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# Payment of Gratuity Act, 1972

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<b>Applicability</b>  Every factory, Mine, Oil Field, Plantation, Port, Railways, Company, Shop, Establishment or Educational Institutions Employing 10 or more Employees.	<table><tr><td data-bbox="974 485 1384 866"><b>Employee</b> All Employees Including a Teacher Irrespective of Status or Salary</td><td data-bbox="1384 485 1960 1345" rowspan="2"><b>Qualifying Period</b>  On Rendering of 5 Years' Service, either Termination, Resignation or Retirement</td></tr><tr><td data-bbox="974 866 1384 1345"><b>Entitlement</b> On Completion of Five Years' Service Except in case of Death or Disablement</td></tr></table>	<b>Employee</b> All Employees Including a Teacher Irrespective of Status or Salary	<b>Qualifying Period</b>  On Rendering of 5 Years' Service, either Termination, Resignation or Retirement	<b>Entitlement</b> On Completion of Five Years' Service Except in case of Death or Disablement
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# Payment of Gratuity Act, 1972

## **Protection of Gratuity**

Cannot be Attached  
in Execution of any  
Decree

## **Recovery of Gratuity**

To Apply within 30  
Days in Form I when  
not Paid within 30  
Days.

## **Nomination**

To be Obtained  
by Employer  
after Expiry of  
One Year  
Service in  
Form 'F'

# Payment of Gratuity Act, 1972

## Calculation of Gratuity

### Wages for Calculation

@ 15 Days' Wages for Every Completed Year as if the month Comprises of 26 Days at the Last Drawn Wages.

### Calculation

#### Piece-rated Employees

@ 15 Days' Wages for Every Completed Year on an Average of 3 Months' Wages.

### Calculation

#### Seasonal Employees

@ 7 Days' Wages for Every Completed Year of Service.

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## Illustration: Calculation of Gratuity

Mr. Bala Gopal Joined the National Bank as a teller on 22 August 1980. On attaining the age of superannuation on 31 December 2013, he was released from the services of the bank. On the date of his superannuation, his basic pay, as an accountant, was INR 11,500 and his dearness allowance was INR 3,700.

His Gratuity was calculated as follows:

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## Illustration: Calculation of Gratuity

**Monthly wage:**  $\text{INR } 11,500 + \text{INR } 3,700 = \text{INR } 15,200$

**Total service** = 33 years completed

**Gratuity** = 15 days of wage for every completed year of service

**Gratuity payable** =  $\text{INR } 15,200 \times 15/26 \times 33 = \text{INR } 2,89,385$

**Note:** The factor 15/26 means 15 days' wage in a month comprising 26 working days (i.e. 30 days less 4 weekly off days).

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## **Mode of Payment**

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

## **Total Ceiling**

**Rs. 20,00,000 /-**

# Payment of Gratuity Act, 1972

## **Forfeiture of Gratuity**

On Termination of an Employee for Disorderly Behaviour

Wholly or Partially for Willfully Causing Loss, Destruction of Property.

## **Penalties**

- Imprisonment for 6 Months or Fine up to Rs. 10,000 for Avoiding to Make Payment by Making False Statement or Representation
- Imprisonment not less than 3 Months and up to One Year with Fine on Default in Complying with the Provisions of Act or Rules.



## Problems and Remedies related to Payment of Gratuity Act, 1972

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Whether a retired employee of a Hindu temple is entitled to claim benefit of Gratuity on attaining the age of superannuation?

The Orissa High Court has ruled that the whole temple would come under the purview of establishment and therefore clerk or manager who was working in a temple is entitled for payment of gratuity.

## Problems and Remedies related to Payment of Gratuity Act, 1972

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Can Gratuity be adjusted against loans, rent or other outstanding against an employee?

No, Gratuity, as payable by an employer to an employee or his legal heir, cannot be adjusted against the loans or any other outstanding against an employee.

## Problems and Remedies related to Payment of Gratuity Act, 1972

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Can Gratuity of an employee be attached in a decree by the civil court?

