

## **Forfeiture of Gratuity**

We have been receiving references from Circle Offices seeking clarifications to various issues pertaining to forfeiture of gratuity. The relevant provisions of gratuity under the Payment of Gratuity Act, 1972, Award and Punjab National Bank (Officers') Service Regulations, 1979 are mentioned hereunder :--

### **A. PAYMENT OF GRATUITY ACT, 1972**

The gratuity payable under the Payment of Gratuity Act, 1972 is liable to full or partial forfeiture under different circumstances.

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

Section 4(1) 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) 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 or 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.”

### **B. DESAI AWARD AND BIPARTITE SETTLEMENT**

Para 8.31 of the Desai Award states as under:-

“Gratuity shall become payable (i) on the death of an employee while in service of the bank, the amount of gratuity being payable to the heirs, executors, administrators or assigns of the employee or, in case he has executed a nomination paper in the form prescribed by the bank, to the nominee of the employee ; (ii) on an employee becoming physically or mentally incapable of further service ; (iii) on termination of his service by the employer ; and (iv) on voluntary retirement or resignation after ten years' continuous service.”

Para 12.2 of the Bipartite Settlement dated 19.10.1966 provides as under:

“There will be no forfeiture of gratuity for dismissal on account of misconduct except in cases where such misconduct causes financial loss to the bank and in that case to that extent only.”

C. PUNJAB NATIONAL BANK (OFFICERS’) SERVICE REGULATIONS, 1979 Regulation 46 (1) of the PNB (Officers’) Service Regulations, 1979 states as under :-

“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
- d) Resignation after completing ten years of continuous service; or
- e) Termination of service in any other way except by way of punishment after completion of 10 years of service.

Thus, in terms of provisions of the PNB (Officers’) Service Regulations, 1979, an officer is not eligible for gratuity in case his service is terminated by way of punishment imposed upon him under the Punjab National Bank Officer Employees’ (Discipline and Appeal) Regulations, 1977.

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:-

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.

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.

The aforesaid procedure is to be followed for the workman employee in case his gratuity is being forfeited under the Award. The competent authorities for forfeiture of gratuity are mentioned in HRDD Circular No. 464 dated 03.06.2008, in terms of which the power to forfeit the gratuity of an employee under the Act is vested with – the Head of the Controlling Office/ Divisional Head/ General Manager-HR.

**(Ref.: Personnel Administration Division Circular No. 280 dated 14.08.2015)**