

## Notes

**8.6.4 Powers and Procedure of Commissioners [Section 23]**

The Commissioner shall have all the powers of a Civil Court under the Code of Civil Procedure 1908 for the purpose of taking evidence on oath (which such Commissioner is hereby empowered to impose) and of enforcing the attendance of witnesses and compelling the production of documents and material objects and the Commissioner shall be deemed to be a Civil Court for all the purposes of section 195 and of Chapter XXVI of the Code of Criminal Procedure 1973.

**8.6.5 Appeals [Section 30]**

An appeal shall lie to the High Court from the following orders of a Commissioner namely:

- An order as awarding as compensation a lump sum whether by way of redemption of a half-monthly payment or otherwise or disallowing a claim in full or in part for a lump sum;
- An order awarding interest or penalty under section 4A;
- An order refusing to allow redemption of a half-monthly payment;
- An order providing for the distribution of compensation among the dependants of a deceased workman or disallowing any claim of a person alleging himself to be such dependant;
- An order allowing or disallowing any claim for the amount of an indemnity under the provisions of sub-section (2) of section 12; or
- An order refusing to register a memorandum of agreement or registering the same or providing for the registration of the same subject to conditions; provided that no appeal shall lie against any order unless a substantial question of law is involved in the appeal and in the case of an order other than an order such as is referred to in clause (b) unless the amount in dispute in the appeal is not less than three hundred rupees; provided further that no appeal shall lie in any case in which the parties have agreed to abide by the decision of the Commissioner or in which the order of the Commissioner gives effect to an agreement come to by the parties; provided further that no appeal by an employer under clause (a) shall lie unless the memorandum of appeal is accompanied by a certificate by the Commissioner to the effect that the appellant has deposited with him the amount payable under the order appealed against.



*Caution* The period of limitation for an appeal under this section shall be sixty days. The provisions of section 5 of the Limitation Act 1963 (36 of 1963) shall be applicable to appeals under this section.

**8.6.6 Withholding of Certain Payments Pending Decision of Appeal [Section 30A]**

Where an employer makes an appeal under clause (a) of sub-section (1) of section 30 the Commissioner may and if so directed by the High Court shall pending the decision of the appeal withhold payment of any sum in deposit with him.



*Task*

Critically analyse the task and procedures of the Commissioners of your area.

## Self Assessment

Notes

Fill in the blanks:

16. No Civil Court shall have jurisdiction to settle decided or deal with any question which is by or under this Act required to be settled decided or dealt with by a ..... or to enforce any liability incurred under this Act.
17. Every Commissioner shall be deemed to be a public servant within the meaning of the .....
18. The Commissioner shall have all the powers of a Civil Court under the Code of Civil Procedure ..... for the purpose of taking evidence on oath.



Case Study

### **A Madras High Court judgment calls for an amendment of the Workmen's Compensation Act, 1923, to benefit the worker**

**A** Judgment of the Madras High Court has raised the hopes of lakhs of workers, particularly those in the unorganised sector, of getting a fair deal in case of an accident at the workplace or a fair compensation to their dependants in case of death. The judgment calls for the amendment of the Workmen's Compensation Act, 1923, which fixes a ceiling of ₹ 4,000 a month as the maximum wage of a labourer while calculating the "employment injury compensation" to an injured workman or while arriving at the compensation to dependants in case of death. Against the backdrop of criticism in trade union circles that the "judiciary has turned its back on the working people and the poor, particularly since the era of economic liberalisation", Justice N. Kirubakaran, in his February 8 judgment, observes thus: "Minimum monthly wages can be fixed and there cannot be any ceiling on the monthly wages. Fixing maximum monthly wages is detrimental to the interests of the working class and would certainly affect the fundamental rights of the workers guaranteed under Articles 19 (1) (g) [Right to carry on occupation] and 21 [Right to life]." He said fixing ₹ 4,000 as the maximum wage, under Section 4 (1) Explanation-II of the Act, went against the very object of the Act and it was high time the Act was amended.

The judgment comes in the wake of an appeal by the Oriental Insurance Company against the award of ₹ 4,34,650 to a mason who suffered 80 per cent disability in an accident during the course of employment on August 20, 2003, and claimed ₹ 3,00,000 as compensation. Going into two "substantial questions of law at the time of admission" of the appeal, the court upheld the decision of the Deputy Commissioner of Labour that the claimant was a "workman" who suffered injuries during the course of employment and confirmed his award fixing the compensation at ₹ 4,34,650. The Centre of Indian Trade Unions (CITU) and the All India Trade Union Congress (AITUC) have welcomed the judgment. Recalling that the Workmen's Compensation Act, 1923, has its origins in the colonial period like many other primary and major Acts, the court pointed out that but for "cosmetic amendments", the main statement of object and reasons for the enactment of the law remained the same. The object of the piece of legislation was to compensate for injuries arising out of accidents during the course of employment and resulting in disablement or death, the judge pointed out. He said that as the object was very laudable and the legislation had been enacted for the benefit of workmen, there should not have been a ceiling on the monthly wage of workers at ₹ 4,000.

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## Notes

“Considering the rise in the earning capacity and spending power, inflation and cost of living, the monthly wage of workmen is bound to rise and change. Therefore, the maximum monthly wage of ₹ 4,000 fixed in the Act is very meagre and requires reconsideration by way of enhancement or deletion of ceiling fixed under Section 4 (1) Explanation II of the Act,” the judge observed. He also wondered why labour forums and associations had missed the implications of the section and had not challenged the provision.

