GBA S3 03

Business and Labour Laws

SEMESTER - III

BACHELOR IN BUSINESS ADMINISTRATION

BLOCK - 3

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BACHELOR IN BUSINESS ADMINISTRATION

BUSINESS AND LABOUR LAWS

BLOCK - 3

DETAILED SYLLABUS

UNIT 11. Worksmen Compensation Act **Pages : 237-252**

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UNIT 12. Arbitration and Conciliation Act **Pages : 253-272**

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UNIT 13. Employees Provident Funds and Miscellaneous Provisions Act , 1952
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UNIT 14. Payment of Gratuity Act, 1972 **Pages : 288-304**

Objective and Scope of the Payment of Gratuity Act, 1972, Provisions of the Act, Procedure of determination and pay ment of gratuity ,Dispute regarding the amount of gratuity, Appointment and Power of Inspector under the Payment of Gratuity Act, Controlling Authority and its Power

UNIT 15. Payment of Wages Act,1936 **Pages : 305-322**

Definition of Wages, Few important terms under the Payment of Wages Act and its objects and application,Responsibility for payment of wages,Time of Payment of Wages,Deduction and its various kinds and Deductions claims for wrongful deductions

BLOCK INTRODUCTION:

This is the *Third Block* of the course '***Business and Labour Laws***'. After completing this block, which consists of five units, you will be able to get a fair idea on the different concepts that comes under Business and Labour Laws.

This block comprises the following five units :

The eleventh unit gives us an idea on Important definitions of Workmen's Compensation Act,1923, Disablement, Employer's liability for compensation, Employer's liability when contractor is engaged, Commissioner and Compensation

The twelth unit will help us in understanding the meaning of Arbitration and its Types, Arbitration Agreement and elements of a valid arbitration agreement, Appointment, Powers and Duties of Arbitrator, Conciliation and Conciliation Proceeding, Role of Conciliator and Sequential pattern of Conciliation, Kinds of Conciliation, Drafting of Agreement and suggestions for improving the Conciliation Machinery

The thirteenth unit gives us a broad overview of Scope and Applicability of the Employee's Provident Funds and Misc Provisions Act, 1952, Various schemes provided under the Act, Central Board and its Constitution, Functions and Powers, State Board and their Constitution, Duties and Powers of Inspectors appointed under the Act, Constitution and working procedure of the Act

The forteenth unit is about the Objective and Scope of the Payment of Gratuity Act, 1972, Provisions of the Act, Procedure of determination and payment of gratuity ,Dispute regarding the amount of gratuity, Appointment and Power of Inspector under the Payment of Gratuity Act, Controlling Authority and its Power

The fiftinth unit is about Payment of Wages Act, 1936. Its states acout the Definition of Wages, Responsibility for payment of wages,Time of Payment of Wages,Deduction and its various kinds and Deductions claims for wrongful deductions

The structure of Block-III is as follows :

UNIT 11 : Worksmen's Compensation Act ,1923

UNIT 12 : Arbitration and Conciliation Act

UNIT 13 : Employees Provident Funds and Miscellaneous Provisions Act , 1952

UNIT 14 : Payment of Gratuity Act, 1972

UNIT 15 : Payment of Wages Act,1936

UNIT 11: WORKMEN'S COMPENSATION ACT, 1923

UNIT STRUCTURE

11.1 Learning Objectives

11.2 Introduction

11.3 Object and scope of the act

11.4 Important definitions

11.5 Disablement

11.6 Employer's liability for compensation

11.7 Employer's liability when contractor is engaged

11.8 Commissioner

11.9 Compensation

11.10 Let Us Sum Up

11.11 Further Reading

11.12 Answers To Check Your Progress

11.13 Model Questions

11.1 LEARNING OBJECTIVES

After going through this unit, you will be able to :

- explain the object and scope of Workmen's Compensation Act, 1923
- define the different definitions
- describe employer's liability for compensation
- explain the employer's liability when contractor is engaged
- explain commissioner & compensation

11.2 INTRODUCTION

The passing of the Workmen's Compensation Act, 1923 was the first step towards social security of the workmen. Its main purpose was to give financial protection to the workmen. In this unit, we are going to discuss about Workmen's Compensation Act, 1923 and details about its

object and scope .This unit also encompass the different definitions. Through this unit, you will be able to know about the employer's liability for compensation and penalties related to it. The unit discusses about the meaning of compensation and the basic object of passing of this Act and different principles of workmen's compensation stipulated under the Act.

11.3 OBJECT AND SCOPE OF THE ACT

The Workmen's Compensation Act, 1923 extends to the whole of India. It came into force on the first day of July, 1924. It is social security legislation. The Workmen's Compensation Act, 1923 imposes statutory liability upon an employer to discharge his moral obligation towards employees when they suffer from any physical disabilities or diseases, during the course of employment in hazardous working conditions. The aim of the Act is to provide quick and cheaper disposal of disputes relating to the compensation which is not possible in comparison in case of proceedings of civil law. The Act also helps the dependants to get relieved from the hardship, rising from accident.



CHECK YOUR PROGRESS

Q1. Mention one objective of the Workmen's Compensation Act, 1923.

i) .....

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11.4 IMPORTANT DEFINITIONS

Some important definitions are given below—

(a) Section 2 (1) (b) of the Act define, **"Commissioner"** as a Commissioner for Workmen's Compensation appointed under section 20;

(b) **"Compensation"** [section 2 (1) (c)] means compensation as provided for by this Act;

(c) Section 2(1) (d) of the Act defines, **"dependent"** means any of the following relatives of a deceased workman, namely :-

(i) a widow, a minor legitimate or adopted son, and unmarried legitimate or adopted daughter, or a widowed mother; and

(ii) if wholly dependent on the earnings of the workman at the time of his death, a son or a daughter who has attained the age of 18 years and who is infirm;

(iii) if wholly or in part dependent on the earnings of the workman at the time of his death,

(a) a widower,

(b) a parent other than a widowed mother,

(c) a minor illegitimate son, an unmarried illegitimate daughter or a daughter legitimate or illegitimate or adopted if married and a minor or if widowed and a minor,

(d) a minor brother or an unmarried sister or a widowed sister if a minor,

(e) a widowed daughter-in-law,

(f) a minor child of a pre-deceased son,

(g) a minor child of a pre-deceased daughter where no parent of the child is alive, or

(h) a paternal grandparent if no parent of the workman is alive.

Explanation: For the purposes of sub-clause (ii) and items (f) and (g) of sub-clause (iii), references to a son, daughter or child include an adopted son, daughter or child respectively;

(d) **"Employer"** [section 2 (1) (e)] includes:

i) any body of persons whether incorporated or not ,

ii) any managing agent of an employer ,

iii) legal representative of a deceased employer,

iv) any workman whose services are temporarily lent or let on hire to another person, by the person with whom the workman has entered into a contract of service or apprenticeship; means such other person while the workman is working for him.

A contractor falls within the above definition of the employer.

(e) **"Managing agent"** means any person appointed or acting as the representative of another person for the purpose of carrying on such other person's trade or business, but does not include an individual manager subordinate to an employer;

(f) **"Minor"** means a person who has not attained the age of 18 years;

(g) **"Prescribed"** means prescribed by rules made under this Act;

(h) **"Qualified medical practitioner"** means any person registered under any Central Act, Provincial Act, or an Act of the Legislature of a State providing for the maintenance of a register of medical practitioners, or, in any area where no such last-mentioned Act is in force, any person declared by the State Government, by notification in the Official Gazette, to be a qualified medical practitioner for the purposes of this Act;

(i) **"Seaman"** means any person forming part of the crew of any ship, but does not include the master of the ship;

(j) **"Wages"** includes any privilege or benefit which is capable of being estimated in money, other than a travelling allowance or the value of any travelling concession or a contribution paid by the employer a workman towards any pension or provident fund or a sum paid to a workman to cover any special expenses entailed on him by the nature of his employment;

(k) **"Workman"** has been defined under section 2 (1) (n) as follows:

1. Workman means any person (other than a person whose employment is of a casual in nature and who is employed otherwise than for the purposes of the employer's trade or business) who is–

   (i) a railway servant as defined in clause (34) of section 2 of the Railways Act, 1989 (24 of 1989), not permanently employed in any administrative, district or sub-divisional office of a railway and not employed in any such capacity as is specified in Schedule II, or

      (a) a master, seaman or other member of the crew of a ship,

      (b) a captain or other member of the crew of an aircraft,

      (c) a person recruited as driver, helper, mechanic, cleaner or in any other capacity in connection with a motor vehicle,

      (d) a person recruited for work abroad by a company, and who is employed outside India in any such capacity as is specified in Schedule II and the ship, aircraft or motor vehicle, or company, as the case may be, is registered in India, or

   (ii) employed in any such capacity as is specified in Schedule II, whether the contract of employment was made before or after the passing of this Act and whether such contract is expressed or implied, oral or in writing; but does not include any person working in the capacity of a member of the Armed Forces of the Union; and any reference to a workman who has been injured shall, where the workman is dead, include a reference to his dependants or any of them.

(2) The exercise and performance of the powers and duties of a local authority or of any department acting on behalf of the Government shall, for the purposes of this Act, unless a contrary intention appears, be deemed to be the trade or business of such authority or department.

(3) The Central Government or the State Government, by notification in the Official Gazette, after giving not less than three months' notice of its intention so to do, may, by a like notification, add to Schedule II any class of persons employed in any occupation which it is satisfied is a hazardous occupation, and the provisions of this Act shall thereupon apply, in case of a notification by the Central Government, within the territories to which the Act extends, or, in the case of a notification by the State Government, within the State, to such classes of persons :

Provided that in making addition, the Central Government or the State Government, as the case may be, may direct that the provisions of this Act shall apply to such classes of persons in respect of specified injuries only.



CHECK YOUR PROGRESS

Q2. Define the term wage under the Workmen's Compensation Act, 1923.

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11.5 DISABLEMENT

The Act does not define the word disablement. But it defines the partial and total disablement.

(i) **"Partial disablement"** means,

a. where the disablement is of a temporary in nature, such disablement as reduces the earning capacity of a workman in any employment in which he was engaged at the time of the accident resulting in the disablement, and

b. where the disablement is of a permanent nature, such disablement as reduces his earning capacity in every employment which he was capable of undertaking at that time:

Provided that every injury specified in Part II of Schedule I shall be deemed to result in permanent partial disablement.

In case of temporary partial disablement, the disablement results in reduction of earning capacity in respect of only that employment in which he was engaged at the time of accident. This means the workman's earning capacity in relation to other employment is not affected. But in case of permanent partial disablement, the disablement results in reduction in his earning capacity is not only the employment in which he was engaged at the time of accident but in all other employment.

(ii) **"Total disablement"** means such disablement, whether of a temporary or permanent nature, as incapacitates a workman for all work which he was capable of performing at the time of the accident resulting in such disablement.

Provided that permanent total disablement shall be deemed to result from every injury specified in Part I of Schedule I or from any combination of injuries specified in Part II thereof where the aggregate percentage of the loss of earning capacity, as specified in the said Part II against those injuries, amounts to one hundred per cent or more.

11.6 EMPLOYER'S LIABILITY FOR COMPENSATION

Under the Section 3 of the Act provides the liability of the employer, in case of occupational diseases or personal injuries or the prescribed manner in which compensation has pay to the workmen.

a. *In case of occupational diseases:*

i. Where a workman employed in any employment specified in Part A of Schedule III contracts any disease specified therein, as an occupational diseases peculiar to that employment , it is deemed to be injury by accident out of and in the course of such employment ,

ii. Such employment period should be continuously doing for six months under the same employer as specified in the Part B of Schedule III.

iii. Contract any such diseases to a workman, whilst he is in service of one or more employers (not necessarily the same employer) in any employment specified in Part C of Schedule III for such continuous period as the Central Government may specify.

iv. If it is proved:

   a. Contract any such occupational diseases to a workman, whilst he is in service of one or more employers in any employment specified in Part C of Schedule III and that occupational diseases is peculiar in nature to that employment during a continuous period which is less than the period specified under this sub section for that employment;

   b. That the disease has arisen out of and in the course of the employment.

v. The Central Government or the State Government, after giving, by notification in the Official Gazette, not less than three months' notice of its intention so to do, may, by a like notification, add any description of employment to the employments specified in Schedule III, and shall specify in the case of employments so added the diseases which shall be deemed for the purposes of this section to be occupational diseases peculiar to those employments respectively, and thereupon the provisions of sub-section (2) shall apply In the case of a notification by the Central Government, within the territories to which this Act extends or, in case of a notification by the State Government, within the State as if such diseases had been declared by this Act to be occupational diseases peculiar to those employments.

vi. Except as mentioned above, no compensation shall be payable to a workman in respect of any disease unless the disease is directly attributable to a specific injury by accident arising out of and in the course of his employment.

b. *In case of Personal Injuries:*

i. **Personal injuries:** Here the injury means physical or bodily injury caused by an accident which may include nervous shock or break-down or mental strain.

ii. **Accident:** The word 'accident' has not been defined in the Act. But in common expression, it means a mishap or an untoward event which is not expected or designed.

iii. **Arising out of employment and in the course of employment:**

a. **Arising out of employment:** The injury should arise out of employment

i.e. the cause should be a proximate cause not a remote cause. In the case of **Mackenzie v. I.M. Issak**, it was observed that the word arising out of employment means that injury which is resulted from the risk incidental to the duties of the service which unless engaged in the duty owing to the master , it is reasonable to believe that the workman would not otherwise have suffered. There must be a casual relationship between the accident and the employment.

b. **Arising in the course of employment:** The workman, at the time of accident must have been employed in the performance of his duties and the accident took place at or about the place where he was performing his duties.

iv. *Theory of notional extension of employment:* The injury should be caused by an accident which must have arisen in the course of employment i.e. the accident must take place at a time and the place when he was doing his master's job.

v. *When employer is not liable:*

A. When the injury does not result of disablement for a period exceeding 3 days.

B. When the injury not resulting in death or permanent total disability is due to any of the following:

a. the workman was at the time of accident, under the influence of drink or drugs,

b. the workman wilfully disobeyed an order expressly framed for the purpose of securing safety of workers,

c. the workman wilfully disregards or removes any safety guards or safety devices which he knew to have been provided for the safety of workman.

iv. Suit for damages in a court barred: Under Section 3(5), a workman has to institute in a Civil Court, a suit for damages against the employer or any other person to entitle compensation under the Workmen's Compensation Act, 1923.



