

* Chapter 189 *
* Unit - IV. Payment of
Gratuity Act, 1972 *

- Gratuity is a lump sum payment made by the employer to the employees when they retire or leave service.
- This act provides payment of gratuity to employees who work in any - factories,
 - mines,
 - plantation,
 - ports,
 - railway companies,
 - shops,
 - & other establishments
- This act has been amended from time to time to deal with prevailing situation.
- The Payment of Gratuity Act enhanced ceiling amount of gratuity from 10 lakhs to 20 lakhs.

* APPLICATION OF ACT :-

Section 1(3) :- The Act applies to,

- every factory, mine, oilfield, plantation, port & railway company.
- every shop or establishment, in

which ten or more persons are employed or were employed, on any day of preceding twelve months.

- and other establishments or class of establishment where 10 or more persons employed within preceding 12 months as central government may specify by notification in this behalf.

* WHO IS EMPLOYEE?

Section 2 (e) = Employee means a person,

- other than apprentice,
- employed for wages,
- whether terms of employment are express or implied,
- for any kind of work,
- manual or otherwise in, connection with work of factory, mine, oilfield, plantation, ports, railway company, shop or other establishments,
- to which this act applies,
- But does not includes,
- person who is governed by or holds post under central or state government,
- or by any rules providing for payment of gratuity.

* WHEN GRATUITY IS PAYABLE?

Section 4(1) : Gratuity shall be payable to termination of an employee or his employment after, when he has rendered service for continuous five years or more than five years.

- on his superannuation,
- or his retirement or resignation,
- or his death or disablement due to accident or disease.

Note :- The termination of employment of an employee is due to death or disablement then it is not necessary continuous service of five years.

* TO WHOM GRATUITY IS PAYABLE?

- Generally, gratuity is payable to employer himself.
- But in case of death of employee, it shall be paid to nominee or legal heirs of employee.
- If nominee or legal heir is minor, then gratuity amount shall be deposited into controlling authority, who invests money for benefit of minor into bank or financial institution, until minor becomes major.

* AMOUNT OF GRATUITY PAYABLE ?

- Gratuity is calculated on the basis of continuous service.
- For every completed year of service at the rate of fifteen days salary.
- The maximum amount of gratuity is Rs. 20 lakhs.
- The payment of gratuity Act has enhanced ceiling amount of gratuity from 10 lakhs to 20 lakhs.

* NOMINATION.

- Every Employee to whom gratuity is payable under The payment of gratuity Act is required to make nomination in respect to rules under this act, for the purpose of payment of gratuity if in case of his death.
- The rules are also provided for change in nomination.

* FORFEITURE OF GRATUITY

Section 4(6)(a) : If any loss or damage, or destruction of property belonging to employer is caused by any act of employee, then gratuity shall be forfeited by employer.

The right of forfeiture is limited to the extent of damage.

Section 4(6)(b) : It deals with case where services of employee have been terminated

- for riotous or disorderly conduct or any other act of violence

- or for any act which involves an offence involving moral turpitude such offence committed by him in course of his employment.

* EXEMPTIONS :-

The appropriate government may exempt factory or other establishment or any employee if the gratuity benefits for employees are not less favourable than conferred under the act.

* THE CONTROLLING AUTHORITY & THE APPELLATE AUTHORITY

- For functioning of operation of this Act Controlling & appellate authority are very important.
- An appropriate government may appoint controlling authority who shall be responsible for administration of the Act, by notification.
- Different appellate & controlling authority may appoint in different areas.
- Section 7(7) of act provides for an appeal being preferred against controlling authority to the appropriate government as may be prescribed by appropriate government on this behalf.

* RIGHTS AND OBLIGATIONS OF EMPLOYEES

Section 7(1) : According to this section person who is eligible for payment of gratuity under the Act or any person authorised shall send written application to the employer.

- Employer shall determine amount of gratuity payable within 30 days from the date gratuity becomes payable.

- In case of death of an employee nominee of employee who is eligible for the payment of gratuity shall apply or inform to the employer within 30 days from the date of gratuity becomes payable to him.
- The application can be sent to employer by personal service or by registered post with acknowledgement due.
- Application for payment of gratuity is filed after 30 days then employee shall give sufficient cause for the delay.

