

PAYMENT OF GRATUITY

A) Payment of Gratuity under “The Payment of Gratuity Act, 1972” **(Both Workmen & Officers):**

1. The Payment of Gratuity Act, 1972 came into force w.e.f. 16.9.1972 and provides for payment of gratuity to all employees irrespective of their cadre/scale. The gratuity as per the Gratuity Act is payable to all employees in the event of their superannuation/retirement/resignation/death/discharge on the ground of total disablement due to an accident or a disease. Minimum continuous service of not less than 5 years is required so as to entitle an employee for gratuity except where the termination of employment of any employee is due to death or disablement. The length of service shall be calculated as the total period from the day of initial appointment in the bank (on scale wages or otherwise) to the day of cessation of the bank's service. Quantum of gratuity payable under the Gratuity Act is 15 days wages based on the rate of wages last drawn, for each completed year of service or part thereof, in excess of 6 months, subject to maximum of Rs.20.00 lakhs w.e.f. 29.03.2018.

2. An employee shall be said to be in continuous service for a period if he/she 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 and regulations governing the employees of the establishment), lay-off, strike or a lockout or cessation of work not due to any fault of the employees, whether such uninterrupted service was rendered before or after the commencement of this Act.

3. The term "wages", for the purpose of determining the amount of gratuity payable under the Act, means all emoluments which are earned by an employee while on duty or on leave in accordance with the terms and conditions of his employment and which are paid or are payable to him and includes Basic Pay, Special Allowance, Personal Qualification Pay, Fixed Personal Pay (only Basic Component ranking for PF), Officiating Allowance (Basic Component, in case of Award staff only) and Dearness Allowance but does not include any Bonus, HRA, CCA, Honorarium, Overtime and any other allowance including Conveyance Allowance etc. Hence, the terms “wage” includes Substantive Salary and Dearness Allowance only, excluding Officiating Allowance paid/payable to an employee in officer cadre.

4. Daily wages should be ascertained by dividing the monthly wages by 26 working days and not by 30 working days for the purpose of computing 15 days wages payable as gratuity.

5. Accordingly, calculation for arriving at the total amount of gratuity payable under “The Payment of Gratuity Act, 1972” is given below:

ILLUSTRATION-1:

‘A’ joined the bank on 14.11.1983 and retired from service of the bank on 30.09.2020. His total length of service is 36 years 10 months and 17 days. For Calculation of Gratuity, service of 37 years will be taken.

At the time of his retirement he was drawing monthly emolument comprising of Substantive Pay (excluding officiating pay in case of an employee in officer cadre) and Dearness Allowance aggregating to Rs. 199322/-. Keeping in view the Supreme Court decisions and the modifications in the Payment of Gratuity Act, gratuity payable to him shall be calculated as under:

- Basic Pay = Rs. 111100.00
- FPP (Increment Component) = Rs. 2120.00
- Total Substantive Pay = Rs. 113220.00
- Dearness Allowance = Rs. 86102.00
- Monthly wages (Substantive Pay + DA) = Rs.199322.00
- Wage per day = Rs.199322 ÷ 26 = Rs.7666.23
- Wages for 15 days = Rs.7666.23 x 15 = Rs.114993.45

Amount of gratuity payable shall be Rs.114993.45 x 37 = Rs.42,54,758 for 37 years of service. As the maximum amount of gratuity payable as per the Gratuity Act is Rupees twenty lakhs, the Gratuity payable under the Gratuity Act, to the above employee shall be Rs.20 lakhs.

6. Forfeiture of Gratuity under “The Payment of Gratuity Act, 1972”:

Section 4(1) of “The Payment of Gratuity Act, 1972”, deals with the payment of Gratuity, whereas Section 4(6) of this Act deals with the forfeiture of gratuity.

Section 4(1) of the Gratuity Act reads as under:

“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 five years shall not be necessary where the termination of the employment of any employee is due to death or disablement."

