

Question 1

Who is entitled to bonus under the Payment of Bonus Act, 1965? Does this Act prescribe any disqualifications also for claiming bonus? Explain. (May, 2002 & 2004)

Answer

Every employee of an establishment covered under the Payment of Bonus Act, 1965 is entitled to bonus from his employer in an accounting year, provided he has worked in that establishment for not less than 30 working days in the year on a salary less than Rs.3,500 per month (Section 2 (13) read with Section. 8). **(This ceiling of Rs. 3,500 has been now revised to Rs. 10,000, with effect from Nov 2007)**

If an employee is prevented from working and subsequently re-instated in service, employee's statutory liability for bonus cannot be said to have been lost. "Nor can the employer refuse such bonus. [(ONGC vs Sham Kumar Sahegal (1995)].

An employee in the following cases is entitled to bonus:

- (1) A temporary workman on the basis of total number of days worked by him.
- (2) An employee of a seasonal factory is entitled to proportionate bonus and not minimum bonus, as prescribed by the Act.
- (3) A part-time employee, as a sweeper engaged on a regular basis. (*Automobile Karmachari Sangh vs. Industrial Tribunal (1970) 38 FJR/268.*)
- (4) A retrenched employee, provided he has worked for minimum qualifying period (*East Asiatic C. (P) Ltd. Vs. Industrial Tribunal (1961) LIJ 720.*)
- (5) A probationer is an employee and as such is entitled to bonus. (*Bank of Mudra Ltd. Vs. Employee's Union, 1970 (2) US (21).*)
- (6) A dismissed employee re-instated with back wages is entitled to bonus (*Gammon India Ltd Vs. Nirnjan Das (1984) 2 LIJ 223*)
- (7) A piece rated worker is entitled to bonus (*Mathuradas Kani Vs. L.A. Tribunal AIR (1958) SC. 899.*)

Disqualifications:

There are, however, certain disqualifications of an employee to claim bonus in an account year. An employee who has been dismissed from service for a) fraud; or b) riotous or violent behaviour while on the premises of the establishment; or c) theft, misappropriation or sabotage of any property of the establishment is not entitled, for bonus (Section 9). Further an employee in the following cases is not entitled to bonus:

1. An apprentice .is not entitled to bonus (*Wheel & RIM Co. Vs. Govt. of T.N.*)
2. An employee employed" through contractors on building operation, is not entitled to - bonus (Section 32).
3. An employee who is dismissed from service on the ground of misconduct as mention in Section 9 (*Pandian Roadways Corporation Ltd. Vs. Presiding officer.*)

Regarding a probationer, in case of *Bank of Madwa Ltd. Vs. Employee's Union*, it has been held that a probationer is an employee and as such he is entitled to bonus.

Question 2

X, a temporary employee drawing a salary of Rs.3,000 per month, in an establishment to which the Payment of Bonus Act, 1965 applies was prevented by the employers from working in the establishment for two months during the financial year 2001-2002, pending certain inquiry. Since there were no adverse findings 'X' was re-instated in service, later, when the bonus was to be paid to other employees, the employers refuse to pay bonus to 'X', even though he has worked for the remaining ten months in the year. Referring to the provisions of the Payment of Bonus Act, 1965 examine the validity of employer's refusal to pay bonus to 'X'

(Nov. 2002)

Answer

Entitlement for bonus under the Payment of Bonus Act, 1965

Every 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 30 working days in the year on a salary less than Rs. 3,500

per month. [Section 2(13) read with Section 8] **(This ceiling of Rs. 3,500 has been now revised to Rs. 10,000, with effect from Nov 2007).**

If an employee is prevented from working subsequently reinstated in service, employer's statutory liability for bonus cannot be said to have been lost and the employee concerned shall be entitled to the bonus. (ONGC v. Sham Kumar Sahegal).

Thus based on the above ruling and the provisions of the Act as contained in Section 8, the refusal by the employers to pay bonus to X is not valid and he (X) is entitled to get bonus in the given case for the reasons given above in the provisions, i.e. he has worked for more than 30 days in a year, drawing salary of less than Rs. 3500 **(from November 2007, this amount has been revised to Rs. 10,000)** and not disqualified for any other reason.

