

12. PAYMENT OF BONUS ACT, 1965

INTRODUCTION:

1. This is an Act intended to provide for the 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.
2. It came into force from September 25, 1965.
3. This Act extends to the whole of India
4. The Act is designed to:
 - a) Impose a statutory obligation on an employer of every establishment covered by the Act to pay bonus to employees in the establishment;
 - b) Lay down principles and formulae for calculation of bonus;
 - c) Provide for payment of minimum and maximum bonus and linking the payment of bonus with the scheme of set-on and set-off; and
 - d) Provide machinery for enforcement of liability for payment of bonus.

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To **MASTER MINDS**, Guntur

Q.No.1. Discuss the applicability of the Payment of the Bonus Act, 1965.

(PM)

UNLESS OTHERWISE PROVIDED IN THIS ACT, IT SHALL APPLY TO:

1. Every factory; and
2. Every other establishment in which 20 or more persons are employed on any day during an accounting year.
3. **EVEN FOR 10 TO 19:** The appropriate Government may also apply the provisions of this Act with effect from such accounting year as may be notified in the official Gazette, to any establishment or class of establishments employing persons less than 20 but not less than 10 in number [Proviso to Section 1(3)].
4. The provision of this Act shall also apply to certain public sector establishments [Section 20(1)].

ONCE COVERED ALWAYS COVERED: An establishment in which 20 or more persons are employed on any day during an accounting year, must continue to be governed by this Act, inspite of the fact that the number of persons employed therein falls below 20 [Section 1(5)].

PART-TIME EMPLOYEE: A part-time employee is also an employee for the purpose of calculating the number of employees i.e., 20 or more under Section 1(3)(b). [Automobile Karamchari Sangh Vs. Industrial Tribunal]

Q.No.2. Who are the employees excluded from the Payment of Bonus Act?

(PM)

ACCORDING TO SEC.32 OF THE PAYMENT OF BONUS ACT, 1965, THE ACT IS NOT APPLICABLE TO THE FOLLOWING TYPES OF EMPLOYEES:

- i) Employees employed by the Life Insurance Corporation of India
- ii) Seamen as defined under Section 3(42) 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 carried on by or under the authority of any department of the Central Government or a State Government or a local authority

v) Employees employed by-

- The Indian Red Cross Society or any other institution of like nature (including its branches)
- Universities and other educational Institutions
- Institutions (including hospitals, chambers of commerce and social welfare institutions) established not for purposes of profit

vi) Employees employed by the Reserve Bank of India (RBI)

vii) Employees employed by the financial and other institutions such as;

- The Industrial Finance Corporation of India (IFCI)
- Any State Financial Corporation (SFCZ)
- The Deposit Insurance Corporation (DIC)
- The National Bank for Agriculture and Rural Development (NABARD)
- The Unit Trust of India (UTI)
- The Industrial Development Bank of India (IDBI)
- The Small Industries Development Bank of India established under Section 3 of the Small Industries Development Bank of India Act, 1989 (SIDBI)
- The National Housing Bank
- Any other financial institution (other than a banking company) being an establishment in public sector notified by Central Government,

viii) Employees employed by inland water transport establishment operating on routes passing through any other country.

(IMMEDIATELY REFER PRACTICAL QUESTION NO. 1 & 2)

Q.No.3. Who is entitled and who is not entitled to claim Bonus under the Payment of Bonus Act? (PM) (CMA D 08 – 4M)

ELIGIBILITY: 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 or equal to Rs.21,000 per month [Section 2(13) read with Section 8].

DISQUALIFICATIONS - SEC.9:

However, there are certain disqualifications of an employee to claim bonus in an accounting year.

