

THE PAYMENT OF GRATUITY ACT, 1972 (AMENDED 2018)

Gratuity is defined as a benefit given by the employer to the employee for rendering services continuously for five years or more. It is a mandatory and monetary benefit usually given at the time of employee separation from organization or retirement. But there are certain rules which make an employee eligible to receive gratuity

The main purpose and concept of gratuity is to help the workman after the retirement, whether the retirement is a result of the rules of superannuation or physical disability or impairment of the vital part of the body. Gratuity is the amount which is not connected with any consideration and has to be considered as something given freely for the service the employee has rendered to the organization for more than 5 years.

DEFINITIONS [Sec 2]

(a) "appropriate Government" means, -

(i) in relation to an establishment -

- (a) belonging to, or under the control of, the Central Government,
- (b) having branches in more than one State,
- (c) of a factory belonging to, or under the control of, the Central Government,
- (d) of a major port, mine, oilfield or railway company, the Central Government,

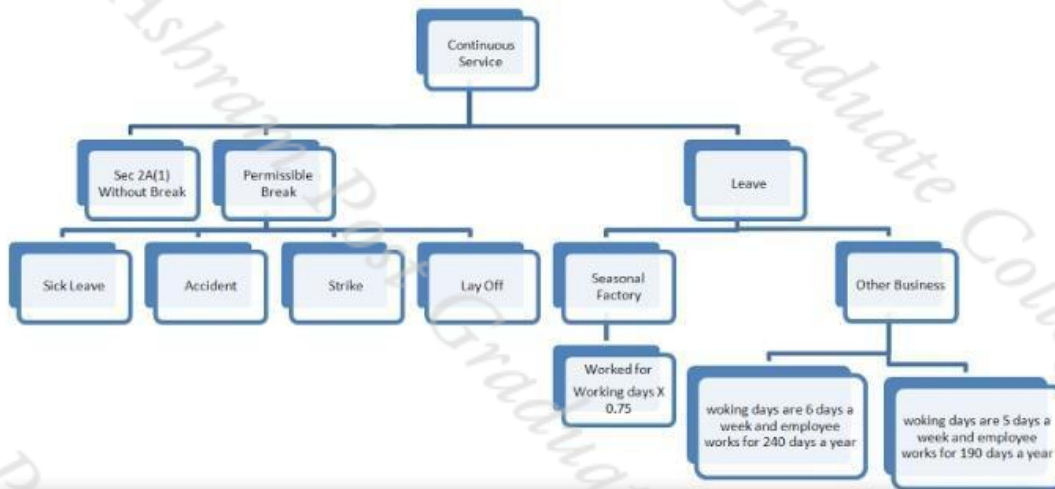
(ii) in any other case, the State Government;

(b) "Completed year of service" means continuous service for one year;

(e) "employee" means any person (other than an apprentice) who is employed for wages, whether the terms of such employment are express or implied, in any kind of work, manual or otherwise, in or in connection with the work of a factory, mine, oilfield, plantation, port, railway company, shop or other establishment, to which this Act applies, but does not 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.

(c) "Continuous service" means continuous service as defined in section 2A;

By **continuous service** for the purpose of **gratuity** it is meant uninterrupted **service** which may be interrupted due to accident, sickness, absence for **duty** without any leave, leave, lay-off, lock-out, strike or cessation of work (due to not any fault of the employee) are considered as **continuous service**.



(K)"notification" means a notification published in the Official Gazette and the expression "notified" shall be construed accordingly;'

(q) "Retirement" means termination of the service of an employee otherwise than on superannuation;

(r) "superannuation", in relation to an employee, means the attainment by the employee of such age as is fixed in the contract or conditions of service at the age on the attainment of which the employee shall vacate the employment;

(s) "wages" means all emoluments which are earned by an employee while on duty or on leave in accordance with the terms and conditions of his employment and which are paid or are payable to him in cash and includes dearness allowance but does not include any bonus, commission, house rent allowance, overtime wages and any other allowance.

