

# **GRATUITY CANNOT BE WITHHELD OR FORFEITED IN DISCIPLINARY OR CRIMINAL CASES OR NON VACATION OF OF QUARTER**

## **– JUDGMENTS OF VARIOUS COURTS CITED**

- GRATUITY, AS PAYABLE TO AN EMPLOYEE, CAN BE FORFEITED ONLY WHEN HE IS DISMISSED FROM SERVICE FOR WILFUL OMISSION AND RIOTOUS AND DISORDERLY BEHAVIOUR INVOLVING MORAL TURPITUDE etc. as stipulated under section 4(6) of the Payment of Gratuity Act, hence, withholding of gratuity by the employer of an employee retired from service will not be justified.
- **Texmaco Ltd. v. Shri Ram Dhan, (1993) 1 LLN 129: (1992) 2 CLR 256: (1993) III LLJ (Supp) 20B: 1992 LLR 369: 1992(65) FLR 742 (Del HC).**
- **Withholding of gratuity of an employee compulsorily retired from service will not be justified.**
- **Brundaban Sahu v. a.s.R.T. Corporation Ltd., (1993) 1 LLN 129: (1992) 2 CLR 256: (1993) III LLJ (Supp) 208: 1992 LLR 696 (Ori HC).**
- **Gratuity of an employee cannot be withheld even if disciplinary proceeding is pending against him.**
- **Gopalkrishna v. Kamataka Soaps & Detergents Ltd., 1996 LLR 306 (Kef HC).**
- **Gratuity of an employee cannot be withheld even if he fails to surrender employer's land.**
- **Travancore Plywood Ind. Ltd. v. Regional Joint Labour Commissioner, (1996) II LLJ 85: 1996 LLR 397 (Ker HC).**
- **Gratuity of an employee dismissed for wilful slowing down of work cannot be withheld since there is no such bar in the Act.**
- **Permoli Wallace Ltd. Bhopal v. State of Madhya Pradesh, (1996) 88 FJR 652: (1996) II LLJ 515: 1996 LLR 414 (MP HC).**
- **Gratuity of an employee cannot be withheld by an employer.**
- **Lt. Col. A. V. Tiwari (Retd.) v. The Secretary Ministry of Welfare, Government of India, 1996 LLR 1092 (AU HC).**
- **Compensation of Rs. 50,000 will be payable for withholding gratuity for three years.**
- **Molwmmad Zaheeruddin Siddiqui v. Executive Council, AM.U., 2000 LLR 458 (SC).**
- **Forfeiture of gratuity of a terminated employee can be done only to the extent of damages or losses.**
- **KC. Mathew v. Plantation Corporation of Kerala, Ltd., 2000 LIC 1519: 2000 LLR 1280 (Ker HC).**
- **Gratuity of an employee can be withheld only in case of his dismissal and not otherwise.**