Question 3

In an accounting year, a company to which the payment of Bonus Act, 1965 applies, suffered heavy losses. The Board of Directors of the said company decided not to give bonus to the employees. The employees of the company move to the Court for relief. Decide in the light of the provisions of the said Act whether the employees will get relief? (May 2003)

Answer

Problem on Payment of Bonus.

Section 10 of the Payment of Bonus Act, 1965 provides that subject to the other provisions of the Act, every employer shall be bound to pay to employee in respect of the accounting year commencing on any day in 1979 and in respect of any subsequent 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 Rs. 100 (Rs. 60 in case of employees below 15 years of age), whichever is higher. The minimum bonus is payable whether or not employer has any allocable surplus in the accounting year.

Therefore based on the above provision (Section 10) the question asked in the problem can be answered as under:

Yes, applying the provisions as contained in Section 10 the employees shall succeed and they are entitled to be paid minimum bonus at rate 8.33% of the salary or wage earned during the accounting year or Rs. 100 (Rs. 60 in case of employees below 15 Years of age), whichever is higher.

Question 4

On 1st January, 2002, Aryan Textiles Ltd. agreed with the employees for payment of an annual bonus linked with production or productivity instead of bonus based on profits subject to the limit of 30% of their salary wages during the relevant accounting year. It was also agreed by the employees that they will not claim minimum bonus stated under Section 10 of the Payment of Bonus Act, 1965. As per the agreement the employees of Aryan Textiles Ltd claimed annual bonus linked with production or productivity in the relevant accounting year. On refusal of the company the employees of the company moved to the court for relief.

Decide in reference to the provisions of the payment of Bonus Act, 1965 whether the employees will get the relief? In spite of the aforesaid agreement whether the employees are still entitled to receive minimum bonus. (November 2004)

Answer

Problem relating to bonus linked with production or productivity (Section 31A)

As per Section 31 (A) of the Payment of Bonus Act, 1965, there may be an agreement or settlement by the employees with their employer for payment of an annual bonus linked with production or productivity in lieu of bonus based on profits, as is payable under the Act. Accordingly, when such an agreement has been entered into the employees are entitled to receive bonus as per terms of the agreement/settlement, subject to the following restriction imposed by Section 31A;

- (a) any such agreement/settlement whereby the employees relinquish their right to receive minimum bonus under Section 10, shall be null and void in so far as it purports to deprive the employees of the right of receiving minimum bonus.
- (b) If the bonus payable under such agreement exceed 20% of the salary/wages earned by the employees during the relevant accounting year, such employees are not entitled to the excess over 20% of salary/wages.

In the given case Aryan Textile Ltd. agreed with the employees for payment of an annual bonus linked with production or productivity instead of based on profits subject to the limit of 30% of their salary/ wages during the relevant accounting year. According to Section 31A the maximum bonus under this provision can be given which should not exceed 20% of the salary/wages earned by the employee during the relevant accounting year. Hence, the maximum bonus may be paid upto

20% of the salary/wages. If the company agrees to pay more than 20% then it will be against the provisions of the Payment of Bonus Act, 1965.

The employees of Aryan Textiles also agreed not to claim minimum bonus stated in Section 10 of the Payment of Bonus Act, 1965 such an agreement shall be null and void as it purports to deprive the employees of their right of receiving minimum bonus. Hence, the relief may be given by the court, as regards to the payment of bonus to the employees, based on the production or productivity, if it is agreed, subject to a maximum of 20%. The employees will also be entitled legally to claim bonus which is minimum prescribed under Section 10 of the Act, even though they have relinquished such right as per the agreement.

