

No Limitation to Claim Payment of Gratuity

by [Kumar Doab](#)
on 05 October 2016

The Payment of Gratuity Act does not prescribe any limitation to claim gratuity.

Payment of gratuity is not a bounty to the employee by the employer. It is the right of an employee to claim gratuity. The employer can not delay in disbursement of gratuity. The amount should be disbursed without delay.

It is duty of the employer to pay gratuity within stipulated period. In case, employee fails to claim, it is the duty of the employer, to calculate give notice in writing to the person to whom the gratuity is payable and also to the controlling authority (and deposit the same with the Controlling Authority).

Starting point for payment of gratuity will be from the time when the employer disputes the liability.

The employer cannot resist the claim of payment of Gratuity on the ground of limitation.

No claim for gratuity shall be invalid merely because the claimant failed to present his application within the specified period (If any).

The rule leaves no manner of doubt that the Legislature intended that the claim or application for gratuity by an employee should not be defeated on technical consideration.

Payment of Gratuity

>>> **Payment of Gratuity Act, 1972:**

Section: 7

Determination of the amount of gratuity.

(1) A person who is eligible for payment of gratuity under this Act or any person authorized, in writing, to act on his behalf shall send a written application to the employer, within such time and in such form, as may be prescribed, for payment of such gratuity.

(2) As soon as gratuity becomes payable, the employer shall, whether an application referred to in sub-section (1) has been made or not, determine the amount of gratuity and give notice in writing to the person to whom the gratuity is payable and also to the controlling authority specifying the amount gratuity so determined.

(3) The employer shall arrange to pay the amount of gratuity within thirty days from the date it becomes payable to the person to whom the gratuity is payable.

(3-A) If the amount of gratuity payable under sub-section (3) is not paid by the employer within the period specified in sub-section (3) the employer shall pay, from the date on which

the gratuity becomes payable to the date on which it is paid, simple interest at such rate, not exceeding the rate notified by the Central Government from time to time for repayment of long term deposits, as that Government may, by notification specify

(4)(a) If there is any dispute as to the amount of gratuity payable to an employee under this Act or as to the admissibility of any claim of, or in relation to, an employee for payment of gratuity, or as to the person entitled to receive the gratuity, the employer shall deposit with the Controlling Authority such amount as he admits to be payable by him as gratuity

>>> Some states have enacted Gratuity Rules in accordance with the Act, to ensure that payment of social security benefit is further **secured** for the employees' e.g;

THE GRATUITY ACT, 1972

The Payment of Gratuity (Maharashtra) Rules, 1972.

ELIGIBILITY: (i) Any person employed on wages / salary.

Other Requirements: 4) Abstract of the Payment of Gratuity Act & Rules made there under is to be displayed as per Rule 20.

5) Compulsory insurance of the employees is to be obtained Section:

4A Compulsory insurance Every employer has to obtain an insurance in the manner prescribed, for his liability for payment towards the gratuity under this Act, from the Life Insurance Corporation of India established under the Life Insurance Corporation of India Act, 1956 (31 of 1956) or any other prescribed insurer.

Where an employer fails to make any payment by way of premium to the insurance referred to in sub-section (1) or by way of 'contribution to all approved gratuity fund referred to in sub-section (2), he shall be liable to pay the amount of gratuity due under this Act (including interest, if any, for delayed payments) forthwith to the controlling authority. Whoever contravenes the provisions of sub-section (5) shall be punishable with fine which may extend to ten thousand rupees and in the case of a continuing offence with a further fine which may extend to one thousand rupees for each day during which the offence continues.

Determination of the amount of gratuity:

Section: 7 As soon as gratuity becomes payable, the employer shall determine the amount of gratuity and give notice in writing to the person to whom the gratuity is payable and also to the controlling authority specifying the amount gratuity so determined. A person who is eligible for payment of gratuity under this Act or any person authorised, in writing, to act on his behalf shall send a written application to the employer, within such time and in such form, as may be prescribed, for payment of such gratuity. The employer shall arrange to pay the amount of gratuity within thirty days from the date it becomes payable to the person to whom the gratuity is payable. If the amount of gratuity payable under sub-section (3) is not paid by the employer within the period specified in sub-section (3), the employer shall pay, from the date on which the gratuity becomes payable to the date on which it is paid, simple interest at such rate, not exceeding the rate notified by the Central Government from time to time for repayment of long-term deposits, as that Government may, by notification specify:

>>> **THE PAYMENT OF GRATUITY (CENTRAL) RULES, 1972-1**

7. Application for gratuity.-(1) An employee who is eligible for payment of gratuity under the Act, or any person authorised, in writing, to act on his behalf, shall apply, ordinarily within thirty days from the date the gratuity became payable, in Form 'I' to the employer: Provided that where the date of superannuation or retirement of an employee is known, the employee may apply to the employer before thirty days of the date of superannuation or retirement.