While passing the order, Justice Kirubakaran referred to the January 5 judgment of a two-judge Bench of the Supreme Court of India comprising Justice G.S. Singhvi and Justice Asok Kumar Ganguly in *Harjinder Singh vs. Punjab State Warehousing Corporation*. The judges, in separate but concurring judgments, stressed the need to protect the rights of workers in the liberalised and globalised scenario.

The Madras High Court judgment quotes Justice Singhvi’s observation as follows:

“Of late, there has been a visible shift in the courts’ approach in dealing with the cases involving the interpretation of social welfare legislation. The attractive mantras of globalisation and liberalisation are fast becoming the *raison d’être* of the judicial process and an impression has been created that the constitutional courts are no longer sympathetic towards the plight of industrial and unorganised workers. In large number of cases like the present one, relief has been denied to the employees falling in the category of workmen, who are illegally retrenched from service by creating bylanes and sidelanés in the jurisprudence developed by this court in three decades.”

“The stock plea raised by the public employer in such cases is that the initial employment/ engagement of the workman-employee was contrary to some or the other statute or that reinstatement of the workman will put unbearable burden on the financial health of the establishment. The courts have readily accepted such plea unmindful of the accountability of the wrongdoer and indirectly punished the tiny beneficiary of the wrong, ignoring the fact that he may have continued in the employment for years together and that micro wages earned by him may be the only source of his livelihood. It needs no emphasis that if a man is deprived of his livelihood, he is deprived of all his fundamental and constitutional rights....”

“Therefore, the approach of the courts must be compatible with the constitutional philosophy of which the Directive Principles of State Policy constitute an integral part, and justice due to the workman should not be denied by entertaining the specious and untenable grounds put forward by the employer – public or private.”

Justice Kirubakaran also referred to the observation of Justice Asok Kumar Ganguly, that the court “has a duty to interpret statutes with social welfare benefits in such a way as to further the statutory goal and not to frustrate it. In doing so, this court should make an effort to protect the rights of the weaker sections of society in view of the clear constitutional mandate discussed above.” He further said that while awarding compensation under the Motor Vehicles Act, 1988, factors such as disability, loss of income, pain and suffering, loss of love and affection, loss of consortium, loss of damage to clothes and property and loss of estate are considered whereas under the Workmen’s Compensation Act, disability alone is considered for the purpose of calculating the loss of income.

Stressing the need to revamp the Workmen’s Compensation Act on a par with the Motor Vehicles Act, he said “... an ‘injury’ sustained is always an ‘injury’ and the ‘pain’ suffered is ‘pain’ with all elements and there cannot be any difference whether the victim gets relief under either of the Acts”. Praising the judgment, A.K. Padmanabhan, president of the Tamil Nadu unit of the CITU, said very rarely had a judgment of this type been awarded by the Supreme Court or the High Courts. He described the High Court order and the judgment of the two-judge Bench of the Supreme Court as “exceptional” and said he hoped they would not continue to be exceptions for too long.

*Contd...*

He said three years ago, in Chennai, the State unit of the CITU had submitted a memorandum to the Chief Justice of India expressing concern over the apex court's decisions that had "consistently gone against the working class". On the High Court order calling for the removal of the ceiling on wages for calculating compensation, he said: "This is one area where the government has been consistently taking a negative attitude towards the demands of workers and trade unions." He alleged that the government had made changes in the various enactments on wages wherever it wanted to favour the employers, but nothing of much use to the workers had been done in this regard. With regard to pieces of legislations such as the Workmen's Compensation Act and the Bonus Act, the wage ceiling had not been amended for years, he said. Though it had been continuously pointed out by trade unions in various tripartite meetings including the Indian Labour Conference, the highest tripartite body in the country, that certain sections of the Bonus Act had become obsolete, the wage limits prescribed for the application of the bonus law remained, he added.

Pointing out that only recently the Union Cabinet decided to amend the Gratuity Act, which put a ceiling on the maximum amount payable to workers, he said, these were only a few examples to show how wage ceilings in the present inflationary situations took away the meagre amounts that workers were to get as a benefit or as compensation. At least in the wake of the High Court's judgment, he said, the government should come forward to amend the Workmen's Compensation Act on the lines of the Motor Vehicles Act. Expressing similar sentiments, S.S. Thyagarajan, general secretary of the State unit of the AITUC, said trade unions had always demanded that the government lift the ceiling on the wages for all welfare schemes, including Provident Fund, Employees' State Insurance, and bonus. According to him, the judgment of the High Court "has a tinge of humanitarian consideration". He pointed out that the governments had always been reluctant to effect an upward revision of wages that would benefit workers. Whenever amendments effected an enhancement of wages, the increases became virtually redundant owing to belated implementation, he said. "We hope the essence of the judgment will be taken into account and wages will be enhanced appropriately to benefit workers and their families," he said.

**Question:**

Critically analyse the above case.