CHECK YOUR PROGRESS

Q3. Mention reasons when employer is not liable to pay compensation under the Workmen's Compensation Act, 1923.

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11.7 EMPLOYER'S LIABILITY WHEN CONTRACTOR IS ENGAGED

Section 12 of the act covers the employer's liability when contractor is engaged for the purpose of doing any work in respect of employer's trade or business. Such contractor has to execute the work with the help of workman engaged by him. But the employers will liable for the payment of compensation only in the following circumstances:

a. The contractor is engaged to do a work which is part of the trade or business of the employer.

b. The workmen were engaged in the course of or for the purpose of his trade or business.

c. The accident occurred in or about the premises on which the employer has under taken or undertakes to execute the work.

This provision, however does not prevent a workman from recovering compensation from the contractor instead of the employer. Here, the

amount of compensation shall be calculated with reference to the wages of the workman under the employer by whom he is immediately employed.

11.8 COMMISSIONER

Section 19(1) lays down the jurisdiction of a commissioner to entertain a claim in respect of payment of compensation to workman. The State Government may, by notification in the Official Gazette, appoint any person to be a Commissioner for Workman's Compensation for such area as may be specified in the notification. The Commissioner has the following jurisdiction over following matters:

a. Liability of any person to pay compensation.

b. The person injured is or is not a workman.

c. The nature and extent of disablement.

d. The amount or duration of compensation.

According to Section 19 (2), no Civil Court, shall have jurisdiction to settle, decide or deal with any question which is by or under this Act required to be settled, decide or dealt with by a Commissioner or to enforce any liability incurred under this Act.

All claims shall be made subject to the provision of the Act to the Commissioner. But, such applications other than the applications made by dependant or dependants can only be submitted when the parties have failed to settle the matter by agreement.

The Commissioner shall have for the following powers—

a. taking evidence on oath;

b. enforcing the attendance of witness;

c. compelling the production of documents and material objects.

According to the Section 26, all costs incidental to any proceedings before a Commissioner shall subject to rules under this Act .



CHECK YOUR PROGRESS

Q4. Mention three jurisdiction of Commissioner in payment of compensation to workman under the Workmen's Compensation Act, 1923.

i) .....

ii) .....

iii) .....

11.9 COMPENSATION

The word 'compensation' has been defined under section 2(1) (c) of the Workmen's Compensation Act, 1923. Amount of compensation can be decided by—

a. Schedule II contains a list of persons engaged in different employments/ operations specified therein who are covered by the definition of workman and they are entitled to pay compensation.

b. Schedule III contains a list of occupational diseases which if contracted while in employment entitles a workman to compensation such as disease caused by lead, mercury etc.

c. Schedule IV lays down the relevant factors related to age of the workman at the time of death, injury or accident by which wages are multiplied to arrive at compensation.

d. Section 4A of the Act provides that compensation under section 4 shall be paid as soon as it falls due.

e. The amount of compensation can be calculated deemed to be payable for a month , as—

   i. The monthly wages of the workman i.e. 1/12th of total wages which have been fallen due, for payment to him by the employer in the last 12 months of that period, only when workman is continuing work not less than 12 months immediately preceding the accident.

   ii. If the service of the workman was less than one month, the

monthly wages of the workman shall be the average monthly amount which will be earned by the workman during the year i.e. 12 months immediately preceding the accident.

iii. If it is not possible to calculate the monthly wages under clause (b), the monthly wage shall be the 30 times the total wages earned in respect of the last continuous period of service, divided by the number of days comprising such period.

f. Any half monthly payment payable to the workman under this act, either under an agreement between the parties or under the order of the Commissioner, accompanied by the certificate of qualified medical practitioner.

g. The half monthly payment received by agreement between the parties or on application of either party to the Commissioner, the compensation has to pay to the workman for not less than 6 months or, lump sum as determined by the Commissioner and agreed by the two parties.

h. No compensation has to be paid in respect of a workman whose injury has resulted in death and no payment of lump sum compensation to a woman or person under a legal disability except by deposit with the Commissioner.

i. The compensation money shall bear the first charge on the asset transferred by the employer.



11.10 LET US SUM UP

In this unit, we have discussed the following:

- The Workmen's Compensation Act, 1923 is one of the important social security legislation
- The Act provide quick and cheaper mode of disposal of disputes.
- Partial disablement may be temporary or permanent disablement.
- Total disablement means such disablement, whether of a temporary or permanent nature, as incapacitates a workman for

all work which he was capable of performing at the time of the accident resulting in such disablement.

- Amount of compensation is payable in the event of a workman meeting with an accident resulting into temporary or permanent disabilities or disease as stated in Schedule II and III in terms of Section 4 of the Act , read with schedule IV.



11.11 FURTHER READING

1. The Minimum Wages Act 1948; (Bare Act)
2. P. L. Malik (2017);*P. L. Malik's Industrial Law*; Eastern Book Company, India
3. N.D. Kapoor (2011);Handbook of Industrial Law ; Sultan Chand & Sons, India

11.12 ANSWERS TO CHECK YOUR PROGRESS

Ans to Q. No.1: The object of the Workmen's Compensation Act, 1923 is to provide quick and cheaper disposal of disputes relating to the compensation which is not possible under the proceeding of civil law.

Ans to Q. No.2: The definition of "Wages" under the Workmen's Compensation Act, 1923 includes, any privilege or benefit which is capable of being estimated in money, other than a travelling allowance or the value of any travelling concession or a contribution paid by the employer a workman towards any pension or provident fund or a sum paid to a workman to cover any special expenses entailed on him by the nature of his employment.

Ans to Q. No.3: The reasons when employer is not liable to pay compensation under the Workmen's Compensation Act, 1923 are—

i. When the injury does not result of disablement for a period exceeding 3 days.

ii. When the injury not resulting in death or permanent total disability is due to any of the following:

a. the workman was at the time of accident, under the influence of drink or drugs,

b. the workman wilfully disobeyed an order expressly framed for the purpose of securing safety of workers,

c. the workman wilfully disregards or removes any safety guards or safety devices which he knew to have been provided for the safety of workman.

Ans to Q. No.4: Three jurisdiction of Commissioner in payment of compensation to workman under the Workmen's Compensation Act, 1923 are—

a. Liability of any person to pay compensation.

b. The person injured is or is not a workman.

c. The nature and extent of disablement.

d. The amount or duration of compensation.



11.13 MODEL QUESTIONS

1. Explain the following terms under the Workmen's Compensation Act, 1923:

   i. Dependant

   ii. Disablement

   iii. Wages

2. Define an 'accident'. When it is said to arise out of and in the course of an employment?

3. Explain employer's liability to pay compensation to an employee?

4. Is the principal employer liable to pay compensation to a workman engaged through contractor sustaining injuries while on duty?

5. To what extent is the compensation payable to a workman for personal injury sustained by him while on duty leading to—

   i. his permanent total disablement

   ii. his death under the Workmen's Compensation Act, 1923.

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UNIT 12: THE ARBITRATION AND CONCILIATION ACT

UNIT STRUCTURE

12.1 Learning Objectives

12.2 Introduction

12.3 Meaning of Arbitration and its Types

12.4 Arbitration Agreement and elements of a valid arbitration agreement

12.5 Arbitration and his Appointment

12.6 Powers and Duties of Arbitrator

12.7 Conciliation and Conciliation Proceedings

12.8 Role of Conciliator and Sequential pattern of Conciliation

12.9 Kinds of Conciliation

12.10 Drafting of Agreement

12.11 Suggestions for improving the Conciliation Machinery

12.12 Let Us Sum Up

12.13 Further Reading

12.14 Answers To Check Your Progress

12.15 Model Questions

12.1 LEARNING OBJECTIVES

After going through this unit, you will be able to :

- define Arbitration and its Types
- explain the Arbitration agreement and its essentials
- describe the meaning, appointment, Powers and Duties of Arbitration
- define conciliation and its proceedings
- describe the role of conciliator
- explain the kinds of conciliation, drafting of its agreement and suggestions for improving the conciliation machinery.

12.2 INTRODUCTION

In the previous unit, we have discussed about workmen's compensation Act, 1923. In the present unit, an attempt is being taken to discuss the various important aspects of arbitration and conciliation. Arbitration is a process where a dispute is submitted to an impartial outsider for taking a decision. On the other hand, conciliation is the most important method for prevention and settlement of Industrial disputes through third party intervention. Arbitration is to be distinguished from conciliation not only by the fact that its decision is binding on the parties but also by its different approach and spirit. Arbitration is more judicial in character than conciliation. After completion of this unit, the students will able to understand in detail the concept and process of Arbitration and Conciliation.

12.3 MEANING OF ARBITRATION AND ITS TYPES

The meaning of arbitration is securing an award on a conflict issued by reference to a third party. Under the process of arbitration, a dispute is submitted to an impartial outsider who makes a decision which is usually binding on both parties. In the process of arbitration, there is hearing and determination of a cause between parties in controversy by a person or persons chosen by the parties or appointed under statutory authority. The purpose of arbitration is adjudication, that is why there is no chance for compromise in awards. In the word of Kurt Brenn, the objective of arbitration is not compromise but adjudicating though parties are at liberty to compromise. A wise arbitrator will certainly promote such agreement but as a rule there is no place for compromise in the awards. In time of issuing decision, the arbitrator should take in to consideration the fact that the decision must be based upon some sound principle of natural justice, it must be workable, and it must be based upon a 'Split the difference' approach.

In order to clear the concept of arbitration we should know the difference

between arbitration and conciliation as well as the difference between arbitration and mediation.

Arbitration can be distinguished from conciliation on the basis of that its decision is binding on the parties and its different approach and spirit. The main objectives of arbitration is adjudication and so there is no place for compromise in awards though the parties are long as it brings about an agreement between the contending parties, an arbitrator enforces his own point of view on the contending parties and the opinions of the disputants are not given any predominance. Moreover, arbitration produce justice and fair approach to a dispute. So, it is more judicial in character than conciliation.

Difference between arbitration and mediation is that arbitration is a judicial process, but mediation has a legislative tint. The award of the arbitrator rests on equity and justice. There is no chance of compromise in arbitration but, in case of mediation compromise is the main essence. The award of arbitration is mandatory but in case of mediation, it is not so. Arbitration may sometime terminate the dispute, which is not happened in mediator. Arbitration is best suited to settlement of contractual rights, but mediation is suited to the adjustment of disputes.

Types of Arbitration : There are two types of arbitration. One is voluntary and another is compulsory. Below we discuss these two types of arbitration.

Voluntary Arbitration : In case of voluntary arbitration the two contending parties unable to compose their difference by themselves or with the help of the mediator or conciliator, agree to submit the conflict / dispute between them to be resolved by an impartial authority, where they are ready to accept the decision of that authority. In case of voluntary arbitration before the dispute is referred for adjudication, the parties can and do themselves refer voluntarily the dispute to arbitration.

To be voluntary arbitration, following elements are essentials –

(i) Voluntary submission of disputes to an arbitrator.

(ii) Subsequent attendance of witness and investigations.

(iii) Enforcement of an award may not be necessary and binding because there is no compulsion. The award may be favorable or unfavorable.

(iv) Voluntary arbitration may be specially needed for disputes arising under agreements.

Compulsory Arbitration : In case of compulsory arbitration parties are required to arbitrate without any willingness on their part. If one of the parties thinks aggrieved by an Act of the other, then, that particular party can apply to the appropriate govt. to refer the dispute to an adjudication machinery. This type of dispute is called as compulsory arbitration. In case of the following condition, the parties under compulsory artitration are forced to arbitration by the state–

(i) If the parties fail to arrive at a settlement by voluntary method.

(ii) If there is a national emergency which requires that wheels of production should not be obstructed by frequent work-stoppages.

(iii) If the country is passing through grave economic crisis.

(iv) If there is a grave public dissatisfaction with the existing industrial relations.

(v) If Industries of Strategic importance are involved.

(vi) If the parties are ill balanced, where the unions are weak ill-organised and powerless and the means of production are in the hands of the capitalists.

(vii) If the public interest and the working conditions are desired to be sabeguarded and regulated by the state.

12.4 ARBITRATION AGREEMENT AND ELEMENTS OF A VALID ARBITRATION AGREEMENT

Under section 2 (a) of the Arbitration Act 1940 an arbitration agreement

is defined as a written agreement to submit present or future differences to arbitration. Whether an arbitrator is named therein or not. Arbitration agreement or arbitration clause in an agreement is sometimes called submission. An Arbitration agreement is also called as 'reference'. In the word of Halsbury, 'It is an agreement made by two or more parties between whom some difference has arise or may thereafter arise whereby they appoint another person to adjudicate upon such dispute and agree to be bound by his decision. The characteristics of arbitration is that it is a private tribunal chosen by the parties. The person, who is appointed to settle the differences or disputes is called an 'arbitrator', the proceeding before him are known as an 'arbitration' and his decision is known as 'award'.

Essentials of a Valid Arbitration agreement :

For a valid Arbitration agreement, following essentials elements are required :-

1) **Written :** The arbitration agreement should be in written form of course, in the written arbitration agreement, there is no need of signatures of the parties. In the written agreement, the terms of arbitration should be minimum. The main purpose of the written arbitration agreement is to establish that the parties agreed to the settlement of disputes by arbitration.

