THE JURISPRUDENCE OF GRATUITY: DECONSTRUCTING THE MINIMUM "CONTINUOUS SERVICE" REQUIREMENT FOR PAYMENT OF GRATUITY

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ABSTRACT

The Payment of Gratuity Act, 1972 (referred to as 'PGA' hereinafter), serves as a cornerstone of social security legislation in India, providing a lump sum payment to employees as a token of appreciation for long and meritorious service. A central tenet of this Act is the requirement of "continuous service" for gratuity eligibility. However, even the most seasoned HR professionals disagree on the minimum length of service for which gratuity is payable under the Gratuity Act. Based on the plain reading of the Act, there is confusion regarding whether gratuity is payable after 5 years of service or 4 years, 240 days (or 190 days in some cases). Indian HR professionals have struggled with whether the statutory fiction in Section 2A—the 240-day rule—shortens the minimum requirement for paying gratuity or not. This article examines the diverse judicial perspectives to shed light on the debate.

Relevant Statutory Framework

Section 4 (1) of the PGA (summarised)**:**

Gratuity shall be payable to an employee on the termination of his employment after he has rendered continuous service for not less than five years:

(a) on his superannuation, or

(b) on his retirement or resignation, or

(c) on his death or disablement due to accident or disease:

Provided that the completion of continuous service of five years shall not be necessary where the termination of the employment of any employee is due to death or disablement.

Section 2A (2) of the PGA (summarised)**:**

Where an employee is not in continuous service for any period of one year, he shall be deemed to be in continuous service under the employer for one year, if the employee during the preceding 12 calendar months has actually worked under the employer for not less than:

(i) 190 days, in the case of an employee employed in an establishment that works for less than six days a week; and

(ii) 240 days, in any other case.

A plain reading of the above gives rise to the conflicting arguments on the minimum tenure of continuous service required to become eligible for the payment of gratuity.

Judicial Decisions

Surendra Kumar Verma v. Central Government Industrial Tribunal-cum-Labour Court[1]

- **Facts**: Workmen were employed in a banking concern on a temporary basis pending a qualifying test for permanent absorption and were subsequently discharged from service.

[1] (1980) 4 SCC 443

All of them worked more than 240 days in the 12 months immediately preceding their discharge, but they had not completed a full calendar year.

- **Issues**: What counts as "continuous service of not less than one year" under Section 25-F of the Industrial Disputes Act 1947 ('IDA')?

- **Judgement**: The Court held that, in view of Section 25-B (2) of the IDA, a worker need not show an unbroken 12-month stint; working 240 days in the preceding 12 months is enough to treat him as having completed "one year of continuous service."

- **Significance**: Although Surendra Kumar Verma was decided under the IDA, Section 2A of the Gratuity Act is textually identical to Section 25-B (2) IDA. High Courts, therefore, borrow their ratio when deciding on gratuity eligibility.

Lalappa Lingappa & Others v. Laxmi Vishnu Textile Mills Ltd.[2]

- **Facts**: Workers whose employment had ended asked for gratuity for each calendar year in service, irrespective of how many days they had actually worked in that year. The employer paid gratuity only for those years in which the employee had worked for at least 240 days, treating all other years as ineligible.

- **Issue**: Meaning of "continuous service" in Section 2(c) of PGA (now Section 2A): does it require at least 240 days actually worked in a year? Whether mere permanence or inclusion on the muster-roll entitles an employee to gratuity for a year in which he worked fewer than 240 days.

- **Judgement**: Gratuity payable only for the years in which the worker actually worked for 240 days or more. Unauthorised absence that reduces attendance below 240 days disqualifies that year. Each gratuity year must show 240 counted days.

- **Significance**: The decision anchors the 240-day yardstick inside the Gratuity Act itself, defining the minimum length of service that must be demonstrated for each gratuity-earning year—and, by extension, for reaching the five-year eligibility threshold.

[2] (1981) 2 SCC 238

Mohan Lal v. Management of Bharat Electronics Ltd.[3]

- **Facts**: Mohan Lal clocked a little over ten months' service, but his muster rolls showed ≥ more than 240 paid days when weekly-offs and paid holidays were counted. The company ended his employment without notice pay or retrenchment compensation.

- **Issues**: Does 240 paid days in the preceding 12 months satisfy "one year's continuous service" under Section 25-B (2) of the IDA? When computing those 240 days, are paid weekly off days and notified holidays considered as days "actually worked"?

- **Judgement**: A worker who has been on the muster-roll and paid for more than 240 days in the relevant 12 months is deemed to have completed one year's continuous service. The phrase "actually worked" covers every day for which wages are paid "by contract, standing orders or statute," including Sundays and other paid holidays.

- **Significance**: Section 2A of the PGA copies verbatim the "actually worked 240-day" language of Section 25-B (2) IDA. Courts, therefore, transplant Mohan Lal's inclusive arithmetic directly into gratuity disputes.

