Question 1
State whether the following statements are true or false and give reasons therefor with reference to the Payment of Gratuity Act, 1972.

i. The Payment of Gratuity Act, 1972 is largely based on Kerala Industrial Employees Payment of Gratuity Act, 1972.

   This statement is false because the Payment of Gratuity Act, 1972 is largely based on West Bengal Employees’ Payment of Compulsory Gratuity Act, 1971.

ii. A retrenched employee is also eligible for gratuity.

   This statement is true because in the case of State of Punjab Vs. Labour Court (1986), it was held that a retrenched employee is also eligible for gratuity. Under section 4 of the Payment of Gratuity Act, 1972 gratuity is payable to every employee on the termination of his employment if he has completed 5 years of continuous service. Hence, in the case of a retrenched employee, he shall be eligible for gratuity upto the date of retrenchment if he has completed 5 years of service. It is assumed that he is retrenched in compliance with the applicable labour laws in this regard and has been paid the required compensation.

iii. Where an employee’s resignation has not been accepted, then that employee is not eligible to claim gratuity.

   This statement is false as it was held in Mettur Spinning Mills Vs. Deputy Commissioner of Labour, (1983) II LLJ 188, that non acceptance of the resignation is no hurdle in the way of an employee to claim gratuity.

iv. Where the negligence of employee causes loss to the employer, then the gratuity shall be wholly forfeited.

   This statement is false because when loss is caused by the negligence of employee, there gratuity shall be forfeited to the extent of the damage or loss so caused as laid down in section 4(6) clause (a) of the Payment of Gratuity Act, 1972.

v. An appeal against the Controlling Authority’s order must generally be made within 60 days.

   This statement is true because generally an appeal against the Controlling Authority’s order must be made within 60 days.

Answer
i. This statement is false because the Payment of Gratuity Act, 1972 is largely based on West Bengal Employees’ Payment of Compulsory Gratuity Act, 1971.

ii. This statement is true because in the case of State of Punjab Vs. Labour Court (1986), it was held that a retrenched employee is also eligible for gratuity. Under section 4 of the Payment of Gratuity Act, 1972 gratuity is payable to every employee on the termination of his employment if he has completed 5 years of continuous service. Hence, in the case of a retrenched employee, he shall be eligible for gratuity upto the date of retrenchment if he has completed 5 years of service. It is assumed that he is retrenched in compliance with the applicable labour laws in this regard and has been paid the required compensation.

iii. This statement is false as it was held in Mettur Spinning Mills Vs. Deputy Commissioner of Labour, (1983) II LLJ 188, that non acceptance of the resignation is no hurdle in the way of an employee to claim gratuity.

iv. This statement is false because when loss is caused by the negligence of employee, there gratuity shall be forfeited to the extent of the damage or loss so caused as laid down in section 4(6) clause (a) of the Payment of Gratuity Act, 1972.
v. This statement is true as an appeal against the Controlling Authority’s order must be made within 60 days [Section 7 (7) of the Payment of Gratuity Act, 1972].

Question 2

K is an employee of RST Limited, a software company which works five days in a week. K was not in continuous service during the financial year 2009-10. However, she worked only for 150 days because she was on maternity leave with full pay for 50 days. Referring to the provisions of the Payment of Gratuity Act, 1972 decide, whether K is entitled to gratuity payable under the Act?

Answer

As per sub section 1 of Section 2 A of the Payment of Gratuity Act, 1972 an employee shall be said to be in continuous service for a period if he has, for that period, been in uninterrupted service. This uninterrupted service will include the period during which the employee could not work on account of sickness, accident, leave, lay-off, strike or a lockout or cessation of work not due to any fault of an employee.

Further sub section 2 of section 2A states that where any employee (not being an employee employed in a seasonal establishment) is not in continuous service (as defined in sub section 1) for any period of one year he shall be deemed to be in continuous service under the employer 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.

The explanation to section 2A (2) clarifies that for the purposes of calculating the number of days on which an employee has actually worked under an employer shall include the days on which 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.

Thus, as per the above provisions-

K will be considered to be in continuous employment during the year for a period she worked + the period for which she was on maternity leave = 150 + 50 = 200 days. Since, she worked in an establishment which works for five days in a week for more than 190 days, so she will be entitled to gratuity.

