

Why's When's and At all of Gratuity Forfeiture

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< EXECUTIVE SUMMARY >

◆ All the aspects for the payment of Gratuity are covered in the payment of Gratuity Act, 1972. It creates the right of the payment of the gratuity, prescribes when the right will accrue and lays down the principles for quantification of gratuity. Apart

from these provisions, the Act also lays down the conditions under which the gratuity shall be forfeited. These are indeed corrective measures for growing indiscipline. The article below discusses such issues.



Payment of Gratuity Act 1972 is a Complete Code containing all detailed provisions on practically all aspects for payment of Gratuity. It creates the right of payment of gratuity, prescribes when the right will accrue and lays down the principles for quantification of the gratuity. Simultaneously there are provisions when the gratuity. Payable to an employee could be forfeited for willful omission or negligence causing damage, loss or destruction of employers property and for riotous and disorderly conduct and for offence/misconducts involving moral turpitude. We are moving fantastically fast so far as Trade, Commerce and Industry is concerned. So nothing should be tolerated which retards the industrial development of the country.

The bulk of labour legislation in India had proved counter productive and succeeded only in dividing the labour and management. The indiscipline in the workers is mounting and the need of the hour is just the corrective aspect of the justice because nothing could condone the obstreperous and wild behaviour and conduct of the workers. Whatever the grievances hooliganism is not a method of protest that any civilized society can put up with.

The acts of willful omission or negligence, which cause damage loss or destruction to employers property and the acts of riotous or disorderly conduct and any act involving moral turpitude on the part of employee could debar him of

the due amount of gratuity. The intemperance of the employee to evade the legal consequences of his acts of omission and commission as aforesaid shall not be countenanced while extending the benefit of this Act to the employees.

As has been observed the Payment of Gratuity Act, 1972 is a self-contained act containing full provisions covering all essential feature of a scheme for payment of gratuity. It creates the right to payment of gratuity indicates when the right will accrue and lays down the principles for qualification of gratuity. It provides further for recovery of the amount and contains a special provisions that compound interest will be payable on delayed payments. For the enforcement of its provisions the Act provides for the appointment of a controlling Authority who is entrusted with the task of administering the provisions of the Act. The fulfillment of rights and obligation of parties are made his responsibility and he has been invested with amplitude of power for the full discharge of that responsibility. Any error committed by him can be corrected in appeal by the appropriate Govt. or an Appellate Authority particularly constituted under the Act. The Act contains elaborate provisions for forfeiture of gratuity amount under certain circumstances of which employers are not usually aware or do not resort to such an action when contingencies so arise. Section 4 (6) provides circumstances in which amount of gratuity can be forfeited wholly or partially. They are as hereunder:-

Notwithstanding anything contained in sub-section (1)-
(a) The gratuity of an employee, whose services have

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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.

- (b) The gratuity payable to an employee (may be wholly or partially forfeited).
- i. 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
 - ii. If the services of such employee have been terminated for any act, which constitutes an offence involving moral turpitude, provided that he commits such offence in the course of his employment.

These provisions are akin to the disqualifications for receiving bonus under Section 9 of the payment of Bonus act 1965. According to this, the gratuity of an employee, whose services have been terminated for any act, willful omission or negligence causing any damage or loss or destruction of property belonging to the employer shall be forfeited to the extent of damage or loss so caused.

Unfortunately the acts of “willful omission” or “negligence” have not been defined in the Act. We have therefore to seek guidance from case law on these issues. It has been held in *Cheenia v/s. Dalmia Cement (Bharat) Ltd.* 1955 1 LLJ 599 that if a workman deliberately refused to obey the orders, it is subversive of discipline and is a serious misconduct. If an employee willfully interfered with the working of a machine and took the repairer to task when it was repaired by him and as he was also found sleeping during duty hours he was liable to be dismissed and damages could be recovered from him (*Hiraman Shrestha V/s. Creshan and Govt. of India-I FJR 267 (Lat)*)

Besides the willful omission as defined in most Standing Orders and model Standing Orders usually prescribe as to what acts and omission would constitute misconduct.