APPLICABILITY

Every factory (as defined in Factories Act), mine, oilfield, plantation, port and railway.

Every shop or establishment to which Shops & Establishment Act of a State applies in which 10 or more persons are employed at any time during the year end.

Any establishment employing 10 or more persons as may be notified by the Central Government.

Once Act applies, it continues to apply even if employment strength falls below 10.

PAYMENT OF GRATUITY ACT, 1972 & THE RULES

CHECKLIST

Sec. 1

Applicability

Every factory, mine, oil field, plantation, port, railways, company, shop, establishment or educational institutions employing 10 or more employees

Sec. 2(g)

Wages for Calculation

@ 15 days' wages for every completed year as if the month comprises of 26 days at the last drawn wages.

Sec. 2(e)

Employee

All employees irrespective of status or salary

Entitlement
On completion of five years' service except in case of death or disablement

Qualifying period

On rendering of 5 years' service, either termination, resignation or retirement.

Sec. 1

Calculation Piece-rated employee

@ 15 days wages for every completed year on an average of 3 months' wages

Calculation Seasonal employee

@ 7 days' wages for every completed year of service.

Rule 4

Display of Notice

On conspicuous place at the main entrance in English language or the language understood by majority of employees of the factory, etc.

Sec. 4(3)

Maximum Ceiling

20,00,000

Rule 2

Mode of payment

Cash or, if so desired, by Bank Draft or Cheque

Rule 9

Penalties

- Imprisonment for 6 months or fine upto Rs.10,000 for avoiding to make payment by making false statement or representation.
- Imprisonment not less than 3 months and upto one year with fine on default in complying with the provisions of Act or Rules.

Sec. 6 Rule 6

Nomination

To be obtained by employer after expiry of one year's service, in Form 'F'

Sec. 4(6)

Forfeiture of Gratuity

- On termination of an employee for moral turpitude or riotous or disorderly behaviour.
- Wholly or partially for wilfully causing loss, destruction of property etc.

Sec. 13

Protection of Gratuity

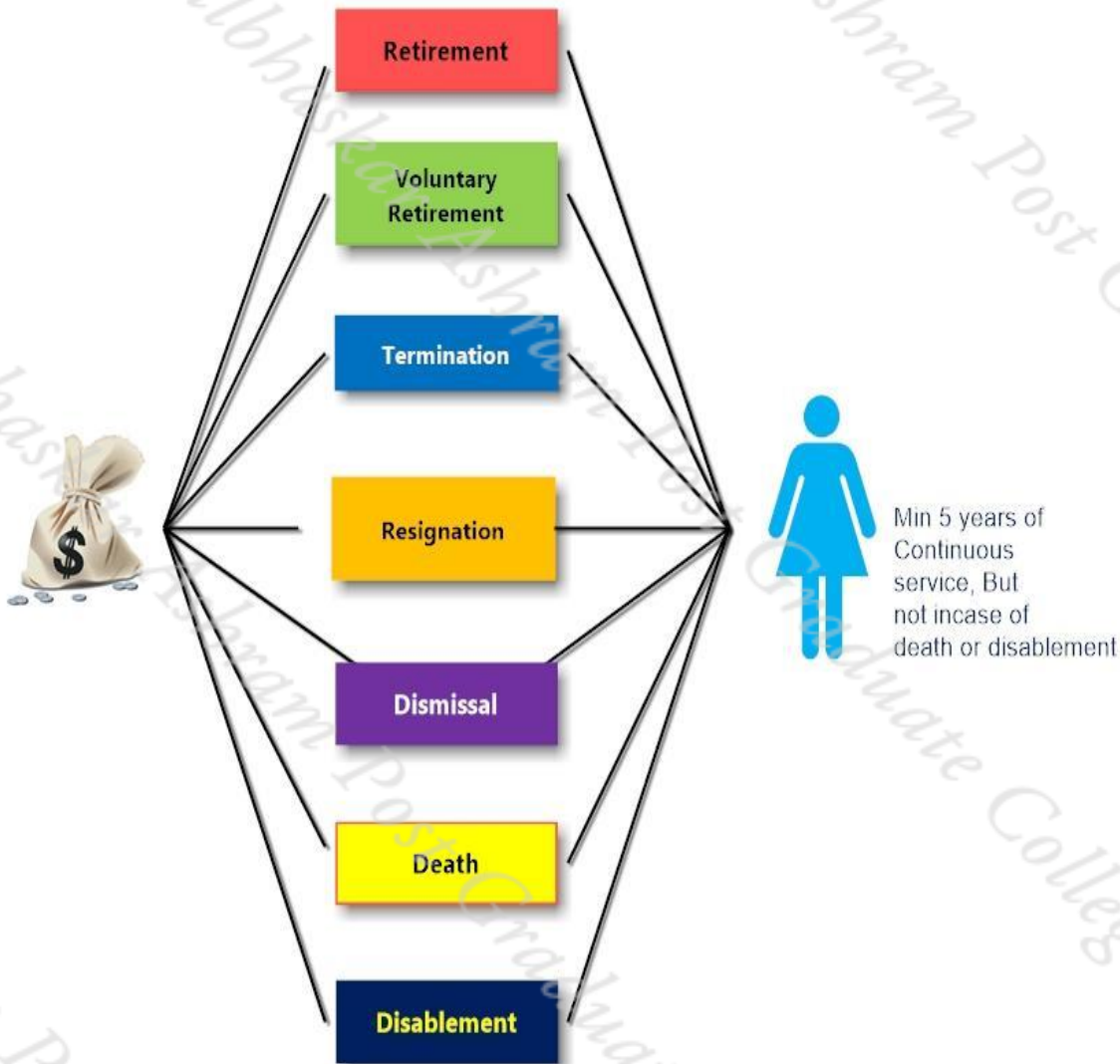
Can't be attached in execution of any decree

