

Course Name: Labour Welfare and Industrial Relations

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Lecture: 32

Lec 32: Payment of Gratuity Act 1972: Main Provisions, Compulsory Insurance, Other Provisions

Hello learners, welcome back to the course on Labour Welfare and Industrial Relations.

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So, over the previous few lectures, especially in this module, module 7, we have looked into more intricacies or the finer details of different welfare schemes. We had introduced them in the previous module if you have seen. In this module we have gone into the different aspects like what are the forms required, what are the ways to claim the process, what are the ifs and buts when you actually go for the process in itself, the claim process, claim settlement etc.

Today we will deal with the Payment of Gratuity Act. We have already seen it extensively. My intention today would be to underline on certain key provisions and especially the compulsory insurance part and also to look into some cases which are relevant and some verdicts which have been instrumental in taking forward the understanding of this particular act. So on that note. Let's look into the payment of gratuity amendment act specifically.

So this has been a promise throughout the course that I'll be going with the more detailed version of all the different acts and here it is the payment of gratuity amendment act 2018. So, when you look into the entire Payment of Gratuity Act, it had a social buffer or

the intention was to give you a social cushion or a financial cushion at the end of your career or end of your work period or work span. Now, when you look into the Amendment Act, it has become more critical. It has become more effective, I should say. It came into force on 29th March 2018.

We will look into that in detail. The background was obviously the Payment of Gratuity Act 1972. So when you look into the decision, the Payment Gratitute Act specifically, the Amendment Act 2018 has been passed by Lok Sabha in 2018, 15th March 2018 to be precise and later it was passed by Rajya Sabha on the 22nd March of the same year 2018. And has been brought into force on 29th March 2018. So this is the timeline.

We obviously understand the background. It is nothing but the payment of Gratuity Act 1972. Which was brought to provide a social security to workmen after their retirement. Whether retirement is a result of please note superannuation. It could be result of physical disablement or impairment of a vital part of the body.

We have seen this. Now when payment of Gratitute Act 1972 has been an important social security legislation to wage earning population in industry but it is also significant in factories and other establishments also. The ceiling at this point in time is basically 10 lakh. The provisions for central government employees under the central civil service pension rules 1972 with regard to gratuity are also similar in terms of the ceiling limit. So, before if you look into the implementation of the 7th Central Pay Commission, the ceiling under CCS rules 1972 was Rs.10 lakh. However, when you look into the implementation of the 7th Central Pay Commission, specifically in terms of the government servants, the ceiling has been raised to Rs. 20 lakh. Now, this is the background of the ceiling.

So,Therefore, when we look into the inflation, the wage increase even in case of employees engaged in private sector, Government decided that the entitlement of gratuity should also be revised in respect of the employees who are covered under the Payment of Gratuity Act 1972. So what has happened is the government initiated the process for amendment to Payment of Gratuity Act because of this to increase the maximum limit of gratuity to such amount as may be notified by the central government that So the

government has issued notification specifying this 20 lakh presently as the maximum limit. In addition if you see the bill also envisages to amend the provisions relating to calculation of continuous service for the purpose of gratuity in case of if you look into the female workforce or who are in maternity leave for 12 weeks specifically.

So to such period as may be notified again by the central government from time to time. So this period has also been notified as 26 weeks specifically. Now this is the main purpose to provide social security to workmen as I mentioned after retirement. The retirement could be a result of the superannuation, it could be a result of the physical disablement, it could be even the result of the impairment of a vital part of the body as already mentioned. So this essentially comes out as a social security legislation to the entire wage earning population.

Now when you look into the applicability of that and this is where I want to stress the most in this lecture is Every single manufacturing unit, be it even plantation, oil field, mine, port, railway firm, everything is covered. Specifically, if you look into Section 1 of the Act, it states that the Act extends to the whole of India, except in cases of plantation and ports, where the state of Jammu and Kashmir was exempted before 2019. Please note, till 2019, it was exempted. where it was amended to extend to the whole of India.

So what has happened with respect to the applicability is, that every single manufacturing unit, we can now extensively, exhaustively mention, that every manufacturing unit, mine, oil field, plantation, port, railway, firm, everything will be covered. Every business as defined by any law, currently in effect with regard to business, and premises in a state, where 10 or more people are employed or were employed on any day during the previous 12 months. They are also applicable or that is also coming under the purview of the Act. Now, that said, any other businesses or groups of businesses where 10 or more people are employed or were employed on any day during the previous year as a central government may designate in notification.

So, this has been the extended applicability because of the amendment. Now let's look into the compulsory insurance part. This has been the applicability part critically of this

amended act of gratuity. Now when you look into the act as such, the bill has been passed by both the houses. It has become an act with the assent of the Honorable President.

