

Course Name: Labour Welfare and Industrial Relations

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Week:7

Lecture: 31

Lec 31: Payment of Gratuity Act 1972: Enactment, Scope and Coverage

Hello learners. Namaste. Welcome back to the course on labor welfare and industrial relations. We have already introduced you to the concept of pension, gratuity, etc. Today we'll look into the payment of gratuity act 1972 in greater detail.

We'll look into the enactment scope and above all the calculation methods and specifically the nitty gritty associated with the calculation and disbursement.

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So when you when you look into the Payment of Gratuity Act specifically in the previous module, if you have gone through the videos, we'll see that the Payment of Gratuity Act is all about giving you a lump sum amount. The worker, a lump sum amount, a lump sum payment as a retire will benefit you.

After superannuation or the termination of service for recognized reasons. Now, this came into force in 1972, very specifically 16th September 1972. When you look into gratuity, let's understand why there is need or what is the purpose of gratuity in greater detail. When you look into gratuity, it provides a financial assistance to employees after the retirement or termination of the employment. We have clear understanding of that and we'll see.

We have also understood that it is a way for employees to recognize that. and reward the contributions made by their long-serving employees towards the growth and prosperity of

the organization specifically. When you look into the entire, you know, the gratuity as a concept, you'll see that there is a clear understanding that the Act aims to ensure that workers... Upon leaving their jobs, have a financial cushion to help them transition into the next phase of their lives. Now, when you want to understand the payment of gratitude act, you have to understand what do you mean by different words.

This could be functional words. but the comprehension of these critical words should be there when you proceed further with the act. So, the first is employee, second is employer, family, wages, etc. So, let us understand what do you mean by employee, but just we will take 30 seconds before that, we will try to see that when you are looking into gratuity, please acknowledge that it is one of the efficiency devices and is considered very critical and necessary for an orderly and human exit from industry of superannuated or disabled employees who for the retiring benefits would continue in employment even though they function inefficiently so it's not paid to an employee gratuitously or merely as a matter of boon so please focus that and in the background you should understand what do you mean by employee employer family and wages when you look into employee Means any person other than the apprentice. Please note, other than the apprentice. Any person who is employed for wages, whether the terms of such employment are express or implied in any kind of work, it could be manual or otherwise in or in connection with the work of a factory, of a mine, oil field, it could be a plantation, a railway company, port, a shop or other establishment to which this particular 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.

Now this is the comprehension or this is the meaning of employee within this act. When you look into employer, the second most important person in this act means in relation to any establishment, in relation to any mine, factory or oil field, a plantation or port or as I mentioned railway company or shop for that matter. Belonging to or under the control of the central government or a state government, a person or authority appointed by the appropriate government for the supervision and control of employees or where no person or authority has been so appointed, the head of the ministry or the department concerned.

So that is the first understanding that should come your way. Second, when you look into employer belonging to or under the control of any local authority, so need not be only the government, it could be under the control of any local authority, the person appointed by such authority, for the supervision and control of employees or where no person has been so appointed the chief executive office of the local authority that said there's a third dimension to it which is in any other case not the government not the local authority the person who or the authority which has the ultimate control over the affairs of establishment factory oil field Port, plantation, mine, shop or a railway company and where the said affairs are interested to any other person, whether called a manager or even a managing director or by any other name, such a person should denote employer. So you'll see. that there are three different dimensions. One, when the central government is at the helm or the state government is at the helm, is the authority.

Or maybe second is when there is a local authority who is placing a person or an entity for the supervision. And the third is a person in itself having the power or being the manager or the managing director. Then you look into the third important element which is the family. Family as again please note is in relation to an employee and it shall be deemed to consist of Anybody in case of, let's say, a male employee, let's look into a male employee.

