Introduction

The Payment of Gratuity Act, 1972 (Act) is a social security legislation which provides post-retirement defined benefits arrangements for employees engaged in various industries, factories and establishments. Gratuity is a tax-free defined benefit that is payable when an employee exits due to resignation, superannuation, physical disablement, etc.

Amendment

The Act has been recently amended vide the Payment of Gratuity (Amendment) Bill, 2018 (Bill). The Bill was earlier cleared by the Union Cabinet on 12 September 2017. Our previous update on the Bill can be accessed here. The Bill was passed by the Lok Sabha on 15 March 2018 and by the Rajya Sabha on 22 March 2018. The Bill is now pending assent of the President, post which it will become effective from the date appointed by the Central Government.

The Act presently prescribes the upper ceiling on payment of gratuity to INR 1,000,000 (Indian Rupees one million). The Bill has done away with prescription of a ceiling, and empowers the Central Government to increase the maximum limit of gratuity from time to time by way of a notification.

The Act presently states that for the purpose of calculation of gratuity of a female employee, the maternity leave of upto 12 (twelve) weeks shall be counted towards the number of days she has actually worked. In addition to enhancement of the upper ceiling, the Bill also omits the ceiling of 12 (twelve) weeks on maternity leave. By way of this amendment, maternity leave, for such period as may be notified by the Central Government from time to time, shall be taken into account for the purpose of calculation of gratuity of a female employee. The purpose of this amendment is to align the Act with the recently introduced higher maternity leave under the Maternity Benefit (Amendment) Act, 2017.

Comment

The amendment gathers intent from the Central Civil Services (Pension) Rules, 1972 (Rules), which is a similar legislation for employees of the Central Government. The gratuity ceiling for employees of the Central Government under the Rules was increased
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from INR 1,000,000 (Indian Rupees one million) to INR 2,000,000 (Indian Rupees two million) after the recommendations of the 7th Central Pay Commission became effective from 1 January 2016.

As per the Act, payment of gratuity is entitled to every employee who (a) has been in continuous service for 5 (five) years or more; and (b) is employed in an establishment with 10 (ten) or more employees. The Act covers the private sector workers and Public Sector Undertakings / Autonomous Organisations which are not covered under the Rules. The long-pending amendment seeks to increase the extent of social security provided to all eligible employees and to align employee benefits in the private sector with those of Central Government employees. Further, it evinces the Government’s intention to consider inflation and wage increase of employees engaged in the private sector.

Having de-freezed the gratuity limit, the Central Government can now increase the maximum limit of gratuity by way of a notification, without requiring a prior nod from the Parliament. This will enable quicker determination of maximum limit of gratuity.

The Bill also envisages to amend the provisions relating to calculation of continuous service for the purpose of gratuity in case of female employees who are on maternity leave, thereby bringing parity between the provisions of the Act and the recently amended Maternity Benefit Act, 1961.

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