



135. Do you agree that a trainee (not an apprentice) qualifies as an employee for claiming gratuity under the Payment of Gratuity Act, 1972?

Yes, based on the definition under Section 2(e) of the Payment of Gratuity Act, 1972, a **trainee**, who is not classified as an apprentice, can qualify as an employee and is therefore eligible to claim gratuity if they fulfill certain conditions. The key factors include:

- 1. Trainee Status:** As long as the person is not an apprentice as per the Apprentices Act, 1961, they may be considered an employee. The definition of an "employee" includes anyone employed for wages in any work connected with a factory or establishment covered by the Act, regardless of the nature of the work.
- 2. Continuous Service:** Under Section 4 of the Act, the entitlement to gratuity arises after an employee has completed **five years of continuous service** with the same employer. Therefore, if a trainee has worked continuously for five years, they would be eligible to claim gratuity, assuming there are no gaps or interruptions in their service that would disqualify them under the continuous service provisions.

Case Law:

High Court at Calcutta | Steel Authority of India Limited (IISCO Steel Plant) vs. Md. Mohiuddin & Ors. | W.P.A. 21014 of 2007 | 2024 LLR 831

Key Issues of the Case:

- 1. Applicability of the Payment of Gratuity Act, 1972:** The primary issue of this case was whether the employee (Respondent No. 1) qualified as an "employee" under the Gratuity Act for the purpose of gratuity payment. The contention centered around whether the period of apprenticeship training should be considered part of the employee's continuous service for calculating gratuity.
- 2. Definition of "Apprentice" under the Apprentices Act, 1961:** The question arose whether the Respondent's status as an apprentice excluded them from being considered an employee under the Gratuity Act.

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3. Evidence Admissibility: Whether the service record and other documents submitted by the employer were sufficient to prove the Respondent was an apprentice under the 1961 Act.

Arguments:

Petitioner (Steel Authority of India Limited - IISCO Steel Plant):

- 1. Exclusion of Apprentices:** The petitioner argued that an apprentice is excluded from the definition of "employee" under the Gratuity Act. Therefore, the period of apprenticeship from 1971 to 1974 should not count towards continuous service for gratuity calculations.
- 2. Service Record Card:** The petitioner relied on the employee's service record, specifically the marking "FTA" (Full Term Apprentice), to establish that the respondent was an apprentice during the disputed period.
- 3. Erroneous Orders by Lower Authorities:** The petitioner contended that both the Controlling and Appellate Authorities failed to consider admissible evidence, including the service record, while making their determinations. The orders were argued to be based on inadmissible evidence provided by the employee.

Respondents (Md. Mohiuddin and others):

- 1. Status as Trainees, not Apprentices:** The respondents claimed they were not apprentices under the 1961 Act but trainees, and thus their training period should be considered part of their continuous service.
- 2. Documentary Evidence:** The respondents submitted evidence showing their continuous employment and argued that the employer failed to produce relevant documents, such as a valid contract of apprenticeship under the 1961 Act.
- 3. Burden of Proof:** The respondents argued that once they provided evidence of their status, the burden shifted to the petitioner to prove they were engaged as apprentices, which the petitioner failed to do.

Court's Interpretation:

- 1. Employee Definition under Gratuity Act:** The court highlighted the distinction in the Gratuity Act's definition of "employee," which excludes apprentices but includes trainees who are not apprentices under the 1961 Act. The court noted that not all trainees qualify as apprentices unless they

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undergo training under a valid apprenticeship contract as defined in the Apprentices Act.

2. **Burden of Proof:** The court held that the respondents successfully discharged their burden of proving that they were not apprentices. The petitioner, however, failed to produce sufficient evidence to establish that the respondents were engaged as apprentices under a valid apprenticeship contract.
3. **Service Record Card's Admissibility:** The court noted that the service record card provided by the petitioner did not contain sufficient information to conclusively prove that the respondents were apprentices under the Apprentices Act. Moreover, the service card did not bear the respondents' signatures, undermining its credibility.
4. **Circular Clarification:** The court examined a circular from 2003 issued by the employer, which indicated that the training period of various categories of trainees could be considered for gratuity purposes if followed by regular employment. This bolstered the respondents' argument that their training period should be considered for gratuity purposes.
5. **Limited Scope of Judicial Review:** The court reiterated that findings of fact by the Controlling and Appellate Authorities should not be interfered with unless they are perverse or based on no evidence. Since the authorities' findings were based on sufficient evidence, the court found no reason to interfere.

Conclusion:

The High Court dismissed the writ petitions filed by the Steel Authority of India Limited (IISCO Steel Plant). It upheld the orders of the Controlling and Appellate Authorities, which determined that the respondents were entitled to gratuity for the disputed period. The court concluded that the respondents were trainees, not apprentices, and thus qualified as "employees" under the Gratuity Act, making them eligible for gratuity.

The employer's contention that the respondents were apprentices under the Apprentices Act, 1961, was rejected due to a lack of sufficient evidence.

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