

Eligibility under The Payment of Gratuity Act.

An employee is any person (other than an apprentice) employed on wages, in any establishment, factory, mine, oilfield, plantation, port, railway company or shop, to do any skilled, semi-skilled, or unskilled, manual, supervisory, technical or clerical work, whether the terms of such employment are expressed or implied and whether or not such person is employed in a managerial or administrative capacity, 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.

An employee who has rendered not less than five years of service becomes entitled to gratuity on his superannuation or on his retirement or resignation or on his death or disablement. The pre requisite of completion of continuous service of five years shall not be necessary where the termination of the employment of any employee is due to death or disablement. Disablement in such a case would mean disablement which incapacitates an employee for the work which he was capable of performing before the accident or disease resulting in such disablement.

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 nominees 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. Family in relation to an employee shall be deemed to consist of in the case of a male employee, himself, his wife, his children, whether married or unmarried, his dependent parents the dependent parents of his wife and the widow and children of his predeceased son, if any.

In case of female employees, family includes female employee, herself, her husband, her children, whether married or unmarried, her dependent parents and the dependent parents of her husband and the widow and children of her predeceased son, if any. Where the personal law of an employee permits the adoption by him of a child, any child lawfully adopted by him shall be deemed to be included in his family, and where a child of an employee has been adopted by another person and such adoption is under the personal law of the person making such adoption, lawful, such child shall be deemed to be excluded from the family of the employee.

Meaning of Continuous Service

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. An employee shall be said to be in continuous service for a period if he has, for that period, been in uninterrupted service and includes 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, whether such uninterrupted or interrupted service was rendered before or after the commencement of this Act.

Where an employee is not in continuous service for any period of one year or six months, he shall be deemed to be in continuous service under the employer:

- if for the said period of one year he has worked for one hundred and ninety days in the

case of an employee employed below the ground in a mine or in an establishment which works for less than six days in a week and two hundred and forty days in any other case;

- if for the said period of six months has actually worked under the employer for not less than ninety-five days in the case of an employee employed below the ground in a mine or in an establishment which works for less than six days in a week and one hundred and twenty days, in any other case;
- The number of days on which an employee has actually worked under an employer shall include the days on which:
 - a. he has been laid-off under an agreement or as permitted by standing orders made under the Industrial Employment (Standing Orders) Act, 1946 or under the Industrial Disputes Act, 1947 or under any other law applicable to the establishment;
 - b. he has been on leave with full wages earned in the previous year;
 - c. he has been absent due to temporary disablement caused by accident arising out of and in the course of his employment and
 - d. in the case of a female, she has been on maternity leave; so, however, that the total period of such maternity leave does not exceed twelve weeks.
- In case of employees in seasonal establishments he shall be deemed to be in continuous service for any period of one year or six months if he has actually worked for not less than seventy-five per cent of the number of days on which the establishment was in operation during such period.