Question 3

Mr. X was an employee of Mutual Developers Limited. He retired from the company after completing 30 years of continuous service. He applied to the company for the payment of gratuity within the prescribed time. The company refused to pay the gratuity and contended that due to stringent financial condition the company is unable to pay the gratuity. Mr. X applied to the Appropriate Authority for the recovery of the amount of gratuity.
Examine the validity of the contention of the company and also state the provisions of law to recover the gratuity under the Payment of Gratuity Act, 1972.

Answer

(i) Gratuity shall be payable to an employee on the termination of his employment after he has rendered continuous service for not less than five years on his superannuation or on his retirement or resignation or on his death or disablement due to accident or disease under Section 4(1) of the Payment of Gratuity Act, 1972. Further, section 7(2) provides that as soon as gratuity becomes payable, the employer shall, whether the application for the payment of gratuity has been given or not by the employee, 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 of gratuity so determined.

The employer shall arrange to pay the amount of gratuity within 30 days for the date of its becoming due/payable to the person to whom it is payable [Section 7(3)], along with simple interest (at rates specified) if it is not paid within the period specified except where the delay in the payment is due to the fault of the employee and the employer has obtained permission thereon from the Controlling Authority [Section 7(3A)].

(ii) If the gratuity payable under the Act is not paid by the employer within the prescribed time to the person entitled thereto, the Controlling Authority shall issue a certificate for the amount to the Collector to recover the same along with compound interest at such rate as prescribed by the Central Government from the date of expiry of the prescribed time as land revenue arrears, to enable the person entitled to get the amount, after receiving the application from the aggrieved person (Section 8).

Before issuing the certificate for such recovery the Controlling Authority shall give the employer a reasonable opportunity of showing cause against the issue of such certificate. The amount of interest payable under the Section shall not exceed the amount of gratuity payable under this Act in no case (Section 8).

In the given case the facts are commensurate with provisions of law as stated above under Sections 7 and 8 of the Payment of Gratuity Act, 1972. Therefore, Mr. X is entitled to recover gratuity as he has completed the service of 30 years. The company cannot take the plea of stringent financial conditions for not paying the gratuity to Mr. X. On the refusal by the company, Mr. X can apply to the appropriate authority and the company will be liable to pay the gratuity along with interest as decided by such authority.

Question 4

Explain as to when is the gratuity payable to an employee of an establishment, under the provisions of the Payment of Gratuity Act, 1972.
Answer

According to section 4 (1) of the Payment of Gratuity Act, 1972, gratuity shall be payable to an 'employee' on the termination of his employment after he has rendered continuous services for not less than 5 years:

a. On his superannuation, or
b. On his retirement or resignation, or
c. On his death or disablement due to accident or disease.

The condition of the completion of five years of continuous service is not essential in case of the termination of the employment of any employee due to death or disablement.

Generally, gratuity is payable to the employee himself. However, in case of death of the employee, it shall be paid to his nominee or if no nomination has been made, to his legal heirs.

The payability of gratuity to the employee is his right as well as the obligation of the employer. By the change of ownership, the relationship of employer and employees subsists and the new employer cannot escape from the liability of payment of gratuity to the employees. (Pattathurila K. Damodharan Vs M. Kassim Kanju, 1993).

An employee resigning from service is also entitled to gratuity (Texmaco Ltd. V/s Sri Ram Dhan, 1992) and non acceptance of the resignation is no hurdle in the way of an employee to claim gratuity (Mettur Spinning Mills V/s Deputy Commissioner of Labour, 1983).

Further under section 7(3) the employer shall arrange to pay the amount of gratuity within 30 days for the date of its becoming due/payable to the person to whom it is payable.

Question 5

Explain the manner in which the gratuity payable to employees in a seasonal as well as other establishments is calculated under the Payment of Gratuity Act, 1972. State also the maximum amount of gratuity payable under the Act.

Answer

Computation of gratuity amount: Section 4 of the Payment of Gratuity Act, 1972 stipulates the manner in which the amount of gratuity payable to an employee will be calculated.