Sec. 8 Rule 8

Recovery of Gratuity

To apply within 30 days in Form I when not paid within 30 days

Payment of Gratuity



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Section 2A. CONTINUOUS SERVICE. -

an employee shall be said to be in continuous service even his/her service is interrupted by way

- sickness,
- accident,
- leave,
- absence from duty without leave,
- leave with full wage,
- temporary disablement,
- laid-off period,
- maternity leave : 26 weeks (THE PAYMENT OF GRATUITY (AMENDMENT) ACT, 2018)

whether such uninterrupted or interrupted service was rendered before or after the commencement of this Act.

In case of period of one year

Employee will be treated as he in continuous service, if he is employed by employer for the period of

- 190 days employment under the ground in mines, or in establishment which works less than 6 days in a week.
- 240 days in case of other any establishments (factories, companies, etc.)

In case of period of 6 months

Employee will be treated as he in continuous service, if he is employed by employer for the period of

- 95 days employment under the ground in mines, or in establishment which works less than 6 days in a week.
- 120 days in case of other any establishments (factories, companies, etc.)

In case of seasonal establishments

An employee of a seasonal establishment shall be deemed to be in continuous service if he has actually worked for not less than 75% of the numbers of days on which the establishment was in operation during the 1 year or 6 months.

Seasonal Establishments in which, although work is carried on throughout the year, the number of employees is regularly subject to seasonal fluctuations for reasons associated with the weather, their sales or their location. For example, hotels and restaurants in health spas and holiday resorts, gravel and sand pits and stone quarries are deemed to be seasonal establishments.

Section- 3. CONTROLLING AUTHORITY. –

The appropriate Government may, by notification, appoint any officer to be a controlling authority, who shall be responsible for the administration of this Act and different controlling authorities may be appointed for different areas.

Section- 4. PAYMENT OF GRATUITY.-

(1) Gratuity shall be payable to an employee on the termination of his employment after he has rendered continuous service for not less than 5years, -

(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 5 years shall not be necessary where the termination of the employment of any employee is due to death or disablement:

Provided further that in the case of death of the employee, gratuity payable to him shall be paid to his nominee or, if no nomination has been made, to his heirs, and where any such nominee or heirs is a 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.

