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259. Under what circumstances can an employer forfeit an employee's gratuity under Section 4 of the Payment of Gratuity Act, 1972?

Section 4(6) of the Payment of Gratuity Act, 1972 provides specific circumstances under which an employer can forfeit gratuity of an employee. The provision overrides the general rule that gratuity is a statutory right and must be paid upon retirement, resignation, or termination after at least five years of continuous service.

Key Elements of Section 4(6): The employer can forfeit gratuity under two key scenarios:

(a) If the Employee Causes Damage to the Employer's Property

If an employee's services are terminated due to:

- Any act
- Willful omission (intentionally neglecting responsibilities)
- Negligence

Which results in:

- Damage or loss to the employer's property
- Destruction of property belonging to the employer

Extent of Forfeiture: The forfeiture is limited only to the extent of the damage or loss caused.

Example: If an employee causes a loss of ₹1 lakh due to negligence or misconduct, gratuity can be forfeited up to ₹1 lakh.

(b) If the Employee Is Dismissed Due to Serious Misconduct

The employer may wholly or partially forfeit the gratuity if the employee's services are terminated due to:

(i) Riotous or Disorderly Conduct or Act of Violence

- If the employee engages in violent, riotous, or disorderly behavior, their gratuity can be forfeited.
- This includes:
 - Physical assault on a supervisor, co-worker, or management personnel.
 - Engaging in violent protests or riots at the workplace.
 - Destruction of office property due to violent behavior.

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Extent of Forfeiture: The employer has the discretion to forfeit gratuity **fully or partially**, depending on the severity of the act.

(ii) Conviction for an Offense Involving Moral Turpitude

- If an employee is terminated due to an act that constitutes a criminal offense involving moral turpitude, the gratuity may be forfeited.
- **Conditions:**
 - The act must be an offense under law (e.g., theft, fraud, sexual harassment, corruption, etc.).
 - The act must have been committed during the course of employment (i.e., at the workplace or in connection with official duties).
 - It is not necessary for the employee to be convicted in a criminal court; if the employer terminates the employee based on substantial proof of such misconduct, gratuity can be forfeited.

Example:

- If an employee is found guilty of sexual harassment at work and is terminated, gratuity can be forfeited.
- If an employee steals company funds and is terminated, gratuity can be forfeited.

Case Law: Western Coal Fields Ltd. vs. Manohar Govinda Fulzele (2025 INSC 233) | Supreme Court of India | Decision Date: February 17, 2025 | Citation: 2025 INSC 233

Key Legal Issue of the Case:

Whether an employer can forfeit gratuity under Section 4(6)(b)(ii) of the Payment of Gratuity Act, 1972 for an act constituting an offense involving moral turpitude without a criminal conviction.

Background of the Case:

1. The employer, Western Coal Fields Ltd., terminated the respondent, Manohar Govinda Fulzele, on allegations of misconduct involving moral turpitude.
2. The employer invoked Section 4(6)(b)(ii) of the Payment of Gratuity Act, 1972, to forfeit the respondent's gratuity.
3. The High Court ruled in favor of the employee, stating that gratuity could only be forfeited if the employee was convicted in a criminal court for an offense involving moral turpitude.

Supreme Court's Ruling:

1. Forfeiture Does Not Require Criminal Conviction:

- The Supreme Court overruled the High Court's interpretation and held that forfeiture of gratuity does not require a conviction in a criminal court.
- The misconduct must only constitute an offense involving moral turpitude, as determined in a departmental inquiry.

2. Standard of Proof in Disciplinary vs. Criminal Proceedings:

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- Criminal proceedings require proof beyond a reasonable doubt, while
- Disciplinary inquiries require proof based on preponderance of probabilities.
- Since the Payment of Gratuity Act does not explicitly require a criminal conviction, the employer has the authority to forfeit gratuity upon proving misconduct in a departmental inquiry.

3. **Obligation to Follow Due Process:**

- The employer must issue a formal notice and allow the employee an opportunity to respond before forfeiting gratuity.

Key Precedents Considered:

1. **Union Bank of India & Ors. vs. C.G. Ajay Babu (2018) 9 SCC 529**

- Held that forfeiture of gratuity requires proof that the act involved moral turpitude.
- The present case distinguished this ruling, stating that a conviction in a court is not necessary.

2. **Jaswant Singh Gill vs. Bharat Coking Coal Ltd. (2007) 1 SCC 663**

- Held that gratuity can only be forfeited under strict conditions as per the Act.
- This judgment was overruled in part by Mahanadi Coalfields Ltd. vs. Rabindranath Choubey (2020) 18 SCC 71, which allowed forfeiture of gratuity for retired employees if disciplinary proceedings were pending.

3. **Devendra Kumar vs. State of Uttaranchal (2013) 9 SCC 363**

- Held that suppression of material information during appointment constitutes moral turpitude and justifies termination and forfeiture of benefits.

Final Judgment:

- The Supreme Court upheld the forfeiture of gratuity in this case, ruling that termination based on misconduct involving moral turpitude is sufficient to deny gratuity.
- The employer does not need a criminal conviction to enforce forfeiture under Section 4(6)(b)(ii) of the Payment of Gratuity Act, 1972.

Summary:

1. **Termination is Mandatory:** Gratuity can be forfeited only if the employee is terminated due to the above-mentioned reasons. Resignation or retirement does not allow forfeiture.
2. **Forfeiture Can Be Partial or Full:** The employer can decide whether to forfeit gratuity completely or partially, depending on the nature and extent of the misconduct.
3. **Employer Must Provide Justification:** The employer must have documented evidence of the misconduct before forfeiting gratuity.
4. **Forfeiture is Not Automatic:** The employer must issue a formal notice/order stating the reason for forfeiture.
5. **Judicial Review Possible:** If an employee believes their gratuity has been wrongfully forfeited, they can challenge the decision.

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