THE PAYMENT OF GRATUITY ACT, 1972

1. **What is Gratuity?**

Gratuity is a reward to an employee for his long and meritorious service with his present employer. It is just like other retirement benefits like provident Fund, Pension etc. intended to help the worker after his retirement from service either due to superannuation or some physical disability.

The payment of Gratuity act, 1972 was passed by Parliament in August 1972 and came into force on 16th September 1972. It is progressive social security measure and was passed to

1. Ensure the uniform pattern of payment of Gratuity to industrial workers throughout the country, and
2. Avoid different treatment to industrial workers engaged in establishment having their branches and places of business throughout the county in different states and under the service conditions the employees are liable to be transferred from one state to another.

2. **What is the scope of payment of Gratuity Act 1972?**

The payment of Gratuity Act 1972 extends to the whole of India. But in so far as it relates to plantations or ports, it shall not extend to the State of Jammu and Kashmir. [sec.1(2)]

The Act Applies to the persons employed in the following establishments:-

1. Every factory, mine, oilfield, plantation, port and railway company;
2. Every shop and establishment within the meaning of any law for the time being in force in relation to shops and establishment in a state, in which ten or more persons are employed or were employed, on any day of the preceding twelve months;
3. Such other establishments or class of establishments, which the Central Government may by notification specify in this behalf and in which ten preceding twelve moths. [sec. 1(3)]

The payment of Gratuity (second Amendment) Act, 1984 inserted a new sub-section 3A to sec. 1 that provides that a shop or establishment to which notwithstanding that the number of employees in the establishment falls below 10. The Government intends by this amendment to check the tendency of employers to artificially reduce the number of employees below 10 so as to get out of the coverage of the Act.

The Act does not apply to the following persons-

1. Apprentices
2. Person who hold civil posts under the central Government or a State Government and are governed by any other Act or rules providing for the payment of Gratuity. [Sec. 2(e)]

The Government may however, exempt any establishment covered by this Act from provisions of the Act, if its employees are in receipt of gratuity or pensionary benefits not less favourable than the benefits provided in the Act [Sec. 5(1)]

3. **Definition**

a. **Appropriate Government [sec 2(a)]:** In relation to any of the following establishments appropriate Government means the Central Government

i. An establishment belonging to, or under the control of the Central Government.
ii. An establishment, having branches in more than one States
iii. An establishment of a factory, belonging to, or under the control of the Central Government
iv. An Establishment of a major port, mine, oilfield, or Railway Company.

In any other case, 'Appropriate Government' means the State Government.

b. **Continuous Service :** According to Section 2-A an employee shall be said to be in continuous service for a period, if he has, for the period been in uninterrupted service, including service which may be interrupted on account of (a) sickness, (b), accident (c) leave (d) absence from duty without leave (not being an absence in respective of which, an order treating the absence as break in service has been passed in accordance with the standing order, rules or regulations, governing the employees of the establishment), (e) layoff, (f) strike, or (g) lockout or (h) cessation of work not due to any fault of the employee whether such uninterrupted or interrupted service was rendered by an employee before or after the enactment of the Amendment Act 1984.

c. **Deemed Continuous Service:** Where an employee (not being an employee in seasonal establishment) is not in a continuous services for a period of one year, he shall be deemed to be in a continuous service for a period of one year under the employer, if the employee during the period of 12 Calendar moths preceding the date with reference to which the calculation of gratuity is to be made, has actually worked under the employer for not less than –

   i. 190 days in the case, an employee is employed in a mine below the ground level or in an establishment which works for less than 6 days in a week; and

   ii. 240 days, in any other case.

For determining the service for a period of six months, for the payment of gratuity the number of days the employee should have actually worked should be half the number of days which constitute a continuous service for a period of one year, (i.e. 95 days or 120 days respectively as the case may be), [sec. 2A(2)]

In the case of a seasonal establishment, if the employee, employed in that establishment, is not in continuous service for a period of 12 months or 6 months, he shall be deemed to be in continuous service, if he has actually worked for not less than seventy-five per cent of the number of days on which the establishment has actually been in operation during such period. [sec. 2A(3)]

d. **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 cash. It includes dearness allowance, but it does not include any bonus, commission, house rent allowance, overtime wages and any other allowance.

e. **Employee [Sec. 2 (e)]**

Employee means any person (other than an apprentice) employed on wages in any establishment, factory, mine, oilfield, plantation, port, Railway Company or shop. He may be employed to do skilled, unskilled, semi skilled, manual, supervisory, technical or clerical work. The terms of his employment may be expressed or implied and whether or not such person is employed in a managerial or administrative capacity.