1. An employee who has been dismissed from service for reasons of
 - Fraud Or
 - Riotous / Violent behaviour while in the premises of the establishment Or
 - Theft, misappropriation or damage of any property of the establishment is not entitled for any bonus.
2. But a dismissed employee reinstated with back wages is entitled to bonus. (Gammon India Ltd. Vs. Niranjan Das)
3. Employee dismissed from service for misconduct is disqualified from any bonus and not merely for the bonus of accounting year in which he is dismissed. (Pandian Roadways Corp. Ltd. Vs. Presiding Officer)

IN THE FOLLOWING CASES AN EMPLOYEE IS ENTITLED TO BONUS:

1. A Temporary workman is entitled to bonus on the basis of total number of days worked.
2. An employee of a seasonal factory is entitled to proportionate bonus and not the minimum bonus as prescribed under Sec.10 of the Act.
3. A Part time employee as a sweeper engaged on a regular basis is entitled to bonus. (Automobile Karamchari Sangh Vs. Industrial Tribunal)
4. A Retrenched employee is eligible to get bonus provided he has worked for a minimum qualifying period i.e. he has worked in the establishment for not less than 30 working days in an accounting year as required under Sec.8. (East Asiatic Company Pvt. Ltd. Vs. Industrial Tribunal)
5. A Probationer is an employee and as such is entitled to bonus. (Bank of Madurai Ltd. Vs. Employees Union)
6. A Piece-rated worker is entitled to bonus. (Mathuradas Kanji Vs. L.A. Tribunal)
7. Employee employed through contractors on building operations.
8. If the employee is prevented from working and subsequently reinstated in service, employer's statutory liability for bonus can't be said to have been lost. [ONGC Vs. Shyam Kumar Sahegal].

EMPLOYEES NOT ENTITLED TO BONUS:

1. An apprentice is NOT entitled to bonus. (Wheel & RIM Co. Vs. Govt. of Tamilnadu)
2. An employee disqualified U/s 9 (Refer Above)
3. Employees of certain establishments specified in Sec.32.

(IMMEDIATELY REFER PRACTICAL QUESTION NO. 3, 4, 5, 6, 7, 8, 9, 10 & 15)

Q.No.4. Examine the bonus entitlement to the following persons:

- a) A Probationer. (PM) (N15 4M) (N 12 - 4M, N 07 - 5M, N14 – 4M) (RTP – N17, M16, N15)
- b) An employee who committed a fraud Or A Dismissed Employee.
- c) An employee who is found guilty of misconduct causing financial loss to employer.
- d) An Apprentice. (RTP M16)
- e) A Retrenched Employee.
- f) An employee employed through contractors on building operations.
- g) A University teacher
- h) An employee of the 'NABARD'
- i) A reinstated employee without wages for the period of dismissal.
- j) A retrenched employee who worked for 45 days in a year on a salary of Rs.12,000 per month.
- k) D, an employee employed by an establishment engaged in an industry carried on by a department of the Central Government
- l) J, who is working in a social welfare organization.

- a) A Probationer is an employee and as such is entitled to bonus provided he has worked for not less than 30 days in the year on a salary less than or equal to Rs.10,000 per month.
- b) Sec.9 (Refer above).
- c) Refer to Sec.18.
- d) As the apprentice is specifically excluded from the definition of the term 'employee', he cannot be an employee who is entitled to receive bonus under the Act.
- e) A Retrenched employee is eligible to get bonus provided he has worked for a minimum qualifying period i.e. he has worked in the establishment for not less than 30 working days in an accounting year as required under Sec.8.

- f) An employee employed through contractors on building operations is eligible for bonus as such employees are removed from exemption list U/s 32.
- g) A University teacher is not entitled for bonus because the employees of Universities and other educational institutions are excluded from the operations of the Act as per Section 32 of the Payment of Bonus Act, 1965.
- h) Employees of the NABARD are not entitled for bonus because 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.
- i) A reinstated employee, without wages for the period of dismissal, is not entitled for bonus because only a dismissed employee reinstated with back wages is entitled to bonus.
- j) A retrenched employee who worked for 45 days in a year on a salary of Rs.12,000 per month is entitled for bonus.
- k) The Payment of Bonus Act, 1965 is not applicable to the employees engaged in an industry carried on by a department of the Central Government vide Section 32 (iv) of the Payment of Bonus Act, 1965.
- l) 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.

Q.No.5. What does available surplus mean under the Payment of Bonus Act?

(CMA D10-2M) (PM)

AVAILABLE SURPLUS (SECTION 5): The available surplus in respect of any accounting year comprises of the gross profits for that year after deducting therefrom certain prior charges referred to in Section 6.

Further an amount equal to the tax saved on the account of bonus in respect of the immediately preceding accounting year should be added.

