ECONOMIC AND LABOUR LAWS
PART B – LABOUR LAWS

STUDY XVI - PAYMENT OF BONUS ACT, 1965

LEARNING OBJECTIVES

The Payment of Bonus Act, 1965 provides for payment of bonus to persons employed in certain establishments on the basis of profits or on the basis of production or productivity and for matters connected therewith. The students must be familiar with the basic legal framework envisaged under the Act to understand the main principles involved in the grant of bonus to workers.

At the end of the study lesson, you should be able to understand:

- Scope and application of the Act
- Eligibility for bonus and its payment
- Bonus linked with production
- Exemption
- Compliances under the Act
- Offences and penalties

INTRODUCTION

The term "bonus" is not defined in the Payment of Bonus Act, 1965. Websters International Dictionary, defines bonus as "something given in addition to what is ordinarily received by or strictly due to the recipient". The Oxford Concise Dictionary defines it as "something to the good into the bargain (and as an example) gratuity to workmen beyond their wages". The purpose of payment of bonus is to bridge the gap between wages paid and ideal of a living wage.

OBJECT AND SCOPE OF THE ACT

The object of the Act is to provide for the payment of bonus to persons employed in certain establishments and for matters connected therewith. **Shah J. observed in *Jalan Trading Co. (Pvt.) Ltd.* v. *Mill Mazdor Sabha,* AIR 1967 S.C. 691, that the "object of the Act being to maintain peace and harmony between labour and capital by allowing the employees to share the prosperity of the establishment and prescribing the maximum and minimum rates of bonus together with the**

scheme of "set-off" and "set on" not only secures the right of labour to share in the profits but also ensures a reasonable degree of uniformity".

On the question whether the Act deals only with profit bonus, **it was observed by the Supreme Court in *Mumbai Kamgar Sabha* v. *Abdulbhai Faizullabhai,* (1976) II LLJ 186, that "bonus" is a word of many generous connotations and, in the Lord's mansion, there are many houses. There is profit based bonus which is one specific kind of claim and perhaps the most common. There is customary or traditional bonus which has its emergence from long, continued usage leading to a promissory and expectancy situation materialising in a right. There is attendance bonus and what not. The Bonus Act speak and speaks as a whole Code on the sole subject of profit based bonus but is silent and cannot, therefore, annihilate by implication, other distinct and different kinds of bonuses, such as the one oriented on custom. The Bonus Act, 1965 as it then stood does not bar claims to customary bonus or those based on conditions of service. Held, a discerning and concrete analysis of the scheme of the Bonus Act and reasoning of the Court leaves no doubt that the Act leaves untouched customary bonus.**

The provision of the Act have no say on customary bonus and cannot, therefore, be inconsistent therewith. Conceptually, statutory bonus and customary bonus operate in two fields and do not clash with each other (*Hukamchand Jute Mills Limited* v. *Second Industrial Tribunal, West Bengal;* 1979-I Labour Law Journal 461).

APPLICATION OF THE ACT

According to Section 1(2), the Act extends to the whole of India, and as per Section 1(3) the Act shall apply to

a. every factory; and
b. every other establishment in which twenty or more persons are employed on any day during an accounting year.

Provided that the appropriate Government may, after giving not less than two months notice of its intention so to do, by notification in the Official Gazette apply the provisions of this Act with effect from such accounting year as may be specified in the notification to any establishment including an establishment being a factory within the meaning of sub-clause (ii) of clause (m) of Section 2 of the Factories Act, 1948 employing such number of persons less than twenty as may be specified in the notification; so, however, that the number of persons so specified shall in no case be less than ten.

Save as otherwise provided in this Act, the provisions of this Act shall, in relation to a factory or other establishment to which this Act applies, have effect in respect of the accounting year commencing on any day in the year 1964 and in respect of every subsequent accounting year:

Provided that in relation to the State of Jammu and Kashmir, the reference to the accounting year commencing on any day in the year 1964 and every subsequent accounting year shall be construed as reference to the accounting year commencing on any day in the year 1968 and every subsequent accounting year.

Provided further that when the provisions of this Act have been made applicable to any establishment or class of establishments by the issue of a notification under the proviso to sub-section (3), the reference to the accounting year commencing on any day in the year 1964 and every subsequent accounting year, or, as the case may be, the reference to the accounting year commencing on any day in the year 1968 and every subsequent accounting year, shall, in relation to such establishment or class of establishments, be construed as a reference to the accounting year specified in such notification and every subsequent accounting year [Section 1(4)].

