treatment and attendance provided to insured persons and, where the medical benefit is extended to their families, including the cost of any building and equipment, in accordance with any agreement entered into by the Corporation;

✚ defraying expenditure, within the limits prescribed, on measures for the improvement of the health, welfare of insured persons and for the rehabilitation and re-employment of insured persons who have been disabled or injured.

Question 11.

Define the terms “family” and “immediate employer”

Answer -

Section 2(11) of ESI Act defines the term ‘family’ as all or any of the following relatives of an insured person

- ☐ a spouse;
- ☐ a minor legitimate or adopted child dependent upon the insured person;
- ☐ a child who is wholly dependent on the earnings of the insured person and who is receiving education, till he or she attains the age of 25 years;
- ☐ an unmarried daughter;
- ☐ a child who is in firm by reason of any physical or mental abnormality or injury and is wholly dependent on the earnings of the insured person, so long as the infirmity continues;
- ☐ dependent parents, whose income from all sources does not exceed such income as may be prescribed by the Central Government;

In case the insured person is unmarried and his or her parents are not alive, a minor brother or sister wholly dependent upon the earnings of the insured person.

Immediate employer

Section 2(13) defines the terms ‘immediate employer’ in relation to employees employed by or through him, as a person who has undertaken the execution, on the premises of a factory or an establishment to which this Act applies or under the supervision of the principal employer or his agent, of the whole or any part of any work which is ordinarily part of the work of the factory or establishment of the principal employer or is preliminary to the work carried on in, or incidental to the purpose of, any such factory or establishment, and includes a person by whom the services of an employee who has entered into a contract of service with him are temporarily lent on hire to the principal employer and includes a contractor

Question 12.

What is the registration procedure of the employees under ESI Act, 1948.

Answer –

Registration is the process of obtaining and recording information about his employment which is insurable employment for the purpose of his identification under the Act. This process also

identifies to provide the benefits available under the Act that are related to the contributions paid by the employer on behalf of insured employees. The employee is required to give his details and his family details to his employer so that the employer can register the employee online. A family photo is also to be provided so that the employer can register the employee.

This exercise of registering an employee has to be a onetime exercise in life time of an employee. The insurance number generated on the first occasion of registration is to be used throughout his life time irrespective of change of employment including change of place.

Question 13.

Mention the benefits that are entitled to the insured persons under the ESI Act, 1948

Answer –

Section 46 provides that the insured persons, their dependents shall be entitled to the following benefits-

- (i) Periodical payments to any insured person in case of his sickness;
- (ii) Periodical payments to an insured woman in case of confinement or mis-carriage or sickness arising out of the pregnancy, confinement, premature birth of child or miscarriage;
- (iii) Periodical payments to an insured person suffering from a disablement as a result of an employment injury sustained as an employee;
- (iv) Periodical payments to such dependents of an insured person who dies as a result of an employment injury sustained as an employee;
- (v) Medical treatment for and attendance on insured persons;
- (vi) Payment to the eldest surviving member of the family of an insured person, who has died, towards the expenditure on the funeral of the deceased insured person; if the injured person at the time of his death does not have a family, the funeral payment will be paid to the person who actually incurs the expenditure.

The amount of such payment shall not exceed such amount as may be prescribed by the Central Government. The claim for such payments shall be made within 3 months of the death of the insured person or within such extended period as the Corporation allow in this behalf.

Question 14.

What are the different purposes for which employees' state insurance fund may be utilized by the central government?

Answer to Question 14.

Section 28 of the Act provides the Central Government may utilize the State Insurance Fund only For the following purposes:

- payment of benefits and provision of medical treatment and attendance to insured persons
- payment of fees and allowances to members of the Corporation, the Standing Committee and the Medical Benefit Council, the Regional Boards, Local Committees and Regional and Local Medical Benefit Councils;
- payment of salaries, leave and joining time allowances, travelling and compensatory allowances, gratuities and compassionate allowances, pensions, contributions to provident or other benefit fund of officers and servants of the Corporation and meeting the expenditure in respect of offices and other services set up for the purpose of giving effect to the provisions of this Act;
- establishment and maintenance of hospitals, dispensaries and other institutions;
- payment of contributions to any State Government, local authority or any private body or individual, towards the cost of medical treatment and attendance provided to insured persons;
- defraying the cost (including all expenses) of auditing the accounts of the Corporation and of the valuation of its assets and liabilities;
- defraying the cost (including all expenses) of the Employees' Insurance Courts set up under this Act;
- payment of any sums under any contract entered into for the purpose of this Act by the Corporation or the Standing Committee or by any officer duly authorized by the Corporation or the Standing Committee in that behalf;
- payment of sums under any decree, order or award of any Court or Tribunal against the Corporation or any of its officers or servants for any act done in the execution of his duty or under a compromise or settlement of any suit or other legal proceeding or claim instituted or made against the Corporation;
- defraying the cost and other charges of instituting or defending any civil or criminal proceedings arising out of any action taken under this Act;
- defraying expenditure, within the limits prescribed, on measures for the improvement of the health, welfare of insured persons and for the rehabilitation and re-employment of insured persons who have been disabled or injured; and
- such other purposes as may be authorized by the Corporation with the previous approval of the Central Government.

Question 15.

Inspect whether an employee can be dismissed or punished during sickness under “Employees State Insurance Act, 1948”?

Answer to Question 15.

Section 73 provides that no employer shall dismiss, discharge or reduce or otherwise punish an employee during the period the employee is in receipt of sickness benefit or maternity benefit, nor shall he, except as provided under the regulations, dismiss, discharge or reduce or otherwise punish an employee during the period which he is in receipt of disablement benefit for temporary disablement or is under medical treatment for sickness or is absent from work as a result of illness duly certified in accordance with the regulations to arise out of the pregnancy or confinement rendering the employee unfit for work.