2) **Present or Future Dispute :** Without the existence of dispute, the arbitration is meaningless. Arbitration pre-supposes the existence or the possible existence of a dispute. In this connection, dispute implies assertion of a right by one party and denial of that right by the other party.

3) **Essential of a valid contract :** To be a valid arbitration agreement, it should fulfil all the essential elements of a valid contract. Such as, offer and acceptance, face consent, legal relationship, complaint to control, lawful consideration, lawful object, not declared without valid contract, arbitration clause is not binding.

12.5 ARBITRATION AND HIS APPOINTMENT

Arbitrator can be defined as a person who is appointed by mutual consent of the contending parties for investigation and settlement of difference in dispute submitted to him. Any person may become an Arbitrator. The person should be of sound mind and have capacity to understand and settle the differences or disputes for which he is appointed. Even, one of the parties to the dispute may be appointed as arbitrator, if other party has no complain. On the other hand, each party can nominate one or more arbitrators. Where all persons shall jointly act as arbitrators. In case of more than two arbitrator are appointed, the decision of the majority arbitrator will be final, if there is no such contrary from agreement, If the arbitrators are not agree then-dispute shall be referred to a third party, who is known as an Umpire. The decision given by the Umpire will be final.

Appointment of Arbitrator :

Arbitrator can be appointed by the following ways.

1) **Appointment by the parties :** The arbitrator or arbitrators may be selected by the mutual consent of the parties. According to section 2 (a) it is not compulsory to mention the name of arbitrator in the agreement. Parties can appoint any person or body of persons of their choice as a arbitrator (s). Even the parties can appoint a new arbitrator, if any appointed arbitrator neglects or refuses or is incapable of acting as a arbitrator.

2) **Appointment by third party :** Under section 4 of the Arbitration Act 1940, an arbitrator can be appointed by the third party or parties. It is laid under the section 4 that 'The parties loan arbitration agreement may agree that any reference there under shall be to an arbitrator or arbitrators to be appointed by a person designated in the agreement either by name or a holder for the time being of any office or appointment.'

3) Power to party to appoint New or Sole arbitrator : Under section 9 of the Arbitration Act 1940, it is laid down that 'where an arbitrator agreement provides that reference shall of two arbitrators, one to be appointed by each party. Then, unless different intention is expressed in the agreement :-

(a) if either of the appointed arbitrators neglects or refuses to act or is incapable of acting, or dies, the party who appointed him may appoint a new arbitrator in his place.

(b) if one party fails to appoint an arbitrator either originally or by way of substitution as aforesaid for fifteen clear days after the service by the other party of a notice in writing to make the appointment, such other party having appointed his arbitrator before giving the notice, the party who has appointed the arbitrator may appoint that arbitrator to act as sole arbitrator in the reference, and his award shall be binding on both parties as if he had been appointed by consent.

4) Power to court to appointment arbitrator or Umpire : Under section 8, a court is empowered to appoint an arbitrator or umpire in the following cases –

(a) If an arbitration agreement provides that the reference shall be made to one or more arbitrator to be appointed by the consent of the parties, but all the parties do not, after differences have arisen, concur in the appointment or appointments.

(b) If any appointed arbitrator or Umpire neglects to act or refuses to act or is incapable of acting or dies and the arbitration agreement does not provide such a vacancy to keep it vacant and parties do not fill it.

(c) If the parties or the arbitrators are required to appointment umpire and do not appoint him.

12.6 POWER AND DUTIES OF ARBITRATOR

Under section 13 of the Arbitration Act 1940, following power are entrusted to the Arbitrator.

(i) To administer oath to the parties and witness appearing.

(ii) To state a special case for the opinion of the court on any question of law involved or state the award. Wholly or in part in the form if a special case of such question for the opinion.

(iii) To make the award conditional or in the alternative.

(iv) To correct an award any clerical mistake or user arising from any accidental slip or omission.

(v) To administer any party to the arbitration such interrogatories as may in the opinion of the arbitrators or impose be necessary.

(vi) To award interest upto the date of award.

(vii) To determine by and to whom the costs of reference and the award shall be paid.

(viii) When an award of money is given the arbitrator can fix the instalment thereof and their amount and time.

(ix) To make interim award to be followed by a final award.

(x) To order for the specific performance of the contract.

Following are the duties of Arbitrator :

(i) Primary duty of arbitrator is to act judicially as because an arbitration is a method of settling a dispute between the parties in a quasi-judicial manner.

(ii) The duty of arbitrator is more than a judge because of the fact that the award of arbitrator is final.

(iii) Another important duty of arbitrator is to give faith hearing to the parties. Moreover, the arbitrator should give reasonable time and opportunity to parties to put up their respective claims.

(iv) The duty of arbitrator is to decide the dispute in accordance with

the law. The arbitrator should conduct the proceeding in accordance with the principle of natural justice.

(v) One of the important duties of arbitrator is to hear or receive evidence from both sides. It is not his duty to bear or receive evidence from one party in the absence of the other party without giving the other party affected by such evidence, the opportunity of answering it.

(vi) Except ministerial character, the arbitrator should perform all functions personally.

(vii) It is urgent of arbitrator to sign the award. Moreover he should make it available to the parties and file it in the court within reasonable time.

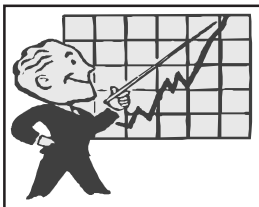


LET US KNOW

(i) The objectives of arbitration is not is not compromise but adjudication, though parties are at liberty to comprise. A wise arbitrator will certainly promote such agreements, but as a rule there is no place for compromise in the awards. Thus, the basic difference between the settlement approach and the quasi-judicial approach must be appreciated.

(ii) The judicial approach emphasises that arbitration should not be confused with conciliation and mediation.

(iii) The non-judicial approach emphasises that the arbitrator cannot isolate himself from the reality of the need of a wearable solution.



CHECK YOUR PROGRESS

Q.1: Fill in the blanks.

(i) The meaning of arbitration is securing an ——— on a conflict issued by reference to a third party.

(ii) Arbitration is a ——— process.

(iii) There is no chance of ——— of the Arbitration Act 1940, an arbitrator can be appointed by the third parties.

(v) Under section 8, a ——— is empowered to appoint an arbitrator.

12.7 CONCILIATION AND CONCILIATION PROCEEDINGS

Conciliation is a method for prevention and settlement of Industrial disputes through third party intervention. Conciliation reconcile the views of disputants to bring them to an agreement. Under the conciliation method, services of a neutral third party are used in a dispute as a means of helping the disputing parties to reduce the extent of their differences and to arrive at an amicable settlement or agreed solution. Conciliation is a rational and orderly process of discussion of differences between the parties to a dispute under the guidance of a conciliator. In the process of conciliation, representatives of workers and the employers are brought together before a third person or a group of persons to persuade them to arrive at an agreement by mutual discussion. It is a peace-making process in Industrial relations. It is a speedy settlement of disputes without resort to strikes or lock-outs. Because, conciliation assists the parties towards a mutually acceptable compromise or solution by virtue of his reasoning and persuasion. The conciliation process is characterised by its flexibility, informality and simplicity. So, sometimes conciliation is an art, the conciliator is a solitary artist recongnising at most a few guiding stars and depending mainly on his personal power of divination.

Conciliation Proceedings :

In order to clear concept of conciliation proceedings, it is better to know about the conciliation machinery as well as the conciliation officers.

Under the Industrial Disputes Act 1947, conciliation officer can be appointed by the Central Government and the State Government by

notification in the official gazette. The conciliation officer is entrusted the duty of mediating in and promoting the settlement of Industrial disputes. According to the section 4, the conciliation officer can be permanently appointed or for a limited period. The number of conciliation officers is determined by the appropriate government depending upon the volume of work and the number of Industrial disputes. Moreover, conciliation officer may be appointed only for a certain area or Industry or may be appointed for limited period or permanently.

It is gratifying to mention that if an industrial dispute exists or is approached in public utility service, the conciliation officer must hold conciliation proceedings in the prescribed manner. Of course, in case of other industries, the power of conciliator is discretionary, so he may or may not hold such proceedings. Under section 12(2) it is laid down regarding the conciliator that 'he may do all such thing as he thinks fit for the purpose of inducing the parties to come to a fair and amicable settlement of the disputes.' In case of a settlement arrived at in the course of conciliation proceedings, the conciliation officer is to send a report along with a memorandum of settlement signed by the parties to the dispute to the appropriate government. If no settlement is reached at, then the conciliation officer is to send immediately a full report setting forth the steps taken by him. He is also required to mention the probable reasons for failure to the appropriate government. The conciliation officer is to submit the report within 14 days of the commencement of the conciliation proceedings or within such shorter period as may be fixed by the appropriate Government. A conciliation proceeding is commenced on the date on which a notice of strike or lock-out is received by the conciliation officer. In other cases, conciliation proceeding is commenced from the date in which the conciliation officer holds proceedings. A conciliation proceeding is not concluded and is deemed to be pending until any of the conditions mentioned below is fulfilled :-

(i) Where a settlement is arrived at, a memorandum of the settlement is signed by the parties to the disputes.

(ii) Where no settlement is arrived at the report of conciliation officer is received by the appropriate Government and

(iii) A reference is made to the Court, Labour court, Tribunal or National Tribunal, during the pendency of the conciliation proceedings.

The Board of conciliation is constituted as an adhoc body by an appropriate government. The main purpose of the Board of conciliation is to mediate and to induce the parties to come to a fair and amicable settlement of course, the appropriate Government has no power to constitute a Board for the purpose of refesseing criminal proceedings.

The enquiry or investigation conducted by a Board of conciliation is treated as judicial proceedings.

Under section 18 of the Industrial Disputes Act 1947, a distinction is laid down between an agreement arrived at between the employers and the working in the course of conciliation proceedings and without recourse to conciliation. Under section 22 and 23 certain statutory restrictions have been placed on strikes / lockouts in all Industrial Establishments during the pendency of any conciliation proceedings before a conciliation officer or a conciliation Board and 7 days after the conclusion of such proceedings.

12.8 ROLE OF CONCILIATOR AND SEQUENTIAL PATTERN OF CONCILIATION

Conciliator plays a vital role in solving Industrial dispute. Regarding the role of conciliator, I.L.O. publication lays down as follow.

'The conciliator induces the parties to a course of action. His intervention in the dispute creates for the parties a salvation different from the direct confrontation they had before. The conciliator establishes for the parties a need re-examine their positions in this new solvation and to consider possible alternatives or options.'

Below we discuss some important roles to be played by the conciliator:-

(1) **As a discussion Leader :** By play the role of conciliator as a discussion leader, reduces irrationality and antagonism between the parties. Conciliator guides the parties towards a problem solving approach to their dispute.

(2) **As a Safety Valve :** The conciliator also plays his role as a safety valve placing himself in the position of alternative target when he feels that the parties are in an aggressive mode.

(3) **As a communication link :** The conciliator performs his functions as a communication link between the parties. He provides a thorough explanation and interprets the intention of the party.

(4) **As an Innovator :** The conciliator can play his role by supplying new information and new thoughts. Thereby he can help the parties by providing various views of issues, possible alternative solution and an entirely new approach.

(5) **As a Sounding Board :** The conciliator may indicate the parties which of their own arguments, defences and support cannot stand under a rational searching enquiring.

(6) **As a Protector :** The conciliator can also provide protection to the parties for making their ready for collective bargaining position by exploring alternative solution during separate meetings.

(7) **As a Fail-Safe Device :** The conciliator also plays his role by assisting a party which has overstated its position to the extent of bluff or exaggeration of its reaction to some more on the part of the other.

(8) **As a Stimulator :** The conciliator can crystalise changes of opinion in time of discussion by intervening at the appropriate moment and giving such ideas a concrete form.

(9) **As an Adviser :** The conciliator also plays his role as an adviser by removing misunderstandings regarding their opinion, intentions and capabilities.

(10) As a Promoter of Collective Bargaining : The conciliator helps in promoting collective Bargaining. Thereby the conciliator helps and guide the parties in the development of their relationship.

12.9 KINDS OF CONCILIATION

There are mainly two kinds of conciliation. Such as :

(i) Voluntary Conciliation.

(ii) Compulsory Conciliation.

(1) Voluntary Conciliation : Under voluntary conciliation, the disputes are referred to the conciliation officer or the Board of conciliation by both parties under their own free will who agree to have their disputes settled by an outsider, but they may or may not accept the decision.

The ILO (International Labour Organisation) Recommendation No. 92 concerning voluntary conciliation (and Arbitration) 1951 as follows.

1. Voluntary conciliation machinery appropriate to national conditions should be made to assist in the prevention and settlement of Industrial disputes between employers and workers.

2. Where voluntary conciliation machinery is constituted on a joint basis it should include equal representation of employers and workers.

3. (i) The procedure should be free of charge and expeditions, such time limits for the proceedings as may be prescribed by national laws or regulations should be fixed in advance and kept to the minimum.

   (ii) Provision should be made to enable the procedure to be set in million either on the initiative of any of the parties to the dispute or ex-officer by the voluntary conciliation authority.

4. If the dispute has been submitted to conciliation procedure with the consent of all the parties concerned, the latter should be encouraged to abstain from stick and lock outs while conciliation is in progress.

5. All agreements which the parties may reach during conciliation procedure or as a result thereof should be drawn up in writing regarded as equivalent to agreement concluded in the usual manner.