* RIGHTS & OBLIGATIONS OF EMPLOYER

Employers duty to Determine & Pay Gratuity.

- Section 7(2) : As soon as gratuity becomes payable employer shall determine amount of gratuity whether application has made or not.

And shall give notice to the person/ employee to whom gratuity is payable.

& Controlling authority, also specify give notice to authority specifying amount of gratuity determined.

- Section 7(3) : Employer shall arrange to pay amount of gratuity within 30 days from the date of when gratuity becomes payable to whom it is payable.
- Section 7(3A) : If amount of gratuity payable under this act is not paid by employer within prescribed time period, then employer shall payable for gratuity with simple interest of 10% per annum.

Dispute as the amount of gratuity or Admissibility of the claim.

- If claim of gratuity is not allowed or found admissible, then employer shall give notice to employee or nominee or legal heir in the prescribed form.
- Notice should specify why the claim for gratuity is not allowed.
- Employer should also endorse the copy of notice to the Controlling Authority.
- In case of dispute between employer and employee regarding payment of gratuity payable, employer shall deposit such amount with

controlling authority.

• According to Section 7(4)(e) controlling authority shall pay amount of deposit quickly after deposit is made,

- to the applicant, where he is employee

- If applicant is not employee then his legal heirs or nominee if authority is satisfied to the right of applicant to receive amt. of gratuity.

* RECOVERY OF GRATUITY

Section 8 : If payable gratuity amount is not provided by the employer within specific time period, then Controlling authority shall issue a certificate on behalf of aggrieved person to the Collector who shall recover amount payable with compound interest rate as may be prescribed by Central government by notification.

Controlling authority before issuing a certificate under this section shall give employer opportunity of showing cause.

* PROTECTION OF GRATUITY :

- Gratuity has been exempted from attachment of any decree or order of any Civil or Criminal court.
- Statutory protection has given to gratuity.
- Aim of this relief is to provide payment of gratuity to the person entitled without affected by any order or decree of any court.

* MEANING OF CONTINUOUS SERVICE .

- 1) Employee should set to be continuous service for the period he has been in uninterrupted service, including service which may be interrupted on account of sickness, accident, leave, absence from duty, or lockout, layoff.
- 2) Mere absence from duty without leave cannot be said to result in breach of continuity of service.
- 3) Service is not continuous in case of legal termination of service & subsequent re-employment.
- 4) Gratuity cannot be claimed on basis of continuous service on being taken back in service after

break in service of One and half year.

* Chapter 19 *

* UNIT V : Apprentices Act, 1961 *

- The object of this act is to regulate the programme of training of apprentices in industry, by utilizing facilities available for them for on-the-job training.
- Non engineering graduates & diploma holders are eligible for apprenticeship.
- To make all approvals transparent and time bound a portal is setup.
- Apprenticeship can be taken up in new occupations also.

* QUALIFICATIONS FOR BEING ENGAGED AS AN APPRENTICE

- Section 3 : A person shall be qualified for being as an apprentice to undergo articleship training in any trade unless he -
not
- is ^{not} less than 14 years of age and not less than 18 years if he is engaged in hazardous process.

- Satisfied standards of education and physical fitness as may be prescribed.

- different standards can be prescribed with relation to different trade for different categories of apprentices.

* CONTRACT OF APPRENTICESHIP

• Section 4 : It deals with contract of apprenticeship. It states that,

- No person shall be engaged in trade as apprentice unto undergo apprenticeship trade unless such person or minor's guardian has entered into contract of apprenticeship.

- Apprenticeship training shall be commenced on a date on which apprenticeship has been entered into contract.

- Every apprenticeship contract shall contain terms and conditions as may be prescribed by both parties.

- No terms & conditions of contract shall be inconsistent with any provision of this Act.

- Every contract of apprenticeship shall be sent to Apprenticeship Advisor within 30 days and then the details of contract of apprenticeship shall be entered into portal within 7 days for verification & registration.

- If it is a case of objection in the contract, the Apprenticeship advisor shall send objection to the employer within 15 days from date of receipt.

- Apprenticeship advisor shall register of the contract of apprenticeship within 30 days from its receipt.

* NOVATION OF CONTRACTS OF APPRENTICESHIP

- Section 5 : This section provides that where an employer with whom contract of apprenticeship has made, is for any reason unable to fulfil his obligation and with the approval of Apprenticeship Advisor is agreed between the employer, the apprentice or his guardian & any other employer that apprentice shall be engaged as apprentice under other employer for the unexpired portion of period of apprenticeship training.