  Constructing the fifth year – Because the fifth "completed year" under Section 4(1) of the PGA is deemed once the employee crosses 240 paid days in that fifth block, an employee who has served 4 years + 240 days is treated as having the five years' minimum length of service required for gratuity.

Rajasthan State Road Transport Corporation v. Mohani Devi & Anr.[4]

- **Facts**: Mohani Devi was appointed on 1 Jan 2009 and resigned on 31 Aug 2014 with a continuous service of 5 years 8 months. Employer claimed that resignation is not "termination of employment" under Section 4 (1) of the PGA, hence no gratuity payable; and also tried to deduct alleged outstanding dues.

- **Issues**:

  a. Does a voluntary resignation after five years' continuous service amount to

[3] (1981) 3 SCC 225
[4] Civil Appeal No. 2236 of 2020

"termination" for the purpose of Section 4 (1) of the Gratuity Act to trigger gratuity liability?

b. Whether the employer can unilaterally set off disputed "loss" claims against the statutory gratuity.

- **Judgement**:

a. Resignation = termination.

b. Set-off of losses is prohibited - Sections 4 & 8 furnish a self-contained code; any "damage" claim must be adjudicated independently—an employer cannot make gratuity a hostage.

- **Significance**: This judgment is often cited as a counter to the other judgments that have upheld the applicability of Section 2A (2) of the PGA to minimum service. In this case, the honourable Court read Section 4 (1) literally: an employee must render "not less than five years' continuous service." It is worth noting that the facts of the case did not necessitate the court's formation of any view on the minimum service requirements, as the employee had already met the 5-year threshold in Section 4(1). It can be safely assessed that the Honourable Courts' recital of Section 4(1) was an obiter dictum and not the ratio decidendi, and hence should not be taken as a precedent.

Mettur Beardsell Ltd. v. Regional Labour Commissioner (Central) & Ors.[5]

- **Facts**: An employee worked at Mettur Beardsell for 4 years, 10 months, 18 days. The Employer declined to pay the gratuity, citing the provisions of Section 4(1) of the PGA.

- **Issues**: Does Section 2A of the PGA, which deems "240 days' continuous service" to be one completed year, apply when construing the five-year qualifying period in Section 4(1)? If yes, is an employee with 4 years, 10 months, and 18 days deemed to have completed five years and therefore entitled to gratuity?

[5] Mad HC W.P. 2135/1987 (1996)

- **Judgement**: 240-day fiction governs eligibility - Sections 2(b) ("completed year of service") and 2A must be read with s 4(1). Once an employee has actually worked ≥ 240 days in a twelve-month block, that block is deemed a completed year for all purposes of the Act, including the five-year threshold.

- **Significance**: Mettur Beardsell is the first reported High-Court decision to explicitly graft the 240-day deeming fiction onto the five-year eligibility bar of Section 4(1). It therefore became the jurisprudential foundation for later cases (covered below).

Management of Salem Textiles Ltd. v. Appellate Authority under the Payment of Gratuity Act & Anr.[6]

- **Facts**: Workman resigned after continuous regular service of 4 years + more than 240 working days in the 5th year.

- **Issue**: Does an employee who has served 4 years and at least 240 days in the 5th year satisfy the "five years' continuous service" requirement in Section 4(1) of the PGA?

- **Judgement**:

    - Interplay of Section 4(1) and Section 2A(2)(a) deems an employee to be in "continuous service for one year" if, during the preceding twelve months, he actually worked 240 days (or 190 days in a 5-day-week establishment). Hence, once an employee crosses that threshold in the 5th year, that period counts as a completed year of service.

    - Beneficial Construction - The PGA is a piece of social-benefit legislation; doubts must be resolved in favour of the employee. Reading Section 4(1) in isolation would defeat that objective.

- **Significance**: For establishments governed by Indian labour law, the "five-year" rule in Section 4(1) is satisfied once the employee has completed four full years and the statutory 240/190-day threshold in the 5th year.

[6] Mad HC W.P. 32663/2007 (2011)

Sreeja B. v. Regional Joint Labour Commissioner & Ors.[7]

- **Facts**: Ms Sreeja B. resigned after 4 years + ~9 months of service. Gratuity was declined, citing provisions of Section 4 (1)

- **Issues**: Does working 4 years and at least 240 days in the 5th year satisfy the "five years' continuous service" requirement in Section 4(1) of the PGA?

- **Judgement**:

    - Reading Section 4 with Section 2A(2)(a) deems an employee to have completed "one year of continuous service" if, during the preceding 12 months, they actually worked 240 days (190 days where a 5-day week applies). That deeming fiction applies to each of the five years contemplated by Section 4.

    - Beneficial construction - The PGA is social-benefit legislation; ambiguities must be interpreted in favour of employees. Once the statute "imagines" 240 days as a whole year, courts cannot "boggle" at the inevitable consequence that four years + 240 days = five years.

