

GRATUITY BENEFITS ACTS

The main purpose and concept of gratuity is to help the workman after the retirement, whether the retirement is a result of the rules of superannuation or physical disability or impairment of the vital part of the body. Gratuity is the amount which is not connected with any consideration and has to be considered as something given freely for the service the employee has rendered to the organization for more than 5 years.

DEFINITIONS [Sec 2]

(a) "appropriate Government" means, -

(i) in relation to an establishment -

- (a) belonging to, or under the control of, the Central Government,
- (b) having branches in more than one State,
- (c) of a factory belonging to, or under the control of, the Central Government,
- (d) of a major port, mine, oilfield or railway company, the Central Government,

(ii) in any other case, the State Government.

(b) "Completed year of service" means continuous service for one year;

(e) "employee" means 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, but does not include any such person who holds a post under the Central Government or a State Government and is governed by any other Act or by any rules providing for payment of gratuity.

(c) "Continuous service" means continuous service as defined in section 2A;

(K)"notification" means a notification published in the Official Gazette and the expression "notified" shall be construed accordingly;'

(q) "Retirement" means termination of the service of an employee otherwise than on superannuation;

(r) "superannuation", in relation to an employee, means the attainment by the employee of such age as is fixed in the contract or conditions of service at the age on the attainment of which the employee shall vacate the employment;

(s) "wages" means all emoluments which are earned by an employee while on duty or on leave in accordance with the terms and conditions of his employment and which are paid or are payable to him in cash and includes dearness allowance but does not include any bonus, commission, house rent allowance, overtime wages and any other allowance.