Explanation. - For the purposes of this section, 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.

Calculation of gratuity [Sec 4 (2)]

$$\text{Gratuity} = \frac{\text{Monthly salary} \times 15 \times \text{Number of years of service}}{26}$$

- Monthly salary= last month drawn salary by the employee.
- 26 = total number of working days in a month.
- 15 = number of days in half of the month.

Illustration : for monthly salaried employees

$$\text{Gratuity} = (\text{Basic} + \text{DA}) \times 15/26 \times \text{number of years.}$$

Example: If an employee had joined a job on 01-08-2004 and retired or got his job terminated on 30-04-2018, with last drawn basic Salary of Rs 30,000 and DA of Rs 13000, his Gratuity will be:

$$(\text{Rs } 30,000 + \text{Rs } 13000) \times 15/26 \times 14 = \text{Rs } 3,47,307.70/-$$

Note: Here the employee has completed 14 years of service. The seven months of his first year (August 2005 to March 2006) is to be counted as one year as it is more than six months of service.

Deduction of gratuity

[Sec 4(6) (a)]

Whose services have been terminated for any act, willful omission or negligence causing any damage or loss to, or destruction of, property belonging to the employer, shall be forfeited to the extent of the damage or loss so caused.

Gratuity of employee wholly or partially lost in case of

[Sec 4(6) (b)]

- If the services of such employee have been terminated for his riotous or disorderly conduct or any other act of violence on his part, or
- if the services of such 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.

Payment of gratuity is not applicable to employee who has been dismissed from the service for the reason of indiscipline or misconduct.

COMPULSORY INSURANCE. [Sec 4A]

(1) With effect from such date as may be notified by the appropriate Government in this behalf, every employer, other than an employer or an establishment belonging to, or under the control of, the Central Government or a State Government, shall, subject to the provisions of sub-section (2), obtain an insurance in the manner prescribed, for his liability for payment towards the gratuity under this Act, from the Life Insurance Corporation of India established under the Life Insurance Corporation of India Act, 1956 (31 of 1956) or any other prescribed insurer : Provided that different dates may be appointed for different establishments or class of establishments or for different areas.

(2) The appropriate Government may, subject to such conditions as may be prescribed, exempt every employer who had already established an approved gratuity fund in respect of his employees and who desires to continue such arrangement, and every employer employing five hundred or more persons who establishes an approved gratuity fund in the manner prescribed from the provisions of sub-section (1).

(3) For the purpose of effectively implementing the provisions of this section, every employer shall within such time as may be prescribed get his establishment registered with the controlling authority in the prescribed manner and no employer shall be registered under the provisions of this section unless he has taken an insurance referred to in sub-section (1) or has established an approved gratuity fund referred to in sub-section (2).

(4) The appropriate Government may, by notification, make rules to give effect to the provisions of this section and such rules may provide for the composition of the Board of Trustees of the approved gratuity fund and for the recovery by the controlling authority of the amount of the gratuity payable to an employee from the Life Insurance Corporation of India or any other insurer with whom an insurance has been taken under sub-section (1), or as the case may be, the Board of Trustees of the approved gratuity fund.

(5) Where an employer fails to make any payment by way of premium to the insurance referred to in sub-section (1) or by way of contribution to an approved gratuity fund referred to in sub-section (2), he shall be liable to pay the amount of gratuity due under

this Act (including interest, if any, for delayed payments) forthwith to the controlling authority.

PENALTIES

[Sec 4A (6)]

Whoever contravenes the provisions of sub-section (5) shall be punishable with fine which may extend to ten thousand rupees and in the case of a continuing offence with a further fine which may extend to one thousand rupees for each day during which the offence continues.

Explanation : In this section “approved gratuity fund” shall have the same meaning as in clause (5) of section 2 of the Income-tax Act, 1961 (43 of 1961).