Question 5

Prakash Chandra is working as a salesman in a company on salary basis. The following payments were made to him by the company during the previous financial year –

- (i) overtime allowance,*
- (ii) dearness allowance*
- (iii) commission on sales*
- (iv) employer's contribution towards pension fund*
- (v) value of food.*

Examine as to which of the above payments form part of "salary" of Prakash Chandra under the provisions of the payment of Bonus Act, 1965.
(November 2005)

Answer

Computation of Salary / Wages: According to Section 2(21) of the Payment of Bonus Act, 1965 salary and wages means all remuneration other than remuneration in respect of overtime 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. It includes dearness allowance, i.e. all cash payment by whatever name called, paid to an employee on account of a rise in the cost of living. But the term excludes:

- (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 amenities of any service or of any concessional supply of food grains or other articles;
- (iii) Any traveling concession;
- (iv) Any contribution paid or payable by the employer to any pension fund or for benefit of the employee under any law for the time being in force.
- (v) Any retrenchment compensation or any gratuity or other retirement benefit payable to the employee or any ex-gratia payment made to him; and
- (vi) Any commission payable to the employee.

It may be noted 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 be deemed to form part of the salary or wage for such employee.

In view of the provisions of Section 2(21) explained above, the payment of dearness allowance and value of free food by the employer forms part of salary of Prakash Chandra while remaining three payments i.e. payment for overtime, commission on sales and employer's contribution towards pension funds does not form part of his salary

Question 6

Referring the provisions of the Payment of Bonus Act, 1965, state whether the following persons are entitled to bonus under the Act:

- (i) An apprentice;
- (ii) An employee dismissed on the ground of misconduct;
- (iii) A temporary workman;
- (iv) A piece-rated worker.

(November 2006)

Answer

- (i) An Apprentice is not entitled to bonus [Wheel RIM Co. Vs. Govt. of Tamil Nadu (1971)]
- (ii) An employee dismissed on the ground of misconduct is disqualified for any; bonus. [Pandian Roadways Corporation Ltd. Vs. Presiding Officer (1996)]
- (iii) A temporary workman is entitled to bonus on the basis of the total number of days worked by him.
- (iv) A piece-rated worker is entitled to bonus. [Mathurads Kani Vs. L.A. Tribunal (1958)]

Question 7

Examine whether the Payment of Bonus Act, 1965 be applicable to the following cases:

- (i) J, who is working in a social welfare organization.
- (ii) D, an employee employed by an establishment engaged in an industry carried on by a department of the Central Government.

(May 2007)

Answer

- (i) As per the provisions contained in Section 32 (v) (c) of the Payment of Bonus Act, 1965, 'J' is not entitled to any bonus as the said Act is not applicable to social welfare organization.
- (ii) Similarly the said Act is not applicable to the employees engaged by a Department of the Central Government vide Section 32 (iv).

Question 8

During the accounting year 2005-06, XYZ Limited to which the Payment of Bonus Act, 1965 applies, suffered heavy losses. The Board of Directors of the company decided not to pay any bonus to its employees. The employees moved the Court for relief. Referring to the provisions of the Act, decide whether the employees of the company would be given any relief by the Court?

(May 2007)

Answer

Yes, They will succeed. Even if the employer suffers losses during the accounting year he is bound to pay minimum bonus as prescribed by section 10 of the payment of Bonus Act, 1965. i.e.8.33% of the basic wages (State Vs Sardar Dalip Singh Majilhia, 1979 .

Question 9

Decide with reasons in the light of the Payment of Bonus Act, 1965 whether the following persons are entitled for bonus:

- (i) A University teacher,
- (ii) An employee of the 'NABARD',
- (iii) A reinstated employee without wages for the period of dismissal.
- (iv) A retrenched employee who worked for 45 days in a year on a salary of Rs. 4,000 per month.
- (v) An apprentice.

(November 2007)

Answer

Every employee of an establishment covered under the Payment of Bonus Act, 1965 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. 3,500 per month. [Section 2(13) and Section 8] (**Note: This amount has been revised to Rs. 10,000 now**)

In the given problem a University teacher and an employee of the NABARD are not entitled for bonus because the employees of Universities and other educational institutions and employees of the Agricultural Refinance Corporation are excluded from the operation of the Act as per Section 32 of the Payment of Bonus Act, 1965.

