

**K.J. Somaiya Institute of Management Studies & Research**  
**Vidyavihar (E), Mumbai - 400 077**  
**Program: MMM- II Sem.(2017-20 Batch)**  
**Subject: Personnel Law**  
**(End Term Exam)**

*Total Marks: 25*

*Duration: 1.5 Hours*

*Date: 12<sup>th</sup> April 2018*

*Note: 1. All questions are compulsory.  
2. All questions carry equal marks.*

- Q.1. Write explanatory notes on the following: (Any one)
- a) Continuous Service under The Payment of Gratuity Act, 1936
  - b) Manufacturing Process under The Factories Act, 1948.
- Q.2. Can an employer discharge or dismiss a woman during or on account of absence from work in accordance with the provisions of The Maternity Benefit Act, 1961, or during pregnancy? Can any deductions be made from the normal and daily wages of a woman entitled to maternity benefit?
- Q.3. Rajiv, an employee of the stores department of a factory, had been in employment for six years. Two years back, he was suspended for one day due to misbehaviour with his supervisor. Subsequently, he was also alleged to have attempted to steal a few items of the stores. On an enquiry, he was found guilty and his services were terminated. Is he entitled to the gratuity due to him?
- Q.4. Hotel Amravati is managed by a firm employing more than 100 employees and covered under the provisions of The Employees Provident Fund and Miscellaneous Act, 1952. Some of its partners started a new restaurant in the premises registering the restaurant as a new unit as per the applicable State enactment. The restaurant employed 15 employees and the management of restaurant took a stand that the restaurant is a different establishment and is not covered under the Employees Provident Fund and Miscellaneous Provisions Act, 1952. Will it succeed?
- Q.5. Answer the following:
- a) While working on a machine, a worker accidentally drops a valuable testing appliance which is broken. The employer deducts the value of the appliance from the wages of the worker. Is the deduction justified?
  - b) 12 persons acting in concert absent themselves for 2 days without due notice and without reasonable cause. What is the maximum amount that may be deducted on account of the absence from duty of these persons?

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### **Solution Set**

1. Write explanatory notes on the following:

a) **Continuous service**: A person is in continuous service if the employee has worked for:

- 190 days - establishment which works for less than 6 days in a week
- 240 days - in any other case

In case of seasonal establishment, if he has worked for not less than 75% of the number on which the establishment was in operation during such period.

b) **Manufacturing Process**: Sec 2 (k) It means process for –

- i) making, altering, repairing, ornamenting, finishing, packing, oiling, washing, cleaning, breaking up, demolishing, or otherwise treating or adapting any article or substance with a view to its use, sale, transport, delivery or disposal, or
- ii) pumping oil, water, sewage or any other substance, or
- iii) generating, transforming or transmitting power, or
- iv) composing types for printing, printing by letter press, lithography, photogravure or other similar process or book binding, or
- v) constructing, reconstructing, repairing, refitting, finishing, breaking up ships or vessels, or
- vi) preserving or storing any article in cold storage.

2. According to Sec 12 when a woman absents herself from work in accordance with the provisions of the Act, it shall be unlawful for her employer to discharge or dismiss her during or on account of such absence

But where the dismissal is for any prescribed gross misconduct, the employer may, by order in writing communicated to the woman, deprive her of the maternity benefit or medical bonus referred to in Sec.8 or both.

The following acts shall constitute gross misconduct:

- (a) Wilful destruction of employer's goods or property;
- (b) Assaulting any superior or co-employee at the place of work;
- (c) Criminal offence involving moral turpitude resulting in conviction in a court of law;
- (d) Theft, fraud or dishonesty in connection with the employer's business or property; and
- (e) Wilful non-observance of safety measures or rules or wilful interference with safety devices or with fire-fighting equipment.

Sec 13 states that no deduction from the normal and usual daily wages of a woman entitled to maternity benefit under the provisions of the Act shall be made for the reason that-

- (a) The nature of work assigned to her, by virtue of the provisions contained in sec 4(3) is not of arduous nature, or that the pregnant woman has been given a different nature of work, or
- (b) Breaks for nursing the child are allowed to her under the provisions of Sec.11.

3. According to sec 4(6)(b) of The Payment of Gratuity Act, 1972, in case where the

services of an employee have been terminated:

- (a) For riotous and disorderly conduct or any other act of violence on his part, or
- (b) For any act which constitute moral turpitude committed in course of employment. In the above two cases the gratuity payable to the employee may be wholly or partially forfeited.

In this case the act of stealing in the course of employment amounts moral turpitude, thus gratuity can be forfeited.

- 4. No, the management will not succeed and the provisions of The Provident Fund and Miscellaneous Provisions Act, becomes applicable to it where an establishment to which this Act applies divides itself and operates as an independent unit, even then the Act, becomes applicable to it even if the number of employees is less than 20.
- 5. Answer the following:
  - a) No, as the loss cannot be directly attributable to the worker's neglect or default. {Sec 7(2)(c) and Sec 10}
  - b) Wages for 10 days i.e. two days wages for absence plus 8 day's wages for not giving due notice. Sec 9(2)

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