Section 4(6) of the Gratuity Act provides as under:

"Notwithstanding anything contained in sub-section (1)

- a) 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;
- b) The gratuity payable to an employee may be wholly/partially forfeited:
 - i) If the services of such employee have been terminated for his riotous or disorderly conduct or any other act of violence on his part, or
 - ii) "If the services of such 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."

7. Interest on Gratuity Payable under “Payment of Gratuity Act 1972”:

As per provisions of the Payment of Gratuity Act 1972, the bank has to pay full amount of gratuity within 30 days from the date it becomes payable to the person to whom gratuity is payable. If the amount of gratuity payable is not paid by the bank within the specified period (30 days) the bank has to pay simple interest @ 10% p.a. from the date on which the gratuity becomes payable to the date on which it is paid. No such interest on gratuity amount shall be payable for delay in the payment due to the fault of the employee. The interest payable due to delay in Settlement, if any, shall be paid by the Retiree Branch/Office.

B. Payment of Gratuity to Workmen Staff under Award/Bipartite Settlement:

1. Under the provisions of the Shastry Award, as modified, a minimum period of 10 completed years of service is required so as to entitle a workman to gratuity under the Award, except in case of death, disablement or termination of employment including retirement after attaining the superannuation age. The gratuity payable to workmen is to be calculated at the rate of one month's pay for each completed year of service subject to a maximum of 15 months' pay up to 30 years of service and additional gratuity at the rate of half month pay for each completed year of service beyond 30 years. The period of service rendered for more than 6 months but less than 1 year beyond the completed years of service shall be reckoned pro rata for the purpose of calculation of gratuity. The length of service shall be calculated as the total period from the day of initial appointment in the bank on scale wages (not on consolidated wages) to the day of cessation of the bank's service.

Note: If the fraction of service beyond completed years of service is more than six months, gratuity will be paid pro-rata for the purpose. In this connection, we have to clarify that for the purpose of calculating gratuity, the number of days beyond 6 months period is also to be taken into account.

2. The "Pay" for the purpose of determining gratuity under the Award shall consist of average of Substantive Salary drawn by the Workmen during 12 months immediately preceding the month of retirement/resignation/death/termination/disablement etc.

3. Forfeiture of Gratuity under Award/Settlement:

There shall be no forfeiture of gratuity on dismissal/removal from service of any workman (award staff) on account of misconduct, except in cases where such misconduct causes financial loss to the bank and in that case, to that extent only.

4. The Payment of Gratuity Act also provides that employee's right to receive better terms of gratuity under any Award or Settlement with the employer shall be protected. The employee should, therefore, be paid higher amount of gratuity payable either under the Act or the Award/Settlement. This aspect has been clarified by way of following illustration.

ILLUSTRATION-2:

Gratuity under Award/Settlement:

(i) 'A' clerk retired from the bank service in Sept. 2020 after 39 years 6 months 13 days of service. His emoluments were as under:

- Basic Pay = Rs. 42020.00
- Special Allowance = Rs. 1930.00
- FPP (Increment Component) = Rs. 1310.00
- Officiating pay = Rs. 1260.59
- Total Substantive Salary = Rs. 46520.59

Assuming that his average substantive salary for the last 12 months as per the Award/Settlement works out to Rs.46520.59 per month, he would be eligible for gratuity as per the Award/Settlement as under:-

Rs. 46520.59 x 15 = Rs. 6,97,808.85 (maximum 15 months for up to 30 years)

Rs. 46520.59 x 15 x 9 ÷ 30 = Rs. 2,09,342.65.00 (for 9 years)

Rs. 46520.59 x 6 ÷ (12 x 2) = Rs.11,630.15 (for 6 months)

Rs. 46520.59 x 13 ÷ (365 x 2) = Rs. 839.95 (for 13 days)

Total = Rs. 9,19,621.60 - (A)

Accordingly, as per the Award the employee would be entitled to gratuity amounting to Rs.9,19,621.60

Gratuity under Gratuity Act, 1972:

(ii) The above employee would also be eligible for Gratuity under the payment of Gratuity Act, 1972. As per the Act the gratuity payable to him would be as under:

Wages (last drawn):