Source: <http://www.frontlineonnet.com/fl2707/stories/20100409270709800.htm>

**8.7 Summary**

- The language in Section 3 shows that injury is caused by accident and not 'by an accident'.
- The wilful disregard of the usage of the safety device or safety guard provided for the purpose of securing safety of the workman by the employer.
- Schedule III is divided into three parts, viz., A, B and C. No specific period of employment is necessary for a claim for compensation with respect to occupational diseases mentioned in Part A.
- Section 10 of the Act prescribes that a claim for compensation shall be entertained by the Commissioner only after a notice of the accident has been given to him.
- Every notice shall be served upon the employer. It may be served by delivering it at or sending it by registered post and addressed to the residence or any of office or place of business of the person on whom it is to be served.
- The power to make rules conferred by section 32 shall be subject to the condition of the rules being made after previous publication.

Notes

- Prior to the passing of this Act, the employer was liable to pay compensation only if he was guilty of negligence.
- An injured workman may, if he wishes, file a civil suit for damages against the employer.
- In a civil suit for damages, it is open to the employer to plead all the defences provided by the law of Torts.
- Section 8 of the Act provides for the deposit of the compensation before the Commissioner, as also to the distribution of compensation by the Commissioner.

### 8.8 Keywords

**Compensation:** Compensation of employees (CE) is a statistical term used in national accounts, balance of payments statistics and sometimes in corporate accounts as well.

**Defences:** The action of defending from or resisting attack.

**Employer:** A legal entity that controls and directs a servant or worker under an express or implied contract of employment and pays (or is obligated to pay) him or her salary or wages in compensation.

**Employment:** Employment is a contract between two parties, one being the employer and the other being the employee.

**Enforcement:** Application of a law or regulation, or carrying out of an executive or judicial order.

**Liability:** A company's legal debts or obligations that arise during the course of business operations.

**Occupational Disease:** An occupational disease is any chronic ailment that occurs as a result of work or occupational activity.

**Personal Injury:** Personal injury is a legal term for an injury to the body, mind or emotions, as opposed to an injury to property.

**Workmen Compensation:** Workers' compensation is a form of insurance providing wage replacement and medical benefits to employees injured in the course of employment in exchange for mandatory relinquishment of the employee's right to sue his or her employer for the tort of negligence.

**Workmen:** A man employed to do manual labour.

### 8.9 Review Questions

1. Discuss employer's liability for Compensation.
2. Highlight the notice and claim for Compensation.
3. Describe the power of the State Government to make rules.
4. Explain the Publication of rules.
5. What are the rules made by Central Government to be laid before Parliament?
6. Elucidate the two ways of claiming compensation.
7. Explain the defences of the Employer.
8. Describe the compensation for Permanent Total Disablement.
9. Discuss the compensation for Permanent Partial Disablement.

10. Write brief note on distribution of compensation.
11. Highlight the role of Commissioners.

Notes

### Answers: Self Assessment

- |                       |                        |
|-----------------------|------------------------|
| 1. False              | 2. True                |
| 3. False              | 4. State               |
| 5. 32                 | 6. House of Parliament |
| 7. True               | 8. False               |
| 9. True               | 10. 4                  |
| 11. Compensation      | 12. 25%                |
| 13. False             | 14. True               |
| 15. True              | 16. Commissioner       |
| 17. Indian Penal Code | 18. 1908               |

### 8.10 Further Readings



Books

Davidov, Guy & Langille, Brian (2011). *The Idea of Labour Law*. Oxford University Press.

Davis, Ja E (2012). *Labour Laws*. General Books.

Kumar, H.L. (2010). *Labour Laws*. Universal Law Publishing.

Rao, VSP (2008). *Industrial Relations & Labour Laws*. Excel Books.

Singh, B.D. (2009). *Labour Laws for Managers*. Excel Books India.



Online links

[http://tppl.co.in/admin\\_panel\\_tppl\\_moon/files/Chapter%2015.pdf](http://tppl.co.in/admin_panel_tppl_moon/files/Chapter%2015.pdf)

[http://wiki.answers.com/Q/What\\_is\\_Workmen's\\_Compensation\\_Act\\_1923](http://wiki.answers.com/Q/What_is_Workmen's_Compensation_Act_1923)

<http://www.advocatekhoj.com/library/bareacts/workmenscompensation/index.php?Title=Workmens%20Compensation%20Act,%201923>

<http://www.hrinfo.in/2011/10/workmens-compensation-act-1923-faq.html>

## Unit 9: Payment of Bonus Act, 1965

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### Objectives

After studying this unit, you will be able to:

- Describe an overview of Payment of Bonus Act
- Explain the definitions under this Act
- Discuss the eligibility and disqualification of bonus
- Get an overview of computation of bonus payment
- Describe the powers of inspectors offences and penalties [Sec 27]

## Introduction

Notes

In the previous unit, we dealt with the rules regarding the Workmen's Compensation Act. Annual Bonus is an important component of wage payable to workers. This forms 8 to 10% of the total earnings of workers. As its payment can now be claimed as a legal right, it is looked upon by the working class as a great hope and expectation. Again, as real wages payable to most of the workers in India have not reached even the prewar (1939) level, the annual bonus will continue to play the part of tilling the gap between the existing and the living wage. Though views have been expressed for the total abolition of bonus claim, and instead for raising the wage level, it appears that such a radical step has no chance of acceptance at least till the whole wage policy undergoes a rational and planned formulation in place of its present haphazard growth. The purpose of this Unit is to enable the students to comprehend basic expressions. At the end of this unit you should be able to understand various concepts regarding the Payment of Bonus Act.