It means the available surplus as computed under **Sec.5**. Accordingly, it means:

Gross Profit (As per Sec.4)	XXX
Less: Prior charges (Sec.6)	XXX
Add: Tax savings on account of bonus in respect of previous accounting year. (*)	XXX
Available surplus	XXX

Q.No.6. How to compute Gross Profit U/S 4 & Deductions as prior charges U/S 6? (or) You are to compute Gross Profit for the purpose of bonus payable to employees of a Non-Banking company. What deductions you shall make from the Gross Profit as per Schedule II under the Provisions of the Act?

Sec.4: The gross profit of an employer is required to be calculated in the manner specified in:

1. In the case of a banking company, as per 1st Schedule &
2. In any other case as per 2nd Schedule.

PRIOR CHARGES (Sec.6): After calculating Gross Profit, the following must be deducted as prior charges:

1. Any amount by way of depreciation admissible under Sec.32(1) of the Income Tax Act
2. Any amount by way of development rebate or development allowance, investment allowance which the employer is entitled to deduct from his income under the I.Tax Act.
3. Any direct tax payable for the accounting year (As calculated under Sec.7 of Bonus Act).
4. Such further sums as are specified in the 3rd Schedule. (As per this some minimum return on capital employed is allowed as deduction)

Q.No.7. Distinguish Available surplus and Allocable surplus.

(PM)(CMA J 07- 4M, D 10)

“AVAILABLE SURPLUS”: Refer to previous questions.

“ALLOCABLE SURPLUS” [Sec.2(4)]: This expression means:

1. 67% of the available surplus in an accounting year, in relation to an employer, being a company, other than banking company, which has not made the arrangements prescribed under the Income Tax Act 1961, for the declaration and payment within India of the dividends payable out of its profits in accordance with the provisions of Sec.194 of Income Tax Act .
2. In any other case of employer, allocable surplus means 60% of such available surplus.

This is to be distributed as bonus in proportion to the salary actually earned by each employee during the year. However, this is subject to minimum of 8.33% and maximum of 20% of salary.

(IMMEDIATELY REFER PRACTICAL QUESTION NO. 11 & 12)

Q.No.8. Write the provisions relating to minimum & maximum bonus?

(MTP M16, N 11- 4M) RTP N15, M 16, PM)

PAYMENT OF MINIMUM BONUS - SEC.10:

1. Every employer shall be
 - Bound to pay
 - To every employee
 - In respect of every accounting year,
 - Minimum bonus which shall be 8.33% of the salary or wage earned by the employee during the accounting year or Rs. 100, whichever is higher (↑)
2. This is payable whether or not the employer has any allocable surplus in the accounting year i.e. even if the employer suffers losses during the accounting year he is bound to pay this.
3. But if the employee has not completed 16 years of age at the beginning of the accounting year he will be entitled to a minimum bonus which shall be 8.33% of the salary or wage earned during the accounting year or Rs.60, whichever is higher (↑)

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PAYMENT OF MAXIMUM BONUS - SEC.11:

1. Where, in respect of any accounting year, the allocable surplus
 - a) Exceeds the amount of minimum bonus payable (A.S. > Min. Bonus) to the employees
 - b) The employer shall, instead of such minimum bonus, is bound to pay to every employee in respect of that accounting year a bonus upto a maximum of 20% of such salary or wages.
2. In computing the allocable surplus mentioned in 'a' point above, the amount Set on or Set off under the Sec.15 shall be taken into account.
3. Further, where the salary or wage of an employee exceeds Rs. 7,000 per mensem w.e.f. 01.04.2014

The bonus payable to such employee under Sec.10/Sec.11, shall be calculated as if his salary or wage is 7,000 p.m.

Q.No.9. Explain the provisions related "set on & set off" of allocable surplus (sec.15)

(CMA D 06 - 4M) (PM)

SET - ON OF ALLOCABLE SURPLUS:

- Where for any accounting year, the allocable surplus exceeds the amount of maximum bonus payable(AS > Max. bonus) to the employees in the establishment under Section 11,

- Then, the excess shall, subject to a limit of 20% 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 4th accounting year. [Section 15(1)]

SET - OFF OF ALLOCABLE SURPLUS:

- There may be a case where there is no available surplus or where the allocable surplus in respect of that year falls short of the amount of minimum bonus (AS = 0 or AS <= Min. Bonus) and**
- there is no amount or sufficient amount carried forward and set on
- In such a situation 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 4th accounting year. [Section 15(2)]

Note: 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 [Section 15(4)].