An establishment to which this Act applies shall continue to be governed by this Act notwithstanding that the number of persons employed therein falls below twenty, or, as the case may be, the number specified in the notification issued under the proviso to sub-section (3).

ACT NOT TO APPLY TO CERTAIN CLASSES OF EMPLOYEES

Section 32 of this Act provides that the Act shall not apply to the following classes of employees:

i. employees employed by any insurer carrying on general insurance business and the employees employed by the Life Insurance Corporation of India;
ii. seamen as defined in clause (42) of Section 3 of the Merchant Shipping Act, 1958;
iii. employees registered or listed under any scheme made under the Dock Workers (Regulation of Employment) Act, 1948 and employed by registered or listed employers;
iv. employees employed by an establishment engaged in any industry called on by or under the authority of any department of Central Government or a State Government or a local authority;
v. employees employed by

a. the Indian Red Cross Society or any other institution of a like nature including its branches;
b. universities and other educational institutions;
c. institutions (including hospitals, chambers of commerce and social welfare institutions) established not for the purpose of profit;

vi. …….[*]
vii. employees employed by the Reserve Bank of India;
viii. employees employed by

a. the Industrial Finance Corporation of India;
b. any Financial Corporation established under Section 3, or any Joint Financial Corporation established under Section 3A of the State Financial Corporations Act, 1951;
c. the Deposit Insurance Corporation;
d. the National Bank for Agriculture and Rural Development;
e. the Unit Trust of India;
f. the Industrial Development Bank of India;

(fa) the Small Industries Development Bank of India established under Section 3 of the Small Industries Development Bank of India Act, 1989;

(fb) the National Housing Bank;

g. any other financial Institution (other than Banking Company) being an establishment in public sector, which the Central Government may by notification specify having regard to (i) its capital structure; (ii) its objectives and the nature of its activities; (iii) the nature and extent of financial assistance or any concession given to it by the Government; and (iv) any other relevant factor;

ix. employees employed by inland water transport establishments operating on routes passing through any other country.

Apart from the above, the appropriate Government has necessary powers under Section 36 to exempt any establishment or class of establishments from all or any of the provisions of the Act for a specified period having regard to its financial position and other relevant circumstances and if it is of the opinion that it will not be in the public interest to apply all or any of the provisions of this Act thereto. It may also impose such conditions while according the exemptions as it may consider fit to impose.

IMPORTANT DEFINITIONS

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. [Section 2(1)]

Allocable Surplus

It 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, sixty-seven per cent of the available surplus in an accounting year;
b. in any other case sixty per cent of such available surplus. [Section 2(4)]

Available Surplus

It means the available surplus under Section 5. [Section 2(6)]

Award

"Award" means an interim or a final determination of any industrial dispute or of any question relating thereto by any Labour Court, Industrial Tribunal or National Tribunal Constituted under the Industrial Disputes Act, 1947 or by any other authority constituted under any corresponding law relating to investigation and settlement of industrial disputes in force in a State and includes an arbitration award made under Section 10A of that Act or under that law. [Section 2(7)]

Corporation

"Corporation" means any body corporate established by or under any Central, Provincial or State Act but does not include a company or a co-operative society. [Section 2(11)]

Employee

"Employee" means any person (other than an apprentice) employed on a salary or wages not exceeding Rs. 10,000[*1] per mensem in any industry to do any skilled or unskilled, manual, supervisory, managerial, administrative, technical or clerical work of hire or reward, whether the terms of employment be express or implied. [Section 2(13)]

Part time permanent employees working on fixed hours are employees (1971 (22) FLR 98).