The term 'employee' does not, however, include, any such person who holds a post under the Central government or a state government and is governed by any other act or by any rules providing for payment of gratuity.

f. **Employer [sec. 2(f)]**

In relation to any establishment, factory, mine, oilfield, plantation, port, railway company or shop

- Belonging to or under the control of the Central Government or a State Government, employer means a person or authority appointed by an appropriate Government for the supervision and control of employees. Where to such person or authority has been so appointed, employer means the head of the ministry of the Department concerned;
- Belonging to or under the control of any local authority, employer means the person appointed by such authority for the supervision and control of employees or where no such person has been so appointed, the chief executive officer of the local authority.
- In any other case 'employer' means the person who or the authority that has the ultimate control over the affairs of any of the above establishment. Where the said affairs have been entrusted to any other person, employer means such other person whether called a manager, managing director or by any other name.

4. What are the circumstances in which gratuity becomes payable to an employee under the Act?

Section 4 of the act explains the circumstances in which gratuity becomes payable to an employee.

Continuous Service of Five years. An employee has a right to claim gratuity from his employer on the termination of his employment. Provided that he has rendered continuous service with his present employer 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 or disease. (In this case continuous service of 5 years is not applicable)

Disablement means such disablement as incapacitates an employee for the work which he was capable of performing before the accident or disease resulting in such disablement, [Explanation to 4(1)]. If a disabled employee is employed after his disablement on reduced wages, his wages, fir the purpose of calculating gratuity payable to him on the termination of his employment, for the period preceding his disablement shall be taken to be the wages received by him during that period and for the period subsequent to his disablement, shall be taken to be the wages as so reduced,[sec. 4(4)].

5. To whom is gratuity payable?

	Situation	Result
1.	Normal case	Payable to employee
2.	In case of death	
	(i) Nomination has been done	Nominee(s)
	(ii) Nomination has not been done	Legal Heir(s)
	(iii) When nominee(s) or legal heir(s) is 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.

6. How is the amount of gratuity computed?

Rate of Gratuity: The amount of gratuity payable to an employee shall be at the rate of 15 days' wages for each completed year of service or part thereof in excess of six months, based on the rate of the basic wages rated employee by the employee concerned [sec. 4(2). In the case of monthly rated employee 15 days' wages shall be calculated by dividing the monthly rate of wages last drawn (including D.A.) by 26 and multiplying the quotient by 15.

Rate of Gratuity for piece rate employee: If the employee is a piece rated employee, daily wages shall be computed on the average of total wages received by him for a period of three months immediately preceding the termination of his employment and for the purpose, wages paid to him for any overtime work shall not be taken into account.

Rate of gratuity for employees is seasonal establishment: In the case of employees employed in seasonal establishment, and who is not so employed throughout the year, the gratuity payable to him shall be at the rate of 7 days wages for each season.

Maximum amount of Gratuity [sec. 4(3)]: The amount of gratuity payable to an employee shall not exceed Rs. 3,50,000.

Better terms of Gratuity [sec. 4(5)]: An employee may sometimes be entitled to receive better of gratuity under any award or agreement or contract with the employer. In such a case, noting in Sec. 4 shall affect the right of the employee to receive better terms.

7. When does an employee forfeit the right of Gratuity?

According to section 4(b) (a) Where the services of an 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 of the employee shall be forfeited to the extent of such damage or loss caused to the employer, or (b) Where the services of an employee have been terminated for

(i) His riotous or disorderly conduct or any other act of violence on his part;

(ii) Any act which constitutes an offence involving moral turpitude, in the course of his employment.

8. Can gratuity to an employee under the act be attached in execution of a decree?

The act protects the amount of gratuity payable to an employee from attachment. According to sec. 13 no gratuity under this act to an employee, employed in any establishment, factory, mine, oilfield, plantation, port, Railway company or shop, exempted under section 5, shall be liable to attachment in execution of any decree of any civil, revenue of criminal court.

9. What are the rules relating to nomination by an employee under the Payment of Gratuity, 1972?

1. **Nomination to be made with a fixed Time [sec. 6(1)] and rule 6(1):** Each employee who has completed one year of service is authorized to make a nomination within 30 days from the date of completion of one year service.
2. **Distribution of Gratuity [sec. 6(2)]:** An employee may nominate one or more persons to be as nominees. The employee in his nomination shall distribute the amount of gratuity payable to him under the act, amongst more than one nominee.
3. **Nomination in favour of Family [sec. 6(3)];** if an employee has a family at the time of making a nomination, the nomination shall be made only in favour of one or more members of the family and the nomination already made in favour of any other person (who is not a member of the family) shall be void.