* REGULATION OF OPTIONAL TRADE

- Section 5A : It states that qualification, period of apprenticeship training, holding of test, grant of certificate and other conditions related to apprentices in ~~optai~~ optional trade shall be as may be prescribed.

* ENGAGEMENT OF APPRENTICE FROM ONE OTHER STATES -

- Section 5B : For the purpose of providing apprenticeship training to apprentices employer may engage apprentices from other states.

* PERIOD OF APPRENTICESHIP TRAINING -

- Section 6 : Period of apprenticeship which shall be specified in contract of apprenticeship shall be -

- In case of trade apprentice, who have been undergone institutional training in school or institution recognized by National Council, have passed all tests, the period of apprence~~ship~~ shall be as prescribed.

Date _____
Page _____

- In case of trade apprentice who have undergone institutional training in school or any other institution recognized by board or state council, who have passed exams, the period of apprentice shall be as may be prescribed.

- In case of other trade apprentices, the period of apprenticeship shall be as prescribed.

- In case of graduate or technician apprentice, the period of apprenticeship shall be as may be prescribed.

* NUMBER OF APPRENTICES FOR A DESIGNATED TRADE AND OPTIONAL TRADE -

• Section 8 : Central Government shall prescribe the number of apprentices to be engaged by the employer for designate and optional trade.

Employees can also join together either themselves or through an agency approved by Apprenticeship Advisor.

According to the guidelines provided by Central government time to time for the purpose of providing training to apprentices under them.

* PRACTICAL AND BASIC TRAINING OF APPRENTICES

• Section 9 : This section provides practical and basic training of apprentices. It states that,

1) Employer shall make agreement to give practical training to every apprentice engaged by him.

2) Central Apprenticeship Advisor or his assistant shall give reasonable facilities to apprentice to test their work.

3) If employer employs 250 or more worker then cost of apprenticeship shall be borne by employer.

4) If workers are less than 250 then by employer and government equally.

Note :- This is not applicable for clause A and A(A) of section 6.

5) For clause A and A(A) of section 6 cost of apprenticeship shall be borne by employer.

* Obligations of Employers -

Every employer shall have following obligations. -

- 1) Every employer shall provide the apprentice training of his trade in accordance with the rules & regulation of this Act.
- 2) If the employer is not in trade qualifications, then the employer shall ensure a person with prescribed qualifications in charge of training of the apprentices.
- 3) Employer shall provide adequate instructional staff with prescribed qualifications for imparting practical & theoretical training & facilities for trade test of apprentice.
- 4) Every employer have to carry out his obligations under contract of apprenticeship.

* Obligations of Apprentice :-

Every apprentice shall have the following obligations -

- 1) Every apprentice shall ~~trade~~ learn to trade diligently to qualify himself as skilled & craftsman before expiry period of training.
- 2) Every apprentice shall attend practical & instructional classes regularly.

- 3) Every apprentice shall follow all lawful orders of his employer & superiors of establishment.
- 4) Every apprentice shall carry out his all obligations under the contract of apprenticeship.
- 5) Every graduate or technician apprentice shall have to learn his subject field in engineering or technology or vocational course at his place of trainings.
- 6) Every graduate or technician apprentice shall attend classes regularly & should follow lawful orders of employee & should carry out his all obligations.

* Hours of work, overtime, leave & holidays

Section 15 : It provides that,

- i] Weekly and daily hours of work of apprentice who is undergoing his training shall be determined by employer subject to compliance with training duration.
- ii] No apprentice shall work overtime, except, with grant of Apprenticeship Advisor overtime is allowed in interest of apprenticeship training or in the public interest.

iii] An apprentice shall be entitled to such leave & holidays as prescribed in that establishment in which his training is undergoing.

* Apprentices and Trainee Not workers -

• Every apprentice who is undergoing his apprenticeship training in any establishment shall be a trainee not a worker.

• And, provisions of any law with respect to worker shall not apply to apprentice.

* Records & Returns -

Section 19 : Every employer shall maintain records of every apprentice who is undergoing his training in his establishment in such form as may be prescribed.