Employer

"Employer" includes:

i. in relation to an establishment which is a factory, the owner or occupier of the factory, including the agent of such owner or occupier, the legal representative of a deceased owner or occupier, and where a person has been named as a manager of the factory under Clause (f) of Sub-section 7(1) of the Factories Act, 1948, the person so named; and
ii. in relation to any other establishment, the person who, or the authority which, has the ultimate control over the affairs of the establishment and where the said affairs are entrusted to a manager, managing director or managing agent, such manager, managing director or managing agent. [Section 2(14)]

Establishment in Private Sector

It means any establishment other than an establishment in public sector. [Section 2(15)]

Establishment in Public Sector

It means an establishment owned, controlled or managed by:

a. a Government company as defined in Section 617 of the Companies Act, 1956;
b. a corporation in which not less than forty percent 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. [Section 2(16)]

Salary or Wage

The "salary or wage" means all remuneration (other than remuneration in respect of over-time work) capable of being expressed in terms of money, which would, if the terms of employment, express or implied, were fulfilled, be payable to an employee in respect of his employment or of work done in such employment and includes dearness allowance (that is to say, all cash payments, by whatever name called, paid to an employee on account of a rise in the cost of living) but does not include:

i. any other allowance which the employee is for the time being entitled to;
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 foodgrains 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 or for the benefit of the employee under any law for the time being in force;
vi. any retrenchment compensation or any gratuity or other retirement benefit payable to the employee or any ex-gratia payment made to him;
vii. any commission payable to the employee. [Section 2(21)]

The Explanation appended to the Section states that where an employee is given in lieu of the whole or part of the salary or, wage payable to him, free food allowance or free food by his employer, such food allowance or the value of such food shall, for the purpose of this clause, be deemed to form part of the salary or wage of such employee.

The definition is wide enough to cover the payment of retaining allowance and also dearness allowance paid to the workmen. It is nothing but remuneration *(Chalthan Vibhag Sahakari Khand Udyog* v.*Government Labour Officer* AIR 1981 SC 905). Subsistence allowance given during suspension is not wages. However lay-off compensation is wages.

Establishment **—** *Meaning of*

Section 3 of the Act provides that the word establishment shall include all its departments, undertakings and branches wherever it has so whether situated in the same place or in different places and the same shall be treated as parts of the same establishment for the purpose of computation of bonus under this Act:

Provided that where for any accounting year, a separate balance-sheet and profit and loss account are prepared and maintained in respect of any such department or undertaking or branch then such department, undertaking or branches shall be treated as a separate establishment for the purpose of computation of bonus under this Act for that year, unless such department, or undertaking or branch was, immediately before the commencement of that accounting year treated as part of establishment for the purpose of computation of bonus.

CALCULATION OF AMOUNT PAYABLE AS BONUS

The Act has laid down a detailed procedure for calculating the amount of bonus payable to employees. First of all, Gross Profit is calculated as per First or Second Schedule. From this Gross Profit, the sums deductible under Section 6 are deducted. To this figure, we add the sum equal to the difference between the direct tax calculated on gross profit for the previous year and direct tax calculated on gross profit arrived at after deducting the bonus paid or payable to the employees. The figure so arrived will be the available surplus. Of this surplus, 67% in case of company (other than a banking company) and 60% in other cases, shall be the “allocable surplus” which is the amount available for payment of bonus to employees. The details of such calculations are given below.

i. *Computation of gross profits*

As per Section 4, the gross profits derived by an employer from an establishment in respect of any accounting year shall:

a. in the case of banking company be calculated in the manner specified in the First Schedule.

b. in any other case, be calculated in the manner specified in the Second Schedule.

ii. *Deductions from gross profits*

According to Section 6, the sums deductible from gross profits include

a. any amount by way of depreciation admissible in accordance with the provisions of Section 32(1) of the Income-tax Act, or in accordance with the provisions of the Agricultural Income-tax Law, as the case may be:

Provided that where an employer has been paying bonus to his employees under a settlement or an award or agreement made before the 29th May, 1965, and subsisting on that date after deducting from the gross profits notional normal depreciation, then, the amount of depreciation to be deducted under this clause shall, at the option of such employer (such option to be exercised once and within one year from that date) continue to be such notional normal depreciation.

What is deductible under Section 6(a), is depreciation admissible in accordance with the provisions of Section 32(1) of the Income- tax Act and not depreciation allowed by the Income-tax Officer in making assessment on the employer.

b. any amount by way of development rebate, investment allowance, or development allowance which the employer is entitled to deduct from his income under the Income Tax Act.
c. subject to the provisions of Section 7, any direct tax which the employer is liable to pay for the accounting year in respect of his income, profits and gains during the year.
d. such further sums as are specified in respect of the employer in the Third Schedule.