- Substantive salary = Rs.46520.59
- Dearness allowance = Rs. 35038.21
- Total = Rs.81558.80
- Daily Wages = Rs.81558.80 ÷ 26 = Rs.3136.8769
- Wages for 15 days = Rs.3136.8769 x 15 = Rs.47053.15
- **Amount of Gratuity payable for 40 years of service = Rs.47,053.20 x 40 = Rs.18,82,126 - (B)**

In this case, Gratuity Payable under the Award/Settlement, as per calculations 'A' is less than the amount payable under the Gratuity Act as per calculation in 'B' above. As such, the employee shall be paid gratuity under the Act i.e. Rs.18,82,126/- which is beneficial to the employee.

C. Payment of Gratuity to Officers under PNB Officers' Service Regulations, 1979:

Rules relating to Payment of Gratuity to Officers staff have been laid down under Regulation 46 of PNB (Officers') Service Regulations, 1979 which is as under:

(1) Every Officer shall be eligible for gratuity on:

a) retirement (b) death (c) disablement rendering him unfit for further service as certified by a medical officer approved by the Bank, or (d) resignation after completing ten years of continuous service or termination of service in any other way except by way of punishment after completion of 10 years of service.

Explanation: It is hereby clarified that gratuity may be paid in case of termination of service, subject to the condition that the officer has put in at least 10 years of service with the Bank and provided that the termination is not by way of dismissal or removal from service as punishment.

(2) The amount of gratuity payable to an officer shall be one month's pay, based on the rate of wages last drawn, for every completed year of service, subject to a maximum of 15 month's pay:

“Provided that where an officer has completed more than 30 years of service, he shall be eligible by way of gratuity for an additional amount at the rate of one-half of a month's pay for each completed year of service beyond thirty years.”

'Pay' for the purpose of gratuity in case of officer shall mean Basic Pay only. While calculating gratuity, that part of PQP & FPP (only basic component ranking for PF) drawn by an officer, which rank for superannuation benefit shall also be taken into account.

Note: If the fraction of service beyond completed years of service is six months or more, gratuity will be paid prorata. In this connection, it is clarified that for the purpose of calculating gratuity, the number of days beyond 6 months period is also to be taken into account.

ILLUSTRATION- 3:

An Officer 'A' joined the bank on 14.11.1983 and retired from service of the bank on 30.09.2020. His total length of service is 36 years 10 months and 17 days. At the time of his retirement he was drawing monthly emolument comprising of Substantive Pay (excluding officiating in case of an employee in officer cadre) = Rs. 113220/

- Basic Pay = Rs. 111100.00
- FPP: = Rs. 2120.00
- Total: = Rs. 113220.00

i) Gratuity under Officers Service Regulations, 1979:

Gratuity payable to him under Officers' Regulations shall be calculated as under:

- Monthly wages = Rs.113220/-
- Rs. 113220 x 15 = Rs. 1698300 (max 15 months for up to 30 years)
- Rs. 113220 x 15 x 6 ÷ 30 = Rs.339660 (for 6 years)
- Rs. 113220 x 10 ÷ (12 x 2) = Rs. 47175 (for 10 months)
- Rs. 113220 x 17 ÷ (365 x 2) = Rs. 2636 (for 17 days)
- **Total: Rs. (1698300 + 339660 + 47175 + 2636) = Rs. 20,87,771.00 - (A)**

Amount of Gratuity Payable = Rs.20,87,771/- subject to TDS as per Point E below.

(ii) Gratuity under Gratuity Act, 1972:

The Calculation under Gratuity Act, 1972 for Officer are given in Illustration-1, wherein maximum amount of gratuity payable as per the Gratuity Act, comes to Rs. twenty lakhs - **(B)**

In this case, Gratuity Payable under the Payment of Gratuity Act, as per calculation 'B' i.e. Rs.20,00,000/- which is less than the amount payable under the Officers' Service Regulations,1979, as per calculation 'A' above i.e. Rs.20,87,771/-. Hence, the employee shall be paid gratuity under the Officers' Service Regulations, 1979 i.e. Rs.20,87,771/- which is beneficial to the employee subject to TDS as per point E below.