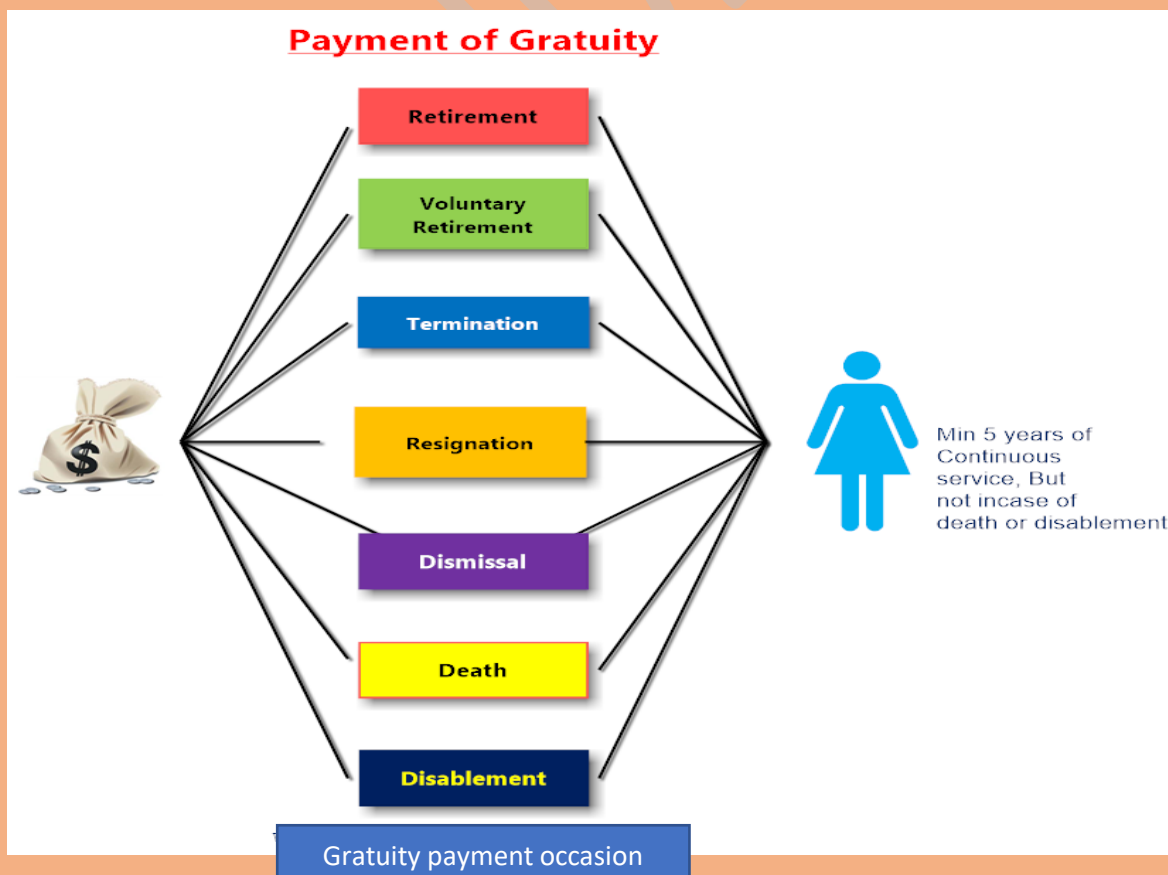
APPLICABILITY

- Every factory (as defined in Factories Act), mine, oilfield, plantation, port and railway.
- Every shop or establishment to which Shops & Establishment Act of a State applies in which 10 or more persons are employed at any time during the year end.
- Any establishment employing 10 or more persons as may be notified by the Central Government.
- Once Act applies, it continues to apply even if employment strength falls below 10.

In **Regional Provident Fund Commissioner v. The Regional Labour Commissioner and others (1985 II labour Law Journal 63)**, an upper divisional clerk working in the establishment of regional Provident fund Commissioner resigned his job in March 1982 after rendering service for more than nine years, and claimed that the gratuity under this act.

The High Court of Karnataka held that the said establishment falls within the definition of an establishment under The Payment of Gratuity Act, 1972 and the employee was entitled to gratuity, now withstanding the fact that he resign the jobs,

In **Arasuri Ambajimata Mandir devasthan Trust v. Jaitabhai Patel, Shramjivi general Works union (1983 (3) Supp. labour law general 1129)**, it was held at the thought the post in Temple trust is controlled by state government., It is not a post under State government. So as to fall under the exclusion under section 2 (e) and hence it falls under the definition of employee and is entitled to gratuity under the act. *which means though the temple is not mentioned in the section (e) of the act, court held that it is applicable under this act.*



Private Hospitals Are Covered Under Payment Of Gratuity Act : Kerala High Court -

[\[Read Judgment\]](#)

The contention of the appellant before the Court, Lourdes Hospital, was that it did not come within the purview of the Kerala Shops and Commercial Establishments Act, 1960, being a charitable institution. The Gratuity Act is applicable to 'shops and establishments within the meaning of any law for the time being in force in relation to shops and establishments in a State', as per Section 1(3)(b). Since the hospital was out of the ambit of Shops and Establishments Act, it was not covered under Gratuity Act, contended the appellant.

The Court held that whether an establishment made profit or not was immaterial. Following the Supreme Court's precedent [Management of Tata Iron and Steel Co.Ltd vs Chief Inspecting Officer and others](#), the bench observed :

The Apex Court held that, if the activity is frequent, continuous and relating to business, whether it earns profit or not is irrelevant. Since the above ingredients were present in respect of the activities of the hospital, it was held as an establishment under Section 2(6) of the above Act. Teachers entitled to Gratuity under Payment of Gratuity Act : Supreme Court of India

**CIVIL APPELLATE JURISDICTION CIVIL APPEAL No.2530 OF 2012 - Birla Institute of Technology
...Appellant(s) VERSUS The State of Jharkhand & Ors. ...Respondent(s)**

The Supreme Court today held that teachers are entitled to gratuity under the Payment of Gratuity Act, 1972 (Act). A Bench of Justices Abhay Manohar Sapre and Indu Malhotra recalled its previous judgment that had laid down that teachers do not fall within the scope of the definition of 'employees' under the Act.

In its judgment rendered on January 7 2019, a Bench of Justices Abhay Manohar Sapre and Indu Malhotra had placed reliance on the case of Ahmadabad Pvt. Primary Teachers Association v. Administrative Officer and Others [(2004) 1 SCC 755] to hold that teachers do not fall within the scope of the definition of 'employee' under Section 2 (e) of the Act.

The Court had thus, allowed the appeal filed by Birla Institute of Technology and set aside the judgment of the Jharkhand High Court.