If the termination of an employee is on account of his riotous or disorderly behaviour or any act of violence on his part and for any of his acts constituting moral turpitude committed during the course of his employment, his whole amount of gratuity could be forfeited. Now what would constitute riotous or disorderly behaviors, act or violence or acts involving moral turpitude would depend on the circumstances of a particular case and incidents and matter incidental thereto.

Then there are various kinds of misconducts which find mention in the Standing Orders for which gratuity could be forfeited wholly or in part.

However, as classified by the Hon’ble Supreme court, the misconduct broadly fall into the following three categories:-

- (1) Technical misconducts –they are simple miscon-

ducts and will not lead to forfeiture of Gratuity.

- (2) Misconduct resulting in loss and damages –In such cases of misconducts the forfeiture of gratuity could be made to the extent of loss or damage to the property of the employer.
- (3) Grave misconduct-they are serious misconducts involving violence, disorderly behaviours and the like for which the whole of gratuity could be forfeited.

The law on the subject therefore, boils down to the proposition that if the first category misconduct is committed then no forfeiture of gratuity is permissible but in the matter of second category misconduct gratuity could be forfeited to the extent of loss directly suffered by the employer but in case of third category misconduct, the entire amount of gratuity could be forfeited.

If a workman is guilty of serious misconduct such as act of violence against the management of other employees or riotous or disorderly behaviour in or near the place of employment, which though not directly causing damage is conducive to indiscipline, his gratuity can be forfeited in its entirety. The management personnel should not be roughed up by the erring employees (1973) 2 SCC 302.

Thus the Hon’ble Supreme Court has laid down in categorical terms that act of grave misconduct could entail forfeiture of whole amount of gratuity. This would act as deterrent to indiscipline in the establishment.

In the case of *B. Mohan Reddy vs. A.P.S. Co-op. Marketing Federation Ltd.* 1990 (1) LLN 820 it was held that payment of Gratuity Act does not authorize employer to withhold Gratuity of employee for any reasons such as negligence and unauthorized leave except where services of employee are terminated for any act of willful omission or negligence which caused any damage, loss or destruction to employers property or for riotous or disorderly behaviour or for any act which constitutes an offence involving moral turpitude committed in the course of employment. Again it has been held by the Bombay High Court in the case of *Bombay Gas Public Ltd. Co. V/s. Papa Akbar and Anr.* 1990 II LLJ 220 that the provisions of Sec. 4 (6) (a) of the payment of Gratuity Act do not come into force unless there is a termination of service. The provision of forfeiture of Gratuity must be construed strictly. Merely stating that the employee went on strike. Merely stating that the employee went on strike and thereby caused a heavy loss to the company could not be a ground to deny gratuity to the employees.

In the case of the management of *Tournamulla Estate. Vs. Workmen* 1973 –II LLJ 241 the workman was charge sheeted for riotous and disorderly behaviour for having assaulted a tea maker. The workman was dismissed and his gratuity forfeited. The Supreme Court in this case applied the

principles laid down in the case of Delhi Cloth & General Mills Co. Ltd. V. Workman 1969-11-LLJ 755 and held that in such a case when the concerned workman was guilty of this kind of misconduct, he forfeited his right of gratuity.

POINT OF TIME FOR FORFEITURE AND PROCEDURE TO BE FOLLOWED

The question whether the whole of the gratuity or part thereof is to be forfeited would come up only on termination of employment because gratuity is payable to an employee on termination of his services.

