



122. Can an employee claim gratuity under the Payment of Gratuity Act if he/she voluntarily resign after 4 years and 10 months of service?

Under the Payment of Gratuity Act, 1972, an employee must meet specific conditions to be eligible for gratuity. As per **Section 4**, gratuity is payable to an employee upon the termination of employment, provided they have rendered **continuous service for not less than five years**. Continuous service is defined in **Section 2A**, which allows for uninterrupted service even if certain interruptions, such as sickness or leave, occur. However, **completion of five years of continuous service** is a statutory requirement for gratuity, except in cases of death or disablement.

In the case of an employee who has completed **4 years and 10 months** of service and voluntarily resigns, they fall short of the statutory five years of continuous service as required by **Section 4**. Even though they may have worked more than **240 days in the fifth year**, this does not automatically qualify them for gratuity.

The decision of the **Karnataka High Court** in the case of **M/s Alvas Institute of Engineering and Technology v. State of Karnataka (WP No. 48825 of 2016)** provides clarity on this matter. The detailed analysis of this case is as below:

Background:

1. Third Respondent's Employment:

The third respondent was employed as a Senior Lecturer in the Electronics and Communication Department of the petitioner institution from 17.12.2008 to 31.10.2013 (approximately 4 years, 10 months, and 15 days).

2. Gratuity Claim:

Upon leaving the institution, the third respondent claimed gratuity under Section 4 of the *Payment of Gratuity Act, 1972*, which mandates that gratuity is payable to employees who have completed five years of continuous service.

3. Dispute:

The institution (petitioner) contended that the third respondent had not completed the mandatory five years of continuous service and thus was ineligible for gratuity. **However, the third respondent argued that since he had worked more than 240 days in the fifth year, he should be considered as having completed five years of continuous service under Section 2A(2) of the Act.**

4. Assistant Labour Commissioner's Decision:

The Assistant Labour Commissioner ruled in favour of the third respondent, **ordering the institution to pay applicable gratuity, including interest.** The institution appealed, but the Appellate Authority upheld the decision, leading to the present writ petition in the High Court.

Legal Issues:

1. Continuous Service:

The core issue was whether the third respondent's service duration of 4 years, 10 months, and 15 days could be deemed "continuous service" for five years under Section 2A(2), which allows an employee to be considered in continuous service if they work for 240 days in the fifth year.

2. Voluntary Resignation:

The petitioner argued that since the third respondent had voluntarily resigned, his service was interrupted, and he could not claim the benefit of Section 2A(2), which allows for continuity in cases of certain interruptions like sickness, accidents, etc.

Court's Findings:

1. Statutory Requirements for Gratuity:

Section 4 of the Act mandates that gratuity is payable after an employee has rendered *continuous service* for at least five years. Section 2A defines "continuous service" and includes specific instances (sickness, accidents, etc.) where interruptions do not break the continuity.

2. Application of Section 2A:

The third respondent argued that since he had worked for more than 240 days in the fifth year, his service should be considered continuous under

Disclaimer: This document is for educational purposes only and does not constitute legal advice.

Shekhar Ganagaluru, MSW, LLB, Dip. T&D

HR & IR Specialist | Published Author | Storyteller | Mentor | Trainer | Community Outreach Coordinator | Workplace Safety & Motivation Strategist
begreatseries@gmail.com or [Follow on LinkedIn](#) | Mobile: 96327 11228

Section 2A(2). However, the court disagreed, noting that the interruptions permitted under Section 2A(1) (sickness, accident, etc.) were not applicable here because the third respondent had voluntarily resigned.

3. Ineligibility for Gratuity:

The court emphasized that the statutory condition of five years of continuous service was not met since the third respondent resigned after 4 years, 10 months, and 15 days of service. Therefore, he was not eligible for gratuity.

4. Quashing of Orders:

The High Court concluded that the orders of the Assistant Labour Commissioner and the Appellate Authority were unsustainable in law because they failed to consider the distinction between Section 2A(1) and Section 2A(2) and did not apply the eligibility criteria under Section 4 correctly. Consequently, the court quashed both orders and allowed the writ petition.

Conclusion:

The High Court allowed the writ petition, holding that the third respondent was not entitled to gratuity because he had not completed the requisite five years of continuous service as defined by the *Payment of Gratuity Act, 1972*. The court quashed the earlier orders of the Assistant Labour Commissioner and the Appellate Authority, which had incorrectly interpreted the law.

This judgment reaffirms the strict interpretation of continuous service under the Act and clarifies that voluntary resignation without meeting the 5-year requirement disqualifies an employee from claiming gratuity.

For daily HR, IR, Legal, and Safety updates,
join Shekhar Ganagaluru's **Be Great Learning Hub** WhatsApp Group.

<https://chat.whatsapp.com/Djpl7Fz5ZjwJJSxm5vexlo>

Disclaimer: This document is for educational purposes only and does not constitute legal advice.

Shekhar Ganagaluru, MSW, LLB, Dip. T&D

HR & IR Specialist | Published Author | Storyteller | Mentor | Trainer | Community Outreach Coordinator | Workplace Safety & Motivation Strategist
begreatseries@gmail.com or [Follow on LinkedIn](#)