   But, if at the time of making nomination, the employee has no family, the nomination may be made in favour of any person or persons. If the employee subsequently, acquires a family, the nomination already made shall become invalid and the employee shall make, within ninety days from the date of acquiring a family, a fresh nomination in favour of one or more members of his family.
4. **Modification of Nomination:** An employee can modify a nomination made by him earlier, at any time by giving a written notice to his employer, of his intention to do so.
5. **Death of nominee:** In case of the death of the nominee before the death of the employee, the interest of the nominee shall revert to the employee. The employee, in such cases, shall make a fresh nomination in respect of such interest.
6. **Safe-custody of Nomination [sec. 6(7)]:** Every nomination, fresh nomination or alteration of nomination, as the case may be, shall be sent by the employee who shall keep the same in his safe custody. The nomination shall be effective from the date of receipt of the same by the employer.

10. What are the rules as to the determination the amount of Gratuity under the payment of Gratuity Act, 1972?

An employee who is eligible for payment of Gratuity under the act, or any person authorized by him in writing , to act on his behalf, shall apply to the employer for payment of Gratuity, within thirty days from the date the Gratuity becomes payable. But where the date of superannuation is know, the employee himself may apply to the employer before 30 days from the date of his superannuation or retirement.

The application for gratuity may be sent to the employer by –

(a) A nominee of an employee who is eligible for payment of Gratuity within thirty days from the date of the Gratuity becomes payable to him;

(b) A legal heir of the employee eligible for the payment of Gratuity shall apply ordinarily within one year from the date of Gratuity becomes payable to him by the employer.

The application for the payment of Gratuity field after the expiry of the specified time limit shall be entertained by the employer if the applicant adduces sufficient cause for the delay.

Determination of Gratuity: The amount of Gratuity as soon as it becomes payable, shall be determined by the employer according to the provisions of the act. The employer shall give a notice in writing to the person to whom the Gratuity is payable (i.e. employee, nominee or heir of the employee). Notice shall also be given to the controlling authority specifying the amount of gratuity so determined to be payable. This exercise is to be done by the employer irrespective of the fact whether an application for the payment of Gratuity has been made or not by the person concerned.

11. What are the rules as the payment of Gratuity under the Act?

Payment of Gratuity: The employer shall arrange for the payment of gratuity within 30 days from the date it becomes payable, to the person to whom it is payable.

Payment of Interest [sec. 7(3A)]: If the amount of Gratuity payable by the employer is not paid within 30 days, the amount shall pay simple interest at such rate not exceeding the rate notified by the central government from time to time for payment of long term deposits.

The interest shall be payable from the date on which Gratuity is payable and to the date, it is actually paid.

If there is a delay in paying the amount of the Gratuity payable due to fault on the past activity of the employee, no interest shall be payable provided the employer has obtained permission from the controlling authority.

Payment of Gratuity in case of Dispute [sec. 7(4)]: If there is any dispute as to (a) the amount of Gratuity payable to the employee. (b) the admissibly of any claim of, or in relation to, an employee for the payment of Gratuity or (c) the person entitled to receive the amount of Gratuity, the employer shall deposit the amount of Gratuity as he admits to be payable, with the controlling authority.

Where there is dispute with regard to any matter or matters specified above, the employer or the employee or any other person raising the dispute can make an application to the controlling authority for deciding the dispute. [sec. 7(4)(b)]

The controlling authority, on making an application, shall after due inquiry and after giving the parties to the dispute a reasonable opportunity of being heard determine the matter or matters in dispute. If as a result of such enquiry, it is found that any amount is payable to the employee, the controlling authority shall direct the employer to pay such amount or as the case may be, such amount as reduced by the amount deposited with the controlling authority by him. [sec. 7(4)(c)]

The controlling authority shall pay the amount, deposited with him by the employer including the excess amount, if any deposited, by the employer to the applicant i.e. the employee or the nominee or the heir of the employee. As soon as may be, after deposit is made by the employer, the controlling authority shall pay the amount of deposit –

(a) To the employee if application is made by the employee

(b) To the nominee, guardian of the nominee, the heirs if the applicant is not an employee.