## 9.1 An Overview of Payment of Bonus Act

The Payment of Bonus Act, 1965 was enacted to provide for the payment of bonus to persons employed in certain establishments on the basis of profits or productivity and for the matters connected therewith. The Act applies to:- (i) every factory as defined under the Factories Act, 1948; and (ii) every other establishment in which twenty or more persons are employed on any day during an accounting year. However, the Government may, after giving two months' notification in the Official Gazette, make the Act applicable to any factory or establishment employing less than twenty but not less than ten persons.

The Act is enforced through the Central Industrial Relations Machinery (CIRM). CIRM is an attached office of the Ministry of Labour and is also known as the Chief Labour Commissioner (Central) [CLC(C)] Organisation. It is headed by the Chief Labour Commissioner (Central).

### **9.1.1 Concept of Bonus**

Concept of annual profit bonus has a long history behind it. Originally bonus was regarded as a gift or an ex-gratia payment by any employer to his employees in cash or kind to motivate their efforts on important festivals like Diwali, Durga Puja and Onam. Before the First World War some European firms used to give free Dhoties and other household articles on festivals, while Indian firms gave gifts in cash and kind by way of bonus. In Bengal there was a system of paying bonus at the time of Durga Puja irrespective of profit and loss. In large concerns extra payments were made which were called bonus. A proper system of paying bonus was started during the First World War. In 1917 the textile industry in Bombay and Ahmedabad gave 10 percent increase in wages calling it a war bonus, and this was increased to 15 per cent in 1918. After the war when some concerns stopped paying bonus. Workers claimed it (fit as a right, and went on strike. The matter was referred to a committee headed by the Chief Justice of Bombay in February, 1924. The Committee observed that the employees had not established any enforceable claim, customary, legal or equitable. However, workers continued to receive bonus as an ex-gratia payment in concerns which were making profit. During the years that followed bonus ceased to be a serious industrial relations problem due to economic recession.

During the 2nd World War, bonus again became a live issue when industries started making extra-ordinary profits. Though some employers paid bonus voluntarily, many disputes regarding bonus were referred to ad-hoc Industrial Courts of Tribunals for adjudication under the Defence of India Rules. Some of these disputes went upto the Supreme Court also. The adjudicators took the view that profits were made possible by the joint efforts of both capital and labour. The latter therefore had a right to share in the increased profits. This position continued until the Bombay High Court laid down that the payment of Bonus could be demanded by workers as a right, that is to say, a payment which could be made by the employer as extra remuneration for work



**Notes**

done by employees under a contract, express or implied (India Hume Pipe Company. v. E.M. Nanavutty 48 Bombay L.R., 551).



*Example:* The Supreme Court also held in the case of Associated Cement Co. Ltd. v. Their Workers, A.I.R. 1959 S.C. 967 that it is fair and just that labour should derive some share in the surplus available after meeting necessary prior charges.

### 9.1.2 Objectives of this Act

Following are the objectives of this Act:

- To improve statutory liability to pay bonus reward for good work in case of profits or losses.
- To prescribe formula for calculating bonus
- To prescribe minimum & maximum percentage bonus
- To provide of set off/set on mechanism
- To provide redressal mechanism

### 9.1.3 Key Provisions

The key provisions of the Act are:-

- According to the Act, the term 'employee' means "any person employed on a salary or wage not exceeding three thousand and five hundred rupees per mensem in any industry to do any skilled or unskilled manual, supervisory, managerial, administrative, technical or clerical work for hire or reward, whether the terms of employment be express or implied".
- An employee is entitled to be paid by his employer a bonus in an accounting year subjected to the condition that he/she has worked for not less than 30 working days of that year.
- An employer shall pay minimum bonus at the rate of 8.33% of the salary or wages earned by an employee in an year or one hundred rupees, whichever is higher. Here it is not required that the employer has any allocable surplus in the accounting year. However, where an employee has not completed fifteen years of age at the beginning of the accounting year, the minimum bonus payable is 8.33% or sixty rupees, whichever is higher.
- In any accounting year, if the allocable surplus exceeds the amount of minimum bonus payable to the employees, the employer shall in lieu of such minimum bonus, be bound to pay bonus (maximum bonus) equivalent to the amount which shall not exceed 20% of the salary or wages earned by employees.
- In computing the allocable surplus, the amount set on or the amount set off shall be taken into account. In other words:- (i) If, in any accounting year, the allocable surplus exceeds the amount of maximum bonus payable to the employees in the establishment, then the excess surplus is carried forward for being set on in the succeeding accounting year and so on up to and inclusive of the fourth accounting year for the purpose of payment of bonus; or (ii) If there is no or less allocable surplus in respect of that year, then such a shortfall is carried forward for being set off in the succeeding accounting year and so on up to and inclusive of the fourth accounting year.
- Where in any accounting year, any amount has been carried forward and set on or set off, then in calculating bonus for the succeeding accounting year, the amount of set on or set off carried forward from the earliest accounting year shall first be taken into account.

- All amounts payable to an employee by way of bonus under this Act shall be paid in cash by his employer within a month from the date on which the award become enforceable or the settlement comes into operation, in respect of any dispute regarding payment of bonus. But, in any other case, it shall be paid within a period of eight months from the close of the accounting year.
- However, the Government may order, upon receiving application made to it by the employer and for sufficient reasons, to extend the said period of eight months to such further period or periods as it thinks fit, such that the total period so extended shall not, in any case, exceed two years.
- An employee shall be disqualified from receiving bonus if he/she is dismissed from service for:- (i) fraud; or (ii) riotous or violent behaviour while on the premises of the establishment; or (iii) theft, misappropriation or sabotage of any property of the establishment.