(5) An application for payment of gratuity filed after the expiry of the periods specified in this rule shall also be entertained by the employer, if the applicant adduces sufficient cause for the delay in preferring his claim, and no claim for gratuity under the Act shall be invalid merely because the claimant failed to present his application within the specified period. Any dispute in this regard shall be referred to the controlling authority for his decision.

>>> The employer is able to release the gratuity amount in accordance with the years of service rendered by the employee, **in accordance with the provisions of Section 7 of the Act.**

HIGH COURT OF JUDICATURE AT ALLAHABAD, LUCKNOW BENCH

Court No.22

Writ Petition No.2841 (M/S) of 2008

Organic Fertilizers ... Petitioner

Versus

Assistant Labour Commissioner (Controlling Authority)

and another ... Opp. Parties

Hon'ble S.S. Chauhan, J.

Heard learned counsel for the petitioner and learned counsel for the opposite parties.

The present petition has been filed challenging the order dated 31.3.2008 passed by the opposite party no.1 in Case No.31 of 2006 under the Payment of Gratuity Act, 1972. (for short the 'Act').

Submission of learned counsel for the petitioner is that petitioner has challenged the age of retirement and, therefore, unless and until the said retirement age is determined the payment of gratuity cannot be made. It is also submitted that gratuity is liable to be paid to opposite party no.2 only when full and final settlement between the parties is settled finally. Hence, the impugned order cannot be sustained in law and is liable to be quashed.

Learned counsel for the opposite parties, on the other hand, has submitted **that the impugned order cannot be faulted in any manner and moreover the opposite party no.2 is entitled for payment of gratuity in accordance with the provisions of Section 7 of the Act.** He has further submitted that employer is able to release the gratuity amount in accordance with the years of service rendered by the employee. It is also submitted that identical controversy has been decided by this Court by way of Writ Petition No. 2919 (M/S) of 2008, Organic Fertilizers vs. Assistant Labour Commissioner (Controlling Authority) and another and this Court considering the argument of counsel for the petitioner has proceeded to uphold the

order of payment of gratuity.

I have heard learned counsel for the parties and gone through the record.

This Court while adjudicating the identical controversy in respect to another employee in Writ Petition No.2919 (M/S) of 2008 has proceeded to decide the matter in the following terms:

"A bare perusal of provisions of Section 7 of the Payment of Gratuity Act, 1972 reveals that employer is under duty to prepare the gratuity and given notice in writing to the employee.

Though the employee is also under obligation to submit the Form-I as prescribed, which requires certain informations unless certain informations as are required, are received to the employer, it is difficult for the employer to ascertain the facts and pay the gratuity as is demanded. Overall, it is not disputed that after retirement, the gratuity is payable to the employee. Therefore, I hereby observe that the petitioner shall **extent** the benefit of the gratuity to the opposite party no.2 as per order passed by the Prescribed Authority. So far as the interest is concerned, I do not find any error in the direction issued by the authorities concerned as only the direction has been issued to pay the interest w.e.f. the institution of the case till the date of decision. The petitioner shall pay the gratuity irrespective of the case pending before the Labour Court regarding the dispute of age of retirement. Learned counsel for the petitioner complains that even after the retirement, the respondent has retaining the quarter without payment of rent etc. Learned counsel for the opposite party no.2 undertakes that as soon as the gratuity along with interest is paid, the opposite party no.2 shall vacate the quarter, considering which, in the interest of justice, I hereby provide that as soon as the amount of gratuity along with interest is paid, the contesting respondent shall vacate the quarter forthwith. It is further provided that the petitioner shall be at liberty to deduct the amount of rent from the amounts which are payable against the gratuity."

From the above judgment, it is clear that the claim of payment of gratuity has been accepted by this Court and the said order has become final. So far the question of age of retirement is concerned, that will be considered in accordance with law and if the claim of the opposite aptry no.2 is allowed, then consequences will follow in accordance with law.

I am in full agreement with the judgment rendered in Writ Petition No.2919 (M/S) of 2008. In this case there is no question in regard to payment of rent and so the direction issued in the aforesaid case shall not be applicable in the present case to that extent.

Petition is devoid of merit. It is accordingly dismissed.

23.11.2009

Rao/-

>>> Starting point for payment of gratuity will be from the time when the employer disputes the liability.