The operation of this judgment was, however, suo motu stayed by the Court just two days after the pronouncement of the judgment. The Court noted in that order that it was not apprised of the amendment brought to the Act by the Parliament in 2009. In its order, the Court said,

“Keeping in view the amendment made in the definition of Section 2(e), which as stated above was not brought to the notice of the Bench, this issue was not considered though had relevance for deciding the question involved in the appeal. It is for this reason, we prima facie find error in the judgment and, therefore, are inclined to stay the operation of our judgment dated 07.01.2019 passed in this appeal.”

The definition of the word “employee” under the Gratuity Act was amended through an amendment brought in by the Parliament in 2009. This amendment was given a retrospective effect from April of 1997. It was not brought to the Court’s notice the first time the appeal was heard.

When the matter was reheard, the Court was informed that the submissions regarding precluding teachers from the scope of the definition of ‘employee’ stemmed from the precedent in Ahmedabad Pvt Primary Teachers Association case. However, the said issue was no longer res integra after the statutory amendment.

The reason for the Parliament to amend the provisions of Gratuity Act to bring teachers under the purview of the Act was clear from the Statement of Objects and reasons of the Amendment Bill which reads,

“Keeping in view the observations of the Hon’ble Supreme Court, it is proposed to widen the definition of ‘employee’ under the said Act in order to extend the benefit of gratuity to the teachers.”

This amendment was given a retrospective effect starting from April 3, 1997. The amended definition of the word ‘employee’ is,

“(e) “employee” means 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, but does not include any such person who holds a post under the Central Government or a State Government and is governed by any other Act or by any rules providing for payment of gratuity.”

In light of this amendment, the Court noted that decision in Ahmedabad Pvt Primary Teachers Association loses its binding effect. The Court thus dismissed the appeal with costs of Rs. 25,000.

Section 2A. CONTINUOUS SERVICE. - An employee shall be said to be in continuous service even his/her service in interrupted by way

- sickness,
- accident,
- leave,
- absence from duty without leave,
- leave with full wage,
- temporary disablement,
- laid-off period,
- maternity leave : 26 weeks

(THE PAYMENT OF GRATUITY (AMENDMENT) ACT, 2018) whether such uninterrupted or interrupted service was made before or after the commencement of this Act.

In case of period of one year

Employee will be treated as he in continuous service, if he is employed by employer for the period of

- 190 days employment under the ground in mines, or in establishment which works less than 6 days in a week.
- 240 days in case of other any establishments (factories, companies, etc.)

In case of period of 6 months

Employee will be treated as he in continuous service, if he is employed by employer for the period of

- 95 days employment under the ground in mines, or in establishment which works less than 6 days in a week.
- 120 days in case of other any establishments (factories, companies, etc.)

In case of seasonal establishments

An employee of a seasonal establishment shall be deemed to be in continuous service if he has actually worked for not less than 75% of the numbers of days on which the establishment was in operation during the 1 year or 6 months.

Seasonal Establishments in which, although work is carried on throughout the year, the number of employees is regularly subject to seasonal fluctuations for reasons associated with the weather, their sales or their location. For example, hotels and restaurants in health spas and holiday resorts, gravel and sand pits and stone quarries are deemed to be seasonal establishments.

Section- 3. CONTROLLING AUTHORITY. –

The appropriate Government may, by notification, appoint any officer to be a controlling authority, who shall be responsible for the administration of this Act and different controlling authorities may be appointed for different areas.

Section- 4. PAYMENT OF GRATUITY. -

(1) Gratuity shall be payable to an employee on the termination of his employment after he has rendered continuous service for not less than 5years, -

(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 5 years shall not be necessary where the termination of the employment of any employee is due to death or disablement:

Provided further that in the case of death of the employee, gratuity payable to him shall be paid to his nominee or, if no nomination has been made, to his heirs, and where any such nominees or heirs is a minor, the share of such minor, shall be deposited with the controlling authority who shall invest the same for the benefit of such minor in such bank or other financial institution, as may be prescribed, until such minor attains majority.

Explanation. - For the purposes of this section, disablement means such disablement as incapacitates an employee for the work which he, could perform before the accident or disease resulting in such disablement.

Gratuity Payable on Resignation of employee After 5 Years Of Continuous Service: Supreme Court of India. **Rajasthan State Road Transport Corporation Ltd. & Ors. Versus Smt. Mohani Devi & Anr**

CIVIL APPEAL NO. 2236 OF 2020 (Arising out of SLP (Civil) No.5650 of 2019)

The Court was considering an appeal filed by Rajasthan State Road Transport Corporation Ltd. against the High court judgment which had allowed the writ petition filed by the wife of a deceased employee claiming the retiral benefits.

