

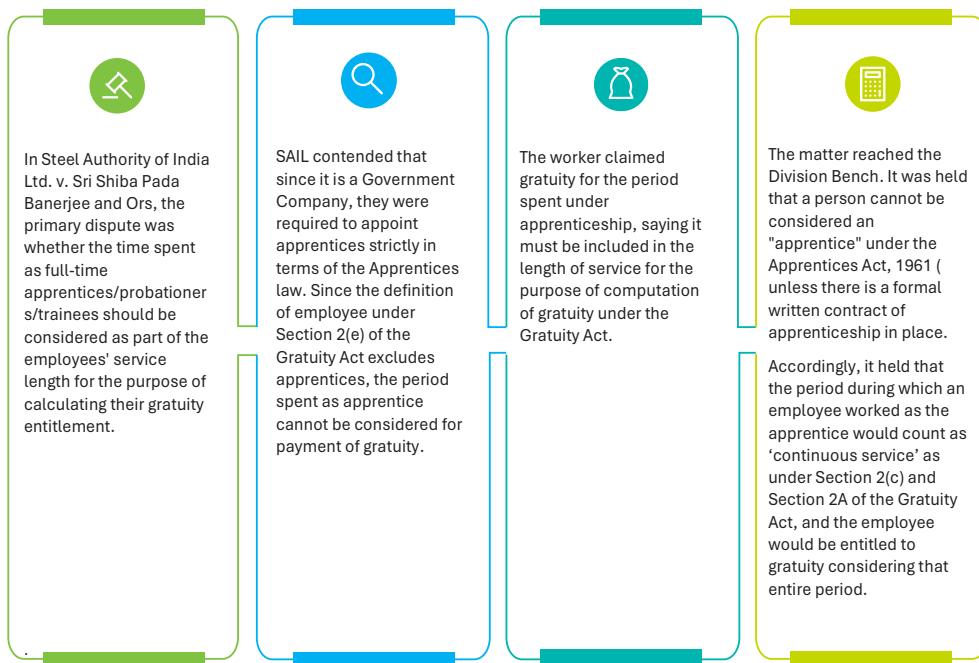


Tax alert: Gratuity implications in absence of appropriate documentation for apprenticeship period

24 June 2025

As per a ruling of the Calcutta High Court, the period during which an employee worked as a trainee/probationer/full time apprentice must be included when calculating the total service period for the purpose of payment of gratuity, in the absence of an apprenticeship agreement.

In a nutshell



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Brief Background

In *Steel Authority of India Ltd. v. Sri Shiba Pada Banerjee and Ors.*¹, there were employees who had been trainees/ full-time apprentices/probationers with Indian Iron and Steel Company ('IISCO'), which had merged with Steel Authority of India Ltd. ('SAIL'). These employees were later offered a Voluntary Retirement Scheme ('VRS') by SAIL, which included a lump sum payment, including gratuity.

Issue

The primary dispute was whether the time spent as full-time apprentices/probationers/trainees should be considered as part of the employees' service length for the purpose of calculating their gratuity entitlement.

Decision of Single bench

The Single Judge Bench, considered it sound and correct in law where the period spent by the workman as 'apprentices' under the IISCO, was not to be construed as part of the service period, for the purpose of computation of gratuity under the Payment of Gratuity Act, 1972 ('Gratuity Act'). The matter was then appealed to the Division Bench of the Calcutta High Court ('HC').

Contention of SAIL

Since the employer is a Government Company, they were required to appoint apprentices strictly in terms of the Apprentices Act, 1961 ('Apprentices Act'). Since the definition of employee under Section 2(e) of the Gratuity Act excludes apprentices, the period spent as apprentice could not be considered for payment of gratuity.

Highlights of the Ruling

The Gratuity Act requires employers in India to pay gratuity as an employee retiral benefit, subject to a minimum employment period. Section 2(c) and Section 2A define the period of 'continuous service' to be considered to determine eligibility of employees for the purpose of gratuity. The Gratuity Act clearly excludes apprentices from the definition of employees. However, the Division Bench investigated the validity of the employees being 'apprentices' as contemplated under the Apprentices Act. The HC stated that a person cannot be considered an "apprentice" unless there is a formal written contract of apprenticeship in place. The HC's reasoning is based on sections 4 and 5 of the Apprentices Act which explicitly require a written contract of apprenticeship to define the terms and conditions of the apprentice's training. It ruled that without the apprenticeship agreement in place, the legal relationship of apprenticeship does not exist.

Accordingly, it held that the period during which an employee worked as the apprentice must be included when calculating the total length of service for the purpose of payment of gratuity. This meant that the training period or probationary service would count as 'continuous service' under the Gratuity Act, and the employee would be entitled to gratuity considering that entire period.

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Comments

This is a key ruling considering it has implications for employers from the perspective of two legislations: the Gratuity Act and the Apprentices Acts. The case highlights the requirement of having an apprenticeship agreement in place to validate the claims of engaging apprentices by employers. This is crucial as employers may need to retain documentation and registration details, to prove compliance with the Apprentices Act. Not having such documents may result in employers bound to treat apprenticeship period as probation and include the period as 'continuous service' for the purpose of calculation of gratuity amount. Keeping appropriate documentation for apprentices is also important to ensure no potential risk of provident fund liability under similar circumstances, for an employer.

¹ 2025 LLR 638, May 19, 2025

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