



127. Is an employee who has completed 5 years of service, including 2 years as a trainee (other than an apprentice), entitled to gratuity upon resignation under the Payment of Gratuity Act, 1972?

Yes, the employee who has completed 5 years of total service, including 2 years as a trainee (other than an apprentice), is entitled to gratuity upon resignation as per the Payment of Gratuity Act, 1972. Here's a detailed explanation based on the Act:

1. Definition of "Employee" under Section 2(e) of the Payment of Gratuity Act

According to Section 2(e) of the Payment of Gratuity Act, 1972, an **"employee"** is defined as:

"any person (other than an apprentice) who is employed for wages, whether the terms of such employment are express or implied, in any kind of work, manual or otherwise, in or in connection with the work of a factory, mine, oilfield, plantation, port, railway company, shop, or other establishment to which this Act applies."

- The key point here is that **a trainee, other than an apprentice**, is considered an employee. Therefore, the 2 years spent in training (as long as the trainee is not classified as an apprentice) count as employment under the Act.

2. Continuous Service under Section 2A of the Act

Section 2A defines what constitutes **continuous service**. It states that:

An employee is said to be in continuous service if they have been in uninterrupted service during that period, even if there are interruptions due to reasons such as sickness, accident, leave, lay-off, strike, lock-out, or any other cessation of work not due to the employee's fault.

- Even if the employee was classified as a trainee for 2 years, as long as there was **uninterrupted service** (i.e., the employee remained with

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the employer without a break due to termination or resignation), their service is considered **continuous**.

Therefore, the 5 years of total service, including the 2 years as a trainee, would be regarded as **continuous service** under the law.

3. Eligibility for Gratuity under Section 4(1) of the Act

As per Section 4(1) of the Act, gratuity is payable to an employee who has rendered continuous service for not less than five years in the following cases:

- **Superannuation** (retirement due to age),
- **Retirement or resignation**,
- **Death or disablement** due to accident or disease.

Since the employee has completed 5 years of continuous service, they meet the criteria under Section 4(1) and are eligible for gratuity upon resignation.

Conclusion:

In summary, an employee who has completed 5 years of service, with 2 years spent as a trainee (other than an apprentice), is entitled to gratuity upon resignation. This is because:

1. A trainee, other than an apprentice, is defined as an employee under Section 2(e).
2. Their service, including the training period, is considered continuous under Section 2A.
3. Gratuity is payable to employees who have completed at least 5 years of continuous service, as per Section 4(1).

Thus, upon resignation, the employee is entitled to gratuity for their entire period of service, including the training period.

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