iii. *Calculation of direct tax payable by the employer*

Under Section 7, any direct tax payable by the employer for any accounting year shall, subject to the following provisions, be calculated at the rates applicable to the income of the employer for that year, namely:

a. in calculating such tax no account shall be taken of

   i. any loss incurred by the employer in respect of any previous accounting year and carried forward under any law for the time being in force relating to direct taxes;

ii. any arrears of depreciation which the employer is entitled to add to the amount of the allowance for depreciation for any following accounting year or years under sub-section (2) of Section 32 of the Income-tax Act;
iii. any exemption conferred on the employer under Section 84 of the Income-tax Act or of any deduction to which he is entitled under sub-section (1) of Section 101 of that Act, as in force immediately before the commencement of the Finance Act, 1965;

b. where the employer is a religious or a charitable institution to which the provisions of Section 32 do not apply and the whole or any part of its income is exempt from tax under the Income-tax Act, then, with respect to the income so exempted, such institution shall be treated as if it were a company in which the public are substantially interested within the meaning of that Act;
c. where the employer is an individual or a Hindu undivided family, the tax payable by such employer under the Income-tax Act shall be calculated on the basis that the income derived by him from the establishment is his only income.

iv. *Computation of available surplus*

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. (Section 5)

ELIGIBILITY FOR BONUS AND ITS PAYMENT

i. *Eligibility for bonus*

Every employee shall be entitled to be paid by his employer in an accounting year, bonus, in accordance with the provisions of this Act, provided he has worked in the establishment for not less than thirty working days in that year. (Section 8) **An employee suspended but subsequently reinstated with full back wages can not be treated to be ineligible for bonus for the period of suspension. [*Project Manager, Ahmedabad Project, ONGC* v. *Sham Kumar Sahegal* (1995) 1 LLJ 863]**

ii. *Disqualification for bonus*

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 behaviour while on the premises or the establishment; or
c. theft, misappropriation or sabotage of any property of the establishment. (Section 9)

This provision is based on the recommendations of the Bonus Commission which observed"after all bonus can only be shared by those workers who promote the stability and well-being of the industry and not by those who positively display disruptive tendencies. Bonus certainly carries with it obligation of good behaviour".

If an employee is dismissed from service for any act of misconduct enumerated in Section 9, he stands disqualified from receiving any bonus under the Act, and not the bonus only for the accounting year in which the dismissal takes place (*Pandian Roadways Corpn. Ltd.* v. *Preseding Officer, Principal Labour Court,* (1996) 2 LLJ 606).

iii. *Payment of minimum bonus*

Section 10 states that subject to the other provisions of this Act, every employer shall be bound to pay to every employee in respect of any accounting year a minimum bonus which shall be 8.33 per cent of the salary or wage earned by the employee during the accounting year or one hundred rupees whichever is higher, whether or not the employer has any allocable surplus in the accounting year:

Provided that where an employee has not completed fifteen years of age at the beginning of the accounting year, the provisions of this Section shall have effect in relation to such employee as if for the words one hundred rupees the words sixty rupees were substituted.

Section 10 of the Act is not violative of Articles 19 and 301 of the Constitution. Even if the employer suffers losses during the accounting year, he is bound to pay minimum bonus as prescribed by Section 10 (State v. Sardar Singh Majithia (1979) Lab. I.C.).

iv. *Maximum bonus*

1. Where in respect of any accounting year referred to in Section 10, the allocable surplus exceeds the amount of minimum bonus payable to the employees under that Section, the employer shall, in lieu of such minimum bonus, be bound to pay to every employee in respect of that accounting year bonus which shall be an amount in proportion to the salary or wage earned by the employee during the accounting year subject to a maximum of twenty per cent of such salary or wage.
2. In computing the allocable surplus under this Section, the amount set on or the amount set off under the provisions of Section 15 shall be taken into account in accordance with the provisions of that Section. (Section 11)

(iv-A) Calculation of bonus with respect to certain employees

Where the salary or wage of an employee exceeds three* thousand and five hundred rupees per mensem, the bonus payable under Section 10 or 11 shall be calculated as if his salary or wage were three*thousand and five hundred rupees per mensem. (Section 12)

v. *Proportionate reduction in bonus in certain cases*

Where an employee has not worked for all the working days in an accounting year, the minimum bonus of one hundred rupees or, as the case may be, of sixty rupees, if such bonus is higher than 8.33 per cent of his salary or wage for the days he had worked in that accounting year, shall be proportionately reduced. (Section 13)