A reinstated employee without wages for the period of dismissal is also not entitled for bonus because only a dismissed employee reinstated with back wages is entitled to bonus. [*Gannon India Ltd. Vs. Niranjan Das [1984] 2LLJ 223*]. In this case the employee has been reinstated without wages.

A retrenched employee who worked for 45 days in a year on a salary of Rs. 4,000 per month is also not entitled for because he has worked for qualifying days i.e. 30 days but his salary is higher than prescribed limit (Rs. 3500 per month) in the Act. (**Under the revised wage ceiling mentioned in the note above, this employee will be eligible for bonus**).

An apprentice is not entitled to bonus [*Wheel & RIM Co. vs. Government of Tamil Nadu [1971]*].

Question 10

A is an employee of a company. The amount of the bonus payable to A during the year 2006-07 is Rs. 10,000, but the company paid him Rs. 7,000 only and a sum of Rs. 3,000 was deducted from bonus against the loss suffered by the company due to misconduct of A during the same accounting year. A files a suit against the company for recovery of the deducted amount. Decide whether A would be given any relief by the court under the provisions of the Payment of Bonus Act, 1966? What will be your answer, if the losses are related to the accounting year 2005-06? (November 2007)

Answer

As per the Payment of Bonus Act, 1965, in any accounting year, if an employee is found guilty of misconduct causing financial loss to the employer, then the employer can lawfully deduct the amount of loss from the amount of bonus payable by him to the employee in respect of that accounting year only. In this case, the employee shall get only the balance, if there be any (Section 18).

After application of the above provision it is clear that 'A' will not get any relief from the court because employer has the right to deduct the said losses from the bonus of employee.

In the second case, A will get relief from the Court because the losses are related to the accounting year 2005-06. As per the provision, the employers are entitled to deduct the losses incurred due to misconduct of the employee in the same accounting year. In this problem bonus payable year and accounting year are different.

Question 11

X is an employee in a Company. The amount of bonus payable to him during the year 2007-08 is Rs.14,000. The company deducted a sum of Rs.4,000 against the "Puja Bonus" already paid to him during the said year and paid the remaining amount. X files a suit against the company for recovery of the deducted amount. Decide, under the Payment of Bonus Act, 1965, whether X would be given any relief by the Court? (May 2008)

Answer

Deduction of Bonus

The problem as given in the question is based on Section 17 of the Payment of Bonus Act, 1965. As per Section 17, if in any accounting year, an employer has paid any puja bonus or other customary bonus to any employee, then the former shall be entitled to deduct 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. The employee shall be entitled to receive only the balance. The employer can do the same thing even in a case where he has paid off the bonus payable under this Act to an employee before the date on which such bonus payable becomes payable.

In the instant case X would not get any relief from the court because employer is empowered to deduct Rs.4,000/- from the total bonus (Rs.14,000) of Mr. X.

Question 12

The management of Shakthi Mills Ltd. entered into an agreement with their employees to pay them bonus based on production in lieu of Bonus based on profits, from the accounting year 2007. The employees further agreed to forego their right to receive minimum bonus and instead accept 25% of their salary/wage as bonus based on productivity. Is such an agreement valid? Examine in the light of the provisions of the Payment of Bonus Act, 1965. (November 2008)

Answer

Payment of bonus linked with productivity

No, such an agreement is null and void. The problem is based on Section 31A of the Payment of Bonus Act, 1965 which allows an agreement between employers and employees for payment of bonus linked with productivity. But such payment is subject to two restrictions :

- (i) That such agreement whereby the employees relinquish their right to receive minimum bonus under Sec.10, shall be null and void.
- (ii) If the bonus payable under such agreement exceeds 20% of the salary/wages earned by the employees during the relevant accounting year, such employees are not entitled to the excess over 20% of the salary/wages.

Accordingly, in the given problem, the agreement to forego the right of receiving minimum bonus is null and void. The employees shall not be entitled to receive the excess over 20% of salary/wages in case of bonus payable linked with productivity.