Non Seasonal Establishments - In the case of establishments other than seasonal establishments, the employer shall pay the gratuity to an employee at the rate of 15 days wages based on the rate of wages last drawn by the employee concerned for every completed year of service or part thereof in excess of 6 months.

In the case of piece rated employees, daily wages, shall be computed on the average of the total wages received by him for a period of 3 months immediately preceding the termination of his employment and for this purpose the wages paid for any overtime work shall not be taken into account.
5.5 Business Laws, Ethics and Communication

In the case of a monthly rated employee 15 days wages shall be calculated by dividing the monthly rate of wages last drawn, by 26 and by multiplying the quotient by 15.

**Seasonal Establishments** - In the case of seasonal establishment the employees can be classified into 2 groups.

(i) Those who work throughout the year and  
(ii) Those who work only during the season.

The former are entitled to get the gratuity at the rate of 15 days wages for every completed year of service or part thereof in excess of 6 months. The latter are entitled to receive gratuity at the rate of 7 days for each season.

Under section 4(3) the amount of gratuity payable to an employee shall not exceed ₹ Ten lakhs as amended in 2010.

**Question 6**

Examine the provisions of the Payment of Gratuity Act, 1972, state whether gratuity is payable to an employee for the periods when he does not actually work in the organization.

**Answer**

**Periods for which Gratuity Payable:**

Yes, the periods for which gratuity is payable to an employee includes those periods during which he does not actually work in the organization which are the following:

1. Lay off under the Industrial Disputes Act, 1947.  
2. Leave with full wages.  
3. Maternity leave for female employees.  
4. Absence due to temporary disablement caused during employment.

**Manner in which gratuity is calculated:** Quantum of gratuity payable is 15 days’ wages on the last drawn wages for every completed year of service or part thereof in excess of six months subject to a maximum of ₹ 10 Lakhs.

**Question 7**

When an employee becomes disabled due to any accident or disease and is unable to do the same work and re-employed on the reduced wages, how the gratuity of such employee shall be, computed under the provisions of the Payment of Gratuity Act, 1972?

**Answer**

**Computation of Gratuity of a disabled employee:** According to Section 4 (4) of the Payment of Gratuity Act, 1972, when an employee becomes disabled due to any accident or
disease and is not in a position to do the same work and re-employed on reduced wages on
some other job, the gratuity will be calculated in two parts:

- For the period preceding the disablement: on the basis of wages last drawn by the
  employee at the time of his disablement.
- For the period subsequent to the disablement: On the basis of the reduced wages as
drawn by him at the time of the termination of services.

In the case of Bharat Commerce and Industries Vs. Ram Prasad, it was decided that if for the
purposes of computation of quantum of the amount of gratuity the terms of agreement or
settlement are better than the Act, the employee is entitled for that benefit.

However, the maximum statutory ceiling limit as providing under Sub-Section 3 of Section 4 of the
Act which is ₹ 10 Lakhs, cannot be reduced by mutual settlement or agreement.

**Question 8**

Explain the provisions of the Payment of Gratuity Act, 1972 relating to ‘forfeiture of the amount
of Gratuity’ payable to an employee.

**Answer**

**Forfeiture of gratuity:** Section 4(6) of the Payment of Gratuity Act, 1972 deals with cases in
which gratuity payable to an employee may be forfeited.

According to clause (a) of the said sub section, the gratuity of an employee whose services
have 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.

Further, clause (b) provides that the gratuity payable to an employee may be wholly or
partially forfeited if the services of such employee have been terminated for –

(i) his riotous or disorderly conduct or any other act of violence on his part, or
(ii) any act which constitutes an offence involving moral turpitude, provided that such offence
is committed by him in the course of his employment.

**Question 9**

National Steels Limited decided to forfeit the amount of gratuity of its employees A, B and C
on account of disorderly conduct and other acts which caused loss to the property belonging
to the company. A, B and C committed the following acts:

(i) A refused to surrender the occupied land belonging to the company.
(ii) B committed theft under law involving offence of moral turpitude.
(iii) C after superannuation continued to occupy the quarter of the company for six months.
Against the decision of the company, A, B and C applied to the appropriate authorities for relief. The company contented that the right to gratuity is not a statutory right and the forfeiture of the amount of gratuity was within the law.