Kerala High Court

Neelakandan Namboothiri vs State Of Kerala on 9 February, 2001

1. The challenge in this Original Petition is against Ext. P7 order passed by the Appellate Authority under the Payment of Gratuity Act dated 4.11.2000. The Appellate Authority upheld the order of the Controlling Authority (District Labour Officer, Thodupuzha) **whereunder it was ordered that the employee (4th respondent herein) is entitled to get Rs. 11,952/- as gratuity and interest at the rate of 10% from 1.4.1993.** The petitioner, who is a reputed Ayurvedic Establishment, contends that the delay in filing the application by the employee, who was a salesman, has not been adverted to by the Appellate Authority, even though at the time of earlier demand, this Court had directed that this aspect also had to be taken notice of. The operative portion of the judgment in "The management is at liberty to agitate the matter before the appellate authority on merits including the jurisdiction of the Controlling Authority under the Payment of Gratuity Act that the delay was not properly condoned."

2. The aspect of delay, as such is not seen specifically considered when the order was passed. Considering the circumstance that only a nominal balance amount is payable by the petitioner-employer, I do not think that the matter is to be kept pending any more.

3. The Government Pleader points out the statute prescribes for deposit of gratuity payable to an employee if not claimed. It is therefore as much a duty on the part of the employer to pay gratuity to a retired employee, and he need not wait for an application to make a payment.

4. I may examine this position in the light of the submissions made. S.7 of the Act deals with determination of gratuity. It of course refers to a formal application to be made, but S. 7(2) imposes a duty on the employer to determine the amount payable as gratuity and give notice thereof to the employee and the Controlling Authority. It is specifically stated that this duty is there, whether an application under S. 7(1) is made or not. S. 7(3) requires such payment to be made within the stipulated time. Interest for belated payment is statutorily fixed by S. 7(3-A) and if there is dispute, the amount as per his calculation at least has to be deposited.

6. Whether or not an application is filed:

Now it is unambiguously laid down that an employer has a duty to pay gratuity. If he disputes it he has to advise the employee of his proposal. The delay can start to run from that point of time. In the aforesaid view, I do not think that the claim of the second respondent has to be rejected on the issue of limitation.

7. Being a beneficial piece of legislation, it has to get a liberal interpretation and the intention of the statute becomes highly relevant when an issue for rejection of a claim is pressed. Establishments which employ less than ten persons are normally outside the purview of the Act. The statute requires for calling of nominations from the serving employees, and by implication, maintenance of complete and proper records including wages that are payable from time to time, and also furnishing of yearly returns to the Inspectors appointed. These are indicative of the mandatory requirement to pay the dues admissible to an employee, who at time may not be aware of his rights. The right being statutory, cannot be equated to a debt, and principles of Limitation Act strictly are not applicable. As pointed out earlier, the liability can be seen only as an obligation which the employer has to obligatorily discharge. Therefore the delay in making an application cannot be permitted to be capitalised. Further in the present case there was no claim that the employee was advised to a rejection of his application, and therefore in fact the question of delay did not arise. For the only reason that

the enforcement authorities did not satisfactorily deal with the issue the matter need not be remitted back, since I have on examination found that delay was not permissible to be pleaded because of the default of the employer.

8. In the aforesaid background, I find no ground to interfere with the orders. The Original Petition is dismissed.

>>> Thus delay at the end of employee in making an application for the payment of Gratuity shall be nothing but a hollow argument.

The employer under Rule 7 (5) of the Rules cannot resist the claim of the workmen on the ground of limitation.

The courts of law have delivered path breaking and trendsetting judgments on condonation of delay.

>>> **Condonation of delay:**

Andhra High Court

Rama Rao P. And Ors. vs Controlling Authority Under P.G. ... on 29 March, 1996

1. A batch of writ petitions questioning the order of the Controlling Authority under the Payment of Gratuity Act, 1972 and Assistant Labour Commissioner (Central) under which order he has rejected the objection of the writ petitioner -respondent (the employer) as to the delay in filing the claim application for gratuity, has been allowed by the learned single Judge. Employees have preferred the instant appeals.

2.....Appellants, however, maintained that they were not aware of the beneficial provisions of the Act when their services were terminated. As soon as they came to know through their co-workers they submitted their claim applications before the proper authority for their due gratuity.....

The Controlling Authority under the Act and Assistant Labour Commissioner (Central) has stated as follows :

"The applicants also stated that it is obligatory on the part of the employer to calculate the gratuity amount correctly in accordance with the provisions of law. Whereas this fact came to their notice through the case of Sri P.V. Raju that the Management has not calculated the gratuity amount as due to them. As such, the delay has occurred in filing the present cases.