Notes

### Applicability of Act (Sec. 1)

Every factory wherein 10 or more persons are employed with the aid of power or an establishment in which 20 or more persons are employed without the aid of power on any day during an accounting year.

## 9.1.4 Duties and Rights of Employer

Duties of Employer are as follows:

- To calculate and pay the annual bonus as required under the Act.
- To submit an annual return of bonus paid to employees during the year to the Inspector, within 30 days of the expiry of the time limit specified for payment of bonus.
- To co-operate with the Inspector, produce before him the registers/records maintained, and such other information as may be required by them.
- To get his account audited as per the directions of a Labour Court/Tribunal or of any such other authority.

An employer has the following rights:

- Right to forfeit bonus of an employee, who has been dismissed from service for fraud, riotous or violent behaviour, or theft, misappropriation or sabotage of any property of the establishment.
- Right to make permissible deductions from the bonus payable to an employee, such as, festival/interim bonus paid and financial loss caused by misconduct of the employee.
- Right to refer any disputes relating to application or interpretation of any provision of the Act, to the Labour Court or Labour Tribunal.



Caselet

### Ghewar Chand

The principle that a ruling of a superior court is binding law is not of scriptural sanctity but is of ratio-wise luminosity within the edifice of facts where the judicial lamp plays the legal flame. So there is no impediment in reading Ghewar Chand's

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**Notes**

case as confined to profit-bonus, leaving room for non-statutory play of customary bonus. That case relates to profit bonus under the Industrial Disputes Act.

The major inarticulate premise of the statute is that it deals with-and only with-profit-based bonus. There is no categorical provision in the Bonus Act nullifying all other kinds of bonus, nor does such a conclusion arise by necessary implication. The core question about the policy of the Parliament that was agitated in that case turned on the availability of the Industrial Disputes Act as an independent method of claiming profit bonus de hors the Bonus Act and the Court took the view that it would be subversive of the scheme of the Act to allow an invasion from the flank in that manner. A discerning and concrete analysis of the scheme of the Act and the reasoning of the Court leaves no doubt that the Act leaves untouched customary bonus.

Source: <http://indiankanoon.org/doc/191016/>

**Self Assessment**

State whether the following statements are true or false:

1. The Act is enforced through the Central Industrial Relations Machinery (CIRM).
2. During the 2nd World War, bonus again became a live issue when industries started making extra-ordinary losses.
3. All amounts payable to an employee by way of bonus under this Act shall be paid in cash by his employer within a month from the date on which the award become enforceable or the settlement comes into operation, in respect of any dispute regarding payment of bonus.

**9.2 Definitions**

In this Act, unless the context otherwise requires -

**Accounting Year**

“Accounting Year” means-

- (i) in relation to a corporation, the year ending on the day on which the books and accounts of the corporation are to be closed and balanced;
- (ii) in relation to a company, the period in respect of which any profit and loss account of the company laid before it in annual general meeting is made up, whether that period is a year or not;
- (iii) in any other case-
  - (a) the year commencing on the 1st day of April; or
  - (b) if the accounts of an establishment maintained by the employer thereof are closed and balanced on any day other than the 31st day of March, then, at the option of the employer, the year ending on the day on which its accounts are so closed and balanced:

Provided that an option once exercised by the employer under paragraph (b) of this sub-clause shall not again be exercised except with the previous permission in writing of the prescribed authority and upon such conditions as that authority may think fit.

**Allocable Surplus**

Notes

“Allocable Surplus” means-

- (a) in relation to an employer, being a company (other than a banking company) which has not made the arrangements prescribed under the Income-tax Act for the declaration and payment within India of the dividends payable out of its profits in accordance with the provisions of section 194 of that Act, 67% of the available surplus in an accounting year;
- (b) in any other case, 60% of such available surplus.

**Available Surplus**

“Available surplus” means the available surplus computed under Sec.5. The available surplus in respect of any accounting year shall be the gross profits for that year after deducting therefrom the sums referred to in section 6:

Provided that the available surplus in respect of the accounting year commencing on any day in the year 1968 and in respect of every subsequent accounting year shall be the aggregate of--

- (a) the gross profits for that accounting year after deducting therefrom the sums referred to in section 6; and
- (b) an amount equal to the difference between--
  - (i) the direct tax, calculated in accordance with the provisions of section 7, in respect of an amount equal to the gross profits of the employer for the immediately preceding accounting year; and
  - (ii) the direct tax, calculated in accordance with the provisions of section 7, in respect of an amount equal to the gross profits of the employer for such preceding accounting year after deducting therefrom the amount of bonus which the employer has paid or is liable to pay to his employees in accordance with the provisions of this Act for that year.

**Direct Tax**

“Direct Tax” means-

- (a) any tax chargeable under-
  - (i) the Income-tax Act;
  - (ii) the Super Profits Tax Act, 1963 (14 of 1963);
  - (iii) the Companies (Profits) Surtax Act, 1964 (7 of 1964);
  - (iv) the agricultural income-tax law; and
- (b) any other tax which, having regard to its nature or incidence, may be declared by the Central Government, by notification in the Official Gazette, to be a direct tax for the purposes of this Act.