Q.No.10. Describe the procedure for computing number of working days? Can the bonus thus calculated be reduced proportionately? If so, under which circumstances?

(CMA D11, J 05- 3M) (N 13 – 4M) (PM)

SECTION 14: Section 14 of the Act provides how to compute the number of working days for purposes of Section 13.

SECTION 13: As per Section 13, where an employee has not worked for all the working days in an accounting year, the minimum bonus of Rs. ~~100~~ or, as the case may be of Rs. 60, if such bonus is higher than 8.33% of his salary or wage for the days he has worked in that accounting year, shall be proportionately reduced.

Suppose X is an employee with the wages of Rs. 80 per month. Here X is entitled to receive Rs. 100 as bonus for the accounting year. If however, X has worked only for half the number of the working days, there X is entitled only for half the number of working days i.e., Rs.50 only as bonus.

WORKING DAYS: Under Section 14, following days shall be deemed to be the working days of an employee and shall be counted while calculating the total working days on which he has been on work for the purpose of bonus:

- Day when he has been laid off under an agreement or by a standing order under Industrial Employment (standing orders) Act, 1946 or Industrial Disputes Act, 1947 or any other law applicable to the establishment
- He has been on leave with salary or wage.
- He has been absent due to temporary disablement caused by accident arising out of and in the course of his employment, and
- The employee has been on maternity leave with salary or wages during the accounting year.

Exceptions:

- Both Sections 13 and 14 do not cover the following case
 - Where an employee is prevented from working by reason of an illegal order of termination.
 - If an employee by himself does not work on all the working days in an accounting year, then the formula prescribed in Section 13 read with section 14 has to be applied.
 - Where an employee was ready and willing to work, but for reasons beyond his control was unable to work and gain the eligibility for bonus under Section 8 of the Act, it cannot be said that Section 14 is a bar for such a claim.

2. Proportionate bonus as per Section 13 shall not apply on the employee of seasonal factory. Here the word 'working days in any accounting year' mean those days of the year during which the employee concerned is actually allowed to work [Sakhkar Mills Mazdoor Sangh V. Gwalior Sugar Co. Ltd.]

(IMMEDIATELY REFER PRACTICAL QUESTION NO. 13&14,27)

SIMILAR QUESTIONS:

1. Examine with reference to Payment of Bonus Act if an employee drawing a salary of Rs.5,000 and who joined duty on January 20th, 2008 and who availed maternity leave for premature delivery from February 8th, 2008 till April 4, 2008, is eligible for bonus for the year 2007-08.

A. Refer point d in Sec.14. (PM)

2. State which of the following statement is correct / incorrect with reasons: Woman employee on maternity leave is not eligible for bonus. (RTP - N 13)

A. Incorrect: Sec 14 – refer above

Q.No.11. Can an employer deduct any amount due from an employee from the bonus payable to him? If so, when and what are the limitations of it. (M - 16 4M, PM)

ADJUSTMENT OF CUSTOMARY OR INTERIM BONUS AGAINST BONUS PAYABLE UNDER THE ACT (SECTION 17):

1. If in any accounting year, an employer has paid any puja bonus or other customary bonus to any employee, then the employer 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.
2. The employer can do the same thing even in a case where he has paid a part of the bonus payable under this Act to an employee before the date on which such bonus becomes payable.

DEDUCTION OF CERTAIN AMOUNTS (IN THE CASE OF MISCONDUCT) FROM BONUS PAYABLE UNDER THE ACT (SECTION 18):

1. Where in any accounting year, 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.
2. In this case, the employee shall get only the balance, if any.

(IMMEDIATELY REFER PRACTICAL QUESTION NO. 16, 17 & 18)

Q.No.12. What is the time limit for payment of bonus and what action can be taken by an employee for the recovery of bonus due from his employer?

(M 12 - 4M) (M 15 - 4M) (CMA J 09 – 2M) (MTP M15, N16 – 4M)

TIME-LIMIT FOR PAYMENT OF BONUS (SECTION 19):

- All amounts payable to an employee by way of bonus shall be paid by the employer within a period of 8 months from the closing of the accounting year.
- The period of 8 months may be extended up to a maximum of 2 years by the appropriate Government or by any authority specified by the appropriate Government.
- This extension is to be granted on the application of the employer and only for sufficient reasons.