The Hon'ble High Court of Rajasthan in the case of Madar Union Sanatorium and Hospital v. M.B. Sathe (1986-II-LLJ-135) inter alia observed that "the person who is not technical and legal minded is generally entitled for the benefit of condonation of delay, specially under beneficial legislation enacted for the welfare of the people". In the instant case, undisputedly, the applicants are not legal minded; as such they cannot be denied the benefit of condonation.

17. "If the object of the Limitation Act is kept in view, it would not be difficult to understand the reasoning for the period of limitation fixed under Rule 10 of the Rules. Before the workman invokes Rule 10 of the Rules for determination of the amount due to him, he would

have an ample opportunity to work out his right with the employer under Section 7 (1) (2) (3) and (4) (a). Under Section 7 (4)(b) he has a right to raise a dispute and have the same referred to the controlling authority. The employer under Rule 7 (5) of the Rules cannot resist the claim of the workmen on the ground of limitation. The employer in these cases did not reject the claim of the workmen under Rule 7(5). In the circumstances, the plea of limitation as prescribed under Rule 10 of the Rules will have to be considered in the light of the provisions of Section 7 of the Act and Rule 7 of the Rules. In my view, Rule 10 would be applicable to the facts of this case only when the workman had raised a dispute earlier under Section 7(4) (a) of the Act and that dispute was not resolved by the employer and thereafter the workman approaches the controlling authority for determination of that dispute."

18. A similar view is expressed in *Ramjilal v. Elphinstone Spg. & Wvg. Mill Co. Ltd.*, (supra) by a learned single Judge of the Bombay High Court in these words at p. 1706 :

.....Rule 7 Payment of Gratuity (Maharashtra) Rules, 1972 provides that the employee entitled to the gratuity shall apply ordinarily within thirty days from the date the gratuity becomes payable. It is undoubtedly true that the petitioner had applied on November 4, 1976, which is long after the expiry of period of thirty days from the date when the right to gratuity accrued. Sub-rule (5) of Rule 7 empowers the authority to condone the delay and further issues a flat that no claim for gratuity shall be invalid merely because the claimant failed to present his application within the specified period.

The rule leaves no manner of doubt that the Legislature intended that the claim or application for gratuity by an employee should not be defeated on technical consideration and the authority should be very liberal in condoning the delay. The Controlling Authority relying upon this provision had thought it fit to condone the delay in presenting the application."

>>> "Landmark judgment of Punjab high court for condonation of delay in payment of Gratuity"

**Senior Superintendent of Post Offices, Hoshiarpur Division, Hoshiarpur
PETITIONER Versus**

Shri Avtar Singh and others RESPONDENTS

The petitioner has filed this petition under Article 226 of the Constitution of India for quashing the orders dated 1.2.2008 and 10.11.2008 , passed by the Controlling Authority and the Appellate Authority, respectively, whereby the application filed by respondent No.1 for payment of gratuity under the Payment of Gratuity Act, 1972 has been accepted and the petitioner has been directed to pay an amount of Rs. 43,232/- along with interest.

A perusal of the order, Annexure P-7, indicates that the authority has taken notice of a Division Bench judgment of this Court in the case of :

Sr. Supdt. of Post Offices vs. Smt. Sham Dulari & others (CWP No. 7576 of 2006), decided on 18.5.2006),:

whereupon relief has been granted to the respondents. It has further been contended that the order was challenged before the Hon'ble Supreme Court of India. The same, however, has been upheld.

Considering the fact that learned counsel for the petitioner has not been able to distinguish the judgment of the Division Bench of this Court, no ground for interference by this Court is made out.

Learned counsel for the petitioner has raised an additional issue of delay on the part of the respondent in approaching the authorities. The issue has been dealt with in impugned order, Annexure P-5.

It has been recorded that delay was caused for reasons beyond the control of the petitioner and therefore, is condoned to meet the ends of social justice. I find no reason to interfere with the said reasoning. The petition is, accordingly, dismissed

>>> It shall be pertinent to go thru the following judgment cited in above mentioned
Landmark judgment of Punjab high court for condonation of delay in payment of Gratuity:

Punjab-Haryana High Court

Sr. Supdt. Of Post Offices vs Smt. Sham Dulari And Ors. on 18 May, 2006

1. The Senior Superintendent of Post Offices, Hoshiarpur has challenged order dated 21.8.2003 (Annexure P.3) of the Controlling Authority appointed under the Payment of Gratuity Act, 1972 whereby he has been directed to pay a sum of Rs. 12,286/- as gratuity alongwith interest @ 10 percent from 25.12.2001 till the date of payment to the claimant. The aforementioned order has been upheld by the Appellate Authority i.e. Regional Labour Commissioner (Central), Chandigarh, vide its order dated January 5, 2006 (P-6).