vi. *Computation of number of working days*

For the purposes of Section 13, an employee shall be deemed to have worked in an establishment in any accounting year also on the days on which:

a. he has been laid off under an agreement or as permitted by standing orders under the Industrial Employment (Standing Orders) Act, 1946 or under the Industrial Disputes Act, 1947 or under any other law applicable to the establishment;
b. he has been on leave with salary or wage;
c. he has been absent due to temporary disablement caused by accident arising out of and in the course of his employment; and
d. the employee has been on maternity leave with salary or wage, during the accounting year. (Section 14)

vii. *Set on and set off of allocable surplus*

1. Where for any accounting year, the allocable surplus exceeds the amount of maximum bonus payable to the employees in the establishment under Section 11, then, the excess shall, subject to a limit of twenty per cent of the total salary or wage of the employees employed in the establishment in that accounting year, be carried forward for being set on in the succeeding accounting year and so on up to and inclusive of the fourth accounting year to be utilized for the purpose of payment of bonus in the manner illustrated in the Fourth Schedule. (Section 15)

THE FOURTH SCHEDULE
(See Sections 15 and 16)

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 Rs. 1,04,167. Accordingly, the maximum bonus to which all the employees are entitled to be paid (Twenty per cent of the annual salary or wage of all the employees) would be Rs. 2,50,000.

Year	*Amount equal to sixty per cent or sixty-seven percent, as the case may be, of available surplus allocable as bonus*		*Amount payable as bonus*	*Set on or set off of the year carried forward*	*To set on set off carried forward*
(1)	(2)	(3)	(4)	(5)	
	Rs.	Rs.	Rs.	Rs. of (year)	
1.	1,04,167	1,04,167[**b]	NIL	NIL	
2.	6,35,000	2,50,000	Set on	Set on	
			2,50,000[*a]	2,50,000	(2)
3.	2,20,000	2,50,000[*a]	NIL	Set on	

		(Inclusive of 30,000 from year 2)		2,20,000	(2)
4.	3,75,000	2,50,000[*a]	Set on	Set on	
			1,25,000	2,20,000	(2)
				1,25,000	(4)
5.	1,40,000	2,50,000	NIL	Set on	
		(Inclusive of 1,10,000 from year 2)		1,10,000	(2)
				1,25,000	(4)
6.	3,10,000	2,50,000[*a]	Set on	Set on	
			60,000	NIL £	(2)
				1,25,000	(4)
				60,000	(6)
7.	1,00,000	2,50,000	Nil	Set on	
		(Inclusive of 1,25,000 from year 4 and 25,000 from 6 year)		35,000	(6)
8.	Nil	1,04,167[**b]			
	(due of loss)	(Inclusive of 35,000 from 6 year)	Set off	Set off	(8)
			69,167	69,167	
9.	10,000	1,04,167[*a]	Set off	Set off	
			69,167	69,167	(8)
				94,167	(9)
10.	2,15,000	1,04,167[*a]	Nil	Set off	
		(After setting off 67,167 from year 8 and 41,666 from year 9)		52,501	(9)

2. Where for any according year, there is no available surplus or the allocable surplus in respect of that year falls short of the amount of minimum bonus payable to the employees in the establishment under Section 10, and there is no amount or sufficient amount carried forward and set on under sub-section (1) which could be utilized for the purpose of payment of the minimum bonus, then, such minimum amount or the deficiency, as the case may be, shall be carried forward for being set off

in the succeeding accounting year and so on up to and inclusive of the fourth accounting year in the manner illustrated in the Fourth Schedule.

3. The principle of set on and set off as illustrated in the Fourth Schedule shall apply to all other cases not covered by sub-section (1) or sub-section (2) for the purpose of payment of bonus under this Act.
4. Where in any accounting year any amount has been carried forward and set on or set off under this Section, 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.