INCASE OF DISPUTE: Where there is a dispute regarding the payment of bonus pending before any authority the same must be paid within a month from the date on which the award becomes enforceable or the settlement comes into operation, in respect of a dispute mentioned under Section 22.

RECOVERY OF THE BONUS DUE FROM AN EMPLOYER (SECTION 21): If the amount of bonus due to an employee under a settlement or an award or agreement is not paid, then the following procedure may be followed to recover the due bonus:

- a) The employee may **make an application** for the recovery of the amount due to him to the appropriate Government. For this purpose, employee includes ex-employee also. Therefore, any person can make an application for recovery of bonus even after he ceased to work with the employer against whom an application is filed.
- b) The **application can be made by** any other person authorized by the employee in writing to act on his behalf. It can be made even by his assignee or heirs when the employee is dead.
- c) The **application is to be made within one year** from the date on which the money (bonus) became due but it may be entertained even after the expiry of the said period of one year, if the appropriate Government is satisfied that the applicant had sufficient cause for not making the application within the said period.
- d) On receipt of the aforesaid application for the recovery of the bonus amount, if the appropriate Government or such authority as it may specify in this connection is satisfied that the money is so due, it shall issue a certificate for that amount to the Collector.
- e) Thereupon, Collector shall proceed to recover the same in the same manner as an arrear of land revenue.

(IMMEDIATELY REFER PRACTICAL QUESTION NO. 19 & 20)

Q.No.13. Discuss the provisions of the Payment of Bonus Act relating to the appointment, powers and functioning of inspectors appointed under the Act. (M 13 - 5M) (PM)

1. **APPOINTMENT AND THE LIMIT OF JURISDICTION (SECTION 27):** The appropriate Government may, by notification in the Official Gazette, appoint such persons as he thinks fit to be Inspectors for the purposes of this Act and may define the limits within which they shall exercise jurisdiction.
2. **POWERS:** An inspector thus appointed has to ascertain whether any of the provisions of this Act has been complied with. And for this purpose, he may have the following powers:
 - a) Require an employer to furnish such information as he may consider necessary;
 - b) At any reasonable time enter any establishment and require anyone found in charge thereof to produce before him any account books, registers and other documents relating to the employment of persons or the payment of salary or wage or bonus in the establishment;
 - c) Examine with respect to any matter relevant to any of the purpose aforesaid, the employer, his agent or servant
 - d) Make copies of or take extracts from, any book, register or other document maintained in relation to the establishment;
 - e) Exercise such other powers as may be prescribed.
3. **POSITION OF THE INSPECTOR:** The Inspector appointed as aforesaid is deemed to be a public servant within the meaning of the Indian Penal Code.
4. **DUTY TO PRODUCE ACCOUNT BOOK, REGISTER AND OTHER DOCUMENT-** Any person whom an Inspector calls upon to produce any account book, register or other document or to give information, shall be legally bound to do so.
5. **LIMITATION OF POWER:** The provisions of Section 27 do not empower 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 accounts or other documents, which a banking company cannot be compelled to furnish, disclose, produce or give inspection of, under Section 34A of the Banking Regulation Act, 1949.

Q.No.14. When the Payment of Bonus Act is applicable to the establishment in public sector?
(PM)

APPLICATION OF THE ACT TO ESTABLISHMENTS IN PUBLIC SECTOR IN CERTAIN CASES
[SECTION 20]: As per Section 20(2) of The Payment of Bonus Act, nothing in this Act shall apply to the employees employed by any establishment in the public sector. But there are certain exceptions as stated below:

EXCEPTION:

1. If in an accounting year an establishment in public sector sells any goods manufactured by it or renders any services in competition with an establishment in private sector.
2. If the income from such sale or service or both is not less than 20% of the gross income of establishment in public sector then the provisions of the Bonus Act shall apply to it.

