



ALL INDIA BANK EMPLOYEES' ASSOCIATION

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CIRCULAR LETTER No. 28/96/2018/44

3-9-2018

**TO ALL OFFICE BEARERS, STATE FEDERATIONS AND
ALL INDIA BANKWISE ORGANISATIONS**

Dear Comrades,

Reg: Payment of Gratuity to employees on dismissal

Based on the recent Judgement of the Supreme Court, we have taken up the issue of payment of Gratuity employees on dismissal. The copy of the AIBEA's letter written the IBA today is furnished herein.

**Chief Executive,
Indian Banks' Association
Mumbai.**

Dear Sir,

**Reg: Wrongful forfeiture of Gratuity – Implementation
of recent Supreme Court judgement**

You are aware that Gratuity is payable to an employee in terms of the Gratuity Act, 1972. You are further aware that in terms of Section 4(5) of the Gratuity Act, an employee will receive Gratuity under Bipartite Settlement, if it is more beneficial to the employee.

Under Bipartite Settlement, the following provisions are available:

Clause 12.2 of 1st BPS Dt. 19-10-1966.	There will be no forfeiture of gratuity for dismissal on account of misconduct except in cases where such misconduct causes financial loss to the bank and in that case to that extent only.
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In the Gratuity Act, the following provisions are available:

Section 4(6)(a)	Loss, if any, can be recovered from the Gratuity payable
Section 4(6)(b)(i)	Gratuity can be fully forfeited if the case involves riotous behaviors, violence, etc
Section 4(6)(b)(ii)	Gratuity can be fully forfeited if the dismissal is for any act which constitutes an offence involving moral turpitude.

Firstly, under BPS, employee is entitled to receive Gratuity even for dismissals, subject to recovery of loss if any.

Secondly, even under the Act, to apply Section 4(6)(b)(ii), there must be conviction by the Court for the alleged act involving moral turpitude. Management cannot assume and presume that a misconduct is coming under moral turpitude.

In a recent Supreme Court Judgement dt. 14-8-2018, (Union Bank of India Vs Ajayn Babu), the Apex Court has declared **that it is not for the Bank to decide whether an offence has been committed involving moral turpitude. If there is no conviction of the employee for the misconduct which according to the Bank is an offence involving moral turpitude, there is no justification for forfeiture of Gratuity.**

Hence Section 6.4 (b)(ii) cannot be applied suo motu in all cases on the assumption of moral turpitude. Invariably Banks are using this Section of Gratuity Act and Gratuity is being forfeited.

Hence even in cases involving dismissals, employees are entitled to receive Gratuity both under the Act as well as under the BPS whichever is more beneficial, subject, ofcourse to recovery of losses, if any, if the employee has not been convicted for the offence assumed or alleged as moral turpitude.


We are sending herewith the copy of the Judgement for your ready reference.

We shall thank you to issue a general circular to the Banks to comply with the provisions of the Act/BPS in view of the above Judgement of the Supreme Court.

Thanking you

Yours faithfully,
Sd..
C.H. VENKATACHALAM
GENERAL SECRETARY

With greetings,

Yours Comradely,

C.H. VENKATACHALAM
GENERAL SECRETARY