If the controlling authority is satisfied there is no dispute as to the right of the applicant to receive the amount of the gratuity.

Thus, the controlling authority shall decide the dispute, if any, as to the payment f Gratuity and shall make the arrangement for its payment to the applicant.

12. What are the rules relating recovery of gratuity under the act?

Recovery of Gratuity [sec. 8]: If the amount of Gratuity payable under the act, is not paid within the prescribed time, by the employer to the person entitled thereto, the aggrieved person or the person to whom the gratuity is payable shall make an application to the controlling authority. The controlling authority having received the application for the purpose, shall issue a certificate for that amount to the collector. On the basis of the certificate the collector shall recover the amount due along 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 arises or land revenue and pay the same to person entitled thereto.

The controlling authority shall before issuing a certificate to the collector, give the employee a reasonable opportunity of showing cause against the issue of such certificate [sec. 7(proviso 2)]

Provided further that the amount of interest, shall, in no case, exceed the amount of gratuity payable under the Act.

13. Who is controlling Authority? What are their powers?

Controlling Authority [sec. 3]: The controlling authority is appointed, by the appropriate authority. The appropriate government may, by notification, appoint any officer to be controlling authorities may be appointed for different areas.

Power of Controlling Authority: The controlling authority has the following power under the act –

1. **Power to decide the dispute,** (1) In case of dispute as to (a) the amount of gratuity payable to an employee or (b) the admissibility of any claim of, or in relation to an employee for payment for gratuity or (c) the person entitled to receive the gratuity, the controlling authority, on application from the person raising the dispute, shall decide the dispute [sec. 7(4)]
2. **Power to conduct an inquiry:** In deciding the dispute, it can conduct an enquiry by giving the parties to the dispute, an opportunity of being heard. The controlling authority for the purpose of conducting enquiry as to matters given above, shah have the same powers as are vested in a court, while trying a suit under the code of Civil Procedure, 1908. It shall have the following powers in this regard namely –
    a. Enforcing the attendance of any person or examining him on oath;
    b. Requiring the discovery and production of documents;
    c. Receiving evidence on affidavits; and

   d. The inquiry shall be a judicial proceeding within the meaning of sec. 193 and 228 and for the sec. 196 of the IPC.

3. **Power to Direct the Employer:** In deciding the dispute, if the controlling authority finds that any amount is payable to the employee by the employer it can direct the employer to pay the amount of gratuity to the employer [sec. 7(4)(a) to the employee.

4. **Power to issue Certificate for Recovery:** If the employer does not pay the amount of gratuity payable within the prescribed time, to the person entitled thereto, shall make an application to the controlling authority and the controlling authority shall issue a certificate mentioning the amount due to the collector recovery. [sec. 8]

14. What are the rules regarding appointment of Inspector under the payment of Gratuity Act, 1972 and what are their powers?

The payment of gratuity (amendment) Act, 1984 has added two new sections i.e. 7-A to the original Act dealing with the appointment of Inspector for the purpose of the Act and their powers.

Appointment of Inspectors [sec. 7-A]: the appropriate Government may, by notification, appoint as many inspectors as it deems fit, for the purpose of the Act. The appropriate Government may by general or special order, define the areas to which the authority of an inspector so appointed shall extend. Where two or more inspectors are appointed for the same area, it may also define by such order, the distribution or allocation of work to be performed by them under the act. Every inspector appointed under the Act shall be deemed to be a public servant, within the meaning of sec. 1 of the IPC.

Powers of Inspectors: Subject to any rules made by the appropriate Government under the Act, an Inspector may, for the purpose of ascertain whether any of the provisions of the Act or the conditions. If any, of the exemptions granted there under, have been complied with, exercise all or any of the powers given below-

1. Require an employer to furnish to furnish any information as he may consider necessary.
2. Enter and inspect at all reasonable hours, with such assistants being person in service of the Government, or local or any public authority, as he think fits, any premises or place in factory, mine, oilfield, plantation, port, railway company, shop and other establishment to which this act applies for the purpose of examining any register, record or notice or other documents required to be kept or exhibited in relation to the rules made there under, or otherwise kept or exhibited in relation to the employment of any person or the payment of gratuity to the employees. He may require the production of any register record or notice for inspection.
3. Examine with respect to any matter relevant to any of the purpose mentioned above, the employer of any person whom he finds in such premises or place, and who, he has sufficient cause to believe is an employee employed therein.
4. Make copies of or take extracts from any register, record, notice or other relevant documents, where he has reason to believe that any offence under the Act has been committed by the employer, search or seizure under this Act, as they apply to any search and seize with the assistant as he thinks fit, any register, notice, document as he considers relevant in respect of that offence.
5. Exercise such other powers as may be prescribed. Any person required by an inspector to produce any register, record, notice or other documents or to give any information, he shall be legally bound to do so within the meaning of sec. 175 and 176 of the Indian Penal Code. The provisions of the code of Criminal Procedure so far as may be shall apply to any search and seizure made under the authority of a warrant issued under the sec. 94 of that code.