(iii) In case of officers, there is no provision for forfeiture of gratuity under Officer's Service Regulations. In cases where the amount of gratuity is higher under the Officer's Service Regulations in comparison to that of Gratuity Act, the same shall be paid to him/her, irrespective of the quantum of loss, if any, caused the bank. However, it may be clarified here that gratuity is not payable to officers under Officer's Service Regulations when the termination of the officer from service is by way of punishment of Dismissal or Removal.

(D) Interest on Gratuity under Award/Officers' Service Regulations:

In case payment of Gratuity under Punjab National Bank Officers' Service Regulations/Bipartite Settlements is not made within the period of 3 months from the date of retirement/resignation/death etc, interest as payable under Section 7(3A) of the Payment of Gratuity Act, 1972 be paid.

(As per Notification No.SO-874(E) dated 01.10.1987, the simple interest on delayed payment of gratuity under the Payment of Gratuity Act, 1972 has been specified as 10% per annum).

The interest is to be paid by the concerned branch/office from where the employee has retired/resigned etc. In such cases, it is not necessary to await sanction from the concerned Circle Office / Higher Authority. However, if gratuity dues are paid within the period of 3 months from the date it becomes payable, no interest would be admissible.

Where gratuity is held for the reasons of punishment and the Gratuity becomes payable subsequent to the date of decision and interest, if payable, shall be paid after the date of decision. No interest for the period prior to the date of decision shall be payable unless specifically mentioned in the decision for payment of interest.

(E) Other Issues Applicable for Workmen/Officers:

E.1. Computation of Income Tax on Gratuity Amount Paid/Payable

As on the date of issuance of this circular, under Sec.10 (10) of Income Tax Act the Gratuity received by an employee on his/her retirement or on cessation of service, is exempted from income tax subject to following conditions:

(i) The whole amount of gratuity calculated and paid to an employee under the Payment of Gratuity Act, 1972 is exempted from income tax.

(ii) Where the gratuity is paid as per the terms of the service conditions of our bank, then, least of the following is to be excluded from the scope of income:

(a) One half month's salary for each completed year of service calculated on the basis of average salary of 10 months immediately preceding the month, in which the employee retires.

(b) Rs.20,000,00/- (Rs. twenty lakhs only).

(c) Amount of Gratuity received.

Any amount of Gratuity paid exceeding the above mentioned exempted amount, is taxable and TDS should be deducted thereon as per Income Tax rules.

E.2. Settlement of Gratuity on Retirement/Death/Resignation

While forwarding the Gratuity Proposal, Incumbent In charge should ensure that customer account of the branch/office, where the concerned employee is posted at the time of cessation from service, is invariably entered in HRMS, for remitting the amount of gratuity. Secondly, the reasons for leaving the service by the employee should be clearly mentioned in the Gratuity Proposal i.e. superannuation, resignation, termination, death, dismissal, voluntary retirement, voluntary cessation of employment etc. We wish to make it clear that it is the personal responsibility of the Incumbent Incharge to ensure that the dues of the ex-employees are paid to them immediately after retirement and all necessary steps are taken by them to achieve end.

E.3. Nomination for Gratuity

It has also been noticed that in some cases, the employees have not made nominations and this also results in delay in settlement of claims in case of death of the employees. It is in the interest of all the employees to file nominations both for Provident Fund and Gratuity, in the prescribed forms (PNB-466) separately with the Gratuity and PF Department, besides keeping a copy in the personal file maintained at the branch/administrative office, as the case may be.

Additional Information:

In terms of Section 6 of Payment of Gratuity Act, 1972:

(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.

(2) An employee may, in his nomination, distribute the amount of gratuity payable to him under this Act amongst more than one nominee.

(3) If an employee has a family at the time of making a nomination, the nomination shall be made in favour of one or more members of his family, and any nomination made by such employee in favour of a person who is not a member of his family, shall be void.