An employer has to take an independent decision after the termination of service of an employee as to whether the gratuity payable should at all be forfeited in cases which fall under sub-clause (i) or (ii) of Sec. 4 (a) (b) of the payment of Gratuity Act and if so to what extent. The decision must necessarily depend upon the facts and circumstances of the case such as the length of service and past record, extent and magnitude of an offence and other relevant consideration. It therefore follows that the decision has to be taken after giving notice of the proposal to the employee concerned and after due consideration of the reply furnished if any. It is however held that notice to show cause against forfeiture was not required to be given before 1984 amendment. (Bharat Gold Mines Ltd. V/s. Regional Labour Commissioner and others 1986 (53) FLR 340).

However things cannot be straitjacketed in this regard and the different case laws have altered the hitherto position a little bit. The Bombay High Court in the case Narayan Rao Bhosekar Vs. Municipal Corporation-Mumbai (2002) 94 FLR 55 held that if there was dismissal from services on grounds of dishonesty and taking bribe etc., it involved moral turpitude and therefore forfeiture of gratuity under Section 4 (6) (b) (11) of the Act was correct and tenable.

The Karnataka High Court in the case of J.B. Micheal De' Souza Vs. Authority under the Payment of Gratuity Act Appellate-Bangalore 2001 (4) LLN 582 held that the employer could forfeit under section 4 (6) (a) of the Act, the amount of gratuity only to the extent of loss caused but before doing it the employer must issue show cause notice.

Lately the Jharkhand High Court in the case of Indian Aluminium Company Ltd. V/s. Regional Labour Commissioner (c) Dhanbad [(2003) 97 FLR 587] went to the extent of holding that if the proved misconduct was extremely serious then no separate order of forfeiture.

The Madhya Pradesh High Court in the case of Mansukh Lal V/s. N.T.C. (MP) FLR (1998) 81-377 held

that no forfeiture of gratuity was permissible if the loss was calculated on assumption and there was no specific rule or scheme applicable to the services of the employee.

On the contingency of retirement Vis-à-vis forfeiture of Gratuity there are two diametrically opposite views. The Allahabad High Court in the case of Krishna Kumar & Ors. V/s State of UP 1999 Lab IC 3346 held that the forfeiture of gratuity was permissible only in cases of termination of employee and not for retired employees. As against this the Madhya Pradesh High Court in the case of Radhey Shyam Khichrolia Vs. M.P. Co-operative Marketing Federation 2002 LLR 610 held that there should be a valid order of dismissal for imposition of punishment before forfeiture of gratuity could be resorted to. However it is submitted that M.P. Law is not a good law because it would put premium on persons who are on the verge of retirement to resort to such acts and omissions and then go away scot-free.

Forfeiture order is a quasi-judicial order. It is well settled law that an order forfeiting the due pension and gratuity is a quasi-judicial and it has got to be passed after due compliance of the principles of natural justice because it deprives the employee of his fundamental right of the property and it must be reasonable and speaking order.

The employee whose gratuity employer proposes to forfeit should be given a proper show cause notice setting out specific misconducts against him along with the nature of evidence in his possession and then he should be given an opportunity of rebutting the show cause notice then ordinarily a final forfeiture order should be passed. However this requirement could be waived in certain extreme cases. It is no more hard and fast.

The more we think, the more we believe that there is now need to emphasize corrective aspect of social justice. The labour has already got more than the average share of nations wealth and a time has come when we should put an end to indiscipline in factories and industries. The provisions relating to the forfeiture of gratuity and disqualification for receiving bonus under certain circumstances are indeed corrective measures for growing indiscipline. A vibrant economy like ours can ill afford the interruption in the unhampered functioning of the instruments of production by riotous and disorderly acts and other omissions and commissions by the workers inside the factories. The employer should resort to these measures when situation so warrant but certainly bonafidely to avoid short-circuiting of the industrial peace. The elongated and prolonged deliberations before the courts has settled and crystallized law on forfeiture of gratuity. The underlying thesis of the article is to set out now the incontrovertible position of perceived notions of economic expediency that indiscipline could debar an employee of his monetary benefits. ■