It could be himself, his wife, his children, whether married or unmarried, his dependent parents and the dependent parents of his wife also, and the widow and children of his pre-deceased son, if any. So this is the case when it is with respect to the male employee. So we'll see that we are going into details so that you will understand what do you mean by the family in this particular act. In case of the female employee, it could be herself, her husband, her children. Whether married or unmarried, her dependent parents and the dependent parents of her husband and the widow and the children of her pre-deceased son, if any.

So this is the third factor, the family. The fourth one, the wages. Wages mean all emoluments which are earned by an employee while on duty or on leave. Please note, while on duty or only in accordance with the terms and conditions of his employment and which are paid or are payable to him in cash and includes different factors like the DA,

DNS allowance, but does not include any bonus, commission, the HRA or even overtime wages and any other allowances for that matter. So this is what happens.

wages is all about when you look into you know the act there are some other terms which for the benefit of the larger audience i'll tell which is retirement and also superannuation retirement means termination of the service of an employee Other than of for superannuation. Superannuation is nothing but in relation to an employee. It means the attainment by the employee of such age as is fixed in the contract or conditions of service. At the age and attainment of which the employee shall actually vacate the employment.

So the act shall apply to whom. This is what is defined by the scope of gratuity act. The scope of Gratuity Act clearly mentions that the Act shall apply to every factory, every mine, oil field, the port, plantation and railway company. It should apply to every shop or establishment in a state in which 10 or more persons are employed or were employed on any day of the preceding 12 months. And it also means a shop or establishment to which this act has become applicable.

shall continue to be governed by this Act, notwithstanding that the number of persons employed therein at any time after it has become so applicable falls below 10. If you go into the nitty-gritties of the Act, there is a section 1, subsection 3a. A shop or establishment to which this Act has become applicable comes under this particular section. sub act so this is what you have to understand it has a class of establishments it has shop also it has every factory mine oil field etc which comes under the purview of this we have seen the broader objectives of gratuity act in a previous class we look into the deeper objectives it is indeed a measure for social security the payment of gratuity act 1972 if you read closely is was enacted to introduce a scheme for payment of gratuity for certain industrial and commercial establishments as a measure for social security.

So this is the most vital thing when it comes to the Gratuity Act. So it has now been universally recognized. that all persons in society need protection against loss of income due to unemployment arising out of maybe incapacity to work, due to invalidity or maybe because of old age, etc. So when you look into the Gratuity Act, it is nothing but it

reflects or it translates into a compulsory statutory retire benefit. For wage earning population, please note, security of income when the worker becomes old or infirm

is of consequential importance. So this is why this is yet another critical act when it comes to labor welfare. When you look into the objectives of the Gratuity Act, the provisions of social security measures, retail benefits like gratuity, provident fund and pension, which are known as triple benefits. Again, I repeat, be it the gratuity, the provident fund and pension. the pension.

These are known as the triple benefits. So please note, these triple benefits are of very great importance. In bringing this particular act, if you see the statute book, the intent or the intention behind that of the legislature for not only achieve uniformity and reasonable degree of certainty, but also to create and bring into force a self-contained, all-embracing, complete and comprehensive code relating to gratuity. This is vital. Now the significance of this legislation lies in the acceptance of the principle of gratuity as a compulsory statutory retire benefit.

So this act, the Gratuity Act specifically accepts in principle compulsory payment of gratuity. I repeat compulsory payment of gratuity as a social security measure to wage earning population in industries, factories and establishments. So We look into this act, we understand that the main purpose and the concept of gratuity is to help the workman after retirement, whether retirement is a result of the rules of superannuation or physical disablement or impairment of vital part of the body. So we see, we understand it as a sort of financial assistance program to tide over post-retirel issues and hardships. So this is where you will actually supplement your understanding of the previous module. We have talked about pension. If you have gone through the previous lecture itself, you will see we have gone into detail by calculating the pension, how much would be the pension itself when you are following EPS scheme, etc. That said,

The objective of these acts is to give you a certain self-assurance that after post-retirement or your post-retirement, what is your life going to look like? Is it going to be financially secure? Yes. The key objective of gratuity and key objective of pension,

key objective of all the particular aspects concerning triple benefits boils down to this fact that the social security post-retirement should be there with every single individual.