Until a portal-site is developed by Government, every employer shall furnish information as may be prescribed to authorities as may be prescribed.

* Settlement of disputes -

Section 20 : Any disagreement or dispute between employer & apprentice shall be referred or transfer to Apprenticeship Advisor for

making decision.

If any person is not satisfied with the decision of Apprenticeship Advisor shall appeal against decision to Apprenticeship Council within 30 days from date of communication.

Such appeal should be determine or heard by Apprenticeship Council.

The decision of Apprenticeship Council on such appeal shall be final.

* Section 21(1) : Every trade apprentice who have completed his training may appear for test conducted by National Council or any other agency authorised by Central government to determine his proficiency in trade which he has undergone apprenticeship training.

* OFFER & Acceptance of Employment

Section 22(1) : Every employer shall formulate its own policy to recruit apprentice who have completed period of training in his establishment.

Sec. 22(2) : If there is condition in contract of apprenticeship that, after completion of training apprentice shall serve the employer, then employer is bound to offer suitable employment to apprentice on remuneration as may be prescribed in contract.

* Authorities Under Contract -

- 1) The national council,
- 2) The Central Apprenticeship Council,
- 3) The state Council,
- 4) The State Apprenticeship Council,
- 5) The All India Council,
- 6) The Regional Boards,
- 7) The Boards or State Council of Technical Education,
- 8) The state Apprenticeship Adviser,
- 9) The Central Apprenticeship Adviser.

* Offence and Penalties :-

- If employer contravenes any provisions of this Act related to number of apprentice required to be engaged, he shall be given written notice for explaining reasons for it.

a) When employer fails to reply notice within prescribed time period or

b) Authorized officer is not satisfied with reasons given by employer, then fine of Rs. 500 per month for first 3 months thereafter fine of Rs. 1000 per month until number of seats are filled up.

- If employer or any other person -

- refuses or neglects any information or return which is false or does not believe to be true, and employer refuses to answer or gives wrong answer,

- Or employer refuses or neglects to afford the Central or state apprenticeship adviser,

- Or if employer requires an apprentice to overwork/ overtime without approval of apprenticeship advisor.

- or if employer employs any apprentice to work, which is not connected to his training,

- or makes payment on basis of piece - rate work to apprentice.
- or employer requires to take part in any incentive scheme
- or engages a person who is not qualified to be apprentice
- fails to carry out terms & conditions of a contract of apprenticeship

shall be punishable with fine of 1000 rupees.

* Chapter 18 *

* Unit VI : Labour Laws Act, 1988. *

The labour laws (Exemption from furnishing Returns & Maintaining Registers by certain establishment) Amendment Act, 2014.

Provides simplification of procedure to furnish returns and maintain registers in relation to establishments employing a small number of persons under some labour laws.

- Small Establishment :- Small establishment means an establishment where 10 to 40 workers are employed on any day of preceding 12 months.
- Very Small Establishment :- Very small establishment where 9 or less than 9 workers are employed on any day of preceding 12 months.

* Exemption from furnishing or maintaining of returns and registers required under certain labour laws.

Section 4 (1) : Provides that notwithstanding anything contained in Scheduled Act on & form commencement of this Act, it shall not be necessary for employer in any small establishment or Very small

establishments to which scheduled Act applies to furnish returns or to maintain registers required to be maintain.

• Employer shall maintain,

form I	form II	Form III
Annual return to be filed before 30 th April / end of financial year.	Register of person employed	Muster roll cum wage register
for both the small & very small establishments	for small establishment	for both the small & very small establishment

* Furnishing or maintaining of returns & registers in electronic form.

Section 4(2) : Annual Return in form I and registers in form II and III, wage slips and books and other records shall be maintained by employer in physical form or on computer, diskette or other electronic media

The computer, diskette or other electronic

form documents, registers should be made available to Inspector whenever he demands by employer.

Section 4(3) : Employer or other person who is responsible to furnish annual return in form I should furnish it to the Inspector or other authority as prescribed either in physical form or electronic mode.

* Penalty -

Section 6 : If any employer fails to comply provisions of the Act shall be punishable,

- In case of 1st conviction :- fine that shall be extend to Rs. 5000/-.
- In case of 2nd / subsequent conviction :- imprisonment of 1 month to 6 months, with fine of Rs. 10,000 to Rs. 25,000 or both.