2. Compulsory Conciliation : In case of compulsory conciliation, the disputes are referred to the Board of conciliation. In case of compulsory conciliation, the procedure is made compulsory by provisions requiring the parties' attendance at conciliation proceedings or empowering the conciliation authority to compel their attendance at such proceeding as well as by the prohibition of strikes and lock-outs without prior resort to conciliation. The compulsory conciliation conserve a useful purpose even if the parties attitude make the possibility of a voluntary settlement very unlikely, especially in developing countries where management and trade unions may as yet have relatively little experience of collective labour relations. There is a less chance that the parties would agree even to meet each other for direct negotiation. Moreover, the management may refuse to recognise and have any dealings with the trade union. In this situation, the compulsory attendance of the parties at a conciliation meeting will help them make each other's acquaintance and to become used to joint discussions. Compulsory conciliation also serves a means of educating, training and guiding the parties with regard to the nature and conduct of bilateral negotiations.

12.10 DRAFTING OF AGREEMENT

The conciliator is to take some actions in time of his efforts to settle a dispute comes to an end. In this time, he is to wind up his handling of

the case. The conciliator can prepare a final report. He should participates in the drafting of any agreement reached. Moreover, the conciliator is to assist the parties in intuiting further proceedings of his conciliation has not been completely successful.

The fact of settlement of a dispute is reflected in an agreement. The conciliator is to sign to an agreement reached in time of conciliation proceedings. He is to submit the report to the government and to the concerned parties in due time, in which the following should be indicated.

(i) Various steps adopted by the conciliator to determine the facts and circumstances pertaining to the dispute.

(ii) Steps taken to bring about the settlement.

(iii) Complete statement of facts and circumstances.

(iv) Reasons for which the settlement could not be reached.

The conciliator is not ultimate authorised person to give recommendation. So, he never can pass any order directing a party to act in a particular manner without jurisdiction. Only on the basis of this report, the government of the country can refer the dispute to a labour court or the Tribunal or may refuse to refer it.

In case of formulating policy as well as for the study of remedial measures in industrial Relation, the Report of conciliation is treated as a great source of Information. This report is an intregal part of the history of the relations between the parties. The information of the report will help for conciliation in a further dispute between the same parties.

12.11 SUGGESTION FOR IMPROVING THE CONCILIATION MACHINERY

Following are the suggestions for improving the Conciliation Machinery–

(1) In order to make the conciliation machinery success, it should be free from the clutches of any political or administrative interference.

(2) Adequate staff and more powers to them should be entrusted to the conciliation machinery, which helps to arrive at a conclusion.

(3) In order to remove negative conceptions of the parties, their mutual images should be improved, so that their mutual images never work like a self fulfilling prophecy for the failure of conciliation.

(4) The conciliation machinery should not be treated by the parties as a mere joy and pride. With the help of conciliator the parties should inculcate a sense of commitment toward the resolution of dispute.

(5) Conciliation should be introduced in all kinds of Industries.

(6) It is better to assess the work load of the machinery of conciliation periodically. Moreover, necessary staff should be appointed.

(7) The conciliation officers should be scientifically selected and appointed having proper qualifications, Moreover, they should be entrusted adequate status, official powers.



LET US KNOW

1. To make conciliation more effective, the National Commission on Labour has recommended that conciliation machinery should be part of the Industrial Relations Commission, which will make it free from other influences.

2. There is no doubt that a large number of Industrial Disputes are settled by conciliation in India. Vast majority of disputes for which bipartite solutions are not feasible come to conciliation and the conciliation officers succeed in bringing about a settlement in over 80% of the cases.



CHECK YOUR PROGRESS

Q.2: State true or false :

(i) Conciliation is a method for prevention and settlement of Industrial disputes through third party intervention. (True / False)

(ii) Conciliation is a Speedy settlement of disputes with resort to strikes or lockout. (True / False)

(iii) Conciliation is not flexible and simple. (True / False)

(iv) The Board of conciliation is constituted as an adhoc body. (True / False)

(v) The conciliator helps in promoting collective Bargaining. (True / False)



ACTIVITY

I. Prepare a list of roles to be played by the conciliator in Solving Industrial Dispute.

II. Under what circumstances the Voluntary Conciliation is recommended?



12.12 LET US SUM UP

In this unit, we have discussed about Arbitration and Conciliation Act. Arbitration is a process under which a dispute is submitted to an impartial outsider who makes a decision which is usually binding on both parties. There are two types of arbitration. One is Voluntary and another is compulsory arbitration. Various essentials of a valid Arbitration agreement are (i) Written (ii) Present or Future Dispute (iii) Essentials of a valid contract.

Arbitrator is a person appointed by mutual consent of the contending parties for investigation and settlement of a difference or dispute submitted to him. Arbitrator may be appointed by (i) by the parties, (ii) by third party, (iii) new or sole Arbitrator is appointed by party (iv) by court.

Different powers of Arbitrator are (i) to administer oath to the parties, (ii) state opinion to the court (iii) make and correct an award etc. Different duties of Arbitrator are (i) to act. judicially (ii) to give fair hearing (iii) to decide the dispute as per law (iv) to hear or receive evidence from both sides. (v) to sign the award.

Conciliation is a method for prevention and settlement of Industrial disputes through third party intervention. In case of Industrial dispute in public utility service the conciliation officer must hold conciliation proceedings in prescribed manner.

The roles of conciliator are (i) as a discussion leader (ii) as a safety valve (iii) as a communication link (iv) as an Innovator (v) as a sounding board, (vi) as a protector (vii) as a fail safe device (viii) as a simulator (ix) as an adviser (x) as a promoter of collective Bargaining.

There are two types of conciliation. One is voluntary conciliation and another as compulsory conciliation. The conciliator can prepare a final report. He should participate in the drafting of any agreement reached. The fact of settlement of a dispute is reflected in an agreement. Conciliator is to sign an agreement reached in time of conciliation and also he should submit the report to the government and to the concerned parties. In order to improve the conciliation machinery it should be free from the clutches of any political or administrative interference. Moreover, adequate staff and more power should be entrusted to them. Mutual image of the parties should be improved for successful conciliation machinery.



12.13 FURTHER READING

1. The Workmen's Compensation Act, 1923; (Bare Act).
2. P. L. Malik (2017);*P. L. Malik's Industrial Law*; Eastern Book Company, India
3. N.D. Kapoor (2011);*Handbook of Industrial Law* ; Sultan Chand & Sons, India



12.14 ANSWERS TO CHECK YOUR PROGRESS

Ans to Q.No.1:

(i) award (ii) judicial

(iii) compromise (iv) 4

(v) court (vi) activity

Ans to Q.No.2:

(i) True (ii) False

(iii) False (iv) True

(v) True

12.15 MODEL QUESTIONS

1. Define Arbitration. What are its different types.
2. What is arbitration agreement? Mention the elements of a valid arbitration agreement.
3. Define Arbitrator. How does he appoint? Also mention his powers and duties.
4. What is conciliation? What are the roles of conciliator?
5. What are the different kinds of conciliation?
6. Write short notes on
   (a) Conciliation Proceeding
   (b) Drafling of Agreement.
7. Give some suggestions for improving the conciliation machinery.

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UNIT 13: EMPLOYEES' PROVIDENT FUNDS AND MISCELLANEOUS PROVISIONS ACT, 1952

UNIT STRUCTURE

13.1 Learning Objectives

13.2 Introduction

13.3 Scope and Applicability of the Act

13.4 Various schemes provided under the Act

13.5 Central Board and its Constitution, Functions and Powers

13.6 State Board and their Constitution

13.7 Duties and Powers of Inspectors appointed under the Employee's Provident Funds and Misc Provisions Act, 1952

13.8 Constitution and working procedure of Employees' Provident Fund Appellate Tribunal

13.9 Let Us Sum Up

13.10 Further Reading

13.11 Answers To Check Your Progress

13.12 Model Questions

13.1 LEARNING OBJECTIVES

After going through this unit, you will be able to :

- discuss the scope and applicability of the Act
- explain various schemes provided under the Employee's Provident Funds and Miscellaneous Provisions Act 1952
- describe the constitution and powers of the Central Board under the Act
- discuss about the constitution of Executive Committee and State Boards under Employee's Provident Funds and Misc Provision Act
- explain the duties and powers of Inspector appointed under the Act

- describe the provisions regarding the question of contribution by the employees and employer under the Act
- explain the constitution and working procedure of employee's Providentdent Fund Appellate Tribunal describe the various penalties provided under the Employee's Provident Funds Misc.Provision Act

13.2 INTRODUCTION

The Employee's Provident Fund (EPF) and Miscellaneous Provisions Act 1952 was introduced for the benefits of the employees working in the factories and their family members. So, in this unit, we are going to discuss the concept of EPF. EPF means the provident fund established under the EPF scheme framed under Section 5 of this Act providing for all or any matters specified in Schedule II. Section 5 of the Act authorised the Central Government to frame employees' provident fund scheme for the establishment of provident fund under this Act. The Central Government by notification in the Official Gazette shall have to issue such a notice before framing any such scheme. The Scheme shall apply to all employees or any class of employees of an establishment as Specified. After framing the scheme, as soon as possible a fund shall be established in accordance with the provisions of this Act and the Scheme as such.

13.3 SCOPE AND APPLICABILITY OF THE ACT

The scope of the Act can be understood from its applicability. This Act is applied in the following establishments except the exemptions contained in Section 16 of the Act.

i) The Act applies to every establishment which is a factory engaged in any industry specified in schedule I and in which 20 or more persons are employed.

ii) Any establishment which employs 20 or more persons or class of such establishments which the central Government may, by notification in the Official Gazette specify in this behalf.

iii) After giving not less than 2 months notice of its intention the Central Government apply the provisions of this Act to any establishment with less than 20 persons in the employment as provided under Section 1(3).

iv) Not with standing anything mentioned above as in sub section (1) of Section 16 (Certain establishment statutorily exempt from the applicability of the Act) where it appears to the Central Provident Fund Commissioner, where as an application made to him in this behalf or otherwise, that the employer and the majority of employees in relation to any establishment, have agreed that the provisions of this Act would be made applicable to the establishment. He may apply the provision of this Act to the establishment on and from the date of such agreement or from any subsequent date specified in such agreement under Section 1(4) and Section 3.

v) An establishment to which this Act applies must continue to be governed by this Act, even if the number of persons employed therein falls, so at below any time under section 1(5).

vi) Under Section 4, the Central Government by a notification in the official Gazette add any other industry to schedule I and it will apply to any establishment engaged in such industry.

13.4 VARIOUS SCHEMES PROVIDED UNDER THE ACT

With a view to providing various benefits of the employees working in the factories and their family members, following schemes are introduced-

i) The Employees' Provident Fund Scheme.

ii) The Employees' Pension Scheme.

iii) Employees' Deposit linked Insurance Scheme.

i) The Employees' Provident Fund Scheme :-

Under Section 5 of Act, the Central Government is authorised to frame employees' provident Fund Scheme for the establishment of provident fund under this Act. Section 5 of the Act also provides that-

i) As per Section 5 (1-A), the fund shall vest in and be administered by the Central Government Board contituted section under 5-4.

ii) Subject to the provisions of this Act, a scheme formed under Section 5(1) may provided all or any of the matters specified in Schedule II, and

iii) A scheme formed under sub-section (1) may provide that any of its provisions shall take effect either prospectively or retrospectively on such dates as may be specified in this behalf in the scheme. In order to frame this scheme, the power of the Central Government is neither unrestricted nor unguided. For the guidance of the Central Government various provisions are laid down under this Act. Under Section 5(1), following two distinct powers are conferred on the Central Government.

i) To frame a scheme and

ii) To specify to which factories and establishments the scheme shall apply.

Above two powers can be exercised only through one notification. Further, the factories and establishments to which the scheme shall apply may be specified in the scheme itself.

ii) The Employees' Pension Scheme :-

Under Section 6-4 of the Act, the Central Government may frame a scheme of Employees' Pension Scheme by notification in the Official Gazette for the purpose of providing for superannuation pension, refiring pension or permanent total disablement pension to the employees of any establishment or class of establishment to which this Act applies and for widow or widower's pension, children pension or orphan pension payable to the beneficiaries of such employees.

Regarding the funding of the scheme, it is to be mentioned that the contribution from the employer should not exceeding 8 $^{1}/_{3}$ % of the basic wages, dearness allowance and retaining allowance.

iii) Employees' Deposit -Linked Insurances Scheme :-

According to the Section 6 of the EPF Act 1952 as amended in 1976,

it is provided that the Central Government may form a scheme to be called the Employees' Deposit linked Insurance Scheme for the purpose of providing life insurances benefits to the employees of any establishment or class of establishment to which this Act applies.

After framing of the insurance scheme, there shall be establish Deposit Linked Insurance Fund into which it shall be paid by employer from time to time in respect of every such employee in relation to whom he is the employer, such amount, not being more than 1% of the aggregate basic wages, dearness allowance and retaining allowance.

After due appropriation made by Parliament by law, the Central Government shall contribute to the Insurance Fund in relation to each employee, of any establishment to which this Act applies, an amount representing one-half of the contribution which an employer is required to make as above.

The employer shall pay into the Insurance Fund such further sums of money, not exceeding $^1/_4$ of the contribution which he is required to make under sub-section (2), as the Central Government may, from time to time, determine to meet all the expenses in connection with the administration of the insurance scheme other than expenses towards the cost of any benefit provided by or under that schemes.

The Insurance Fund shall vest in the Central Board and be administrated by it in such manner as may be specific in the insurance scheme. All or any of the matters specified in the schedule IV may be provided by this insurance scheme.

13.5 CENTRAL BOARD AND ITS CONSTITUTION, FUNCTIONS AND POWERS

According to the Section 5-A of the Act the Central Government may constitute bared of trustees, which is called "The Central Board". The main purpose of this board for administering the employees' Provident Fund in the territories to which this Act has been extended.