Now let's look into the payment of gratuity act. Gratuity shall be payable to an employee on the termination of his employment after he has rendered continuous service for not less than five years. Now this is on his superannuation, the retirement or resignation on his death or disablement or even accident or disease so please note there are critical conditions that have clearly mentioned it need not be that a person has to superannuate should retire it would be the case that he is Having a problem or disablement or maybe he's resigning from the organization, switching to another job or maybe starting a business.

All these aspects could actually lead to the payment of gratuity. So gratuity is a right. Gratuity is a social buffer mechanism. The authorities are providing for the individual post the job, what he is or she is doing.

Now when you look into the act, let us look into some dimensions of the act which have made this act all the more critical and relevant and that is some of the critical factors including overriding effect, statutory right of gratuity, I have Categorically mentioned here that it is a right. Now this is the statutory right of gratuity, executive and quasi-judicial machinery, how it performs or how the act enables it as a quasi-judiciary machinery and finally the maximum gratuity. Let's look into that in greater detail. When you look into the salient features of the act, there is a specific provision of overriding effect.

If you look into overriding effect, the salient features itself is very clearly communicating this overriding of effect. The act, if you see the act specifically, if you see the salient features of the act, the act is a self-contained and exhaustive act and the provisions of this act and rules made under it have an overriding effect. Now, on all other acts or instruments or contracts, so far as they are inconsistent, With this act. Now when you look into the act.

The act is fairly sweeping in coverage. And as it applies to all factories, please note the previous slides. We have underscored the fact that it applies to all factories, oil fields,

mines, plantations, railways, ports, irrespective of the number of workmen employed by them. It also even covers shops, establishments employing 10 or more persons also. So please note the act grants a coverage to entire set of entities.

The act gives a statutory right, which I tried to mention here, the statutory right of gratuity to all employees who have rendered five years continuous service and whose services stand terminated after coming into the force of the act on maybe account of retirement, superannuation or resignation or death or even disablement. So according to this act, The continuous service here means uninterrupted service during the employment period. So this includes, let's say, leaving due to sickness, accident, maybe strike, layoff, etc. It is avoided continuously.

If the interruption is for six months or one year, then the employee is not entitled to gratuity benefits. Please note that they should have worked for at least 190 days in a mine or coal field like establishment where the duration of work is only six months and specifically 240 days in other areas. So on a standard basis, 240 days is understood as the regular working period over a year. So the act certainly provides both executive and quasi-judicial power, quasi-judicial machinery for matters pertaining to nomination, determination and recovery of gratuity. Also note that the executive machinery pertains to the maintenance of the records regarding opening, let's say change or even closure of the establishments.

Display of notices, maintenance of records by the controlling authority, etc. So the quasi judicial functions have been divided between the employers and the controlling authority in as much as for payment of gratuity. So the first forum provided in for an application to the employer. When the employer has declined or avoided payment of gratuity, then an application is required to be made to the controlling authority. The machinery provided for recovery actually rests with the controlling authority.

The orders of the controlling authority for payment or determination of gratuity are applicable before the appropriate government or the appellate authority. You will see that these are the salient features of the act. When you look into another important aspect, the calculation, we have to understand that if you go through the details, Section 4, Clause 2

of the Act provides quantum of gratuity to be paid to the employee. So basically there are three aspects. One is general principle for monthly related employee.