(4) If at the time of making a nomination the employee has no family, the nomination may be made in favour of any person or persons but if the employee subsequently acquires a family, such nomination shall forthwith become invalid and the employee shall make, within such time as may be prescribed, afresh nomination in favour of one or more members of his family.

(5) A nomination may, subject to the provisions of sub-sections (3) and (4), be modified by an employee at any time, after giving to his employer a written notice in such form and in such manner as may be prescribed, of his intention to do so.

(6) If a nominee predeceases the employee, the interest of the nominee shall revert to the employee who shall make a fresh nomination, in the prescribed form, in respect of such interest.

(7) Every nomination, fresh nomination or alteration of nomination, as the case may be, shall be sent by the employee to his employer, who shall keep the same in his safe custody.

The term 'family' means:

- i. In the case of a male employee; himself, his wife, his children (whether married or unmarried), his dependent parents and the widow & children of his predeceased son,
- ii. In the case of a female employee; herself, her husband, her children (whether married or unmarried), her dependent parents, the dependent parents of her husband and the widow & children of her predeceased son.

E.4. time-line for submission of gratuity proposal

All cases of retirements should be properly recorded and diarized. Arrangements should be made to initiate for settlement of retirement dues including gratuity in each case, six months before retirement. Also, the sanctioning authority, before approving the gratuity proposal in HRMS, must ensure that no vigilance/disciplinary action is contemplated/pending against the retiring/retired employee. While forwarding Gratuity Proposal to HO PF & Pension Fund Department, New Delhi; the concerned controlling office must ensure that it has been properly sanctioned by the competent authority.

E.5 Competent Authority to Sanction Gratuity Proposal and Proposal for Forfeiture of Gratuity

The Competent Authority to Sanction Gratuity for Payment and for Forfeiture of Gratuity (under Act) have recently been circulated by HRDD vide their Circular No. 845 dated 12.10.2020. For ready reference of the branches/CO/ZO, the same is quoted hereunder:-

Terminal Benefits			
OSR	Subject	Grade/Scale	Competent Authority
Regulation 46	Gratuity	Sanction for Payment	Designated Chief Manager- Controlling Office/HO Div.
		Forfeiture of Gratuity (Under Act)	Incumbent – HR (CGM/GM)

E.6. Procedure for Forfeiture of Gratuity

The detailed procedure for Forfeiture of Gratuity has been provided in HRMD Circular No.. 415 dated 20.07.2018, which is as under:

“The gratuity is liable to forfeiture in terms of provisions of the Payment of Gratuity Act, 1972. The different circumstances under which gratuity can be forfeited and the procedure to forfeit gratuity is mentioned hereunder:-

1. Under Section 4(6)(a): In case it is decided to forfeit gratuity of those employees whose services are terminated for any act, willful omission or negligence causing any damage or loss to, or destruction of, property belonging to the employer, it is imperative that the loss caused to the employer be first crystallized so that the gratuity be forfeited to that extent only.

Keeping in view the principle of natural justice, a show cause notice be issued to the employee giving him the details of the amount so crystallized along with lapses proved on his part seeking his explanation as to why the gratuity should not be forfeited. Subsequently, after giving due consideration to the reply submitted by the employee, a decision with regard to forfeiture of gratuity may be taken by the competent authority and not by the Disciplinary Authority.

2. Under Section 4(6)(b): Under this section the gratuity payable to an employee may be wholly or partially forfeited if the service of the employee have been terminated for the riotous or disorderly conduct or any other act of violence on his part or for any act which constitutes an offence involving moral turpitude, provided such offence is committed in the course of the employment. However, to arrive at the amount of gratuity which is to be forfeited, the rationale behind the said amount be duly mentioned in the show cause notice so that an employee can make his submissions on the same.”

3. After receipt of reply from the concerned employee in respect of show cause notice issued to him/her regarding forfeiture of Gratuity, in case competent authority decides to forfeit the same, a speaking/reasoned order to this effect is to be passed and communicated to the concerned employee.

(Ref.: Provident Fund & Pension Fund Department Circular No. 12/2020 dated 27.12.2020 and Payment of Gratuity Act, 1972)