The Central Board is constituted by the following persons-

i) One Chairman and one Vice Chairman appointed by the Central Government under section 5-A (a).

ii) The Central Provident Fund Commissioner, ex-officer under Section 5-A (4a).

iii) Not more than five persons to be appointed by the Central Government from its officials under section 5-A (b).

iv) Not more than fifteen person representing Government of such States as the Central Government may specify, to be appointed by the Central Government under Section 5-A (c).

v) Ten persons representing employers or the establishment to which the scheme applies to be appointed by the Central Government consulting with the organization recognised by the Central Government under section 5-A (d).

vi) Ten persons representing employees, in the establishment in which the scheme applies, appointed by the Central Government consulting with the organizations of employees recognized by the Central Government under section 5-A (e).

According to the section 5-c, the Central Board is a corporate body under the name specified in the notification and the board has perpetual succession and a common seal.

Functions of the Central Board:-

Under various Section, different functions are provided to be performed by the Central Board, which are as follows-

i) The terms and the conditions subject to which a member of the Central Board may be appointed shall be such as may be provided for in the scheme.

ii) The time, place and procedure of the meeting of the Central Board shall be such as may be provided for in the scheme.

iii) Under Section 6-A and 6-B, it shall administer the fund, in such manner as may be specified in the Scheme.

iv) It shall perform such other functions as it may be required to perform by or under any provisions of the scheme.

v) According to Section 5-A (5), the Board shall maintain proper accounts of its income and expenditure in such form and in such manner as the Central Government may specify in the scheme after consultation with the controller and Auditor General of India.

vi) According to Section 5-A (6) the accounts of the Board shall be audited by the Controller and Auditor General of India.

vii) According to sub-section 7, the controller and Auditor General of India shall have some rights and privilege and authority in connection with such audit and shall have right to demand the production of books, accounts connected vouchers, documents and papers and inspect any officers of the Central Board.

viii) According to Sub- Section (8) the audit report shall be forwarded to the Central Government along with the comments of the Controller and Auditor General.

ix) According to Section 5-A (9), it shall be the duty of the Central Board to submit also to the Central Government an annual report of its works and activities, which shall be placed before the parliament along with the audit report.

Powers of the Central Board :

Following are the powers of the Central Board

i) To hold and conduct the meetings at the time and place as specified.

ii) To administer the fund as per provisions contained in section 6-A and 6-B.

iii) To perform all the functions, interested to it under the Act.

iv) To appoint and constitute State Board under Section 5-B.

v) To appoint the Central Provident Fund. Commissioner and other officers as per power entrusted to it under section 5-D.

vi) To delegate its powers to the Executive Committee, State Boards or other officers under Section 5-E.



LET US KNOW

Under Section 6-B Central Government shall after due appropriation made by Parliament by law in this behalf pay such further sums as may be determined by it into the family Pension Fund to meet all the expenses in connection with the administration of the Family Pension Scheme other than the expense in connection with the administration of the scheme after that the expense towards the cost of any benefits provided by or under the said scheme.



CHECK YOUR PROGRESS

Q.1: Fill in the blanks.

i) The employees' Pension Scheme may not provide for ..... Pension.

ii) Chairman and Vice-Chairman of the Central Board of P.F. are appointed by .....

iii) The account of the Central Board of PF are audited by the .....

13.6 STATE BOARDS AND THEIR CONSTITUTION

According to Section 5-B of the Act State Boards can be constituted as follow-

i) The Central Government may, by a notification in the Official Gazette, constituent a State Board of Trustees for any state after consultation with the Government of that state in such manner as may be provided in the scheme.

ii) It shall exercise powers and perform such duties as the Central Government may assign to it from time to time.

iii) The members to the State Board shall be appointed on such terms and conditions as may be laid down in the scheme.

iv) The time, place and procedure of the meetings of a State Board shall be such as may be provided under the scheme.

In this connection, other rules are as follows-

i) The State Boards with the approval of the State Government concerned may appoint such staff, as it may consider necessary.

ii) The method of recruitment, allowance discipline and other conditions of services shall be such as may be specific by the Central Government.

iii) Salaries and allowances of these officers shall be paid out of the fund.

iv) Method of recruitment, salary and allowances, discipline and other conditions of service of the officers and employers shall be as that the State Government notify.

13.7 DUTIES AND POWERS OF INSPECTOR APPOINTED UNDER THE EMPLOYEE'S PROVIDENT FUNDS AND MISC. PROVISIONS ACT 1952

According to section 13 inspector shall be appointed by the Appropriate Government by giving notification in the Official Gazette for the purpose of the Act or of any scheme. Under section 13 (i) the Appropriate Government is empowered to define the jurisdiction of inspectors.

Following are the duties of the inspectors :

i) To inqurie about the correctness of any information furnished in connection with this Act or with any scheme, or

ii) To ascertain whether any provision of the Act or of any scheme, have been complied with in respect of an establishment to which the scheme or the insurance scheme applies, or

iii) To ascertain whether the provisions of the Act or any scheme are applicable to any establishment in which the scheme has not been applied, or

iv) To determine whether the conditions subject to which exception was granted under section 17 are being complied with by the employer in relation to an exempted establishment.

Powers of the Inspectors :-

Under Section 13 of the Act, following powers are entrusted to the inspectors -

i) Require the employer or any contractor from whom any amount is recoverable to furnish such information as he may consider necessary.

ii) At any reasonable time and with necessary assistance, enter and search any establishment or any premises connected therewith.

iii) Require anyone found incharge of an establishment to produce before time for examination of any accounts, books, registers and other documents relating to the employment of persons or the payment of wages in the establishment.

iv) Examine, in respect of any matter relevant for his purpose, the employer or the contractor from whom any amount is recoverable, his agent or servant or any other person found incharge of the establishment or whom the inspector has reasonable cause to believe to be or to have been, an employee in an establishment.

v) Make copies of or extract from any book, register or other document maintained by an establishment and where he has reason to believe that any offence under the Act has been committed seize with such assistance as he may think, such book, register as other documents as he may consider relevant.

vi) Exercise such other process as the scheme may provide. The inspector has also been conferred with line above powers for the purpose of enquiring into the correctness or as containing of any information in connection with the employees version scheme.

13.8 CONSTITUTION AND WORKING PROCEDURE OF EMPLOYEES' PROVIDENT FUND APPELLATE TRIBUNAL

Under the section 7-D of the EPF and Miscellaneous Provisions Act 1952, the Central Government may, by notification in the Official Gazette, constitute one or more Appellate Tribunals to be known as the Employee's Provident Funds. Appellate Tribunal to exercise the powers and discharge the functions conferred on such Tribunal by this Act and every such Tribunal shall have jurisdiction in respect of establishments situated in such area as may be specified in the notification constituting the Tribunal. A Tribunal shall consist of one person only to be appointed by the Central Government. A person shall not be qualified for appointment as the Presiding officer of a Tribunal unless he is or has been or is qualified to be a judge of a high court.

Under the section 7-E the term of office of the Presiding Officer of a Tribunal shall hold will be for five years from the date on which he enters upon his office or until the attains the age of sixty two years, whichever is earlier.

Under the section 7-F, the Presiding Officer may, by notice in writing under his hand addressed to the Central Government, resign his office. Provided that the Presiding Officer shall unless he is permitted by the Central Government to relinquish his office until the expiry of three months from the date of receipt of such notice or until a person duly appointed as his successor enters upon his office or until the expiry of his term of office, whichever is the earlier.

Under the section 7-M, if , for any reason, a vacancy occurs in the office of the Presiding Officer the Central Government shall appoint another person in accordance with the provisions of this Act, to fill the vacancy and the proceedings may be continued before a Tribunal from the stage at which the vacancy is filled.

Salary and allowance and other terms and conditions of services of Presiding Officer :- Under section 7-G, the salary and allowance payable

to and the other terms and conditions of service (including pension, gratuity and other retirement benefits) of the Presiding Officer shall of be such as may be prescribed provided that neither the salary and allowances nor the other terms and conditions service of the Presiding Officer shall be varied to his disadvantage after his appointment.

Regarding staff of Tribunal, under section 7-H, it is laid down that the Central Government shall determine the nature and categories of the officers and other employees required to assist a Tribunal in discharge of its functions and other employees as it may think fit.

The officers and other employees of a Tribunal shall discharge their function under general superintendent of the Presiding Officer.

The salaries and allowances and other conditions of services of the officers and other employees of a Tribunal shall be such as may be prescribed.



ACTIVITY

1. Mention few rules regarding the constitution of State Board under the EPF Mis. Pro. Act 1952.



CHECK YOUR PROGRESS

Q.2. Fill in the blanks :

i) State Board is constructed under Section_____

ii) Inspector is appointed under Section _____

iii) Section _____ is empowered to define the jurisdiction of Inspector.

iv) Under Section 13, _____ of inspector's are laid down.

v) The term of office of the Presiding Officer of a Tribunal shall be for _____ years.



13.9 LET US SUM UP

In this unit we have discussed about Employees Provident Fund. The E P F and Misc. Prov. Act 1952 was introduced for the benefit of the employees working in the factories and their family members.

The Act applies to every establishment which is factory engaged in any industry in schedule I and in which 20 or more persons are employed or such establishment which the Central Government may by notification in the Official Gazette specify in this behalf.

There are various schemes under the Act for providing various benefits to the employees. Such as -

i) The Employee's provident fund scheme.

ii) The Employees' Pension scheme.

iii) Employees' Deposit Linked Insurance scheme.

A Central Board may be constituted under section 5-A of the Act by the Central Government. The main purpose of this board for administering, the Employees' Provident Fund in the territories to which this act has been extended. The Central Board shall perform such functions as it may be required to perform by or under any provisions of the scheme. The Central Board is empowered to hold and locate the meetings at the time and place as specified and it can administer his fund as per provisions contained in section 6-A and 6-B. Moreover, the board is to perform all the functions entrusted to it under the Act.

On the other hand, under the section 5-B of the Act, State Boards can be constituent by the Central Government for any state after consultation with the Government of that state in such a manner as may be provided in the scheme.

Under section 13, inspector shall be appointed by the Appropriate Government notification in the Official Gazette for the purpose of this Act or of any scheme under section 13 (i) the Appropriate Government is

empowered to define the jurisdiction of inspectors. The duty of inspectors is to enquire about the correctness of any information furnished in connection with this Act or with any scheme.

Under section 13 of the Act, different powers are entrusted to the inspectors.



13.10 FURTHER READING

1. C B Mamoria(2016);Dynamics of Industrial Relations; Himalaya Publishing House
2. A Monappa,ý R Nambudiri,ý P Selvaraj (2012);*Industrial Relations and Labour Laws*; Tata McGraw Hill Education Private Limited
3. PPS Gonga (2007); *A Textbook Of Business And Industrial Laws*; S Chand, India

13.11 ANSWERS TO CHECK YOUR PROGRESS

Ans to Q.No.1:

i) Third party, ii) Central Govt.

iii) Comptroller and Auditor General of India

Ans to Q.No.2:

i) True ii) 13

iii) Government iv) Power v) 5



13.12 MODEL QUESTIONS

1. Discuss the scope and applicability of the E P F and Misc. Prov. Act 1952.

2. Discuss various schemes provided under the EPF and Misc. Prov. Act 1952.
3. Discuss the constitution of the Central Board and State Board and its functions and powers.
4. Explain the different power of inspectors appointed under the EPF and Misc. Prov. Act 1952.
5. Discuss the constitution and working procedure of E.P.F. Appellate Tribunal.

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UNIT 14: THE PAYMENT OF GRATUITY ACT, 1972

UNIT STRUCTURE

14.1 Learning Objectives

14.2 Introduction

14.3 Objective and Scope of the Payment of Gratuity Act, 1972

14.4 Provisions of the payment of Gratuity Act, 1972

14.5 Procedure of determination and payment of gratuity

14.6 Dispute regarding the amount of gratuity

14.7 Appointment and Power of Inspector under the Payment of Gratuity Act

14.8 Controlling Authority and its Power

14.9 Let Us Sum Up

14.10 Further Reading

14.11 Answers To Check Your Progress

14.12 Model Questions

14.1 LEARNING OBJECTIVES

After going through this unit, you will be able to :

- describe the objective and scope of the payment of gratuity act
- explain the provision and procedure of determination and payment of gratuity under the payment of gratuity act
- explain the dispute and penal provision of payment of gratuity act
- discuss the controlling authority and its power.

14.2 INTRODUCTION

In the previous unit (unit 13) we have discussed the Employees Provident Fund and Miscellaneous Provision Act, 1952 and its important provisions. In this unit, we will discuss the Payment of Gratuity Act, 1972. The meaning of gratuity is a sort of retiring benefit to the workmen who have

rendered long and unblemished service to the employer.

The Payment of Gratuity Act 1972 was passed as Act No : 30 of 1972 and received the assent of the President of India on August 21,1972. It was enforced with effect from September 16, 1972. This Act extends to the whole of India. Of course so far as this act relates to plantation or port, it shall not extend to the State of Jamu and Kashmir. In this unit, we will deal with scope, objectives and various important provisions of the payment of Gratuity Act, 1972.

14.3 OBJECTIVE AND SCOPE OF THE PAYMENT OF GRATUITY ACT, 1972

The main objective of this Act is to provide for a Scheme for the payment of Gratuity to employees engaged in factories, mines, oil fields plantations, ports, railway companies, shops or other establishments and for matter related there of.

The objective of the Payment of Gratuity Act, 1972 are mentioned below-

i) To provide for a Scheme for the payment of Gratuity to employees.

ii) To provide for matters connected with or incidental to the Scheme for payment of Gratuity.

iii) To provide retiring benefits to employees who have rendered continuous services to his employer and thereby contributed to his prosperity.

iv) To define the principles of payment of gratuity according to the prescribed formula.

v) To provide machinery for the employment of liability for payment of gratuity.