**Employee**

“Employee” means any person (other than an apprentice) employed on a salary or wage not exceeding 10,000/- rupees per month in any industry to do any skilled or unskilled manual, supervisory, managerial, administrative, technical or clerical work for hire or reward, whether the terms of employment be express or implied; (2007 amendment).

**Notes**

Rights of Employees are as follows:

- Right to claim bonus payable under the Act and to make an application to the Government, for the recovery of bonus due and unpaid, within one year of its becoming due.
- Right to refer any dispute to the Labour Court/Tribunal Employees, to whom the Payment of Bonus Act does not apply, cannot raise a dispute regarding bonus under the Industrial Disputes Act.
- Right to seek clarification and obtain information, on any item in the accounts of the establishment.

**Establishment in Public Sector**

Establishment in Public Sector means an establishment owned, controlled or managed by-

- (a) a Government company as defined in section 617 of the Companies Act, 1956 (1 of 1956);
- (b) a corporation in which not less than forty per cent of its capital is held (whether singly or taken together) by-
  - (i) the Government; or
  - (ii) the Reserve Bank of India; or
  - (iii) a corporation owned by the Government or the Reserve Bank of India.

The provisions of the Payment of Bonus Act, 1965 do not ordinarily apply to an establishment in public sector. However, if the following two conditions are satisfied by such establishment in any accounting year, the provisions of the Act shall apply to such establishment as they apply to an establishment in the private sector:

- (a) If in any accounting year, an establishment in the public sector sells goods produced or manufactured by it or renders any services, in competition with an establishment in private sector; and
- (b) The income from such sale or services is not less than 20% of the gross income of the establishment in public sector in that year. (Section 20)

**Establishment in Private Sector**

“Establishment in Private Sector” means any establishment other than an establishment in public sector.

**Self Assessment**

Fill in the blanks:

- 4. The ..... in respect of any accounting year shall be the gross profits for that year after deducting therefrom the sums referred to in section 6.
- 5. The ..... tax, calculated in accordance with the provisions of section 7, in respect of an amount equal to the gross profits of the employer for the immediately preceding accounting year.
- 6. Establishment in ..... Sector means any establishment other than an establishment in public sector.

## 9.3 Eligibility and Disqualification of Bonus

Notes

The explanation and criteria for Eligibility and Disqualification of Bonus are given below:

### 9.3.1 Eligibility for Bonus [Sec. 8]

Every employee receiving salary or wages upto ₹ 3,500 p.m. and engaged in any kind of work whether skilled, unskilled, managerial, supervisory etc. is entitled to bonus for every accounting year if he has worked for at least 30 working days in that year.



Notes  
2007.

This ceiling of ₹ 3,500 has been revised to ₹ 10,000 with effect from November,

“Salary or wages” means all remuneration (other than remuneration in respect of over-time work), includes dearness allowance but does not include:

- (i) any other allowance
- (ii) the value of any house accommodation or of supply of light, water, medical attendance or other amenity or of any service or of any concessional supply of food grains or other articles;
- (iii) any travelling concession;
- (iv) any bonus (including incentive, production and attendance bonus);
- (v) any contribution paid or payable by the employer to any pension fund or provident fund;
- (vi) any retrenchment compensation or any gratuity or other retirement benefit;
- (vii) any commission payable to the employee.



**Caution** Free food allowance or free food by his employer, such food allowance or the value of such food in lieu of salary is deemed to form part of the salary or wages of such employee.



**Did u know?** Payment of Minimum Bonus: 8.33% of the salary or ₹ 100 (on completion of 5 years after 1st Accounting year even if there is no profit).

### 9.3.2 Disqualification of Bonus

Notwithstanding anything contained in this Act, an employee shall be disqualified from receiving bonus under this Act, if he is dismissed from service for –

- (a) fraud; or
- (b) riotous or violent behavior while on the premises of the establishment; or
- (c) theft, misappropriation or sabotage of any property of the establishment.

Notes



Notes

**Payment of Bonus Act not to apply to certain classes of employees [Section 32]**

1. Life Insurance Corporation
2. The Indian Red Cross Society or any other institution of a like nature,
3. Universities and other educational institutions,
4. Institutions (including hospitals, chambers of commerce and society welfare institutions) established not for purposes of profit,
5. Employees employed through contractors on building operations,
6. Employees employed by the Reserve Bank of India,
7. The Industrial Finance Corporation of India,
8. Financial Corporations,
9. The National Bank for Agriculture and Rural Development,
10. The Unit Trust of India,
11. The Industrial Development Bank of India,



Task

Explain.

Does this Act prescribe any disqualifications also for claiming bonus?

**Self Assessment**

Fill in the blanks:

7. .... means all remuneration (other than remuneration in respect of over-time work), includes dearness allowance.
8. An ..... shall be disqualified from receiving bonus under this Act, if he is dismissed from service for fraud.
9. Every employee receiving salary or wages upto ..... and engaged in any kind of work whether skilled, unskilled, managerial, supervisory etc. is entitled to bonus for every accounting year if he has worked for at least 30 working days in that year.

