



271. Are contract workers eligible for gratuity if they have been working for the same principal employer for over 5 years but under different contractors?

In India, the Payment of Gratuity Act, 1972, governs the eligibility and payment of gratuity to employees. The Act mandates that gratuity be paid to employees who have completed at least five years of continuous service with the same employer. However, the eligibility of contract workers for gratuity - especially when they have worked under different contractors but for the same principal employer raises legal and practical questions.

Key Points to Consider

1. Principal Employer and Contractor Relationship

- If a contract worker has been engaged for over five years for the same principal employer but through multiple contractors, the principal employer may still be considered the “employer” for gratuity purposes.
- The principal employer could be held liable for gratuity if the contract workers were performing work directly benefiting the principal employer and the contractors acted merely as intermediaries.

2. Continuous Service

- The Payment of Gratuity Act defines "continuous service" as uninterrupted service, including periods of absence due to sickness, accident, leave, layoff, strike, or lockout, as long as the absence is not due to the employee's fault.
- If a contract worker has been engaged continuously at the same workplace for the principal employer, even through different contractors, the service is likely to be considered continuous under the Act.

3. Legal Precedents

- Courts have ruled that contract workers engaged for a continuous period with a principal employer, even under different contractors, are eligible for gratuity.
- Courts consider the nature of employment and the control exercised by the principal employer over contract workers when determining gratuity liability.

4. Contractual Agreements

- Agreements between the principal employer and contractors may specify that the contractor is responsible for employee benefits, including gratuity. However, such contractual clauses cannot override statutory obligations under the Payment of Gratuity Act.

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- If the principal employer effectively controls employment conditions, they may still be held liable for gratuity payments.

5. Landmark Judgment: IIT Bombay vs. Contract Workers (Writ Petition No. 12746 of 2024)

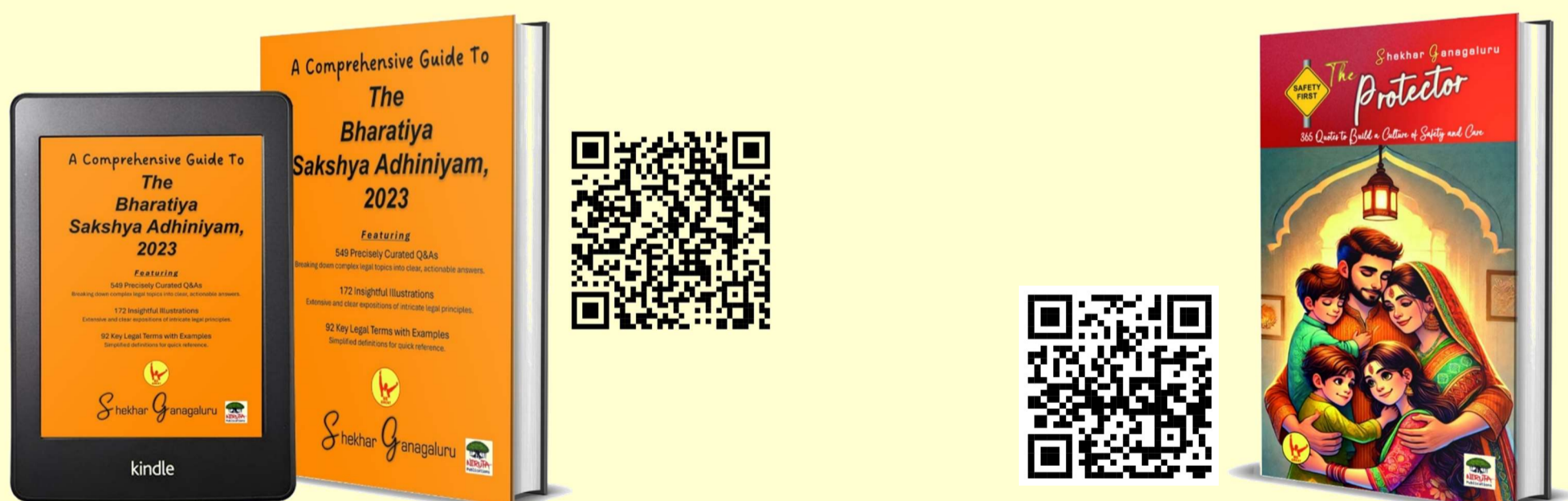
A significant ruling in the IIT Bombay vs. Contract Workers case reaffirmed that contract workers are entitled to gratuity if they have served a principal employer for over five years, even under different contractors. The court held IIT Bombay liable for gratuity, emphasizing:

- The continuity of employment at the same principal employer's premises.
- The principal employer's control over the workers despite contractor changes.
- That statutory obligations under the Gratuity Act supersede contractual terms assigning responsibility solely to contractors.

This ruling strengthens the rights of long-term contract workers and ensures they do not have to chase multiple contractors for gratuity payments.

Conclusion

Contract workers who have been engaged for more than five years under different contractors but for the same principal employer are entitled to gratuity under the Payment of Gratuity Act, 1972. In such cases, the principal employer must ensure that all contractors share the gratuity liability proportionally, based on the period the employee worked under each contractor. However, if the contractors fail to fulfill this obligation, the principal employer holds the ultimate responsibility for ensuring gratuity payments, as statutory obligations cannot be bypassed through contractual arrangements.



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