

## THE PAYMENT OF BONUS ACT, 1965

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### Question 1

Mr. 'E' joined as supervisor on monthly salary of Rs. 3,400 on 1.02.2007 and resigned from his job on 28.02.2007. The company declared a bonus of 20% to all eligible employees and paid it on time. Mr. 'E' knowing the facts made a claim to HRD, which in turn rejected the claim. Examine the validity in the light of the provisions of the Payment of Bonus Act, 1965. (May 2007)

### Answer

As per proviso of Section 2(13) of The Payment of Bonus Act, 1965 an employee means only person on a salary or wage not exceeding ten thousand rupees per month.

Further, Section 8 provides that an employee to be entitled for bonus in the accounting year should have worked in the establishment for not less than thirty working days in that year.

Thus, in view of the above Mr. 'E' is not entitled for Bonus, as he has not worked for 30 days in the accounting year.

### Question 2

State with reasons whether the following persons are entitled to receive bonus under the Payment of Bonus Act, 1965:

- (i) An apprentice under the Apprentice Act.
- (ii) A probationer
- (iii) An employee employed through contractors on building operations
- (iv) A retrenched employee
- (v) A dismissed employee reinstated with back wages. (November 2007)

### Answer

#### Entitlement to Bonus

- (i) **Apprentice:** An Apprentice who is an apprentice under the Apprentice Act is not entitled to bonus, as apprentice is specifically excluded from 'Employee' under section 2 (13)

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- (ii) **Probationer:** A probationer is an employee and as such is entitled to bonus provided he has worked in the establishment for not less than 30 working days in the accounting year (section 8) Confirmation of the employee is not a necessary requirement
- (iii) An employee employed through contractors on building operations is entitled to bonus as section 32 (vi) has been deleted by Payment of Bonus (Amendment) Ordinance, 2007.
- (iv) **Retrenched Employee:** He is eligible to get bonus provided he has worked for minimum qualifying period (*East Asiatic Co. (P) Ltd. Vs Industrial Tribunal*)
- (v) Employee includes a person who is no longer in service (Explanation under Section 21). A dismissed employee reinstated with back wages is entitled to bonus (*Commom India Ltd Vs Neerajan Das*)

### Question 3

*A workshop is employing 50 workmen. A shop-supervisor is drawing monthly wages of Rs. 9,000. HRD paid annual bonus to all employees except the supervisor. The Supervisor contends that he is also entitled to bonus. Referring to the provisions of the Payment of Bonus Act, 1965 decide whether the HRD's action is correct. (May 2008)*

### Answer

#### **Problem: Quantum of Bonus (The Payment of Bonus Act, 1965)**

**The HRD view is not correct.** The limit for payment of bonus originally was Rs.3500 p.m. being the wages as defined in the Payment of Bonus Act, 1965. But this upper limit has been revised to Rs. 10,000 p.m. by way of notification dated 15<sup>th</sup> November 2007, and therefore the contention of supervisor is correct.

### Question 4

*ABC Textiles Ltd. employed 20 full-time and 5 part-time employees who were drawing salary of less than Rs.10,000 per month. After completing service of 28 days, in an accounting year, 10 full-time employees submitted their resignations and left the service of the company. The Board of directors of this company decided not to give the bonus to the employees, who resigned, to the remaining full-time employees and to the part-time employees. Against the decision, all the employees applied to the authorities for relief.*

*Decide, stating the provisions of the Payment of Bonus Act, 1956, whether the employees, who resigned, the remaining full-time employees and part-time employees will get relief.*

*(November 2008)*

### Answer

In accordance with the provisions of Section 2(13) of the Payment of Bonus Act, 1965 any person other than an apprentice employed on a salary or wage not exceeding Rs.10,000 (by notification dated 15<sup>th</sup> Nov. 2007) 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 is eligible for bonus. Further, in accordance with the provisions of Section 8 of the Payment of Bonus Act, 1965 every

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employee of an establishment covered under the Act is entitled to bonus from his employer in an accounting year provided he has worked in that establishment for not less than thirty working days in the year on a salary less than Rs.10,000 per month.

The problem as asked is based on the above provisions of the Act and the answer may be given as follows:

- (a) As regards the employees who resigned : The employees who have resigned are not entitled to bonus because they have given their services only for 28 days in an accounting year although they are drawing salary less than Rs.10,000 per mensem.
- (b) As regards full time remaining employees: These employees are entitled to get the bonus as they fulfil both the requirements as stated under Sections 2 (13) and 8 of the Act. Although the employees in this case have been reduced to 10, once the Act is applicable, it continues to apply even if number of employees fall below 20.