Apart from the provisions contained in Section 15(1), there is no statutory obligation on an employer to set apart any part of the profits of the previous year for payment of bonus for subsequent years.

viii. *Adjustment of customary or interim bonus*

Where in any accounting year (a) an employer has paid any puja bonus or other customary bonus to an employee; or (b) an employer has paid a part of the bonus payable under this Act to an employee before the date on which such bonus becomes payable; then, the employer shall be entitled to deduct at the amount of bonus so paid from the amount of bonus payable by him to the employee under this Act in respect of that accounting year and the employee shall be entitled to receive only the balance. (Section 17)

In *Hukam Chand Jute Mills Ltd.* v. *Second Industrial Tribunal, West Bengal,* AIR 1979 SC 876, the Supreme Court held that the claim for customary bonus is not affected by 1976 Amendment Act. In fact, it has left Section 17 intact which refers to puja bonus or other customary bonus. Section 31A (see later) speaks about productivity bonus but says nothing about other kinds of bonuses. The contention that all agreements inconsistent with the provisions of the Act become inoperative, has no substance vis-a-vis customary bonus. Conceptually statutory bonus and customary bonus operate in two fields and do not clash with each other.

ix. *Deductions of certain amounts from bonus*

Where in any accounting year, an employee is found guilty of misconduct causing financial loss to the employer, then, it shall be lawful for the employer to deduct the amount of loss from the amount of bonus payable by him to the employee under this Act, in respect of that accounting year only and the employee shall be entitled to receive the balance, if any. (Section 18)

x. *Time limit for payment of bonus*

a. Where there is a dispute regarding payment of bonus pending before any authority under Section 22, 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 from which the award becomes enforceable or the settlement comes into operation, in respect of such dispute;
b. In any other case, the bonus should be paid within a period of eight months from the close of the accounting year. However, the appropriate Government or such authority as the appropriate Government may specify in this behalf may, upon an application made to it by the employer and for sufficient reasons, by order, extend the said period of 8 months to such further period or periods as it thinks fit, so, however, that the total period so extended shall not in any case exceed two years. (Section 19)

xi. *Recovery of bonus from an employer*

Where any money is due to an employee by way of bonus from his employer under a settlement or an award or agreement, the employee himself or any other person authorised by him in writing in this behalf, or in the case of the death of the employee, his assignee or heirs may, without prejudice to any other mode of recovery, make an application to the appropriate Government for the recovery of the money due to him, and if the appropriate Government or such authority as the appropriate Government may specify in this behalf is satisfied that any money is so due, it shall issue a certificate for that amount to the Collector who shall proceed to recover the same in the same manner as an arrear of land revenue:

Provided that every such application shall be made within one year from the date on which the money become due to the employee from the employer:

Provided further that, any such application may beentertainedafter the expiry of the said period of one year,if the appropriate Governmentis satisfied that the applicant had sufficient cause for not making the application within the said period.

Explanation: In this Section and in Sections 22, 23, 24 and 25, employee includes a person who is entitled to the payment of bonus under this Act but who is no longer in employment. (Section 21)

Mode of recovery prescribed in Section 21 would be available only if bonus sought to be recovered is under settlement or an award or an agreement. Bonus payable under Bonus Act is not covered by Section 21 (1976-I Labour Law Journal 511).

BONUS LINKED WITH PRODUCTION OR PRODUCTIVITY

Section 31A enables the employees and employers to evolve and operate a scheme of bonus payment linked to production or productivity in lieu of bonus based on profits under the general formula enshrined in the Act. However, bonus payments under Section 31A are also subject to the minimum (8.33 per cent) and maximum (20 per cent). In other words a minimum of 8.33 per cent is payable in any case and the maximum cannot exceed 20 per cent. (Section 31-A)

POWER OF EXEMPTION

If the appropriate Government, having regard to the financial position and other relevant circumstances of any establishment or class of establishments, is of opinion that it will not be in public interest to apply all or any of the provisions of this Act thereto, it may, by notification in the Official Gazette, exempt for such period as may be specified therein and subject to such conditions as it may think fit to impose, such establishment or class of establishments from all or any of the provisions of this Act. (Section 36)

Government should consider public interest, financial position and whether workers contributed to the loss, before grant of exemption (J.K.Chemicals v. Maharashtra, 1996 III CLA Bom. 12).

COMPLIANCES UNDER THE ACT

The establishment must ensure following compliances under the Act. These compliances are not exhaustive but illustrative.

1. The total number of employees who are entitled to bonus in department/undertaking (a) are ….. and (b) are ……
2. The total number of employees who are not entitled to bonus in view of their having worked for less than thirty days during the accounting year in case of department (a) are …. and (b) are ……
3. The Establishment did not pay bonus to …. employees in view of their dismissal from service for (a) fraud or (b) riotous behaviour on the premises of Establishment or (c) theft, misappropriation or sabotage of any property of the establishment.
4. The Establishment has made deductions from the amount of bonus payable under PBA in respect of ……. employees in view of their being found guilty of misconduct causing financial loss to the Establishment. The quantum of deduction was only to the extent of amount of loss suffered by the Establishment.