And has been notified by the government. But when you look into the major impact, it will categorically ensure harmony amongst employees in private sector also and in public sector undertakings, be it autonomous organizations under government who are specifically not covered under the CCS or the pension rules. So these employees will be entitled to receive higher amount of gratuity at par with the counterparts in the government sector. So when does this gratuity become payable? That is also something we should wonder upon.

A gratuity must be paid to an employee upon the termination of the employment if he or she has been or has provided continuous service for work. five years or more according to Section 4 of the Payment of the Gratuity Act. So, let us summarize this. One, it must be upon his or her retirement. Two, upon his or her resignation or retirement.

Three, upon his or her demise or disability brought out or brought on by an accident or illness. So, we will look into some cases at the end of the discussion but please remember there are some typical cases especially one I would recollect now is Kothari Industrial Complex was the appellate authority 1997 the Andhra Pradesh High Court held that a mere absence from work without a valid excuse does not for the purpose of this act constitute a breach of continuity of service so that much is very particular with respect to the breach of service again we'll discuss this with many other cases in the coming lectures. When you look into the compulsory insurance part within this Act, Section 4A of the Act provides compulsory insurance to every employer other than those belonging to the central government or state government through the LIC, Life Insurance Corporation or typically any other company associated with the government for that matter. However these employers are exempted from this provision who have been or who have an established and registered gratuity fund in their company so please note government may also make rules for the enforcement of this section as and when necessary so any violation

Any violation of this provision by anyone may actually lead to penalty. So this is the clause that underscores the relevance and the importance and the need and the existence

of the compulsory insurance part of the Payment of Gratuity Act. Now, when you look into the Payment of Gratuity Act, where certain inhibitions or there were certain discussions that who should be part of it, who should not be the part of it, let's spend some time on that. When you look into who is an employee under the Payment of Gratuity Act, let's try to analyze that first. An employee is defined in Section 2.

If you want a sub-clause, I think it is Sub-Clause E. As any person who is paid wages in an establishment as defined in Section 1, Sub-Clause 3 of the Payment of Gratuity Act 1972. To perform, please note here, any manual, supervisory, technical or clerical work, regardless of whether the terms of employment are express or implied and regardless of whether there is the employees holding a managerial or administrative position. So when you look into the definition, the definition tends to exclude any such critical individuals who occupy a position with the federal or state government and is subject to another act or any guidelines governing the payment of gratuity. So there has been a debate specifically on considering whether teachers as employees.

This is the critical context or this sets the background for our discussion today on the clause or on the understanding of teachers under the Gratuity Act. Now when you look into teachers who impart students education were ruled not to be considered. Employees who avail the benefit of gratuity under this act in the case of Ahmedabad Private Primary Teachers Association versus Administrative Officer LLJ 2004 case. Now, the Supreme Court asked the legislature typically to take cognizance and provide the teachers with gratuity benefits through statutes wherever necessary. Now, this was fundamental in making a conclusion or making an important statement when it came to teachers under the Gratuity Act.

So, therefore, if you look into the 2009 Amendment Act, the term employee has now been expanded to include any person, any person, any individual hired to perform any type of labor. So, as a result, a teacher is also considered an employee for the purpose of this Act. So this has been the background. But I would also like to add that more recently, the Supreme Court in the case of Independent Schools Federation of India registered versus Union of India 2022 case upheld the payment of gratuity amendment act. It's

constitutional validity and held that the amendment aims to bring equality and provide teachers with equitable treatment.

So it's difficult to label it as an arbitrary or arrogant activity. So if you look into the aforementioned Amendment Act. Notably, this act was introduced to extend the benefit of gratuity to teachers who had previously been denied it by incorporating them into the category of the keyword employee. So the court ruled that the private schools should not succeed in When asserting a vested right resulting from a flaw because acceptance would be at the expense of the teachers who would otherwise lose the intended advantage.

So the court upheld the amendment acts legality and order private schools to pick employees and teachers within six weeks. along with interest in accordance with the Act's provision. So if this is not done, the employees and teachers may file a lawsuit in the appropriate forum to have the payment made in accordance with the Act's requirements. So this has been one of the phenomenal changes that has happened or phenomenal decisions that have come up and which has also included which otherwise institution or private educational institution teachers were not part of, they are not coming under the ambit of the Amendment Act. But after this, they are essentially part and parcel of this act.