POWER TO EXEMPT. [Sec 5]

(1) The appropriate Government may, by notification, and subject to such conditions as may be specified in the notification, exempt any establishment, factory, mine, oilfield, plantation, port, railway company or shop to which this Act applies from the operation of the provisions of this Act if, in the opinion of the appropriate Government, the employees in such establishment, factory, mine, oilfield, plantation, port, railway company or shop are in receipt of gratuity or pensionary benefits not less favourable than the benefits conferred under this Act.

(2) The appropriate Government may, by notification and subject to such conditions as may be specified in the notification, exempt any employee or class of employees employed in any establishment, factory, mine, oilfield, plantation, port, railway company or shop to which this Act applies from the operation of the provisions of this Act, if, in the opinion of the appropriate Government, such employee or class of employees are in receipt of gratuity or pensionary benefits not less favourable than the benefits conferred under this Act.

(3) A notification issued under sub-section (1) or sub-section (2) may be issued retrospectively a date not earlier than the date of commencement of this Act, but no such notification shall be issued so as to prejudicially affect the interests of any person

NOMINATION. [Sec 6]

(1) Each employee, who has completed one year of service, shall make, within such time, in such form and in such manner, as may be prescribed, nomination for the purpose of the second proviso to sub-section (1) of section 4.

(2) An employee may in his nomination, distribute the amount of gratuity payable to him, under this Act amongst more than one nominee.

(3) If an employee has a family at the time of making a nomination, the nomination shall be made in favour of one or more members of his family, and any nomination made by such employee in favour of a person who is not a member of his family, shall be void.

(4) If at the time of making a nomination the employee has no family, the nomination may be made in favour of any person or persons but if the employee subsequently acquires a family, such nomination shall forthwith become invalid and the employee shall make, within such time as may be prescribed, a fresh nomination in favour of one or more members of his family.

(5) A nomination may, subject to the provisions of sub-sections (3) and (4), be modified by an employee at any time, after giving to his employer a written notice in such form and in such manner as may be prescribed, of his intention to do so.

(6) If a nominee predeceases the employee, the interest of the nominee shall revert to the employee who shall make a fresh nomination, in the prescribed form, in respect of such interest.

(7) Every nomination, fresh nomination or alteration of nomination, as the case may be, shall be sent by the employee to his employer, who shall keep the same in his safe custody.

DETERMINATION OF THE AMOUNT OF GRATUITY.

[Sec 7]

(1) A person who is eligible for payment of gratuity under this Act or any person authorised, in writing, to act on his behalf shall send a written application to the employer, within such time and in such form, as may be prescribed, for payment of such gratuity.

(2) As soon as gratuity becomes payable, the employer shall, whether an application referred to in sub-section (1) has been made or not, determine the amount of gratuity and give notice in writing to the person to whom the gratuity is payable and also to the controlling authority specifying the amount of gratuity so determined.

(3) The employer shall arrange to pay the amount of gratuity within thirty days from the date it becomes payable to the person to whom the gratuity is payable.

(3A) If the amount of gratuity payable under sub-section (3) is not paid by the employer within the period specified in sub-section (3), the employer shall pay, from the date on which the gratuity becomes payable to the date on which it is paid, simple interest at such rate, not exceeding the rate notified by the Central Government from time to time for repayment of long-term deposits, as that Government may, by notification specify

: Provided that no such interest shall be payable if the delay in the 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.

(4) (a) If there is any dispute as to the amount of gratuity payable to an employee under this Act or as to the admissibility of any claim of, or in relation to, an employee for payment of gratuity, or as to the person entitled to receive the gratuity, the employer shall deposit with the controlling authority such amount as he admits to be payable by him as gratuity.

(b) Where there is a dispute with regard to any matter or matters specified in clause (a), the employer or employee or any other person raising the dispute may make an application to the controlling authority for deciding the dispute.

(c) The controlling authority 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 and if, as a result of such inquiry any amount is found to be 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 already deposited by the employer.