**9.4 Computation of Bonus Payment**

The method for calculation of annual bonus is as follow:

**9.4.1 Computation of Gross Profits [Sec. 4]**

There are a few differences in computation of gross profits in case of banking company and other than banking companies. For accurate computation of the gross profits in case of banking companies refer to First schedule and for other companies but not banking companies refer to Second schedule. But overview for computation of gross profits is mentioned below:

Net profit (P&L a/c) +Add following items

Notes

- Income tax provision for: Bonus to employees, Depreciation, Direct taxes,
- Bonus paid to employees in respect of previous accounting years
- The amount, if any, paid to, or provided for payment to, an approved gratuity fund
- The amount actually paid to employees on their retirement or on termination of their employment for any reason
- Donations
- annuity due
- Capital expenditure (other than capital expenditure on scientific research)
- capital losses
- capital losses (other than losses on sale) of capital assets on which depreciation has been allowed for income-tax or agricultural income-tax).
- Losses of, or expenditure relating to, any business situated outside India.

**Deduct:**

- (a) Capital receipts and capital profits (other than profits on the sale of assets on which depreciation has been allowed for income-tax or agricultural income-tax).
- (b) Profits of, and receipts relating to, any business situated outside India.
- (c) Income of foreign concerns from investments outside India.
- (d) Expenditure or losses (if any) debited directly to reserves, other than -
  - (i) Capital expenditure and capital losses (other than losses on sale of capital assets on which depreciation has not been allowed for income-tax or agricultural income-tax);
  - (ii) Losses of any business situated outside India.
- (e) In the case of foreign concerns proportionate administrative (over head) expenses of Head Office allocable to Indian business.
- (f) Refund of any direct tax paid for previous accounting years and excess provision, if any, of previous accounting years relating to bonus, depreciation, taxation or development rebate or development allowance, if written back.

#### 9.4.2 Computation of Available Surplus [Section 5]

Available surplus = gross profit [derived as per First Schedule or Second Schedule of this Act] - (minus) Depreciation, investment allowance or development allowance [Section 6] - (minus) direct taxes payable [Section 7] - (minus) further sums as are specified in respect of the employer in the Third Schedule of this Act consist of dividend payable (preference shares), reserves and % of paid up equity share capital [investment].

#### 9.4.3 Computation of Allocable Surplus [Sec. 2(4)]

Allocable surplus= 67% of the available surplus (other than banking companies) or 60% of the available surplus (banking companies and companies linked with abroad).

Payment of bonus calculated on the allocable surplus which is derived by the above calculation.



## Notes

**9.4.4 Set-on and Set-off of Allocable Surplus [Sec. 15]***Set-on (In case of huge profits)*

Excess allocable surplus, remained after paying the maximum bonus of 20% on the wage or salary of the employee, Should be carried forward to the next following year to be utilized for the purpose of payment of bonus in case of the shortage of the allocable surplus or losses occur. This is called as Set-on.

*Set-off (in case of losses occur)*

When there are no profits (available surplus or allocable surplus) or the amount falls short or deficiency for payment of minimum bonus to employees 8.33%, such deficiency amount should be adjusted to the current accounting year from the Set-on amount which was carried forward in case of excess allocable surplus in the previous year. This is called as Set-off.



*Example:*

- In this Schedule, the total amount of bonus equal to 8.33 per cent of the annual salary or wage payable to all the employees is assumed to be ₹ 1,04,167. Accordingly,
- Maximum bonus to which all the employees are entitled to be paid (20% of the annual salary or wage of all the employees) would be ₹ 2,50,000.

Year	Amount equal to sixty per cent. or sixty-seven per cent, as the case may be, of an available surplus allocable as bonus	Amount payable as bonus	Set on or set off the year carried forward	Total set on or set off Carried Forward	
	₹	₹	₹	₹	of (year)
1.	1,04,167	1,04,167**	Nil	Nil	
2.	6,35,000	2,50,000*	set on 2,50,000*	set on 2,50,000*	(2)
3.	2,20,000	2,50,000* (inclusive of 30,000 from year-2)	Nil	Set on 2,20,000	(2)
4.	3,75,000	2,50,000*	Set on 1,25,000	Set on 2,20,000 1,25,000	(2) (4)
5.	1,40,000	2,50,000* (inclusive of 1,10,000 from year-2)	Nil	Set on 1,10,000 1,25,000	(2) (4)
6.	3,10,000	2,50,000*	Nil	Set on Nil + 1,25,000 60,000	(2) (4) (6)

*Contd...*

						Notes
7.	1,00,000	2,50,000* (Inclusive of 1,25,000 from year-4 and 25,000 from year-6)	Nil	Set on 35,000	(6)	
8.	Nil (due to loss)	1,04,167** (inclusive of 35,000 from year-6)	Set off 69,167	Set off 69,167	(8)	
9.	10,000	1,04,167***	Set off 94,167	Set off 69,167 94, 1267	(8) (9)	
10.	2,15,000	1,04,167** (after setting off 69, 167 from year-8 and 41,666 from year-9)	Nil	Set off 52,501	(9)	

\* Maximum

\*\* Minimum

\*\*\*The balance of ₹ 1,10,000 set on from year-2 lapses.



Task

State the deductions which are allowed under the Third Schedule of the Payment of Bonus Act, 1965 for the purpose of computation of 'Available surplus' in the case of a Banking Company, which is not a Foreign Company.

## Self Assessment

State whether the following statements are true or false:

- There are few differences in computation of gross profits in case of banking company and other than banking companies.
- Set off is the excess allocable surplus remain after paying the maximum bonus of 20% on the wage or salary of the employee.
- When there are no profits (available surplus or allocable surplus) or the amount falls short or deficiency for payment of minimum bonus to employees 8.33%, such deficiency amount should be adjusted to the current accounting year from the set-on amount which was carried forward in case of excess allocable surplus in the previous year.