So let's understand the penalties that are under the Payment of Gratitude Act. We have looked extensively into what is the applicability of this act. We have looked into the compulsory insurance part. We have also looked into the clinical definition of who is or who should be an employee under the Payment of Gratitude Act. When you look into the penalties under the Payment of Gratitude Act, please understand that,

The violation of the provisions of the Act shall entail certain penalties. It's stated in Section 9 of the Act. When you look into the penalties, they are one, as you can see, to avoid any payment if someone makes a false representation or false statement. It shall be punishable with the imprisonment for 6 months or a fine of up to Rs. 10,000 or even both.

Another important penalty that can come up is failure to comply with the provisions of this Act shall be punishable by a minimum of 3 months which may extend it up to 1 year or a fine of Rs. 10,000 which may extend up to Rs. 20,000. Also, there is a third penalty

that could come in. Non-payment of gratitude shall be punishable with imprisonment for at least six months, which may extend up to two years unless the court provides a sufficient reason for less payment. So please understand, ladies and gentlemen, so all the employers who otherwise feel that, you know, they can do away with the payment of gratitude, you know, there are certain employers, undoubtedly.

You know, you put your resignation, you had the sufficient years of service, you had been toiling there, breaking the sweat there, you have been working there for quite number of years, you have all the eligibility conditions ticked, but still there are some institutions which refuse, maybe not overtly, but covertly, or maybe not explicitly, but implicitly, they don't actually release the payment of gratuity. Please note that this is not there in their hand. The gratitude is the right of every single employee. Employee has been categorically defined in the previous slide and it comes automatically. And also even the private educational institution, the teachers involved in their teaching activities in those institutions are also coming under the ambit.

So irrespective of who is not included within the ambit of employee, everybody who is being defined as employee will have the right to get the payment of gratuity. We have just discussed about the penalty, penalties that can be issued to the employer who is not readily or willingly giving away the gratuity or maybe putting some barrier or restriction towards the gratuity. So that discusses about the penalties. Now let's look into some of the critical cases.

I have just mentioned about this. We go into detail about this Kothari Industrial Corporation versus Appellate Authority 1997 case. And you look into this case specifically. You have to understand that the Andhra Pradesh High Court held that a mere absence from work without a valid excuse does not for the purpose of this act constitute a breach of service. So basically when you look into the gratuity factor, mainly the employers tend to use this as an excuse. Wherever possible, they will try to create a breach of security and this is the practical implications I am telling of this act. So there is a possibility that they will some or the other way try to create a breach of service. When there is a breach of continuity of service, then you are being questioned about the gratuity and there could be valid reasons of not giving gratuity. So this has been one of the critical

cases that Kothari Industrial Corporation versus Appellate Authority 1997 case which actually talks about this continuous service. Please note when you are looking into continuous service according to this act continuous service means uninterrupted service during the employment period. This includes leaving due to sickness. Please note. Accident, layoff, strike etc.

So all these aspects are also included within the ambit of this act. So if the interruption is for 6 months or 1 year. then the employee is not entitled to gratuity benefits. So they should have worked for at least 190 days in a mine or coal field like establishment where the duration of work is only 6 months and 240 days in other areas. So these have been the clear understanding of the continuous service.

Before concluding, I would also like to you know, mention something about the income tax implications on gratuity very quickly. When you look into the tax applicability, please understand the entire amount received will not attract any tax specifically for central state government, defense and local bodies. But when you are looking into employees who are covered under the act, the amount which is the least of the following, it could be actual gratuity received or rupees 20 lakhs. 15 into the last drawn salary into number of completed years of service divided by 26 would be the formula to calculate the same.

when you are looking into employees not covered under the act, the amount which is the least of the following, one is the actual gratuity received or rupees 10 lakhs. So again, the formula would be 15 into average salary for the last 10 months into number of years employed into 30. So just wanted to mention that before we conclude this particular lecture on the payment of gratuities, specifically with respect to some clear provisions on the payment part, on the insurance part. And most importantly, one of the key takeaways here should be that continuity of service is essential. And many employers tend to play with or manipulate with the continuity of service so that they can create a barrier in the payment of the gratuity.

Please note, it is your right that you have been working for there for the particular period of time, whether it is 5 years or 10 years, the period has been satisfied with respect to the law of the land, you are able to or you should be able to get your right which is the

gratuity. So, this should be the takeaway from this particular class. Please note, the entire nitty-gritties are covered, especially, you know, we had introduced this payment of gratuity act in the previous couple of lectures. Now, we are trying, now we have tried to actually look into different facets, different dimensions of this act, particularly when you are being faced with a challenge of being not paid the gratuity or you are not coming under the ambit of or the word of employee.

So that's all from today's class. We'll come up with greater details in the next class. Till then, take care. Bye-bye.