Examine the contention of the company and the decision taken by the company to forfeit the amount of gratuity in the light of the Payment of Gratuity Act, 1972.

Answer

Forfeiture of Gratuity: In accordance with the provisions of Section 4(6) of the Payment of Gratuity Act, 1972, if the services of any employee have been terminated for any act, willful omission, or negligence causing any damage or loss to or destruction of, property belonging to the employer, the gratuity shall be forfeited to the extent of the damage or loss so caused.

Further, if the services of such an employee have been terminated for any act which constitutes an offence involving moral turpitude, provided that such offence is committed by him in the course of his employment, the gratuity payable to the employee may be wholly or partially forfeited.

Under section 4(1) of the Payment of Gratuity Act, 1972 gratuity is payable to an employee on termination of employment provided he completes five years of continuous service with the employer. The condition of the completion of five years’ continuous service is not essential in case of the termination of the employment of any employee due to death or disablement.

The gratuity payable is an obligation of the employer and any forfeiture in full or part of the gratuity payable to an employee can be made only in terms of section 4(6). In K. C. Mathew vs. Plantation Corporation of Kerala Ltd. 2001 LLR (2) (Ker), it was held that withholding of gratuity is not permissible except under those circumstances enumerated in Section 4(6) and that the right to gratuity is a statutory right and none can be deprived of it except as provided by the law.

The correctness of the decision taken by National Steels Ltd. in the given case, regarding forfeiture of the gratuity to its employees A, B and C may be tested in the light of Section 4(6) of the Payment of Gratuity Act, 1972 as referred above.

(i) A, has it appears from the facts given, illegally occupied the land of the company and hence has deliberately caused loss to the company by wrongfully appropriating its property. Hence, his gratuity may be forfeited by the company under section 4(6). This may also be termed as disorderly conduct on the part of A.

(ii) The offence of theft committed by B, under law involves moral turpitude and his gratuity stands wholly forfeited in view of Section 4(6) of the Act [relevant case is Bharat Gold Mines Ltd vs. Regional Labour Commissioner, 1987, 70 FJR 11 (Kamataka)]. It is presumed that such theft is committed by B in the course of his employment.

(iii) C had wrongfully occupied the company’s quarter after the termination of his employment for six months. C may have caused a deliberate loss to the company by his wrongful occupation for 6 months as the quarter could not be given to another employee and the
company may have incurred the cost of rent in such case. Hence, the company is entitled to charge the rent from him and after adjusting other dues the remaining amount of gratuity may be paid [relevant case is Wazir Chand vs. Union of India 2001, LLR172 (SC)].

Question 10

Wazir Chand happens to be a retired Railway servant who occupies the Government quarter, and even after superannuation continued to occupy the Government quarter. For such continuance, the Government, in accordance with Rules, has charged penal rent from the retired Wazir Chand and after adjusting the dues of the Government, the balance amount of the gratuity, which was payable, has been offered to be paid.

Examine the contention of the Government and the decision taken by Government to adjust the amount of gratuity in the lights of the provision of the Payment of Gratuity Act, 1972.

Answer

Payment of Gratuity- According to Section 4(6) of the Payment of Gratuity Act, 1972, if the services of an employee have been terminated for;

i. any act
ii. willful omission or
iii. negligence

causing any damage or loss to, destruction of property belonging to the employer, then the gratuity shall be forfeited to the extent of damage or loss so caused.

Wazir Chand even after superannuation continued to occupy the quarter and the Government in accordance with the rules, charged the penal rent from him and after adjusting other dues, the balance gratuity amount was offered to be paid to him.

In the case of Wazir Chand Vs Union of India, the Court has decided that Wazir Chand having un-authorisedly occupied the Government quarter, was liable to pay the penal rent in accordance with rules and therefore, there is no illegality in those dues being adjusted against the death-cum-retirement dues of the ex-employee.

Question 11

An employee who is governed by the Payment of Gratuity Act, 1972 committed a theft in the course of his employment. And consequently his services was terminated. State in this connection, whether the gratuity payable to him shall be wholly or partly forfeited.