After his application seeking voluntary retirement was not acted upon, the employee had submitted his resignation as he claimed to be under depression and his health condition had further deteriorated. This resignation was accepted. It was after he died, his wife approached the High Court. The High Court directed to treat it as voluntarily retirement and release the retiral benefits to which he was entitled.

Allowing the appeal, the bench observed that pending disciplinary proceedings if an application for voluntary retirement is submitted there would be no absolute right seeking for acceptance since the employer if keen on proceeding with the inquiry would be entitled not to consider the application for voluntary retirement. However, the bench observed:

*" As rightly pointed out by the learned counsel for the respondents, **Section 4(1)(b) of the Payment of Gratuity Act, 1972** provides that the gratuity shall be payable if the termination of employment is after 5 years of continuous service and **such termination would include resignation as well.** In that view, if the gratuity amount has not been paid to the respondent's husband, the liability to pay the same would subsist and the respondent No. 1 will be entitled to receive the same in accordance with the provisions of the Act. In that regard it is directed that the appellants shall accordingly calculate the gratuity and pay the same to the respondent No. 1, if already not paid. Such payment shall be made within four weeks from this date" <https://www.livelaw.in/top-stories/gratuity-payable-on-resignation-also-155305>*

Sec 4(2) For every completed year of service or part thereof in excess of six months, the employer shall pay gratuity to an employee at the rate of fifteen days wages based on the rate of wages last drawn by the employee concerned:

Provided that in the case of a piece-rated employee, daily wages shall be computed on the average of the total wages received by him for a period of three

months immediately preceding the termination of his employment, and, for this purpose, the wages paid for any overtime work shall not be taken into account.:

Provided further that in the case of [an employee who is employed in a seasonal establishment and who is not so employed throughout the year], the employer shall pay the gratuity at the rate of seven days wages for each season.

Explanation: In the case of a monthly rated employee, the fifteen days wages shall be calculated by dividing the monthly rate of wages last drawn by him by twenty-six and multiplying the quotient by fifteen.

Calculation of gratuity [Sec 4 (2)]

$$\text{Gratuity} = \frac{\text{Monthly salary} \times 15 \times \text{Number of years of service}}{26}$$

- Monthly salary= last month drawn salary by the employee.
- 26 = total number of working days in a month.
- 15 = number of days in half of the month.

Illustration : for monthly salaried employees

$$\text{Gratuity} = (\text{Basic} + \text{DA}) \times 15/26 \times \text{number of years.}$$

Example: If an employee had joined a job on 01-08-2004 and retired or got his job terminated on 30-04-2018, with last drawn basic Salary of Rs 30,000 and DA of Rs 13000, his Gratuity will be:

$$(\text{Rs } 30,000 + \text{Rs } 13,000) \times 15/26 \times 14 = \text{Rs } 3,47,307.70/-$$

Note: Here the employee has completed 14 years of service. The seven months of his first year (August 2005 to March 2006) is to be counted as one year as it is more than six months of service.

Illustration : for seasonal employees

In the case of seasonal employees, 7 days wages for each season of service completed by the employee is considered for calculation. Rest of the formula is same as monthly-rated employees.

For example: If a seasonal employee retires after working from 2006 to 2016, working one season each year, with Rs 11000 Basic and Rs 7000 DA, his gratuity will be

$$7/26 \times (\text{Rs } 11,000 + 7,000) \times 11 = \text{Rs } 53,307.70/-$$

Note: Here the employee has worked for one season every year. Hence, the total season is 11

[Sec 4(3)] The maximum amount of gratuity payable to an employee shall not exceed 3, 50,000/- rupees. (According to the amendment in the 2010, the maximum gratuity payable amount was increased to rupees 10,00,000/-)

According to the (THE PAYMENT OF GRATUITY (AMENDMENT) ACT, 2018) The maximum amount of gratuity payable to an employee **shall not exceed 20,00,000/- rupees.**

Sec 4 (4) For the purpose of computing the gratuity payable to an employee who is employed, after his disablement, on reduced wages, his wages for the period preceding his disablement shall be taken to be the wages received by him during that period, and his wages for the period subsequent to his disablement shall be taken to be the wages as so reduced.