## 9.5 Powers of Inspectors, and Offences and Penalties [Sec. 27]

The appropriate government may, by notification in the Official Gazette appoint such persons as it thinks fit to be Inspectors for the purposes of this Act and may define the limits within which they shall exercise jurisdiction.

Notes

### 9.5.1 Powers of Inspectors

The powers of Inspectors are as follows:

1. An Inspector appointed under sub-section (1) may, for the purpose of ascertaining whether any of the provisions of this Act has been complied with-
  - ❖ require an employer to furnish such information as he may consider necessary;
  - ❖ at any reasonable time and with such assistance, if any, as he thinks fit, enter any establishment or any premises connected therewith and require anyone found in charge thereof to produce before him for examination any accounts, books, registers and other documents relating to the employment of persons or the payment of salary or wages or bonus in the establishment;
  - ❖ examine with respect to any matter relevant to any of the purposes aforesaid, the employer, his agent or servant or any other person found in charge of the establishment or any premises connected therewith or any person whom the Inspector has reasonable cause to believe to be or to have been an employee in the establishment;
  - ❖ make copies of, or take extracts from, any book, register or other document maintained in relation to the establishment;
  - ❖ exercise such other power as may be prescribed.
2. Every Inspector shall be deemed to be a public servant within the meaning of the Indian Penal Code (45 of 1860).
3. Any person required to produce any accounts, books, register or other documents or to give information by an Inspector under sub-section (1) shall be legally bound to do so.
4. Nothing contained in this section shall enable an Inspector to require a banking company to furnish or disclose any statement or information or to produce, or give inspection of any of its books of account or other documents, which a banking company cannot be compelled to furnish, disclose, produce or give inspection of, under the provisions of section 34A of the Banking Regulation Act, 1949 (10 of 1949).

### 9.5.2 Offences and Penalties [Secs. 28 & 29]

The offences and penalties of Inspectors are as follows:

1. For contravention of the provisions of the Act or rules the penalty is imprisonment upto 6 months or fine up to ₹ 1000, or both.
2. In case of offences by companies, every person who, at the time the offence was committed, was in charge of, and was responsible to, the company for the conduct of business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly: any such person liable to any punishment if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.

### Self Assessment

Fill in the blanks:

13. The appropriate government may, by notification in the ..... appoint such persons as it thinks fit to be Inspectors for the purposes of this Act and may define the limits within which they shall exercise jurisdiction.

14. Every ..... shall be deemed to be a public servant within the meaning of the Indian Penal Code (45 of 1860).
15. For contravention of the provisions of the Act or rules the penalty is imprisonment upto ..... months or fine up to ₹ 1000, or both.

Notes



Case Study

### **Mumbai Kamgar Sabha, Bombay vs M/s Abdulbhai Faizullabhai & Ors on 10 March, 1976**

A considerable number of workmen were employed by a large number of small businessmen in a locality in the city. Prior to 1965, the employers made ex-gratia payment to the workers by way of bonus which they stopped from that year. A Board of Arbitrators appointed under s. 10A of the Industrial Disputes Act, to which the bonus dispute was referred, rejected the workers demand for bonus. The dispute was eventually referred to an Industrial Tribunal which in limine dismissed the workers' demand as being barred by res judicata, in view of the decision of the Arbitration Board. The Tribunal in addition held that bonus so far paid having been founded on tradition and custom, did not fall within the four-corners of the Bonus Act which is a complete code and came to the conclusion that the workers were not entitled bonus. On appeal to this Court it was contended that (i) the appellant-Union not being a party to the dispute had no locus standi, (ii) the claim of the workmen not being profit-based bonus, which is what the Bonus Act deals with, the Act has no application to this case; and (iii) since no case of customary or contract bonus was urged before the Arbitration Board such a ground was barred by the general principles of res judicata.

#### **Dismissing the appeal**

In an industrial dispute the process of conflict resolution is informal, rough and ready and invites a liberal approach. Technically the union cannot be the appellant, the workmen being the real parties. There is a terminological lapse in the cause title, but a reading of the petition, the description of the parties, the grounds urged and grievances aired, show that the battle was between the workers and the employers and the Union represented the workers. The substance of the matter being obvious, formal defects fades away. Procedural prescriptions are handmaids, not mistresses of justice and failure of fair play is the spirit in which Courts must view processual deviances. Public interest is promoted by a spacious construction of locus standi in our socio-economic circumstances, conceptual latitudinarianism permits taking liberties with individualisation of the right to invoke the higher courts where the remedy is shared by a considerable number, particularly when they are weaker. In industrial law collective bargaining, union representation at conciliations, arbitrations, adjudications and appellate and other proceedings is a welcome development and an enlightened advance in industrial life. [597G] In the instant case the union is an abbreviation for the totality of workmen involved in the dispute. The appeal is, therefore, an appeal by the workmen compendiously projected and impleaded through the union. [598D] [592]

The demands referred by the State Govt. under s. 10(1) (d) of the Industrial Disputes Act, specifically speak of payment of bonus by the employers which had become custom or usage or a condition of service in the establishments. The subject matter of the dispute referred by the Govt. dealt with bonus based on custom or condition of service. The Tribunal was bound to investigate this question. The workers in their statements urged that the demand was not based on profits or financial results of the employer but was based on custom. The pleadings, the terms of reference and the surrounding circumstances

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