Answer

Reduction and forfeiture of Gratuity: Under Section 4 (6)(a) of the Payment of Gratuity Act, 1972, in the case of damage, loss or destruction of property of employer, due to the willful omission or negligence of the employee, the amount of gratuity to the extent of loss or damage shall be forfeited by the employer.
Further, under section 4(6)(b) the gratuity payable to an employee may be wholly or partially forfeited, where the services of an employee are terminated on the ground of:

(i)  riotous or disorderly conduct or act of violence; or

(ii) committing an offence involving moral turpitude in the course of his employment.

Theft is an offence involving moral turpitude and consequently, if the services of an employee had been terminated for committing theft in the course of his employment, the gratuity payable to him under the provisions of the Act shall be wholly forfeited in view of Section 4(6)(b)(ii).

[Bharat Gold Mines Ltd. Vs Regional Labour Commissioner (Central), (1987) 70 FJR 11 (Kern.)]

Question 12

What are the procedures for nominations under the Payment of Gratuity Act, 1972 in establishments for which the Central Government is the appropriate government.

Answer

Under section 6(1), each employee who has completed one year of service, shall make, within such time, in such form and in such manner, as may be prescribed, nomination for the purpose of the second proviso to sub-section (1) of Section 4. The time, form and manner in case of employees in establishment where Central Government is ‘Appropriate Government, are as under:

a. nomination shall be made in form ‘F’ in duplicate;

b. Nomination shall be given to employer or sent by registered post. The employee should get proper receipt or acknowledgement from employer who shall fill details in the form and return one copy to the employee.

c. Nomination shall be submitted within 30 days after completion of service of one year.

d. An employee who did not have family but acquired family later should submit nomination form in duplicate in form G within 90 days after acquiring family.

e. Notice of change in nomination shall be filed in form H.

Question 13

Examine how disputes are resolved under the Payment of Gratuity Act, 1972.

Answer

Under section 7(4)(a) if there is any dispute regarding the amount of gratuity payable to an employee or admissibility of any claim of or in relation to, an employee for payment of gratuity or the person entitled to receive the gratuity, the employer shall deposit, such amount as he admits to be payable by him as gratuity, to the controlling authority.
Section 7(4)(b) further provide that where there is a dispute with regard to any matter or matters specified in Clause (a), the employer or employee or any other person raising the dispute may make an application to the Controlling Authority for deciding the dispute.

The controlling authority shall, after due inquiry and after giving the reasonable opportunity of being heard to the parties to the dispute, determine the matter or matters in dispute. After such inquiry if any amount is found to be payable to the employee, the controlling authority shall direct the employer to deposit with it such amount or the difference of amount so determined and the amount already deposited by the employer to the controlling authority.

The controlling authority shall pay the amount deposited by the employer including the excess amount, if any, to the person entitled thereto.

As soon as the employer made the said deposit, the controlling authority shall pay the amount to the applicant where he is the employee or where the applicant is not the employee, to the nominee or as the case may be, the guardian of such nominee or legal heir of the employee, if he is satisfied that there is no dispute as to the right of the applicant to receive the amount of gratuity.

For the purpose of conducting inquiry, the controlling authority shall have the same powers as are vested in a court, while trying a suit, under the Code of Civil Procedure, 1908. The proceeding made by him will be the 'judicial proceedings' within the meaning of Sections 93 & 228 for the purposes of Section 196, Indian Penal Code the controlling authority will avail all the powers like enforcing the attendance, production of documents, receiving evidences on affidavits and issuing commission for the examination of witnesses. [Section 7(4)]

Question 14

What is the law relating to recovery of amount of gratuity under the Payment of Gratuity Act, 1972 in case the said amount is not paid by the employer?

Answer

Law relating to recovery of gratuity under the Payment of Gratuity Act, 1972:

As per the provision given under section 8 of the Payment of Gratuity Act 1972, if the gratuity payable under the Act is not paid by the employer within the prescribed time, to the person entitled thereto, there the Controlling Authority shall, on an application received from the aggrieved person, issue a certificate for that amount to the Collector to recover the same along with the compound interest at such rate as prescribed by the Central Government, as land revenue arrears and pay to the persons entitled thereto.

Before issuing the certificate for such recovery the Controlling Authority shall give the employer a reasonable opportunity of showing cause against the issue of such certificate.