- **KC. Mathew v. Plantation Corporation of Kerala, Ltd., 2000 LIC 1519: (2000) 4 LLN 450: (2000) II LLj 637: (2000) 4 LLN 450: (2000) II LLJ 637: 2001 LLR 123 (Ker HC).**
- **Forfeiture of gratuity is permissible if an employee is dismissed for misappropriation.**
- **Bank of India v. Kamlakar Vishwambhar Joshi, 2001 LIC 3770: (2001) 3 CLR 32: 2001 LLR 1229 (Born HC).**
- **No deductions can be made from gratuity except shortage or assessed misappropriation.**
- **P.D. Chiyanna v. Kamataka Agro Industries Corporation Ltd. Bangalore, 2001 LIC 19: (2001) 85 FLR 814: 2001 (III) CLR 846: 2001 LLR 250 (Kam HC).**
- **(i) Loss of property has to be ascertained (ii) Disorderly conduct must be supported by evidence of activities creating misbehaviour to damage machinery, urniture etc. while forfeiting the gratuity of an employee.**
- **Bapalswamy (since dead) by LRs v. Management of Usha Martin Industries, 2001 (II) LLj 1060 (Karn HC).**
- **Gratuity of an employee will not be forfeited on subsistence allowance.**
- **PD. Chiyanna v. Kamataka Agro Industries Corporation Ltd., (2001) LIC 19: (2001) 85 FLR 814: 2001 LLR 250 (Kam HC).**
- **Deduction of gratuity with employee's consent cannot be challenged.**
- **Kuttan Pillai v. State of Kerala, (2001) II CLR 900: (2001) 3 LLN 618: (2002) 92 FLR 387: 2001 LLR 1145 (Ker HC).**
- **A notice must be issued to the employee before forfeiting his gratuity.**
- **J.P. Micheal D'Souza v. Appellate Authority under Payment of Gratuity Act, Bangalore, 2002 LLR 7 (Kam HC).**
- **Mere pendency of criminal case shall not disentitle an employee from receiving Gratuity.**
- **Rajrindra Kumar Nangia v. Rashtriya Chemicals & Fertilizers Ltd., (2002) 1 LLj 648: 2002 LLR 266 (Born HC).**
- **In the absence of specific order against an employee, his gratuity cannot be forfeited.**
- **Ahmedabad Municipal Corporation v. Elivina Samuelbhai Christian, (2002) 1 LLj 342: 2002 LLR 269 (Guj HC).**
- **Radheshyam Khichrolia v. Madhya Pradesh Co-operative Marketing Federation Ltd., 2002 LLR 610 (MP He).**
- **Gratuity of an employee cannot be withheld for non- vacation of staff quarter.**
- **Beer Bala Gupta v. 15- Additional Sessions judge, Meerut, 2002 LLR 619 (All HC). Dhanwant Rai v. Delhi Transport Corporatinn, 2005 LLR (SN) 302 (Del HC).**
- **Gratuity being a statutory right payable as a retiral benefit after serving an employer for a long period can not be taken away by an agreement between the parties which cannot be reduced but could be enhanced.**
- **Y.R. Shenoy v. Syndicate Bank, (2003) II LLj 977: 2003 LLR 615: 2003 (97) FLR 812 (Kam HC).**
- **Gratuity, as payable by an employer to an employee, can not be either withheld or adjusted against the amount of rent due to an employer for unauthorized retention of accommodation of the employer by an employee.**

- **Bhailal Kalida, Barot v. Factory Manager, Jehangir Textile Mills Ltd., (2003) 1 GLR 629: (2003) II LLj 355: 2003 LLR 616: 2003-II LLN 283 (Guj He).**
- **For forfeiture of gratuity, a separate order is not required when the dismissal of the workman has been due to riotous and disorderly behaviour e.g. in stopping another workman at the entrance with a dagger and stabbing those who tried to intervene.**
- **Indian Aluminium Company Ltd. v. Regional Labour Commissioner (Central), Dhanbad, 2003 LLR 692: 2003-II LLj 818 (Jhar HC).**
- **Gratuity, being valuable right, is not bounty and cannot be countenanced for non-vacation of the quarter by an employee.**
- **M.A. Shrirahatti v. N.G.E.F. Ltd., Bangalore, 2003 LiC 1352: 2003 LLR 772: 2003-II LLj 1004 (Kam HC).**
- **The adjustment of penal rent for unauthorized occupation of the quarter can not be made from the gratuity, as payable.**
- **M.A. Shrirahatti v. N.G.E.F. Ltd., Bangalore, 2003 LIC 1352: 2003 LLR 772: 2003-II LLj 1004 (Kam HC).**
- **Gratuity payable to an employee on his retirement can not be set off by the employer for the damages pertaining to unauthorized occupation of employer's accommodation by the employee since the employer can pursue appropriate remedy as available in law.**
- **v.u. Warriar v. Secretary, Oil and Natural Gas Commission, Dehradun, (2003) 98 FLR 640: (2003) 2 CLR 99: (2003) 3 Mah LJ 168: 2003 LLR 956: 2003-11 LLj 918 (Bom HC).**
- **An employer can not withhold or adjust the gratuity of an employee on the plea that he is unauthorisedly occupying company accommodation and has not paid the market rent.**
- **Gujarat State Road Transport Corporation v. Kiritkumar Ponjala Barol, 2003 LLR 1069: 2003-III LLN 1047 (Guj HC).**
- **Effecting deduction of Rs. 8700 from the gratuity of a retired employee for finalisation of TA bills will not be justified as held by the Appellate Authority under the Payment of Gratuity Act hence the High Court will not interfere in the writ petition filed by the employer.**
- **National Seeds Corporation Ltd. v. H.L. Mehta, (2004) 1 LLj 656: 2004 LLR 163 (Del HC). • A teacher, though engaged in very noble profession of educating the young generation but neither performing any skilled, semi-skilled or unskilled, manual or supervisory, technical work, will not be an 'employee' under section 2(e) of the Payment of Gratuity Act, thus not entitled to gratuity under the Act.**
- **Ahmedabad Pvt. Primary Teachers v. Administrative Officer, (2004) 1 LLj 596: 2004 LLR 97 (5e).**
- **Even though the Government by its notification dated 3<sup>rd</sup> April, 1997, has extended the Payment of Gratuity Act upon the educational institutions also but the teachers being not 'employees' under the Act will not be eligible for gratuity.**
- **Ahmedabad Pvt. Primary Teachers v. Administrative Officer, (2004) 1 LLj 596: 2004 LLR 97 (SC).**