- **Significance**: This judgement expanded the liberal interpretation of the minimum service requirement to a High Court outside of the Madras High Court

TV Today Network Ltd. v. Ankita Sodhi & Anr.[8]

- **Facts**: Ankita Sodhi joined TV Today on 7 Aug 2006 and resigned after rendering 4 years, 11 months, and 20 days of service. The company refused to release the gratuity, asserting that she fell eight days short of the five-year bar in Section 4(1) of the PGA.

- **Issues**: Had the employee completed the minimum five years of "continuous service" required by Section 4 (1)?

- **Judgement**: Five-year threshold - 4 yrs 11 months 20 days $\approx \geq$ 240 paid days in the 5th block; under Section 2A PGA, that block is deemed a completed year, making the total

[7] Ker HC W.P.(C) 13911/2012 (2015)
[8] Del HC W.P.(C) 6271/2019 (2024)

"five years".

- **Significance**:

    - Delhi joins the "4 yrs + 240 days" camp. By expressly endorsing Mettur Beardsell and reading Section 2A into Section 4 (1), the Court aligned Delhi with the Madras and Kerala views that a worker who tops 240 paid days in the 5th year is deemed to have completed the statutory five years.

    - Distinguishing the strict view - The judgment discusses P. Raghavulu & Sons[9] Only to show it arose under the Andhra Pradesh Shops Act, whose text lacks the 240-day deeming clause and therefore does not dictate the outcome under the central PGA.

    - Re-emphasises inclusive counting. Weekly off days, paid holidays, and other paid absences form part of the "days actually worked."

Days 'Actually Worked'

At this point, it is essential to clarify that it is a settled judicial view that the term 'actually worked' shall also include Sundays and other holidays for which the employee was paid salary/wages.

Indian courts interpret the term "actually worked" functionally rather than mechanically: If wages are paid or statutorily protected, the day counts. Combined with the 240-day deeming rule, this liberal approach enables the reasoning that 4 years plus 240 paid days equates to five "completed" years for gratuity, subject, of course, to the employee *proving* those days through attendance and payroll records.

In the Lalappa case, the honourable Supreme Court emphasised that interruptions due to strikes, lockouts, etc., should not be considered a break in service if they are not caused by the employee's fault.

It also established the broad inclusion rule – if the employer has paid the wage for a day, the courts will almost certainly count it as "actually worked," regardless of whether it was a

[9] Andhra Pradesh High Court, W.P. No. 3969 of 1979

Sunday, a festival closure, or a paid layoff.

Sakhkkar Mills Mazdoor Sangh v. Gwalior Sugar Co. Ltd.[10] - Although this case arose under the Bonus Act, its interpretation of "working/actually worked" has been imported by High Courts when construing Section 2A of the PGA, which uses the identical 240-day yardstick. 'Allowed-to-work' counts – If an establishment is shut for reasons beyond the worker's control (off-season, lay-off, festival shut-down, etc.), those days are credited toward the 240-day threshold because the employee was ready and willing.

Key Takeaways

- **4 years and 240 days (or 190 days) is sufficient:** Crucially, if an employee has completed 4 years of service and then worked for at least 240 days (or 190 days for certain establishments) in the fifth year, they are deemed to have completed 5 years of continuous service for gratuity purposes. This is a significant practical implication of court interpretations.

- **Definition of "continuous service" is crucial:** Section 2A of the Act defines "continuous service," and court rulings have consistently interpreted this broadly to include periods of interrupted service due to valid reasons (like sickness, accident, leave).

- **Resignation is a form of termination:** The Supreme Court has clarified that resignation after completing the requisite service period also entitles an employee to gratuity.

- **240-day threshold is still sacrosanct**: A permanent employee loses gratuity for any year in which he has *not* worked 240 actual working days. This defeats the notion that mere permanence guarantees gratuity; it anchors "actual days worked" inside the PG Act itself. *Lalappa* prevents employees from claiming gratuity for years that fall *short* of 240 counted days; the fiction helps workers reach the bar but does not abolish it.

- **No bar of limitation**: Non-payment or short payment of statutory gratuity is a "continuing wrong." Every day the amount remains unpaid, a fresh cause of action arises; therefore, the question of delay "does not arise." The employee's right to gratuity crystallises on the date

[10] (1985) 2 SCC 134

employment terminates, but the employer's obligation to pay is *ongoing* until full discharge. Limitation provisions in the Rules cannot defeat that statutory entitlement.[11]

Conclusion

Until Parliament or the apex Court expressly settles the fifth-year controversy, these cases collectively form the most persuasive basis for treating four years and 240 days of continuous service as the statutory threshold for gratuity entitlement. Based on the judicial decisions, the following are the principles on the minimum length of service for gratuity

- 6-day week: 4 years + 240 days earns gratuity
- 5-day week: 4 years + 190 days earns gratuity

[11] *Municipal Corporation of Delhi (MCD) v. Nand Kishore,* Delhi High Court LPA No. 415 of 2002