5. The Establishment has computed the gross profit and available surplus in accordance with the provisions of the Act read with the rules made thereunder.
6. In relation to the year ended 31st March 2000, the Establishment paid bonus in cash/cheque(s) or electronic clearance system (ECS) or other electronic mode to its employees at the rate of …… which is not less than the minimum statutory requirement as specified under PBA on 15th January 2000, which is within eight months from the close of the accounting year.
7. During the accounting year, the Establishment opened a separate bank account for transfer of unpaid/unclaimed bonus in respect of employees who have either not been paid bonus for any reason or not collected their bonus for the accounting year ended on 31st March 2004 with ……. Bank (Branch) ….. The unpaid/unclaimed bonus has been deposited with the concerned welfare Board.
8. During the year, the Establishment transferred on …… to Labour Welfare Fund a sum of Rs. …. being the unpaid/unclaimed bonus of ……. employees, whose entitlement under PBA remained unpaid/unclaimed since …… being the last date on which the bonus was to be paid to those …. for the year ended 31st March 2000.
9. In relation to the year ended 31st March 2000, the Establishment has filed Annual Return with the Inspector appointed under the Act on ……. , which is within thirty days from the date of payment of bonus under Section 19 of the PBA.

PENALTIES

If any person contravenes any of the provisions of this Act or any rule made thereunder; he shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both. Likewise if any person, to whom a direction is given or a requisition is made under this Act, fails to comply with the direction or requisition, he shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both. (Section 28)

OFFENCES BY COMPANIES

If the person committing an offence under this Act is a company, 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.

Further, if an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be proceeded against and punished accordingly. (Section 29)

For the purpose of Section 29, 'company' means any body corporate and includes a firm or other association of individuals, and 'director', in relation to a firm, means a partner in the firm.

LESSON ROUND-UP

- Thee Payment of Bonus Act provides for payment of bonus to persons employed in certain establishments on the basis of profits or on the basis of production or productivity and for matters connected therewith.
- It extends to the whole of India and is applicable to every factory and to every other establishment where 20 or more workmen are employed on any day during an accounting year. The Act does not apply to certain classes of employees specified therein.
- The Act has laid down a detailed procedure for calculating the amount of bonus payable to employees.
- Every employee shall be entitled to be paid by his employer in an accounting year, bonus, in accordance with the provisions of this Act, provided he has worked in the establishment for not less than thirty working days in that year.
- An employee shall be disqualified from receiving bonus under this Act, if he is dismissed from service for fraud; or riotous or violent behaviour while on the premises of the establishment; or theft, misappropriation or sabotage of any property of the establishment.
- Every employer shall be bound to pay to every employee in respect of any accounting year a minimum bonus which shall be 8.33 per cent of the salary or wage earned by the employee during the accounting year or one hundred rupees whichever is higher, whether or not the employer has any allocable surplus in the accounting year.
- In case of newly set up establishments provisions have been made under Section 16 for the payment of bonus.
- If there is a dispute regarding payment of bonus pending before any authority under Section 22, 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 from which the award becomes enforceable or the settlement comes into operation, in respect of such dispute.
- In any other case, the bonus should be paid within a period of eight months from the close of the accounting year.
- If any dispute arises between an employer and his employee with respect to the bonus payable under this Act or with respect to the application of this Act to an establishment in public sector, then, such dispute shall be deemed to be an industrial dispute within the meaning of the Industrial Disputes Act, 1947, or any corresponding law relating to investigation and settlement of industrial disputes in

force in a State and provisions of that Act, shall, save as otherwise expressly provided, apply accordingly.

- The Act enables the employees and employers to evolve and operate a scheme of bonus payment linked to production or productivity in lieu of bonus based on profits under the general formula enshrined in the Act.

FOOTNOTES

[*] Clause (vi) providing employees employed through contractors on building operation has been deleted by Payment of Bonus (Amendment) Ordinance, 2007

[*1] Inserted by Payment of Bonus (Amendment) Ordinance, 2007.

[*2] Inserted by Payment of Bonus (Amendment) Ordinance, 2007.

Notes: *a Maximum

**b Minimum

£ The balance of Rs. 1,10,000 set on from year 2 lapses.