

Payment of gratuity act



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Applicability of the Act (Sec 1) & Definitions (Sec 2) – employee, superannuation, continuous service (Sec 2(A)), Wages Payment of gratuity (Sec 4) o Continuous service of not less than 5 yrs o Calculation of gratuity in case of seasonal employees, in case of employee employed after disablement, on ‘ retrenchment’, for service beyond the age of superannuation, on resignation o Calculation of “ 15 days” wages in respect of monthly rated employee, piece-rated employee, daily wager for 26 days in a month o Entitlement to gratuity with better terms o Withholding & forfeiture of gratuity Power to exempt (Sec 5) – payment of gratuity vis-a-vis curtailment of benefits by management Determination of the amt. of gratuity (Sec 7) o Duty of an employer to determine gratuity amt. o Mode of payment of gratuity & pd. f limitation to Controlling authority o Rate of interest Recovery of gratuity (Sec 8) o Delay in payment of gratuity – effect o Default in payment of gratuity or wages on part of employer Act to override other enactments (Sec 14) 1 Wages Sec 2(s) – B+DA + incentive wages * +Food Allowance (In case it is paid to Hotel Employees). Nomenclature of ‘ honorarium’ to the remuneration for the services rendered by a person where employed for work. Not a part of wages under the Act, 1972 (bonus, commission, HRA, OT, & any other allowance like ‘ teller’s allowance’ not even if it is vide bipartite settlements) * Bonus & incentive bonus paid separately – Bonus would include incentive wages (Not even in case of a piece rated employees) Continuous Service

Read Sec 2(A) – in case of interruption of service due to illegal strike, the burden of proof lies upon the person who claims benefit under all circumstance. Where orders of Controlling / Appellate Authority put the onus

on employee – HC held the normal rule by asking both the parties to lead evidence on the said issue. Other Issues Employee – if estopped from claiming gratuity after having once received a sum See if acceptance of gratuity estoppel against the statute [Sec 14] – Parry’s (Cal) Employees Union v. Union of India, 1980 Lab IC (Cal HC) Claim of gratuity for service beyond the age of superannuation, if also maintainable? Age of superannuation of an employee is not relevant for the purpose of payment of gratuity on his retirement / resignation.

Cannot be refused gratuity in terms of Sec 4(1)(b) for the period of service rendered beyond the age of superannuation. Cannot be contended that gratuity is payable for the service rendered by him upto the age of his superannuation u/Sec 2(r). Break in service to be seen Calculation of “ 15 days’ wages” for mthly rated employee Daily wages – to be calculated for actual no. of working days which is 26 and not 30. Not to be calculated just by taking ? of his wages for a mth of 30 days. Not by fixing his daily wages dividing his mthly wages by 30 “ 15 days’ wages” – Cal & Guj HC & SC: 15 days’ wages should be taken as wages earned in 15 days and not wages earned during a pd. of 15 days including the days on which the employee is not entitled to payment of wages 2.

Calculation of “ 15 days’ wages” for piece rated employee Avg. of total wages recd. by an empl for a pd. of 3 mths immediately preceding the termination of employment. Computed by dividing such total wages by the actual no. of days of work & not no. of days / no. of working days in the said pd. of 3 mths. (Wages payable for a day) x 15 Calculation of gratuity during pendency of disciplinary proceedings, & on dismissal for slowing down the
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work Gratuity cannot be withheld even if disciplinary proceeding is pending against an employee. Gratuity of an employee dismissed for willful slowing down of work cannot be withheld since there is no such bar in the Act.

No deduction whatsoever, except as stipulated by Sec 4(6) pertaining to forfeiture on account of dismissal of an employee because of certain misconduct can be made from the payment of gratuity as payable to an employee. Kar HC Held: Non-payment of gratuity to an employee on his retirement on account of some lapses during his service is not tenable as his service has not been termination for any lapses. Retrenchment compensation whether can be set off against gratuity Statutory liability u/Act, 1972 is not in lieu of any other entitlement, but stands on its own. Entitlement under two diff. laws would depend upon the satisfaction of the essential requisites for claiming the sum due under the relevant provisions of these two enactments 3.