- The provisions for payment of gratuity as already existing in several States, separate statutes rules and regulations will not be affected by the said judgment disentitling the teachers from entitlement of gratuity.
- Ahmedabad Pvt. Primary Teachers v. Administrative Officer, (2004) 1 LLj 596: 2004 LLR 97 (Se).
- Gratuity as payable to an employee can be forfeited when his service has been terminated only on the eventualities as enumerated in sub-section (6) of section 4 of the Payment of Gratuity Act.
- GujaTat Stafe Road Transport Corporation v. Devendrabhai Mulvantrai Vaidya, 2004 LLR 225: 2004-1 LLj 77 (Guj HC).
- An employer has no right to withhold gratuity of an employee payable on his retirement on the pretext that he has not been vacating the land of the employer and as such the High Court directed to release the gratuity of the employee forthwith alongwith interest.
- Bharat Heavy Electricals Ltd" Handwar v. Controlling Authority under Payment of Gratuity Act, Meerut, (2004) " LLj 400: 2004 LLR 232: 2004 (100) FLR 653 (Ullr HC).
- Forfeiture of gratuity of an employee for misbehaviour will not be justified.
- Hindalco Industries Ltd. v. Appellate Authority, under the Payment of Gratuity Act, Kilnpur, (2004) 101 FLR 1063: (2004) 3 LLN 106: (2004) " Llj 348: 2004 LLR 690 (All He). .
- For forfeiture of gratuity, the employer must satisfy the Controlling Authority with justifiable reasons.
- Hindalco Industries Ltd. v. Appellate Authority, under the Payment of Gratuity Act, Kanpur, (2004) III LLj 148: (2004) 101 FLR 1063: 2004 LLR 690 (All HC).
- Forfeiture of gratuity by the employer will not be tenable when there is no finding about loss or damage to property.
- Eastern Coalfields Ltd. v. Kripa Sankor Somany, (2004) 1 CHN 662: (2004) III LLj 672: 2004 LLR 1112 (Cal HC).
- Forfeiture of gratuity of a suspended Bank employee, on his retirement, will not be justified in the absence of termination for misconducts.
- Valsad District Central Cooperative Bank Ltd. v. Krushnalal Milnilal Vashi, 2005 LLR 58 (Guj HC).
- Using of abusive language by an employee cannot be construed as 'moral turpitude' for forfeiting the gratuity.
- Management of Central Theatre, Coimbatore v, (1) Controlling Authority, Payment of Gratuity Act, Office a/the Commissioner a/Labour, Coimbatore (2) D. Amirtha Murugan, 2005 LLR 149 (Mad HC).
- Forfeiture of gratuity for moral turpitude as alleged against an employee will not be tenable since no opportunity" was given to him by the employer.
- Management of Central Theatre, Coimbatore v. (1) Controlling Authority, Payment of Gratuity Act, Office of the Commissioner of Labour, Coimbatore (2) D, Amirtha Murugan, 2005 LLR 149 (Mad HC),
- No deduction, whatsoever, except as stipulated by section 4(6) pertaining to forfeiture of gratuity on account of dismissal of an employee because of

certain misconduct, can be made from the payment of gratuity as payable to an employee.