Scope and Application of the Act :

Under the Section 1 (3) of the Payment of Gratuity Act, 1972, this act can be applied to -

i) every factory, mine, oil-field, plantation, port and railway company

ii) every shop or establishment within the meaning of any law for the

time being in force in relation to shop and establishments in a state in which ten or more persons are employed, or were employed, on any day of the proceeding twelve months.

iii) Such other establishment, or class of establishment in which ten or more employees are employed, or were employed on any day of the proceeding twelve months, as the Central Government may, by notification specify in this behalf.

According to the Section 1(3-A), a shop or establishment to which this Act has become applicable shall continue to be governed by this Act notwithstanding that the number of persons employed therein at any time after it has become so applicable falls below ten.

Out of the above provisions it can be understood that the Act is wide enough to bring within its scope the whole organised sector of industry as well as commerce. Of cource, this Act cannot be applied to

i) apprentices and

ii) as per Section 2 (e), persons who hold civil posts under central Government or a State Government and are governed by any other Act or rules providing for the payment of gratuity. Under Section 5 of this Act, the central Government is empowered to exempt any shop or establishment covered by this Act from the provisions of the Act, if its employees are in receipt of gratuity or pensionary benefits not less favourable than the benefits provided under this Act.

14.4 PROVISIONS OF THE PAYMENT OF GRATUITY ACT, 1972

There are many legal provisions of the Payment of Gratuity Act 1972. We are below discussing some important provisions of the Act as follows:

i) Provisions relating to the payment of gratuity :-

Under sections 4 and 7 of the Act , different provisions relating to the payment of gratuity are given according to Section 4(1), the gratuity shall be payable to an employee on the termination of his employement after he has rendered continuous service for not less than 5 years.

The gratuity is payable to an employee on his termination in the following cases-

a) On his superannuation, or

b) On his retirement or resignation

c) On his death or disablement due to accident or disease.

Under Section 7(1) a person who is eligible for payment of gratuity under this Act or any person authorised in writing, to act on his behalf shall send a written application to the employer within such time and in such form as may be prescribed , for payment of such gratuity. Under section 7(2) as soon as gratuity becomes payable, the employer shall, whether an application referred to in the Sub-section (1) has been made or not, 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 determined. Under section 7(3) the employer shall arrange to pay the amount of gratuity within thirty days from the date it became payable to the person to whom the gratuity is payable. Section 7(3-A) states, if the amount of gratuity payable under Sub-Section (3) is not paid by the employer within the period Specified in Sub-Section (3), the employer shall pay, from the date on which the gratuity become payable to the date on which it is paid, simple interest at such rate, not exceeding the rate notified by the Central Government from time to time for repayment of long term deposits, as that Government may by notification Specify.

ii) Provision regarding reduction and forfeiture of gratuity:-

Under Section 4(6) of the Act, following provisions regarding reduction and forfeiture of gratuity are laid down as follows-

i) According to section 4(6) (a), the gratuity payable to an employee, whose services have been terminated for any act due to wilful 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.

ii) According to Section 4(6) (b), the gratuity payable to an employee may be wholly or partially forfeited-

a) If the services of such an employee have been terminated for his riotous or disorderly conduct or any other act of violence on his part.

b) If the services of such an employee have been terminated for any act which constitutes an involving moral turpitude provided that such offence is committed by him in the course of his employement.

iii) Provision regarding recovery of gratuity:-

Regarding the recovery of the amount of gratuity procedure has been laid down under section 8 of the Act as follows -

a) If the amount of gratuity is not paid by the employer within the prescribed time, the person has then right to apply to the controlling authority for the recovery the gratuity.

b) The controlling authority will issue a certificate for the amount to the collector Then, the collector shall recover the amount to the person.

iv) Provision of Compulsory Insurance :-

Under Section 4(A), following provision are laid down regarding the compulsory Insurance-

a) The amendment Act of 1987 of Payment of Gratuity Act provides for compulsory insurance of employer's liability to pay gratuity under the Act.

b) This new section also provides for compulsory registration of all the establishments covered under the Act with the controlling authority appointed by the Government.

c) This Sections empowers the Central Government to make rules for prescribing the insurers other than the LIC and the manner in which the employer shall get the insurance cover.

d) Where an employer fails to make any payment by way of premium to the insurer or by way of contribution to an approved gratuity fund referred to above, he shall be liable to the amount of gratuity due under this Act.

e) Whoever contravenes the above provisions shall be punishable with a fine which may extend to Rs 10,000 and if it continues, a further fine extending to Rs.1,000 per day till the offence continues.

v) Provisions regarding Nomination :-

According to Section 6,each employee who has completed one year of service shall make nomination for the purpose of payment of gratuity in case of his death. Different legal provisions regarding nomination are given below-

1) Time of Nomination :- Under Section 6(1) each employee who has completed one year of service, shall make within 80 days of completion of one year of service a nomination.
2) No of Nominees:- Under Section 6(2) an employee may in his nomination distribute the amount of gratuity payable to him under this Act amongst more than one nominee or may nominate one person only for whole amount of gratuity. According to Section 6(3) if an employee has a family at the time of making nomination, then the nomination shall be made in favour of one or more members of his family. According Section 6(4) if at the time of making a nomination the employee has no family member then the nomination may be made in favour of any persons or persons.
3) Modification :- Under Section 6(5), nomination may be modified by an employee at any time after giving to his employer a written notice in such form and in such a manner as may be prescribed.
4) Death of Nominee :- As per Section 6 (6) if the nominee dies before the employee, the interest of the nominee shall revert to the employee, who will have to make a fresh nomination.
5) Safe Custody of Nomination :- Under Section 6 (7), every nomination, a fresh nomination or alternation of nomination, as the case may be shall be sent by the employee to his employer who will Keep the Same in his custody.

vi) Provisions of Inspectors :-

The Payment of Gratuity (Amendment) Act 1984 has added two new sections. They are Section 7-A and Section 7-B to the original Act dealing with the appointment of Inspectors and their power.

Appointment of Inspectors :- Under the Section 7-A, the government may, by notification, appoint as many inspectors as it deems fit.

Power of Inspectors : Under the Section 7-B inspectors have the power to ask an employer to furnish necessary information. Moreover, inspectors have the power to enter and inspect any place in any factory, mine etc. and to examine the employer and the employees. Inspectors can make copies or take extracts from register or record etc.

vii) Provisions regarding penalties :

According to Section 9 (1) any person who knowingly makes any false statement for avoiding any payment to be made by him under this act shall be punishable with imprisonment upto six months or with fine upto Rs.10,000 or with both. Under section 9(2), an employer who contravenes or makes default in complying with, any of the provisions of the Act, or rule, order made thereunder shall be punishable with imprisonment for a period which may extend to one year or with fine which may extend to one thousand rupees or both.

iii) Provisions regarding appropriate Government's powers to make rules:-

Under Section 15 the appropriate Government may make rules for carrying out the provisions of the Act. Every rule made by the Central Government under this Act shall be laid before each house of parliament while it is in session for a total period of thirty days which may be comprised in one sessions or in two or more successive sessions.



LET US KNOW

Appropriate Government under this Act means

(i) In relations to an establishment :

(a) belonging to, or under the control of the Central Governments,

(b) having branches in more then one State,

(c) of a factory belonging to, or under the control of the Central Government,

(d) of a major port, mine, oilfield or railway company, the Central Government

(ii) any others case, the State Government [Section 2(a)]

14.5 PROCEDURE OF DETERMINATION AND PAYMENT OF GRATUITY

Procedure of Determination of Gratuity is laid down under section 7 of the Act, which are mentioned below-

i) **Filing of Application :** According to Section 7(1) a person who is eligible for payment of gratuity under this Act or any person authorised, in writing, to act on his behalf shall send a written application to this employer within such time and in such form, as may be prescribed, for payment of such gratuity.

ii) **Determination of Gratuity :** As soon as under 7(2) gratuity becomes payable, the employer shall whether an application referred to in sub-section (1) has been made or not, 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 determines.

iii) **Payment within thirty Days :-** According to 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 to whom the gratuity is payable.

iv) **Interest on gratuity :-** According to Section -7 (3-A), if the amount

of gratuity payable under the Sub-Section (3) is not paid by the employer within the period specified in Sub-Section (3), the employer shall pay, from the date on which the gratuity become payable to the date on which it is paid, simple interest at such rate, not exceeding the rate notified by the central government from time to time for repayment of long-term deposits, as that Govt. may by notification specify. The interest will not be payable if the delay in the payment is due to the fault of the employee and the employer has obtained permission in writing from the controlling authority for the delayed payment on the ground.

Payment of Gratuity :

It is a statutory duty of all employers to pay gratuity to their employees. Regarding the Payment of Gratuity, legal payment of Gratuity, legal provisions are laid down under Section 4 and 7 of the Act as follows-

i) According to Section 4(1), the gratuity shall be payable to an employee on the termination of his employment after he has rendered continuous service of not less than five years.

ii) According to Section 4(1), it is further mentioned that in the case of death of an employee gratuity payable to him shall be paid to his nominee or if no nomination has been made, to his heirs and where any such nominee or heir is a minor, the share of such minor shall be deposited with the controlling authority who shall invest the same for the benefit of such minor in such bank or other financial institution, as may be prescribed, until such minor attains majority.

iii) According to the section 7(1) any person who is eligible for payment of gratuity under this Act. shall send a written application to the employer for the payment of such gratuity.

iv) Under the Section 7(2) (3) (3A), it is laid down that it is the duty of employer to pay gratuity to an eligible employee.



LET US KNOW

As gratuity is paid for meritorious service of the employee throughout the employment rendered by him with the employers, so if he is guilty of misconduct or wilful omission or negligence, causing damage to the property of the employer, under clause (a) of Section 4 he cannot be deprived altogether of the benefit of gratuity under the Act. The proper remedy is such that he should be paid his dues of gratuity after deducting the amount of loss caused to the employer by his conduct.



CHECK YOUR PROGRESS

Q1. Choose the correct answer :

i) The Payment of Gratuity Act 1972 does not apply to

a) Apprentices

b) Persons holding civil posts and governed by any other Act.

c) Both a) & b)

d) None of the above

ii) Gratuity will be payable to an employee

a) On his Superannuation

b) On his retirement or resignation.

c) On his death or permanent disablement.

d) Any of the above cases.

iii) Under the Payment of Gratuity Act 1972 gratuity to an employee is payable on his termination only if he has rendered continuous service for not less than-

a) 3 years b) 5 years c) 7 years d) 10 years

iv) The Payment of Gratuity Act 1972 extends to the -

a) Whole of India

b) All states except union territories.

c) States notified by government from time to time

d) Jammu and Kashmir and Union territories.

14.6 DISPUTE REGARDING THE AMOUNT OF GRATUITY

Under Section 7(4) (a), it is laid down that if there is any dispute as to the amount of gratuity payable to an employee under this Act or as to the admissibility of any claim of or in relation to an employee for payment of gratuity, or as to the person entitled to receive the gratuity, the employer shall deposit with the controlling authority such amount as granted to be payable by him as gratuity.

According to 7(4), 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.

According to Section 7(4) (c), the Controlling authority shall after due inquiry and after giving the parties to the dispute a reasonable opportunity of being heard determine the matter or matters in dispute and if as a result of such inquiry any amount is formed to be payable to the employer, the controlling authority shall direct the employer to pay such amount or as the case may be such amount as reduced by the amount already deposited by the employer.

Section 7(4) (d) states that the controlling authority shall pay the amount deposited, including the excess amount if any, deposited by the employer to the person entitled thereto.

According to Section 7 (4) (e), the Controlling Authority shall pay the amount of deposit as soon as may be after a deposit is made -

i) To the applicant where he is the employee or

ii) Where the applicant is not the employee, to the nominee or heir of the employee if the Controlling Authority is satisfied that there is no dispute as to the right of the applicant to receive the amount of gratuity.

14.7 APPOINTMENT AND POWER OF INSPECTOR UNDER THE PAYMENT OF GRATUITY ACT

Section 7-A of the Payment of Gratuity (Amendment) Act 1984 deals with the appointment of inspectors, which are as follow-

i) The appropriate government may, by notification, appoint as many inspectors as it feels fit for the purpose of the Act.

ii) The appropriate government may by general or special order, define the area to which the authority of an inspector so appointed shall extend. Where two or more inspectors are appointed for the same area, it may also define by such order, the distribution or allocation of work to be performed by them under the Act.

iii) Every Inspector appointed under the Act shall be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code 1860.

Powers of Inspectors under the Payment of Gratuity Act

Under Section 7-B the Payment of Gratuity Act 1972, powers of Inspectors are laid down as follows-

1) An Inspector may, for the purpose of ascertaining whether any of the provisions of the Act or the conditions, if any, of any exemptions granted thereunder, have been complied with, exercise all or any of the following powers, such as-

   a) Require an employer to furnish such information as he may consider necessary.

   b) Enter and inspect, at all reasonable hours, with such assistants (if any) being persons in the service of the Government of local or an public authority, as he thinks fit, any premises of or place in any factory, mine, oil field, plantation, port, railway, company, shop or other establishment to which the Act applies, for the purpose of examining any register, record or notice or other document required to be kept or exhibited in relation to the employment of any person for the payment of gratuity to the employees, and require the production thereof for inspection.

c) Examine with respect to any matter relevant to any of the purpose aforesaid the employer or any person whom he finds in such premises or place and who, he has reasonable course to believe, is an employee employed therein.

d) Make copies of or take extracts from, any register, record, notice or other document, as he may consider relevant and where he has reason to believe that any offence under the Act has been committed by an employer, Search, and seize, with such assistance as he may think fit, such register, record, notice or other document as he may consider relevant in respect of that offence.

e) Exercise such other powers as may be prescribed.

2) Any person required to produce any register record, notice or other document or to give any information by an inspector under Sub-Section (1) shall be deemed to be legally bound to do so within the meaning of Section 175 and 176 of Indian Penal Code.