The amount of interest payable under this section shall not exceed the amount of gratuity payable under this Act in no case.
Question 15

Aswani who was an employee of Sun Televisions Limited, retired on 1st January 2013 after 30 years of continuous service. The company did not pay the amount of gratuity to Aswani till the end of December 2013. Now, Aswani claims the amount of gratuity along with interest. Decide, under the Payment of Gratuity Act, 1972, whether Aswani will succeed in his claim?

Answer

As per the provisions of section 4(1) of the Payment of Gratuity Act, 1972, gratuity shall be payable to an “employee” (defined in section 2(e) of the Act) on the termination of his employment after he has rendered continuous service for not less than five years –

- On his superannuation or
- On his retirement or resignation or
- On his death or disablement due to accident or disease;

Further, as per the provisions of section 7(3), the employer shall arrange to pay the amount of gratuity within thirty days from the date it becomes payable to the person as gratuity, whether the application for the payment of gratuity has been given or not by the employee.

Section 8 of the Act deals with Recovery of gratuity – If the amount of gratuity payable under this Act is not paid by the employer, within the prescribed time, to the person entitled thereto, the controlling authority shall, on an application made to it in this behalf by the aggrieved person, issue a certificate for that amount to the Collector, who shall recover the same, together with compound interest thereon at such rate as the Central Government may, by notification, specify, from the date of expiry of the prescribed time, as arrears of land revenue and pay the same to the person entitled thereto provided that the controlling authority shall, before issuing a certificate under this section, give the employer a reasonable opportunity of showing cause against the issue of such certificate provided further that the amount of interest payable under this section shall, in no case exceed the amount of gratuity payable under this Act.

Applying the above provisions of law to the question, Mr. Aswani will succeed and the company M/s. Sun Television Ltd., is required to pay gratuity along with interest as per the application of section 8 of the Act.

Question 16

Discuss the provisions relating to penalties under the Payment of Gratuity Act, 1972.

Answer

The provisions relating to penalties under the Payment of Gratuity Act are contained in section 9 which are as follows:

Making false statement or false representation – Under section 9(1) of the Payment of Gratuity Act, 1972 any person who knowingly makes or causes to be made, any false
statement or false representation for the purpose of avoiding payment to be made under the Payment of Gratuity Act or for enabling another person to avoid such payment, shall be punishable with imprisonment upto six months or with a fine upto ₹ 10,000 or with both.

Contravening provisions of Gratuity Act or rules – Section 9(2) of The Payment of Gratuity Act, 1972 lays down the punishment for an employer who contravenes the provisions of the Act. Under the said section an employer who contravenes or makes a default in complying with the provisions of the Payment of Gratuity Act, 1972 or Rules made thereunder shall be punishable for a term which shall not be less than three months but which can extend upto one year or with a minimum fine of ₹ 10,000 (but which may extend upto ₹ 20,000).

Offence relating to non-payment of gratuity – The proviso to section 9(2) further states that if the contravention relates to non-payment of any gratuity payable under the Payment of Gratuity Act, the term of imprisonment for the employer shall be minimum six months and maximum two years. However, the Court can impose a lesser term of imprisonment, if the Court for reasons to be recorded by it in writing, is of the opinion that a lesser term of imprisonment would meet the ends of justice.

Employer can charge another person as the actual offender – Under section 10 of the Payment of Gratuity Act:

a. where an employer is charged with an offence punishable under this Act,
b. he shall be entitled, to have any other person charged as the actual offender and brought before the Court at the time appointed for hearing the charge; AND IF
c. the employer proves to the satisfaction of the Court that he has used due diligence to enforce the execution of this Act; and

d. that the said other person committed the offence in question without his knowledge, consent or connivance, then

e. that other person shall be convicted of the offence; and

f. shall be liable to the same degree of punishment as if he were the employer and
g. the employer shall be discharged from any liability under this Act in respect of such offence

According to the proviso to section 10, if the person charged as the actual offender by the employer cannot be brought before the Court at the time appointed for hearing the charge, the Court shall adjourn the hearing from time to time for a period not exceeding three months and if by the end of that period the person charged as the actual offender cannot still be brought before the Court, the Court shall proceed to hear the charge against the employer and shall, if the offence be proved, convict the employer.