- **Food Corporation of India v. Appellate Authority under Payment of Gratuity Act, Kanpur, 2005 LLR 713: 2005 (105) FLR 914 (All HC),**
- **Gratuity of an employee cannot be withheld merely on assessment of loss to the bank in the absence of an order for forfeiture.**
- **Baroda Traders Coop, Bank Ltd. v. Mahendrabhai B, Shah, 2006 LLR 390 (Guj HC),**
- **Forfeiture of gratuity order, passed after retirement, would not be justified.**
- **Uttar Pradesh State Road Transport Corporation v, Shivaji, 2007 LLR (SN) 221 (SC).**
- **Gratuity of an employee, even after his retirement, is rightly forfeited when he has caused heavy financial loss to the PSU.**
- **Mashkoo Ahmad (Shri) v. Union of India, 2007 LLR (SN) 318 (Del HC).**
- **Non-payment of gratuity by an employer to an employee for non-payment of rent dues by the latter will not be justified,**
- **Moti Lal Sharma v, University of Rajasthan, 1998 II LLj 1021 (Raj HC).**
- **Gratuity of an employee cannot be withheld for occupying residential quarter.**
- **H. Rajendra Pal v, Canara Bank, (1998) 78 FLR 650, 1998 LLR 419 (Ker HC).**
- **Mohammad Shabbir Nadvi v. Jamia Millia Islamia, (1996) III LLj (Supp) 853: 1995 LLR 5 (Del HC).**
- **Non-payment of gratuity to an employee in failing to vacate staff quarters will not be justified.**
- **Air India Ltd. v. Appellate Authority under the Payment of Gratuity Act, 1972 " the Regional Labour Commissioner (Central) Bombay, (1999) 1 Mah LJ 740: (1999) 1 CLR 291: (1999) 1 Born CR 426: (1999) II LLj 93: 1999 LLR 260 (Bom HC): 1999 (81) FLR 900.**
- **Swadeshi Cotton Mills v. Assistant Labour Commissioner (Central) & Controlling Authority under Payment of Gratuity Act, Allahabad, (2000) 2 LLN 1140: 2000 LLR 366 (All HC).**
- **Deduction from gratuity can be made for electricity charges and house rent when Service Rules so provide.**
- **Sardar Sohan Singh v. Union of India, 2007 LLR 763 (Cal HC).**
- **For forfeiture of gratuity, there has to be positive dismissal for misconduct.**
- **Abdul Rowther v. Appellate Authority under Payment of Gratuity, Madurai, 2007 LLR 1250 (Mad HC),**
- **Gratuity of an employee can be forfeited only under prescribed conditions.**
- **State Farms Corporation of India Ltd, v. PD. Mathai, 2008 LLR 458 (Ker HC),**
- **Forfeiture of gratuity causing loss to employer due to the negligence, cannot be faulted with.**
- **Devinder Singh v. Food Corporation of India, 2008 LLR 934 (P&H HC).**
- **Forfeiture of gratuity not to be interfered because no criminal proceedings were initiated against the workman by the employer for misappropriation.**

- **UCO Bank v. Regional Labour Commissioner (Central), Udai Nagar, 2008 LLR 1008(SN) (All HC).**
- **Withholding of gratuity, because of non-furnishing clearing slip for vacation of the quarter, will not be illegal.**
- **U.P. State Sugar Corporation v. Sukhveer Singh, 2008 LLR 1030 (All HC).**
- **Withholding of gratuity without hearing the employee is not legal.**
- **Raghuhir Singh v. Indian Red Cross Society, 2008 LLR 849 (P&H HC).**
- **Gratuity of a retired employee cannot be forfeited for retaining official accommodation.**
- **Hindustan Antibiotics Ltd. v. Prarnodini Rohidas Sutar, 2009 LLR 24 (Born He).**
- **Forfeiture of gratuity of an employee for moral turpitude only if he is convicted for the offence.**
- **Karnataka State Road Transport Corporation v. Mahadev, 2009 LLR 138 (Kam He).**
- **Forfeiture of gratuity is not absolute but only when the employee has been dismissed for misconduct as specified in the Act.**
- **Vijaya Bank v. Sri Mohan Das Ramona Shetty, 2009 LLR 198 (Kam HC).**
- **Gratuity of an employee cannot be forfeited without an opportunity of hearing.**
- **Vijaya Bank v. Sri Mohan Das Ramana Shelly, 2009 LLR 198 (Kam HC).**
- **Forfeiture of gratuity can be to the extent of amount as misappropriated.**
- **Vijaya Bank v. Sri Mohan Das Ramona Shetty, 2009 LLR 198 (Kam HC).**