So 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 15 days wages based on the rate of wages last drawn by the employee concerned. When you are looking into a specific formula for gratuity, monthly rated employee has been given in the act specifically. We'll see that in the next slide. What is the relevance of the 26 days that will come into picture here, we will go into that but before there is also a piece rate of employees piece rated employees gratuity is calculated based on the average of the total wages received by the employee for the three months preceding termination and there could be reduced wages due to disablement which is gratuity calculated using the wages before and after disablement with separate calculations for the two periods now when you look into the monthly rated calculation you will see that gratuity is calculated As last drawn wages divided by 26 into 15 into number of years of service. The question of 26 days here came to the act in the year, please note, 1987 and this is interesting so i would like to give the background it came into the act in 1987 i think with the effect from 110 1987 it is now placed in the act uh which is nothing but an outcome of the supreme court decision in sri digvijay woolen mills limited versus mahendra prathaparai bak the supreme court in this case observed that ordinarily a month is understood to mean 30 days but the manner of calculating gratuity payable under the act the employees who work for 26 days a month should be taken as what they got for 26 working days and their 15 days wages worked out accordingly and not by just taking half of their wages for a month of 30 days or fixing their wages by dividing their monthly wages by 30 so in other words

For the purpose of computing the amount of gratuity in respect of monthly rated employees, the monthly wages should be taken as what he or she has got for 26 working days. So his or her daily wages should be ascertained on that basis and his 15 days wages worked out accordingly and not by just taking half of the wages for a month of 30 days. days or fixing his daily wages by dividing the monthly wages by 30. So treating monthly wages as wages for 26 working days is not anything which is unknown. The court also, if you are interested, I will tell that the court has further observed that the decision of some

high courts taking one view or the other on the question that also decision based on some provisions of the Minimum Wages Act, which has also, you know, being referred here and other statutes are not relevant on the question of computation of 15 days wages under this particular Act 1972.

When you look into the piece rated daily wages shall be computed on the average of the total wages received by employee for a period of three months immediately preceding the termination of his employment and for this purpose the wages paid for any overtime work shall not be taken into account. So the average wages divided by 26 into 15 into number of years number of service years completed that becomes the piece rated calculation. When you are looking into the reduced wages on disablement, section 4, sub clause 4, Provides the method of calculating the gratuity for an employee receiving reduced wages after his disablement. So it provides that an employee who is employed after his disablement on reduced wages, his wages for the period preceding his disablement shall be taken to be the wages received by him during that period.

And his wages for the period subsequent to his disablement shall be taken to be the wages as so reduced. Therefore, it is advisable to calculate the gratuity by applying this particular formula, which is last wages before disablement by 26 into 15 into years of service, plus last wages after disablement divided by 26 into 15 into years of service. Please note that there is also a provision for seasonal establishment. In the case of an employee who is employed in a seasonal establishment, what will they do?

who is not employed throughout the year, the employer shall pay the gratuity at the rate of seven days wages for each season. And also section four, suppose three of the act also provides that the amount of gratuity payable to an employee shall not exceed seven. 10 lakh rupees. So these are some of the calculation and calculation mechanisms. When you look into the social security provisions for gratuity, please note before concluding, we look into these three elements.

One is comprehensive coverage. The payment of the Gratuity Act provides a comprehensive framework for the payment. of gratuity to be eligible to employees across a wide range of establishments in India. It also has retirement security. The Act translates

or ensures that the employees who have dedicated their service to an organization receive a lump sum payment upon the retirement or termination, providing them with financial security in their post-employment years.

And finally, the Act grants employees as a statutory right to gratuity which cannot be overridden by other laws or contracts further strengthening the social security measures. So you look into these three factors, comprehensive coverage, retirement security and statutory rights. These are the three fundamental elements which make this act one of the most critical act in the entire scheme of labour welfare. Please note,

The coverage in itself is the beauty. It covers a lot of, you know, almost it's comprehensive. We have listed down even shops, establishments have come into the purview of this act. So the coverage is the beauty of this act. Please note when more and more people are included, are involved in this particular act more and more would be the outcome, more and more would be the benefit. So that's all from today's class. Thank you for listening to me patiently. We'll come with greater details in the next session. Till then, take care.

Bye-bye. Thank you.