Cognizance of offence – Under section 11 (1) the cognizance of any offence punishable under this Act, can be taken only on the complaint made by or under the authority of the ‘Appropriate Government’.
Complaint can also be filed by the ‘controlling authority’ under the authority of the appropriate government, if the employer has not paid gratuity within six months from the expiry of the prescribed time.

Question 17

‘N’ is employed in ABC Limited, a seasonal establishment. The factory was in operation from 1st March to 30th June during the financial year 2014-15. Though, ‘N’ was not in continuous service during this period, he had worked for 95 days. Referring to the provisions of the Payment of Gratuity Act, 1972, decide whether ‘N’ is entitled to gratuity.

Answer

Payment of Gratuity to Seasonal Employee: Sub-section 3 of Section 2A of the Payment of Gratuity Act, 1972 provides that 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 percent of the number of days on which the establishment was in operation during such period.

In the given problem, “N” has worked for 95 days in ABC Limited, and as per the above provision, “N” has worked for more than 75% of number of days on which the establishment was in operation i.e. 75% of 120 days (1st of March to 30th June) = 90 days. Therefore, “N” shall be entitled for gratuity.

Question 18

Mr. X was an employee of Green Sugars, Ltd. The whole of undertaking of Green Sugars Ltd. was taken-over by a new company named Modern Sugars Ltd. The services of Mr. X remained continuous in the new company. After serving for one year Mr. X met with an accident and became permanently disabled. Mr. X applied to the new company for the payment of gratuity. The new company refused to pay gratuity on the ground that Mr. X has served only for a year in the new company.

Examine the validity of the refusal of the company in the light of the provisions of the Payment of Gratuity Act, 1972.

Answer

Entitlement to Gratuity: According to Section 4 (1) of the Payment of Gratuity Act, 1972, gratuity shall be payable to an employee on the termination of his employment after he has rendered continuous service for not less than five years on his superannuation, or, on his retirement or resignation or on his death or disablement due to accident or disease.

The proviso to the said section states that the condition of the completion of five years of continuous service is not essential in case of the termination of the employment of any employee due to death or disablement for the purpose of this section.
Disablement has been explained as such disablement which incapacitates an employee for the work which he was capable of performing before the accident or disease resulting in such disablement.

Further, by the change of ownership, the relationship of employer and employees subsists and the new employer cannot escape from the liability of payment of gratuity to the employees; it was held in the case of Pattathurila K. Damodaran Vs M. Kassim Kanju (1993) I LLJ 1211 (Ker).

The given problem fulfills all the above requirements as stated. Therefore, Mr. X is entitled to recover gratuity after becoming permanently disabled and continuous service of five years is not required in this case. Hence, the company cannot refuse to pay gratuity on the ground that he has served only for a year.

Exercise

1. Mark the correct answer
   For calculation of gratuity under the Payment of Gratuity Act, 1972 the number of days in a month is to be taken as
   (a) Actual number of days on employment
   (b) 26 days
   (c) 15 days
   (d) 30 days
   [Hint: Option (b) is the correct answer as per Section 4(2) of the Payment of Gratuity Act, 1972]

2. Mr. X was the owner of a factory to which the Payment of Gratuity Act, 1972 was applicable. Mr. X had appointed Ms. D as the Labour Officer for the Factory and given his specific instructions for deducting the employees’ contribution as provided by the law. But Ms. D had manipulated the records and cheated the employees by making excessive deductions and pocketing the excess. The Inspector identified the irregularities and sent notice to Mr. X. Does he have a defense?
   [Hint: Yes, as per Section 7(B) of the Payment of Gratuity Act, 1972]

3. Forfeiture of Gratuity is possible under certain circumstances.
   (a) True.
   (b) False.
   [Hint: True as per Section 4(6) of the Payment of Gratuity Act, 1972]

4. The ceiling on the Gratuity amount is rupees--------
   [Hint: 10 Lakhs as per the amendment in Section 4(3) under the Payment of Gratuity (Amendment) Act, 2010]

5. Gratuity can be attached in execution of any degree or order of any civil, revenue or criminal court
   (a) True.
   (b) False.
   [Hint: False, as per Section 13 of the Payment of Gratuity Act, 1972]