As regards part time employees: Even a part time employee is also entitled to bonus on the basis of total number of days worked by him in an accounting year. The Payment of Bonus Act, 1965 does not prohibit such employees as they fulfil all the requirements stated above {*Automobile Karmchari Sangh vs. Industrial Tribunal (1971)*}.

### Question 5

*Skypark Wooden Toys Limited was established at Kolkota in the year 2005 employing 100 workmen. Since then, the company suffered losses, but minimum bonus was paid in the accounting years of 2006 and 2007. In the accounting year 2008 the company earned huge profits. After mitigating the previous losses the company is having surplus profits and wants to pay the bonus to its workmen. Skypark Wooden Toys Limited wants legal advice on the following issues:*

- (a) *How much minimum and maximum bonus may be paid to the workmen?*
- (b) *Whether the company may adjust the puja bonus already paid to the workmen while calculating the amount of bonus payable to workmen for that accounting year.*
- (c) *Company wants to give wooden toys as bonus instead of cash. Whether the company can do so?*

*Advise Skypark Wooden Toys Limited, stating the provisions of the Payment of Bonus Act, 1965.*  
(June 2009)

### Answer

#### Payment of bonus

In accordance with the provisions of Section 10 of the Payment of Bonus Act, 1965, every employer shall be bound to pay to every employee in respect of any accounting year, a minimum bonus which shall be 8.33 percent 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. Where an employee has not completed 15 years of age at the beginning of the accounting year, the minimum bonus

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payable is 8.33% or Rs.60 whichever is higher. Even in the case of loss, minimum bonus has to be paid.

Further, in accordance with the provisions of Section 11(1) the maximum bonus payable to the employee is 20% in any accounting year. Section 17 of the Act is related to the adjustment of customary or interim bonus. Bonus should be paid only in cash by the employer.

The legal advice asked in the problem may be given on the basis of the provisions of the Act accordingly:

(a) As regards minimum and maximum bonus: The workmen of the Skypark Wooden Toys Ltd. are entitled to get 8.33% of the salary or wage earned during that particular accounting year. The maximum bonus payable is 20% of the salary or wage earned during that particular accounting year. Even if the employer suffers losses during that accounting year the company is bound to pay minimum bonus as prescribed by Section 10. (Related case is *Jalan Trading Co. vs. D.M Aney* AIR 1979 SC 233).

(b) As regards adjustment of Puja Bonus:

In accordance with the provisions of Section 17 of the Payment of Bonus Act, 1965 where, in an accounting year an employer has paid any puja bonus or other customary bonus to an employee, the employer shall be entitled to deduct (adjust) the amount of bonus so paid from the amount of bonus payable to the employee in respect of that accounting year and the employee shall be entitled to receive only the balance. Therefore Skypark Wooden Toys Ltd. may adjust the puja bonus already paid from the amount of bonus payable to the workmen and the workmen shall be entitled to receive only the balance.

(c) The amount payable to an employee by way of bonus under the Payment of Bonus Act, 1965, shall be paid only in cash by the employer. Therefore, Skypark Wooden Toys Ltd. cannot distribute wooden toys, instead of cash, as bonus. It is against the statutory provisions.

### Question 6

*Standard Airways Limited was incorporated at Chennai in the year 2005, employing 125 workmen. Due to strike of workers, mismanagement in the company and accidental loss of the assets, the company suffered heavy losses continuously since its incorporation, resulting in a large part of the capital and assets getting wiped out. Consequently, the company moved an application to the Government of Tamilnadu requesting to exempt the company fully from the application of the provisions of the Payment of Bonus Act, 1965.*

*Decide, whether the Government of Tamilnadu may grant exemption to the Company. State the provisions of law in this regard as stated under the Payment of Bonus Act, 1965.*

*(November 2009)*

### Answer

An employer who is unable to comply with the provisions of the Payment of Bonus Act, due to paucity of funds or for other reasons, can make an application to the appropriate Government

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for exemption fully or partly from the provisions of the Payment of Bonus Act, 1965 under Section 36. If the appropriate Government having regard to the financial position and other relevant circumstances of any establishment or class of establishments, is of the opinion that it will not be in public interest to apply all or any of the provisions of the Act thereto, it may, by notification in 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 the Act. Such relevant considerations for granting exemptions are industrial peace, law and order situation, effect on production of consumer goods, difficulties of management, etc.

Decision under Section 36 must be an objective one. If the employer establishes that losses were being incurred continuously and entire capital and assets have been wiped out, the State Government can not refuse to grant exemption under Section 36 [*Nav Bharat Potteries vs. State (1987) ILLN117 (Bombay)*]. Employees should be heard before granting such exemption.

The facts of the problem meet the criteria spelt out in Section 36 and hence, Standard Airways may be allowed exemption.

