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Statutory Entitlement of Terminated Employees

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Whether Employees Terminated for Misconduct Entitled to Payment of Statutory Dues

In this day and age of hire and fire, employers usually assume that statutory dues of a managerial employee terminated for misconduct can be legitimately forfeited. This assumption may be far from the established principles of applicable laws. Some of the post termination entitlements of a managerial employee dismissed for misconduct are discussed below:

- (i) **Salary:** Post termination obligations and rights of managerial employees are governed by their contracts and the applicable state's shops and establishment enactment. While in most states employees occupying positions of confidential, managerial or supervisory character are excluded from the purview of the shops and establishment legislations ('S&E Act'), there are a few states such as Punjab and Haryana that do not afford a similar exemption and therefore, employees working in managerial or supervisory capacity in these states fall within the purview of the S&E Act. Consequently, the wages of an employee in these states are liable to be paid within 2 working days of termination without any deductions.

With respect to the other states where the employees working in managerial or supervisory capacity are not protected by the S&E enactments, payment of the unpaid salary is governed by their respective contracts (which usually provide for deduction of salary against losses and damages caused to the employer).
- (ii) **Leave Encashment:** Under the provisions of the S&E Act as applicable to the state of Haryana, the dismissed employee is entitled to wage in lieu of un-availed earned leave up to a total accumulation of 30 days, if any, of previous financial year.

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With respect to other states which do not cover the managerial employees under the S&E enactments, employees would be entitled to payment for the accumulated earned leaves subject to the contractual provisions and company policies related to deductions.

- (iii) Provident Fund: In terms of the Employees' Provident Funds Scheme, 1952 ("**Scheme**"), at the time a member of Scheme (in this case, the terminated employee) leaves the services, the employer is required to forward a duly filled and attested form to the jurisdictional Provident Fund Commissioner.

In view thereof, a copy of the aforementioned application (Form 19) should be provided to the terminated employee, to be filled by him for onward submission to the jurisdictional Provident Fund Commissioner.

- (iv) Gratuity: In terms of the Payment of Gratuity Act, 1972 ("**PGA**"), if the termination of the employment agreement/dismissal of services is, *inter alia* resultant of acts, wilful omission or negligence causing substantial damages to the company, the entitlement of gratuity is liable to be forfeited to the extent of the damages/losses so caused to the company.

However while effecting the aforementioned right of forfeiture of the gratuity entitlement of the terminated employee, the extent of damages/losses caused to the company would need to be substantiated/proved if challenged by the concerned employee. If the company fails to prove such loss the aforementioned forfeiture may be held untenable by the courts (refer the judgment of the High Court of Madhya Pradesh in the case of **Permal Wallance Ltd. vs. State of M.P., 1996 MPLJ 262**).

In view thereof if the claim for gratuity of an employee is being rejected by the company, then the company would need to issue a notice specifying the reasons why the claim for gratuity is not considered admissible. Further, a copy of this notice has to be forwarded to the 'Controlling Authority' notified under the PGA. The terminated employee would be entitled to apply to the Controlling Authority for issuing a direction to the company for payment of the amount of gratuity, within 90 days on receipt of such rejection of his claim. After conducting hearings in the matter, if the Controlling Authority is of the opinion that the gratuity is payable to the employee, then it can issue directions specifying the amount payable and directing payment thereof to the employee under intimation to the Controlling Authority, within 30 days from the date of the receipt of the notice by the company.

In view thereof the terminated employee may challenge the company's decision of forfeiting his gratuity and it will be for the company to prove to the contrary.

In nutshell, the Company would need to release the salary and compensation for the earned leaves to the terminated employee subject to deductions wherever applicable and the gratuity payment can be rejected subject to following the above procedure, which may be subject to challenge by the terminated employee.

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