Sec 4 (5) Nothing in this section shall affect the right of an employee to receive better terms of gratuity under any award or agreement or contract with the employer.

Y.K. Singla v. Punjab National Bank and others (2006) 8 SCC 514 ,

The position has been reiterated holding that the employee has to make a choice between the two for drawing the benefit of gratuity and the choice has a statutory protection under sub-Section (5) of Section 4 of the Act.

Deduction of gratuity

[Sec 4(6) (a)] Notwithstanding anything contained in sub-section (i),

(a) the gratuity of an employee, whose services have been terminated for any act, wilful omission or negligence causing any damage or loss to, or destruction of, property belonging to the employer, shall be forfeited to the extent of the damage or loss so caused.

[Sec 4(6) (b)] the gratuity payable to an employee [may be wholly or partially forfeited]

- If the services of such employee have been terminated for his riotous or disorderly conduct or any other act of violence on his part, or
- if the services of such employee have been terminated for any act which constitutes an offence involving moral turpitude, provided that such offence is committed by him in the course of his employment.

Payment of gratuity is not applicable to employee who has been dismissed from the service for the reason of indiscipline or misconduct.

In the case of *Babu Ram V. Phoenix Mills (1999 (1) labour law Journal 2 58)*, the court held that there was a service of petitioner has been terminated by dismissal, it cannot be said that he was in continuous service from the date of employment will the date of superannuation.

Withholding the payment of gratuity during the pendency of the disciplinary proceedings for ordering the recovery from gratuity.: Supreme Court of India - ***Chairman cum Managing Director, Mahanadi Coalfields Limited Vs Sri Rabindranath Choubey***

COMPULSORY INSURANCE. [Sec 4A]

(1) With effect from such date as may be notified by the appropriate Government in this behalf, every employer, other than an employer or an establishment belonging to, or under the control of, the Central Government or a State Government, shall, subject to the provisions of sub-section (2),

(2) The appropriate Government may, subject to such conditions as may be prescribed, exempt every employer who had already established an approved gratuity fund in respect of his employees and who desires to continue such arrangement, and every employer employing five hundred or more persons who establishes an approved gratuity fund in the manner prescribed from the provisions of sub-section (1).

(3) For the purpose of effectively implementing the provisions of this section, every employer shall within such time as may be prescribed get his establishment registered with the controlling authority in the prescribed manner and no employer shall be registered under the provisions of this section unless he has

taken an insurance referred to in sub-section (1) or has established an approved gratuity fund referred to in sub-section (2).

(4) The appropriate Government may, by notification, make rules to give effect to the provisions of this section and such rules may provide for the composition of the Board of Trustees of the approved gratuity fund and for the recovery by the controlling authority of the amount of the gratuity payable to an employee from the Life Insurance Corporation of India or any other insurer with whom an insurance has been taken under sub-section (1), or as the case may be, the Board of Trustees of the approved gratuity fund.

(5) Where an employer fails to make any payment by way of premium to the insurance referred to in sub-section (1) or by way of contribution to an approved gratuity fund referred to in sub-section (2), he shall be liable to pay the amount of gratuity due under this Act (including interest, if any, for delayed payments) forthwith to the controlling authority. Forfeiture of gratuity is permissible only if the termination of an employee is for any misconduct which constitutes an offence involving moral turpitude, and convicted accordingly by a court : Supreme Court of India

[Sec 4A (6)]

Whoever contravenes the provisions of sub-section (5) shall be punishable with fine which may extend to ten thousand rupees and in the case of a continuing offence with a further fine which may extend to one thousand rupees for each day during which the offence continues.

Explanation: In this section "approved gratuity fund" shall have the same meaning as in clause (5) of section 2 of the Income-tax Act, 1961 (43 of 1961).

NOMINATION. [Sec 6]

(1) Each employee, who has completed one year of service, shall make, within such time, in such form and in such manner, as may be prescribed, nomination for the purpose of the second proviso to sub-section (1) of section 4.

(2) An employee may in his nomination, distribute the amount of gratuity payable to him, under this Act amongst more than one nominee.

(3) If an employee has a family at the time of making a nomination, the nomination shall be made in favour of one or more members of his family, and any nomination made by such employee in favour of a person who is not a member of his family, shall be void.