(d) The controlling authority shall pay the amount deposited, including the excess amount, if any, deposited by the employer, to the person entitled thereto.

(e) As soon as may be after a deposit is made under clause (a), the controlling authority shall pay the amount of the deposit –

(i) to the applicant where he is the employee; or

(ii) where the applicant is not the employee, to the nominee or, as the case may be, the guardian of such nominee or heir of the employee if the controlling authority is satisfied that there is no dispute as to the right of the applicant to receive the amount of gratuity.

(5) For the purpose of conducting an inquiry under sub-section (4), the controlling authority shall have the same powers as are vested in a court, while trying a suit, under the Code of Civil Procedure, 1908 (5 of 1908), in respect of the following matters, 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;

(d) issuing commissions for the examination of witnesses.

(6) Any inquiry under this section shall be a judicial proceeding within the meaning of sections 193 and 228, and for the purpose of section 196, of the Indian Penal Code, 1860 (45 of 1860).

(7) Any person aggrieved by an order under sub-section (4) may, within sixty 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 by the appropriate Government in this behalf : Provided that the appropriate Government or the appellate authority, as the case may be, may, if it is satisfied that the appellant was prevented by sufficient cause from preferring the appeal within the said period of sixty days, extend the said period by a further period of sixty days.

Provided further that no appeal by an employer shall be admitted unless at the time of preferring the appeal, the appellant either produces a certificate of the controlling authority to the effect that the appellant has deposited with him an amount equal to the amount of gratuity required to be deposited under sub-section (4), or deposits with the appellate authority such amount.

(8) The appropriate Government or the appellate authority, as the case may be, may, after giving the parties to the appeal a reasonable opportunity of being heard, confirm, modify or reverse the decision of the controlling authority.

INSPECTORS. [Sec 7A]

(1) The appropriate Government may, by notification, appoint as many Inspectors, as it deems fit, for the purposes of this Act.

(2) The appropriate Government may, by general or special order, define the area to which the authority of an Inspector so appointed shall extend and where two or more Inspectors are appointed for the same area, also provide, by such order, for the distribution or allocation of work to be performed by them under this Act.

(3) Every Inspector shall be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code, 1860 (45 of 1860).

POWERS OF INSPECTORS. [Sec 7B]

(1) Subject to any rules made by the appropriate Government in this behalf, an Inspector may, for the purpose of ascertaining whether any of the provisions of this Act or the conditions, if any, of any exemption granted thereunder, have been complied with, exercise all or any of the following powers, namely :-

(a) require an employer to furnish such information as he may consider necessary;

(b) enter and inspect, at all reasonable hours, with such assistants (if any),

being persons in the service of the Government or local or any public authority, as he thinks fit, any premises of or place in any factory, mine, oilfield, plantation, port, railway company, shop or other establishment to which this Act applies, for the purpose of examining any register, record or notice or other document required to be kept or

exhibited under this Act or the rules made thereunder, or otherwise kept or exhibited in relation to the employment of any person or the payment of gratuity to the employees, and require the production thereof for inspection;

(c) examine with respect to any matter relevant to any of the purposes aforesaid, the employer or any person whom he finds in such premises or place and who, he has reasonable cause to believe, is an employee employed therein;

(d) make copies of, or take extracts from, any register, record, notice or other document, as he may consider relevant, and where he has reason to believe that any offence under this Act has been committed by an employer, search and seize with such assistance as he may think fit, such register, record, notice or other document as he may consider relevant in respect of that offence;

(e) exercise such other powers as may be prescribed.

(2) Any person required to produce any register, record, notice or other document or to give any information by an Inspector under sub-section (1) shall be deemed to be legally bound to do so within the meaning of sections 175 and 176 of the Indian Penal Code 1860 (45 of 1860).

(3) The provisions of the Code of Criminal Procedure, 1973 (2 of 1974) shall so far as may be, apply to any search or seizure under this section as they apply to any search or seizure made under the authority of a warrant issued under section 94 of that Code.