14.8 CONTROLLING AUTHORITY AND ITS POWER

According to Section 2(d), Controlling Authority means any authority appointed by the appropriate Government under Section 3. The appropriate Government may, by notification in the Official Gazette, appoint any officer to be a controlling authority who shall be responsible for the administration of the Act. Different controlling authorities may be appointed for different areas.

Powers of Controlling Authority :-

Controlling Authority is empowered by the Act as follows-

i) **Power to decide Dispute in relation to Gratuity :** According to Section 7(4), the controlling Authority can exercise its power on the following aspects-

a) The amount of Gratuity payable to an employee or

b) The admissibility of any claim of or

c) In relation to an employee for payment of Gratuity or

d) As to person entitled to receive the gratuity, the employer shall deposit with the Controlling Authority such amount as he admits to be payable by him as Gratuity.

2) To Conduct Inquiry : According to the Section 7(5) in deciding the dispute, the Controlling authority can conduct an enquiry by giving the parties to the dispute, an opportunity of being heard. The controlling authority for the purpose of controlling an enquiry as to matters given above, shall have the same powers as are vested to a covert, while trying a suit under the Code of Civil Procedure, 1908. It shall have the following powers in this regard, such as-

a) enforcing the attendance of any person or examining him on oath.

b) requiring the discovery and production of documents

c) receiving evidence on affidavits and

d) insuring commission for the examination of witness.

According to Section 7(6), the inquiry shall be a judicial proceeding within the meaning of Section 193 and 228 and for the Section 196 of the IPC.

3) Direction to pay Gratuity : Under Section 7(4) (d) in deciding the dispute, if the controlling authority finds that any amount is payable to the employee by the employer it can direct the employer to pay the difference to the employee.

4) To pay the amount deposited : The Controlling authority shall pay the amount deposited, including the excess amount, if any, deposited by the employee to person entitled thereto.

5) To give other Directions : The controlling authority, in the application, may direct the employer to do as directed. If the employer -

a) refuses to accept a nomination or to entertain an application for payment of gratuity.

b) issues a notice specifying the amount of gratuity less than what the claimant considers to be payable, or rejecting eligibility to payment of gratuity.

c) fails to issue notice within 15 days the payment of gratuity. (Rule 9)



LET US KNOW

The term "employer" is defined in Section 2(f) of the Act and for the purpose of this Act, it is defined separately in relation to government owned and non-governments owned establishment, factory, mine, oilfield, plantation part, railway company or shop. The term family is defined in Section 2(h) of the Act and for the purposes of this Act, it is defined separately in case of a male employee and female employee.



ACTIVITY

i) Mention four powers of controlling authority to decide dispute in relation to Gratuity.

ii) Mention few powers of Inspectors under the payment of gratuity Act.

6) Power to pay to the applicant : After a deposit is made under the clause above, the controlling authority shall pay the amount of deposit:-

a) To the applicant where he is the employee, or

b) To the nominee, guardian or heir if the applicant is not the employee, and if the controlling authority is satisfied that there is no dispute as to the right of the applicant.



CHECK YOUR PROGRESS

Q.2. Mention any two Powers of Controlling Authority.

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14.9 LET US SUM UP

Gratuity is a sort of retiring benefit to the workmen who have rendered long and unblemished service to the employer. The main object of this Act is to provide for a scheme for the payment of Gratuity to employees engaged in different prescribed establishments. Different provisions of the Act covers payment of gratuity, reduction and forfeiture of gratuity, recovery of gratuity, compulsory insurance, nomination, inspectors and his power, appropriate Government power. Moreover under Section 7(4) (a) dispute regarding gratuity, under section 7 Procedure of Determination of Gratuity and under Section 4 and 7 Payment of Gratuity are provided.



14.10 FURTHER READING

1. C B Mamoria(2016);Dynamics of Industrial Relations; Himalaya Publishing House
2. A Monappa,ý R Nambudiri,ý P Selvaraj (2012);*Industrial Relations and Labour Laws*; Tata McGraw Hill Education Private Limited
3. PPS Gonga (2007); *A Textbook Of Business And Industrial Laws*; S Chand, India

14.11 ANSWERS TO CHECK YOUR PROGRESS

Ans to Q.No.1:

i) (c), ii) (d), iii) (b), iv) (a)

Ans to Q.No.2:

(a) To conduct enquiry.

(b) To pay the amount deposited.



14.12 MODEL QUESTIONS

1. Explain the objects and scope of the Payment of Gratuity Act.
2. Discuss the various provisions relating of the Payment of Gratuity Act.
3. Explain clearly the procedure of determination and payment of Gratuity under the Payment of Gratuity Act.
4. Write Short note on :-
   i) Controlling Authority
   ii) Power of Inspectors
   iii) Dispute regarding the amount of gratuity.

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UNIT 15: THE PAYMENT OF WAGES ACT, 1936

UNIT STRUCTURE

15.1 Learning Objectives

15.2 Introduction

15.3 Definition of Wages

15.4 Few important terms under the Payment of Wages Act. and its objects and application

15.5 Responsibility for payment of wages

15.6 Time of Payment of Wages

15.7 Deduction and its various kinds

15.8 Deductions claims for wrongful deductions

15.9 Let Us Sum Up

15.10 Further Reading

15.11 Answers To Check Your Progress

15.12 Model Questions

15.1 LEARNING OBJECTIVES

After going through this unit, you will be able to :

- explain the meaning and various important terms under the Payment of Wages Act. 1936
- describe regarding the Responsibilities for Payment of Wages
- know the rules with regard to the time of Payment of wages
- define the meaning of deduction and its various kind along with claims for wrongful deduction.

15.2 INTRODUCTION

In the previous unit, we have discussed the Payment of Gratuity Act, 1972. In this unit an attempt is being taken to discuss the Payment of Wages Act. 1936, and its objects, application and other important aspects. The payment of wages Act. 1936 has recently been amended in 2005

by the Payment of wages (Amendment) Act 2005. The wage structure of an Industrial enterprise is built on the premise that each job has its own price depending on the skill and training. Moreover, it depends on commensurate responsibility, which is determined by systematic Job evaluation method or by 'going rate' in the particular market area. By the payment of wages Act 1936, the payment system, rate, deduction, etc. important aspects of wages of certain classes of employed persons are regulated. Through this unit, students can understand all about the important legal matters of the Payment of wages Act. 1936.

15.3 DEFINITION OF WAGES

Under section 2 (vi) of the Payment of wages Act. 1936, the term wages is defined as all remuneration, whether by way of salaries, allowances or otherwise, expressed in terms of money or capable or implied were fulfilled, be payable to a person employed in respect of his employment or of work done in such employment.

In order to understand the concept of wage, it is better to know the following items, which are included in wages. Such as–

(i) Any remuneration payable under any award or settlement between the parties or order of a court.

(ii) Any remuneration to which the person employed is entitled in respect of overtime work on holidays or any leave period.

(iii) Any additional remuneration payable under the terms of employment, whether called a bonus or by any other name.

(iv) Any sum which by reason of the termination of employment of the person employed is payable under any law, contract or instrument.

(v) Any sum to which the person employed is entitled under any scheme framed under any law for the time being in force.

Following are not included in wages

(i) Any bonus which does not form part of the remuneration payable under the terms of employment or which is not payable under any award or settlement between the parties or order of a court.

(ii) The value of any house accommodation or of the supply of light, water, medical attendance or other amenity or of any service excluded from the compilation of wages by a general or a special order of the State Government.

(iii) Any contribution paid by the employer to any pension or provident fund and the interest that may have accrued thereof.

(iv) Any travelling allowance or the value of any travelling concession.

(v) Any sum paid to the employed person to defray special expenses entailed on him by the nature of his employment or

(vi) Any gratuity payable on the termination of employment in cases other than this specified in sub clause (d).

15.4 FEW IMPORTANT TERMS UNDER THE PAYMENT OF WAGES ACT AND ITS OBJECTS AND APPLICATION

(i) Appropriate Government : According to section 2 (i) of the Act, the appropriate Government is the central Government in relation to railways, air transport service, mines and oil fields. On the other hand, in relation to all other cases, the appropriate government is the State Government.

(ii) Employed person : According to section 2 (i)(a) the employed person includes the legal representative of a deceased employed person.

(iii) Employer : According to section 2(i) (b) employer includes the legal representative of a deceased employer.

(iv) Factory : According to section 2 (i)(c) of the Act. Factory means is defined in section 2(m) of the factories Act 1948 and includes any place to which the provisions of that Act have been applied under section 85 (1) thereof.

v) Industrial or other Establishment :

According to section 2(ii), Industrial or other establishment means any

(a) Tram way services or motor transport engaged in carrying passengers, goods or both by road for here or record.

(b) Air transport service other than such service belonging to or exclusively employed in the military, navy or air force of the Union or Civil Aviation Department of the Government of India.

(c) Dock, What of Jetty.

(d) Inland Vessel, mechanically propelled.

(e) Mine, quarry or oil field.

(f) Plantation.

(g) Workshop or other establishment in which articles are produced, adopted or manufactured with a view to their use, transport or sale.

(h) Establishment in which any work relating to the construction, development and maintenance of buildings, roads, bridge or canals or of water relating to the generation, transportation, and distribution of electricity or any other form of power is being carried on.

(vi) **Mine :** The term 'mine' is defined in section 2 (ii) (a) of the Act and for the purpose of this Act it has the same meaning as assigned to it in section 2(1)(i) of the Mines Act 1952.

(vii) **Plantation :** The term plantation is defined in section 2 (iii) of the Act for the purpose of this Act it has the same meaning as assigned to it in section 2(f) of the plantation labour Act. 1951

(viii) **Railway Administration :** The term Railway Administration is defined in section 2 (v) of the Act and for the purposes of this Act it has the same meaning as assigned to it in section 2(32) of the Railways Act 1989.

Objectives and Application of the Act :

In the Preamble of the Payment of Wages Act 1936, the objectives are provided as to regulate the payment of wages of certain classes of employed persons. In this connection, the expression "Certain classes of employed persons' is important for the Act as the act applies to employed persons drawing on an average wages less than Rs. 6,500/- per month (section 1 (6). With a view to achieving these objectives as well as ensuring the payment of wages to the persons covered by the Act. various provisions have been made in the Act.

Regarding application of the Payment of Wages Act 1936, section 1(4) provides that in the first instance, the Act applies to the payment of wages to the following–

(a) Persons employed in any factory.

(b) Persons employed (otherwise than in a factory upon any railway by a railway administration either directly or through a subcontractor) by a person fulfilling a contract with a railway administration.

(c) Persons employed in an Industrial or other establishment as specified in section 2(ii) (a) to 2(ii) (g).

(d) Any class of persons employed in any establishment or class of establishment specified by the appropriate government according to section 5.

The State Government may after giving three months notice, by notification in the Gazette, extend the provisions of the Act or any of them to the payment of wages of any class of persons employed in any Industrial Establishment or class on group of Industrial Establishments. In many states, the Act has been extended to various industries e.g. Shops and Establishments, Omnibus service (in Assam, Maharashra, West Bengal), tramways (in Tamil Nadu) etc.



LET US KNOW

i. The Payment of wages Act of 1936, was initially made applicable to people drawing less than Rs. 200 a month. In 1967, the limit was raised to Rs. 400 a month. On 13th November 1975, the President of India issued an Ordinance amending the Act to cover workers getting up to Rs 1000 a month. In 1976, the ordinance was replaced by an Act, which was passed on 11th February. The effect of the Act was that nothing in this Act applied to wages payment in respect of a wage period, over such wage period, average Rs. 100 a month or more. This limit was raised from Rs. 1000 to Rs 1600 by the payment of wages (Amendment) Act 1982.

(ii) The Act of 1976 provided for the Payment of Wages in cash, by cheque or by crediting the wages to the bank account of a worker after obtaining his written authorisation.

(iii) It also permitted authorised deduction from wages for contribution to the Prime Minister's National Relief fund or such other funds as the central Government may specify by notification in the official Gazette.



CHECK YOUR PROGRESS

Q1. Match the following :

(A) Appropriate Government	– (i) Section 2 (ii)a
(b) Employed Person	– (II) Section 2 (i)b
(c) Employer	– (III) Section 2 (ii)
(d) Factory	– (IV) Section 2 (i)c
(e) Industrial or other Establishment	– (v) Section 2 (i)
(f) Mine	– (VI) Section 2 (i)a
(g) Plantation	– (VII) Section 2 (v)
(h) Railway Administration	– (VIII) Section 2 (iv)



ACTIVITY

(i) Prepare a list of items, which are not included in Wages.

(ii) Prepare or list of items which are included in Wages.

15.5 RESPONSIBILITY FOR PAYMENT OF WAGES

Regarding responsibility for payment of wages, under section 3 of the Act, it is stated that the employer is responsible for the payment of wages. In the case of persons employed (otherwise than by a contractor) the following persons are also responsible for the payment of wages.

(i) The person named as manager in a factory.

(ii) In Industrial establishments the person, if any, who is responsible to the employer for the supervision and control of the establishment.

(iii) Upon railways the person nominated by the railway administration in this behalf for the local area concerned.

(iv) In case of persons employed in the case of contractor, a person designated by such contractor who is directly under his charge, shall be responsible for the payment of wages to the employed persons.

(v) In case of persons employed in any other case, a person designated by the employer as a person responsible for complying with the provisions of this Act, shall be responsible for payment of wages to the employed persons.

According to section 3(2) of the Act. it shall be the responsibility of the employer to make payment of all wages required to be made under this Act in case the contractors or the person designated by the employer fails to make such payments.

The ascended section 3 have removed the doubts regarding responsibility for payment of wages in case the contractor or the person designated by the employer fails to make the payment. Now it has been specifically made clear that in case of such failure on the part of the contractor or designated person, it shall be the responsibility of the employer himself to make the payment of wages.

