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KARNATAKA EMPLOYERS' ASSOCIATION

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To
All Members of the Association

PAYMENT OF GRATUITY ACT

Section 4 of the Payment of Gratuity Act stipulates that Gratuity shall be payable to an employee on termination of his employment after he has rendered continuous service for not less than 5 years, on his superannuation or on his retirement or resignation or on his death or disablement due to accident or decease: provided that the completion of continuous service for 5 years shall not be necessary where the termination of employment of any employee is due to death or disablement.

A number of queries have been received from the member establishments has to what constitutes continuous service for the purpose of payment of gratuity.

Section 2(c) defined continuous service means continuous service as defines in Section 2A.

Section 2A defined continuous service as under:

Continuous Service - For the purposes of this Act –

- (1) an employee shall be said to be in continuous service for a period if he has, for that period, been in uninterrupted service, including service which may be interrupted on account of sickness, accident, leave, absence from duty without leave (not being absence in respect of which an order treating the absence as break in service has been passed in accordance with the standing orders, rules or regulations governing the employees of the establishment), 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;
- (2) Where an employee (not being an employee employed in a seasonal establishment) is not in continuous service within the meaning of clause (1), for any period of one year or six months, he shall be deemed to be in continuous service under the employer –

- (a) for the said period of one year, if the employee during the period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than –
 - (i) one hundred and ninety days, in the case of any employee employed below the ground in a mine or in an establishment which works for less than six days in a week; and
 - (ii) two hundred and forty days, in any other case;
- (b) for the said period of six months, if the employee during the period of six calendar months preceding the date with reference to which the calculation is to be made, has actually worked under the employer for not less than –
 - (i) 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
 - (ii) one hundred and twenty days, in any other case.

(Explanation – For the purposes of clause (2) the number of days on which an employee has actually worked under an employer shall include the days on which –

- i. He has been laid-off under an agreement or as permitted by standing orders made under the industrial Employment (Standing Orders) Act, 1946 (20 of 1946), or under the Industrial Disputes Act, 1947 (14 of 1947), or under any other law applicable to the establishment;
 - ii. He has been on leave with full wages, earned in the previous year;
 - iii. He has been absent due to temporary disablement caused by accident arising out of and in the course of his employment; and
 - iv. 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.
- (3) Where an employee, employed in a seasonal establishment, is not in continuous service within the meaning of clause (1), for any period of one year or six months, he shall be deemed to be in continuous service under the employer for such period 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.

The Hon'ble High Court of Madras has examined the above definition in the case of Mettur Beard cell Ltd., VS RLC Central 1998 LLR 702 and held as under:

“Section 2A defines continuous service. According to the section, if an employee renders continuous service for a period of 240 days in a year he will be

deemed to have continued in service for one year. This deeming provision contained in S.2A must be applied in interpreting the period of five years mentioned in S 4(1). Section 2(b) also supports this interpretation because as per the said section completed year of service means continuous service for one year. Therefore, these provisions are emphatic in stating that if the employee serves continuously for a period of 240 days in a year, he must be deemed to have continuously served for one year. In this case admittedly the third respondent has served for 4 years, 10 months and 18 days. 10 months and 18 days service is definitely more than 240 days.”

In terms of the above interpretation an employee who has completed 4 years service and worked for at least 240 days in the 5th year will be entitled to receive gratuity on the basis that he has completed 5 years continuous service as defined under section 2A of the Payment of Gratuity Act.

Further in establishment which work for less than 6 days in a week, an employee shall be deemed to have completed one year continuous service if he has worked for 190 days in the year. He shall be deemed to have completed 6 months service, in case he has completed 90 days service in the establishment.

An employee employed in an establishment which works for less than 6 days in a week, if he has completed 190 days or more after completion of 4 years continuous service, shall be deemed to have completed 5 years service and he will be entitled to receive gratuity in accordance with the provisions of the Payment of Gratuity Act.

for KARNATAKA EMPLOYERS' ASSOCIATION

B.C. Prabhakar

**(B.C. PRABHAKAR)
PRESIDENT**