2. Brief facts of the case are that one Shri Ram Murti was appointed as Extra Departmental Agent (EDA) on 4.9.1982 and he retired from service on 24.11.2001 after rendering 18 years 9 months and 25 days of continuous service who is now represented by his widow. After one month he died and had nominated his wife (hereinafter to be referred as respondent-workman). The department of the Post Office represented through the petitioner had paid him an amount of Rs. 16,520/- as gratuity in accordance with the Post and Telegraph Extra Departmental Agent (Conduct) Service Rules, 1964 (for brevity EDA Rules). However, his widow has claimed gratuity under Sub-rule 1 of Rule 10 of the Payment of Gratuity (Central) Rules, 1972. She has claimed a sum of Rs. 57,692/- for the period of service rendered by her husband (18 years 9 months and 25 days). Despite representation made to the petitioner department for grant of balance amount of gratuity under the Payment of Gratuity Act, 1972 (for, brevity 'the Gratuity Act') the same has not been paid to the respondent workman. The Controlling Authority came to the conclusion that the case of the respondent-workman was covered by the definition of expression 'employee' as used in Section 2(e) of the Gratuity Act. It was also admitted by the petitioner-department that services of the respondent-workman has been considered out of the purview of Central Civil Service Rules. Placing reliance on Section 14 of the Act, the Controlling Authority held that payment of gratuity to any person cannot be denied on the ground of any other provision in any other Act/Statute or Rules. Therefore, the plea that under the EDA Rules the gratuity is payable and the same would take the case of the respondent-workman out of the purview of the Gratuity Act has been rejected. Accordingly, an amount of Rs. 28,806/- has been calculated to be payable amount as gratuity under the Gratuity Act by taking into account the service period of 19 years of the respondent-workman.

6. We are further of the view that the scheme of the Gratuity Act indicates that it is not applicable to cases where any other rule or statute is more beneficial than the Gratuity Act..... The mere fact that the gratuity is provided for under the Pension Rules will not disentitle him to get the payment of gratuity under the Payment of Gratuity Act. In view of the overriding provisions contained in Section 14 of the Payment of Gratuity Act, the provision for gratuity under the Pension Rules will have no effect.

7.....Therefore, on principle as well as on precedents, we have reached the conclusion that the view taken by the Controlling Authority as well as Appellate Authority are not open to any attack in law and it does not furnish any opportunity to interfere with the same. Therefore, we are inclined to uphold the order dated August 21, 2003 (P-3) passed by the Controlling Authority and the order dated January 5,2006 (P-6) passed by the Appellate Authority.....

10. Accordingly, we direct that the respondent-workman be paid her dues within a period of one month from today, failing which the respondent-workman shall be entitled to interest at the rate of 9% per annum from the date, the amount became due till the date of actual payment.

>>> **It shall be pertinent to go thru the following judgment cited in above mentioned** Landmark judgment of Punjab high court for condonation of delay in payment of Gratuity:

Supreme Court of India:

SC 21309/2206

Sr.SURINTENDENT, P&T, HOOSHIARPUR .vs. SHAM DULARI & ORS

PC 9496/2206 Sr.SURINTENDENT, P&T, HOOSHIARPUR .vs. SHAM DULARI & ORS

ITEM NO.36 COURT NO.9 SECTION XV

SUPREME COURT OF INDIA

RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Civil) No(s).21309/2006

(From the judgement and order dated 18/05/2006 in CWP No. 7576/2006 of

The HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH)

SR.SUPERINTENDENT,P&T HOSHIARPUR

Petitioner(s)

VERSUS

SHAM DULARI & ORS.

Respondent(s)

Date: 07/12/2007 This Petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE A.K. MATHUR

HON'BLE MR. JUSTICE MARKANDEY KATJU

For Petitioner(s)

- Mr. R. Mohan, ASG
- Ms. Kiran Bhardwaj, Adv.
- Mr. V.K. Verma, Adv.

For Respondent(s)

- Mr. D.S. Mahra, Adv.
- Mr. Sanjay Parikh, Adv.
- Ms. Anitha Shenoy, Adv.
- Mr. Jitin Sahni, Adv.
- Mr. A.N. Singh, Adv.
- Ms. Mamta Saxena, Adv.

UPON hearing counsel the Court made the following

ORDER

Heard learned counsel for the parties. We are not inclined to interfere in this Special Leave Petition. The same are accordingly, dismissed.

However, the question of law is left open.

(Sukhbir Paul Kaur)
Court Master

(Vijay Dhawan)
Court Master