15.6 TIME OF PAYMENT OF WAGES

Regarding the time of payment of wages, the section 5 of the Act. provides the following rules.

(i) According to section 5(1) (a), if the number of persons employed upon or in any railway factory or industrial or other establishment is less than 1000, wages shall be paid before the expiry of the seventh day after the last day of the wage period.

(ii) According to Section 5(1)(b), the wages of every person employed upon to in any other railway, factory or Industrial or other establishment shall be paid before the expiry of the tenth day of the lst day of wage period in respect of which the wages are payable further it is provided under the section 5(1) (b), that in the case of persons employed on a dock, Wharf or jetty or in a mine, the balance of wages found due on completion of the final tonnage account of the ship or wagons loaded or unloaded so the case may be, shall be paid before the expiry of the seventh day of such completion.

(iii) According to section 5(2), in case of the termination of the employment of an employee, the wages earned by such employee shall be paid before the expiry of the second working day from the day on which his employment is terminated. However, where the employment of any person in an establishment is terminated due to the closure of the establishment for any reason other than a weekly or other recognised holiday, the wages earned by him shall be paid before the expiry of the second day from the day on which his employment is so terminated. In such a case, the second day may or may not be the working day.

(iv) According to section 5(4) all payment of wages shall be made on a working day. However as discussed above, in case of termination of employment due to closure of establishment, the wages shall be paid before the expiry of second day from the day of termination even if it is not the working days.

(v) According to section 5(3), the appropriate government may exempt the persons responsible for payment of wage from the operation of the above provisions relating to the time of payment in the followings relating to the time of payment in the following cases – (a) where wages are payable persons employed upon any railway otherwise than in a factory or (b) where wages all payable to persons employed as daily rated workers in public works

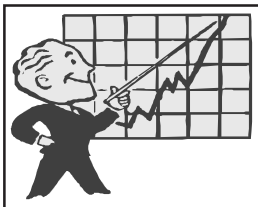
Department of the Central or State Government of course, in this case no exemption order shall be made except in consultation with the central Government.



LET US KNOW

I. Under section 6, all wages shall be paid in current coin or currency notes or in both of course, the employer may, after obtaining the written authorisation of the employed person, pay him the wages either by cheque or by crediting the wages in his bank account.

II. By an amendment in Maharashtra it was provided that in the case of a bonus which exceeds one fourth of the annual earning of the employee the excess may be paid by cheque invested.



CHECK YOUR PROGRESS

Q2. Fill in the blanks :

I. Under section ————— of the Act, it is stated that the employer is responsible for the payment of wages.

II. Under section ————— of the Act, the rules of payment of wages are provided.

III. According to section 5(1) (a), if the number of persons employed upon or in any railway factory or Industrial or other establishment is less than ———— wages shall be paid before the expiry of seventh day after the last day of the wage period.

IV. Under section ————— the provision of wages in case of termination is provided.

v. According to section ————— all payment of wages shall be made on a working day.

15.7 DEDUCTION AND ITS VARIOUS KINDS

According to section 7, the wages of an employed person shall be paid to him without deductions of any kind except those which are authorised by this Act. As per the Act, the following deduction are permitted.

A. Fines : According to the clause (a) of section 7 (2), deductions by way of fine of the wages of an employed person shall be made only in accordance with the provisions of the Act. Below, we briefly discuss the provisions regarding imposition and deduction of fine from the wages of an employed person.

(i) Approval of the Acts and Omissions : According to section 8 (2), fines shall be imposed only in respect of such acts or omissions which have been specified by notice with the approval of the State Government or of the prescribed authority.

(ii) Display of Notice : The notice specifying such acts and omissions shall be exhibited in the prescribed manner on the premises in which the employment is carried on or in the case of persons employed upon a railway (other wise than a factory) in the prescribed place.

(iii) Opportunity to show cause : No fine shall be imposed on any employed person until he has been provided with an opportunity of showing the cause against the fine or otherwise than in accordance with such procedure as may be prescribed for the imposition of fines under the Act.

(iv) Amount of fine : The total amount of fine which may be imposed in any wage period on any employed person, shall not exceed 3 percent (previously half anna per rupee) of the wages payable to him in respect of that wage period.

(v) Age Limit for fine : No fine shall be imposed on any employed person, who is under the age of fifteen years.

(vi) Not Recoverable in Installments and after under delay : Fine imposed on any employed person cannot be recovered in installments, nor it can be recovered after the expiry of 60 days

from the day on which it was imposed.

(vii) Day of Imposition of fine : Every fine shall be deemed to have been imposed of the day of the act or omission in respect of which it was imposed.

(viii) Register of fines : All fines and their realisation shall be recorded in a register to be kept by the person responsible for the payment of wages under section 3 of the Act. in such form as may be prescribed.

(ix) Use of fines : All fines so realised shall be used only in such purposes which are beneficial to the persons employed in the factory as establishment as are approved by the prescribed authority.

(x) Penalty for Breach : The breach of the provision of section 8 is punishable with fine which may extend to Rs. 500/- except in the case of (2) and (9) where the penalty shall extend to Rs. 200.

B. Deductions for absence from Duty : Clause (b) of the section 7 (2) authorises deductions for absence from duty section 9 of the Act states as under :

(1) Deductions may be made only on account of the absence of employed person from the place or places where, by the terms of employment he is required to work.

(2) Such absence may be for the whole or any part of the period during which he is so required to work and

(3) An employed person shall be deemed to be absent from the place where he is required to work if, although present in such place, he refuses to carry out his work in pursuance of stay-in-strike or for any other cause which is not reasonable under the circumstances.

C. Deductions for damage or loss : Clause (c) of section 7 (2) authorises deductions for damages to or loss of goods expressly entrusted to the employed person for custody or for loss of money for which he is required to account, where such damage or loss caused to the employer by the neglect of the employed person.

Regarding deductions for damages or loss following provisions are laid down under the Act:

1. Clause (0) of the section 7 (2) permits deductions for recovery or losses sustained by a railway administration on account of any rebate or refunds, incorrectly granted to the employed person where such loss is directly attributable to his neglect or default.
2. Section 10 (1) provides that any deduction for damages or loss shall not exceed the amount of damage or loss caused to the employer by the neglect or default of the employed person.
3. According to section 10 (1-A) deduction for damage or loss shall not be made until the employed person is given an opportunity of showing cause against the deductions.
4. Any such deduction may be made only in accordance with such procedures as may be prescribed for the purpose.
5. According to section 10 (2) all such deduction and all realisation thereof shall be recorded in a register to be kept by the person responsible for the payment of wages in such form as may be prescribed.
6. Penalty for breach of the above provisions of section 10 shall be punishable with fine which may extend to Rs. 500/-

D. Deductions for Services Rendered : According to section 11. under clause (d) and (e) of section 7 (2) deduction shall not be made from the wages of an employed person unless the house accommodation, amenity or service having been supplied by the employer, has been accepted by him as a term of his employment or otherwise. This deduction shall not exceed an amount equivalent to the value of the house accommodation, amenity or service supplied and the deductions shall further be subject to such conditions as the State Government may impose. Any contravention of the provision in this regard shall be punishable with fine which may enlind upto Rs. 500/-

E. Deduction from Loan advances and overpayment of wages :

Deductions are permitted for recovery of advances or overpayment. According to section 12, it is provided that recovery of an advance of money given before employment began shall be made from the first payment of wages in respect of a complete wage-period, but no recovery shall be made of advances which are given for the travelling expenses. Moreover, it is also provided under section 12 that recovery of advances of wages not already earned shall be subject to any rules made by the State Government regulating the extent to which such advances may be given and the installments by which they may be recovered under section (1-A) deductions for recovery of loans granted for house construction etc. shall be subject to any rules made by the State Government regulating the extent to which such rules may be given and the installments by which they may be recovered.

F. **Other :** In addition to above items, following are also deducted from wages –

(i) Income Tax.

(ii) Orders of court.

(iii) Provident Fund.

(iv) Cooperative Societies and Insurance Schemes.

(v) Deduction as per written authorisation of employed person.

15.8 DEDUCTIONS CLAIMS FOR WRONGFUL DEDUCTIONS

Section 15 deals with the claims arising out of wrong deductions from wages.

Under section 15(1) of the Act, the State Government is empowered to appoint the authority to hear and decide all claims arising under the Act. The appointment shall be made by a notification in the official Gazette. The authority appointed under section 15(1) can decide only the claims arising out of deductions or delay made in payment of wages and all other matters incidental there to and also the refused wages. The authority

has jurisdiction to decide disputes regarding the quantum of wages payable to employed persons also. An application in respect of the following claims can be made to the above authority.

(i) Where contrary to the provisions of this Act any deduction has been made from the wages of an employed person. or

(ii) Where contrary to the provisions of this Act any payment of wages has been delayed.

Application can be made by any of the following –

(i) Employed person himself or

(ii) Any legal practitioner authorised in writing to act on his behalf or

(iii) Any official of a Registered Trade Unions authorised in writing to act on his behalf or

(iv) Any Inspector under the Act or

(v) Any other person acting with the permission of authority appointed to hear such claims under section 15 (1).

Under section 15 (3), the procedure is laid down to be followed by the Authority entertaining an application.

(i) The authority shall hear the applicant and the employer and other persons responsible for payment of wages under section 3. Thus, after giving them an opportunity of being heard and after such further inquiry as may be necessary, the authority may direct the refund to the employed person, of the amount deducted or the payment of the delayed wages.

(ii) The authority may also direct the payment of such compensation as it thinks fit but not exceeding times the amount of wages deducted and in case of delay, not exceeding Rs. 25.

(iii) In case where the amount deducted the wages delayed are paid before the disposal of the application, the authority can direct the payment of compensation as it may think fit but not exceeding Rs. 25.

(iv) It may also impose upon the employer or the other person may other penalty for delay or deduction under this Act.

(v) The direction of this provision does not prejudice any other penalty to which the employer or any other person is liable.



LET US KNOW

(i) Section 15(4) lays down, if the authority having the application is satisfied that the application was either malicious or vexations, the authority may direct the applicant to pay a penalty exceeding Rs. 50 to the employer.

(ii) As per provision of Section 16(2), a single application may be presented under section 15 on behalf or in respect of any number of employed persons belonging to the same unpaid group, and in such case every person on whose behalf such application is presented may be awarded maximum compensation to the extent specified under section 15(3) of the Act.



CHECK YOUR PROGRESS

Q3. State True or False

(i) According to the clause (9) of section 7(2) deduction by way of fine out of the wages of an employed person shall be made only in accordance with the provisions of the Act. (True / False)

(ii) According to section 7(2), fine shall be imposed only in respect of such acts or omissions which have been specified by notice with the approval of the State Government. (True / False)

(iii) The total amount of fine shall not exceed 3% of the wages payable to him. (True / False)

(iv) Clause (c) of section 8(2) authorises deductions for damages to or loss of goods. (True / False)

(v) Section 15 deals with the claims using out of wrong deductions from wages. (True / False)



ACTIVITY

i) Twelve employees jointly absent themselves for five days without due notice and without reasonable cause. Can their wages be deducted?

(ii) An employer intends to deduct Rs. 500/- for payment to the co-operative society and Rs. 200 for damages to the goods of the employer from the wages of the employed person. The employed person draws monthly ways of Rs. 900. State with reason whether the employer can validly make these deductions.



15.9 LET US SUM UP

Wages implies all remuneration, whether by way of salaries, allowances or otherwise, expressed in terms of money or capable or implied were fulfilled, be payable to a person employed in respect of his employment or of work done in such employment. According to section 2 (i), the appropriate Govt. is the Central Govt. in relation to railway, air transport service, mines and oil field. In relation to all other cases, the appropriate Govt. is the State Govt. According to section 2(i) (a) the employed person includes the legal representative of a deceased employed persons. The main objectives of the Act are to regulate the payment of wages of certain classes of employed person. Under section 3 of the Act, it is stated that the employer is responsible for the payment of wages. Regarding the time of payment of wages the section 5 of the Act provides that if the number of persons employed upon or in any railway factory or industrial or other establishment is less than 1000 wages shall be paid before the expiry of the seventh day after the last day of the wage period. According to section 7, the wages of an employed person shall be paid to him without deductions of any kind except those which are authorised by this Act. As per the Act, fines, deduction for absence from duly, deduction for damage or loss, deduction for service rendered deduction from Loan, advances and overpayment of wages, income tax.

orders of court, provident fund, cooperative societies and insurance schemes, etc deductions are permitted.



15.10 FURTHER READING

1. C B Mamoria(2016);Dynamics of Industrial Relations; Himalaya Publishing House
2. A Monappa,ý R Nambudiri,ý P Selvaraj (2012);*Industrial Relations and Labour Laws*; Tata McGraw Hill Education Private Limited
3. PPS Gonga (2007); *A Textbook Of Business And Industrial Laws*; S Chand, India

15.11 ANSWERS TO CHECK YOUR PROGRESS

Ans to Q.No.1:

A (v) B (vi) C (ii) D (iv)
E (iii) F (i) G (viii) H (vii)

Ans to Q.No.2:

Q1. (I) 3 (II) 5 (III) 1000 (IV) 5(2) (V) 5(4)

Ans to Q.No.3:

Q1. (I) True (II) False (III) True (IV) False (V) True



15.12 MODEL QUESTIONS

1. Define Wages. Explain the objectives and application of the Payment wages Act 1936.
2. Discuss the provisions regarding the responsibility for payment of wages under the Payment of Wages Act 1936.

3. What are the various provisions relating to the time of payment of wages under the Payment of Wages Act 1936.

4. Discuss various permitted reduction from wages under the Act.

*** ***** ***



REFERENCES (FOR ALL UNITS)

1. A Monappa,ý R Nambudiri,ý P Selvaraj (2012);*Industrial Relations and Labour Laws*; Tata McGraw Hill Education Private Limited
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