Section 60(1)(g) of the Civil procedure code provides that gratuity payable to an employee cannot be attached and the civil court cannot grant injunction restraining the employer from payment of gratuity to an employee.

## Problems and Remedies related to Payment of Gratuity Act, 1972

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What will be criterion for calculation of gratuity when an employee has been working for only 22 days in a month?

It is immaterial whether the employees are working for 22 days or more in a month. The gratuity will be calculated as if an employee is working for 26 days in a month.

## Problems and Remedies related to Payment of Gratuity Act, 1972

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Will a director of a company be entitled to gratuity under the payment of gratuity Act?

Although the definition of ‘employee’ under section 2(e) of the payment of gratuity act, 1972 does not spell out as to whether the director is an employee or not, it depends upon the function or the duties performed by a director. It is, however made clear that if a director of a company is performing duties and is working for the company then he can come within the purview of an ‘employee’ under the Act.

## Problems and Remedies related to Payment of Gratuity Act, 1972

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What steps are to be taken by the controlling authority if there is no nomination?

In case of death of an employee, gratuity payable to him, shall be paid to his nominee and if no nominee has been made, to his heirs, and where any such nominee or heir is a minor, the share of such a minor shall be deposited in such bank or any financial institution as may be prescribed until the minor attains majority.

## Problems and Remedies related to Payment of Gratuity Act, 1972

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It is mandatory that an employer should display any notice under the Payment of Gratuity Act and rules?

Yes. There is an obligation under rule 4(1) to display a notice at or near the main entrance of the establishment in bold letters in English and in language understood by the majority of the employees.

## Problems and Remedies related to Payment of Gratuity Act, 1972

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Is it necessary that an employee must have worked for five years in order to claim gratuity under the payment of gratuity act?

In one case, the Madras High Court has held that an employee rendering continuous service for a period of 240 days in a year, i.e., the fifth year will be deemed to have continued in service for one year as stipulated by section 2A of the act. Accordingly, an employee who has put in his service for 10 months, 18 days for the fifth year subsequent to first 4 years should be deemed to have completed continuous service of 5 years and is entitled to gratuity.



## Problems and Remedies related to Payment of Gratuity Act, 1972

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Whether a worker doing work of canvassing of general insurance business by going from place to place to meet prospective clients will be an employee under the payment of gratuity act?

The field worker visiting customers at their houses and canvassing and doing the business by selling the insurance policies and collecting premium amount from the customers and depositing ultimately in the office will be performing manual work and clerical work and , thus, will fall within the definition of employee under the payment of gratuity act and will be entitled to gratuity.

## Problems and Remedies related to Payment of Gratuity Act, 1972

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How much exemption is available to an employee on gratuity for income-tax?

Maximum ceiling for gratuity is Rs. 10 lakh and as such an employee is exempted from payment of income tax to that amount. However, if an employee is entitled to more gratuity than Rs. 10 lakh either by way of settlement or a better scheme of gratuity, then the amount more than Rs. 10 lakh should be taxable.

Now it is **tax exempt** up to Rs 20 lakh from the previous ceiling of Rs 10 lakh, which comes Section 10(10) of the Income **Tax** Act.

## Problems and Remedies related to Payment of Gratuity Act, 1972

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Can the payment of gratuity to an employee be stalled if the employer is not in a position to make the payment due to financial difficulties?

Gratuity of employees must be paid irrespective of financial capacity of the employer or even non-availability of finances.

## Problems and Remedies related to Payment of Gratuity Act, 1972

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Whether gratuity will be available to an employee on back-wage when he is reinstated?

Yes. Where labour court awarded reinstatement with continuity of service, it has been held period for which the employee had not worked due to termination of service, rightly included for the calculation of gratuity.

# References

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- Aswathappa, K. (2013). *Human resource management: Text and cases*. Tata McGraw-Hill Education.
- Armstrong, M., & Taylor, S. (2020). *Armstrong's handbook of human resource management practice*. Kogan Page Publishers.