15. What are the provisions relating to penalties?

Penalties [sec. 9 to 12]: the following Act committed by any person shall be deemed to be an offence under the Act and such person shall be punishable with imprisonment or fine for both as specified in the act –

(i) False Statement or False Representation. If any person knowingly makes or causes to be made any false statement or false representation for the purpose of avoiding any payment to be made by him under the Act or enabling any other person to avoiding such payment, he shall be punishable with imprisonment for a term which may extend to six months or with fine which extend to ten thousand rupees or with both.

(ii) For Contravention of the act. An employer who contravenes or makes default in complying with, any of the provisions of the Act, or rules 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 Rs. 10,000 but which may extend to Rs. 20,000 or with both.

If the offence relates to non-payment of gratuity, 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. But if the court trying the offence, for reason to be recorded in writing, is of the opinion that lesser term of imprisonment or the imposition of fine would meet the requirement of justice the court may reduce the punishment.

16. What are the provisions of the Payment of Gratuity Act, 1972 relating to the appeal?

Appeal [Sec. 7(7) and (8)]: Any person aggrieved by an order of the controlling authority may, within 60 days from the date of the receipt of the order, prefer an appeal to the appropriate Government or such other authority as may be specified in this behalf by the Appropriate Government. Such other authority may be referred to as appellate authority. The appropriate Government or the appellate authority may, if it is satisfied that the aggrieved party has been prevented by sufficient cause for preferring the appeal within the specified period of 60 days, extend the said period by a further period of 60 days.

But no appeal by an employer shall be admitted if at the time of preferring the appeal, he does not either produce a certificate from the controlling authority to the effect that he has deposited the amount equal to the amount of gratuity to be payable to an employee with the controlling authority as required to be deposited or deposits such amount with the appellate authority.

The appropriate Government or the appellant authority, as the case may be after giving the parties to the appeal an opportunity of being heard confirm, modify or reserve the decision of the controlling authority.

DESCRIPTIVE QUESTIONS

1. Examining the provisions of the payment of gratuity Act, 1972, state whether gratuity is payable to an employee for the periods when he does not actually work in the organization. Explain the manner in which Gratuity is calculated for regular employees.

Ans.: Gratuity is payable to an employee even if he does not actually work in the following cases:

1. Lay off under the industrial Disputes Act, 1947.
2. Leave with full wages.
3. Maternity leave for female employees.
4. Absence due to temporary disablement caused during employment.

Quantum of Gratuity is 15 days' wages on the last drawn wages/every completed year of service subject to a maximum of 15 moths' wages.

2. E was an employee of Tea estate ltd. The whole of the undertaking of Tea Estate Ltd. was taken over by a new company – Asia Tea Estate Ltd. The services of E remained continuous in new company. After serving for one year E met with an accident and became permanently disabled. E applied to the new company for the payment of Gratuity. The company refused to pay Gratuity on the ground that E has served only for a year in the company. Examine the validity of the refusal of the directors in the light of the provisions of the payment of Gratuity Act, 1972.

Ans: According to section 2A(1), an employee shall said to be in continuous service for a period if he has. For that period, been in uninterrupted service, leave, absence from duty without leave, lay-off, strike or a lock out or cessation of work not due to any fault of the employee, whether such uninterrupted or interrupted service was rendered before or after the commencement of this Act.

According to section 2A(2) where an employee (not being an employee employed in a seasonal establishment) is not in continuous service within the meaning of clause (1), for any period of one year or a six months, he shall be deemed to be in continuous service under the employer.

Therefore, as per the provisions of the payment of Gratuity Act, 1972, the refusal of the directors not to pay gratuity is not valid because E met with an accident and became permanently disabled and as per the provisions of sec. 2A(1), an employee shall said to be in continuous service, including service which may be interrupted on account of sickness, accident, leave, absence from duty without leave, lay-off, strike or a lock out or cessation of work not due to any fault of the employee.

BEST OF LUCK