(4) If at the time of making a nomination the employee has no family, the nomination may be made in favour of any person or persons but if the employee subsequently acquires a family, such nomination shall forthwith become invalid and the employee shall make, within such time as may be prescribed, a fresh nomination in favour of one or more members of his family.

(5) A nomination may, subject to the provisions of sub-sections (3) and (4), be modified by an employee at any time, after giving to his employer a written notice in such form and in such manner as may be prescribed, of his intention to do so.

(6) If a nominee predeceases the employee, the interest of the nominee shall revert to the employee who shall make a fresh nomination, in the prescribed form, in respect of such interest.

(7) Every nomination, fresh nomination or alteration of nomination, as the case may be, shall be sent by the employee to his employer, who shall keep the same in his safe custody.

DETERMINATION OF THE AMOUNT OF GRATUITY. [Sec 7]

(1) A person who is eligible for payment of gratuity under this Act or any person authorised, in writing, to act on his behalf shall send a written application to the employer, within such time and in such form, as may be prescribed, for payment of such gratuity.

(2) As soon as gratuity becomes payable, the employer shall, whether an application referred to in sub-section (1) has been made or not, determine the amount of gratuity and give notice in writing to the person to whom the gratuity is payable and also to the controlling authority specifying the amount of gratuity so determined.

(3) The employer shall arrange to pay the amount of gratuity within thirty days from the date it becomes payable to the person to whom the gratuity is payable.

(3A) If the amount of gratuity payable under sub-section (3) is not paid by the employer within the period specified in sub-section (3), the employer shall pay, from the date on which the gratuity becomes payable to the date on which it is paid, simple interest at such rate, not exceeding the rate notified by the Central Government from time to time for repayment of long-term deposits, as that Government may, by notification specify : Provided that no such interest shall be payable if the delay in the payment is due to the fault of the employee and the employer has obtained permission in writing from the controlling authority for the delayed payment on this ground.

(4) (a) If there is any dispute as to the amount of gratuity payable to an employee under this Act or as to the admissibility of any claim of, or in relation to, an employee for payment of gratuity, or as to the person entitled to receive the gratuity, the employer shall deposit with the controlling authority such amount as he admits to be payable by him as gratuity.

(b) Where there is a dispute with regard to any matter or matters specified in clause (a), the employer or employee or any other person raising the dispute may make an application to the controlling authority for deciding the dispute.

(c) The controlling authority shall, after due inquiry and after giving the parties to the dispute a reasonable opportunity of being heard, determine the matter or matters in dispute and if, as a result of such inquiry any amount is found to be payable to the employee, the controlling authority shall direct the employer to pay such amount or, as the case may be, such amount as reduced by the amount already deposited by the employer.

(5) For the purpose of conducting an inquiry under sub-section (4), the controlling authority shall have the same powers as are vested in a court, while trying a suit, under the Code of Civil Procedure, 1908 (5 of 1908), in respect of the following matters, namely :-

(a) enforcing the attendance of any person or examining him on oath;(b) requiring the discovery and production of documents; (c) receiving evidence on affidavits; (d) issuing commissions for the examination of witnesses.

RECOVERY OF GRATUITY. [Sec 8]

If the amount of gratuity payable under this Act is not paid by the employer, within the prescribed time, to the person entitled thereto, the controlling authority shall, on an application made to it in this behalf by the aggrieved person, issue a certificate for that amount to the Collector, who shall recover the same, together with compound interest thereon at such rate as the Central Government may, by notification, specify, from the date of expiry of the prescribed time, as arrears of land revenue and pay the same to the person entitled thereto :

PENALTIES [Sec 9]

- Employer who avoids the payment of the gratuity to the employees, shall be punishable with imprisonment for a term which may extend to 6 months, or with fine which may extend to 10,000/- rupees or with both.
- If any person makes false statements or false representations, they shall be punishable with imprisonment for a term which may extend to 6 months, or with fine which may extend to 10,000/- rupees or with both.
- Employer who disobeys the rules and regulation of the act, shall be punishable with imprisonment for a term which shall not be less than 3 months but which may extend to one year, or with fine which shall not be less than 10,000/- rupees but which may extend to 20,000/- rupees, or with both :

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