

## Payment of Gratuity Act is fully applicable to Teachers in Schools

This article is prepared to create awareness amongst CA's, Accounting/Finance Personnel & Management of Schools about **Supreme Court Judgment dated 07.03.2019** about **Eligibility of Teachers in Schools for Gratuity Benefits** under the '[Payment of Gratuity Act 1972](#)'. This article will also give information about '**Methods for Discharging the Gratuity Liability by the Schools**'.

On March 07, 2019 the Hon'able Supreme Court gave a ruling that "**In the light of the amendment made in the definition of the word "employee" as defined in Section 2(e) of the Act by Amending Act No. 47 of 2009 with retrospective effect from 03.04.1997, the benefit of the Payment of Gratuity Act was also extended to the teachers from 03.04.1997**" (For this judgment you may visit at <https://taxguru.in/corporate-law/teachers-entitled-gratuity-sc.html>). With this judgment, it appears that Payment of Gratuity Act is fully applicable to Schools

### **Introduction**

**Gratuity is a statutory right of Employee whoever completes 5 years in the same Schools** and is a terminal benefit. It means, Gratuity amount will be determined when monthly terminal wages of the employee are known to the **Schools**. The terminal wages will include Basic & Dearness allowance only. The Gratuity Benefits are calculated using the following formula:-

**(15/26) multiplied by (No of Completed Years on Exit) multiplied by (Terminal Wages)**

The amount is subject rupees 20,00,000/- effective from 29.03.2018.

### **Events when Gratuity is Payable**

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 –

- (a) on his superannuation, or
- (b) on his retirement or resignation, or
- (c) on his death or disablement due to accident or disease:

Provided that the completion of continuous service of 5 years shall not be necessary where the termination of the employment of any employee is due to death or disablement.

### Factors affecting Quantum of Gratuity Benefits

Gratuity Benefits changes with the change in the following:-

- (a) Past Service of Employee in the Company,

- (b) Increase in wages of Employee in the Company,
- (c) Change in Benefit Formula of the Gratuity Benefit due to the amendment in the Act,
- (d) Change in Ceiling Limit on Gratuity Benefits due to the amendment in the Act,
- (e) Change in Vesting Condition for eligibility of Gratuity Benefits due to the amendment in the Act,

You may visit my article published at [www.taxguru.com](http://www.taxguru.com) for understanding impact of the above Factors on Gratuity Benefits. The web-link for the article is as under :-  
<https://taxguru.in/income-tax/factors-affecting-gratuity-benefits-accounting-taxation-gratuity-benefits.html>

### Legal Provisions on Employer for Non Payment of Gratuity under Payment of Act 1972 (Amended)

Section 7 of the Act has kept the obligation for payment of gratuity act on the shoulders of the employer, few provisions of the act are listed below:-

1. As soon as Gratuity becomes payable, it employers responsibility to determine the amount of gratuity and inform it to an employee in writing (Refer subsection 2 of Section 7 of the Act).
2. The employer shall arrange to pay the amount of gratuity within 30 days from the date when it becomes mandatory. (Refer Sub-section 3 of Section 7 of the Act).
3. If the amount of gratuity is not paid within 30 days then the amount of gratuity and simple interest will be paid by the employer to the employee for the duration when the payment is not made to the employee. (Refer Sub-section 4 of Section 7 of the Act).

### Options for Discharging the Gratuity Liability

Gratuity Plan falls in the category of Defined Benefit Obligation and it increases exponentially with the increase in wages of employee and service period of the employee. Also, It is Schools responsibility to pay the gratuity to the employee in any circumstance. The Employer have 2 options for discharging the Gratuity Liability.

**(i) Pay as go option** –This option is called “Pay as go Option” and Mandatory in nature. In this option School makes provision of Gratuity Liability in Accounts by taking an Actuarial Valuation Report/Certificate from Qualified Actuary (**Refer Para 49 of AS 15 – Revised 2005**) for compliance of **AS 15 (Revised 2005)** and whenever an employee leaves the School, School pays him gratuity from his **own resources**.

**(ii) Funding Option** – In this Second Option School Management decides to Form “**an irrevocable Gratuity Trust**” and get approval of this gratuity trust in terms of “**Part C of Fourth Schedule to Income Tax Act, 1961**” from Income Tax Department. Once the approval from the **Income Tax Department** is received then School give contribute funds equivalent to gratuity provisions in **Accounts** into the Gratuity Trust annually and get tax benefits section 36 (1) (v) of the income tax act, 1961 and as and when employee leaves the organization, gratuity amount **paid by the Gratuity trust**.

For more details or Consultation/Advise on the above matter, you may contact me at 9211637063 or email me your queries at [tikaramchaudhary@gmail.com](mailto:tikaramchaudhary@gmail.com)