RECOVERY OF GRATUITY. [Sec 8]

If the amount of gratuity payable under this Act is not paid by the employer, within the prescribed time, to the person entitled thereto, the controlling authority shall, on an application made to it in this behalf by the aggrieved person, issue a certificate for that amount to the Collector, who shall recover the same, together 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 arrears of land revenue and pay the same to the person entitled thereto :

Provided that the controlling authority shall, before issuing a certificate under this section, give the employer a reasonable opportunity of showing cause against the issue of such certificate :

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

PENALTIES [Sec 9]

- Employer who avoids the payment of the gratuity to the employees, shall be punishable with imprisonment for a term which may extend to 6 months, or with fine which may extend to 10,000/- rupees or with both.
- If any person makes false statements or false representations, they shall be punishable with imprisonment for a term which may extend to 6 months, or with fine which may extend to 10,000/- rupees or with both.
- Employer who disobeys the rules and regulation of the act, shall be punishable with imprisonment for a term which shall not be less than 3 months but which may extend to one year, or with fine which shall not be less than 10,000/- rupees but which may extend to 20,000/- rupees, or with both :

EXEMPTION OF EMPLOYER FROM LIABILITY IN CERTAIN CASES. [Sec 10] –

Where an employer is charged with an offence punishable under this Act, he shall be entitled, upon complaint duly made by him and on giving to the complainant not less than three clear days' notice in writing of his intention to do so, to have any other person whom he charges as the actual offender brought before the court at the time appointed for hearing the charge; and if, after the commission of the offence has been proved, the employer proves to the satisfaction of the court – (a) that he has used due diligence to enforce the execution of this Act, and

(b) that the said other person committed the offence in question without his knowledge, consent or connivance, that other person shall be convicted of the offence and shall be liable to the like punishment as if he were the employer and the employer shall be discharged from any liability under this Act in respect of such offence :

Provided that in seeking to prove as aforesaid, the employer may be examined on oath and his evidence and that of any witness whom he calls in his support shall be subject to cross-examination on behalf of the person he charges as the actual offender and by the prosecutor :

Provided further that, if the person charged as the actual offender by the employer cannot be brought before the court at the time appointed for hearing the charge, the court shall adjourn the hearing from time to time for a period not exceeding three months and if by the end of the said period the person charged as the actual offender cannot still be brought before the court, the court shall proceed to hear the charge against the employer and shall, if the offence be proved, convict the employer.

COGNIZANCE OF OFFENCES. [Sec 11]

(1) No court shall take cognizance of any offence punishable under this Act save on a complaint made by or under the authority of the appropriate Government : Provided that where the amount of gratuity has not been paid, or recovered, within six months from the expiry of the prescribed time, the appropriate Government shall authorise the

controlling authority to make a complaint against the employer, whereupon the controlling authority shall, within fifteen days from the date of such authorisation, make such complaint to a Magistrate having jurisdiction to try the offence.

(2) No court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the first class shall try any offence punishable under this Act.

PROTECTION OF ACTION TAKEN IN GOOD FAITH. **[Sec 12] —**

No suit or other legal proceeding shall lie against the controlling authority or any other person in respect of anything which is in good faith done or intended to be done under this Act or any rule or order made thereunder.

PROTECTION OF GRATUITY. [Sec 13] —

No gratuity payable under this Act and no gratuity payable 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 or order of any civil, revenue or criminal court.

ACT TO OVERRIDE OTHER ENACTMENTS, ETC.[Sec 14] —

The provisions of this Act or any rule made thereunder shall have effect notwithstanding anything inconsistent therewith contained in any enactment other than this Act or in any instrument or contract having effect by virtue of any enactment other than this Act.

POWER TO MAKE RULES. [Sec 15] -

(1) The appropriate Government may, by notification make rules for the purpose of carrying out the provisions of this Act. (2) Every rule made by the Central Government under this Act shall be laid, as soon as may be after it is made, before each House of Parliament while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall, thereafter, have effect only in such modified form or be of no effect as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