MEANING OF ESTABLISHMENT IN PUBLIC SECTOR: It means an establishment owned, controlled or managed by-

- a) A Government company as defined in Section 2(45) of the Companies Act, 2013;
- b) A corporation in which not less than 40% 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.**

(IMMEDIATELY REFER PRACTICAL QUESTION NO. 21)

Q.No.15. In what way does the Payment of Bonus Act regulate the payment of bonus to employees linked with productivity? What restrictions apply in such cases on payment of bonus to an employee?

SPECIAL PROVISION WITH RESPECT TO BONUS LINKED WITH PRODUCTION OR PRODUCTIVITY (SECTION 31A)

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, 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 restrictions imposed by Section 31A:

- a) **AGREEMENT TO RELINQUISH MINIMUM BONUS:** 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) **MAXIMUM BONUS NOT EXCEEDING 20%:** 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 salary/wages.

(IMMEDIATELY REFER PRACTICAL QUESTION NO. 22 & 23)

Q.No.16. Explain the special provisions with respect to newly set up establishments? (Sec.16)
(PM)

1. In case of new establishment, in the first 5 accounting years next to the accounting year in which the employer sells the goods manufactured by him or renders services,
 - a) Bonus shall be payable only in the accounting year in which the employer derives profits from such establishment.
 - b) Such bonus shall be calculated without applying the provisions of Sec.15.

2. **When an employer is deemed to have derived profit:**
 - a) After he has made provision for that year's depreciation as per Income Tax Act &
 - b) After the Unabsorbed depreciation & Unabsorbed losses for the previous accounting years have been fully set off against his profits.
3. But in the 6th & 7th accounting years, Sec.15 shall apply subject to the following modifications:
 - a) For the 6th accounting year, set on or set off shall be made, taking into account the **excess or deficiency** of the allocable surplus set on or set off in respect of the 5th and 6th accounting years.
 - b) For the 7th accounting year, the same principle is to be followed but the excess or deficiency of the allocable surplus set on or set off in respect of the 5th, 6th and 7th accounting years has to be taken into account.
4. From the 8th accounting year, the provisions of Sec. 15, shall apply in relation to such establishment as they apply in relation to any other establishment.
5. **Period of Trial run is excluded:**
 - a) Sale of goods produced or manufactured during trial running of any factory or of prospecting stage of any mine or any oil field shall not be taken into consideration.
 - b) Where any question arises with regard to such production or manufacture, decision of the Appropriate Government, made after giving a reasonable opportunity to the parties for representing the case, shall be final and shall not be called into question by any court or other authority.

MEANING OF NEW ESTABLISHMENT: It may be noted that an establishment shall not be deemed to be newly set up merely by reason of a change in its location, management, name or ownership.

Q.No.17. Explain the possibility of relying upon the B/S & P&L a/c in the case of a dispute with its employees relating to bonus payable and the limitations, if any, in this regard? (RTP M 14)

PRESUMPTION ABOUT THE ACCURACY OF BALANCE SHEET AND PROFIT AND LOSS ACCOUNT OF CORPORATIONS AND COMPANIES (SECTION 23):

1. **AUTHORITY TO PRESUME AUDITED ACCOUNTS TO BE ACCURATE:**
 - a) During the course of any dispute specified in section 22, the balance sheet and the profit and loss account of an employer, being a corporation or a company (other than a banking company), duly audited by the Comptroller and Auditor General of India, or by Chartered Accountant in Practice, are produced, then, the authority adjudicating the dispute may presume that those are accurate and
 - b) It shall not be necessary for the corporation or the company to prove the accuracy of such statements and particulars by the filing of an affidavit or by any other mode.
 - c) If the Authority is satisfied that those statements are not accurate, it may take such steps as it thinks necessary to find out the accuracy thereof.
2. **CLARIFICATION BY UNION:**
 - a) Trade union or the employees who are a party to the dispute, may make an application to the authority requiring any clarification relating to any item in the balance sheet or profit and loss account from the employer, company or corporation.
 - b) The authority, if satisfied as to the necessity of such clarification, then it shall direct the corporation or the company to furnish such clarification to the trade union or the employees within a specified time limit.
 - c) Thereupon, the company or the corporation must comply with such direction of the authority. [Section 23(2)].

AUDIT OF ACCOUNTS OF BANKING COMPANIES NOT BE QUESTIONED (SECTION 24):

1. Where any dispute of the nature specified in Section 22 between
 - a) An employer, being a banking company, and
 - b) Its employees
 - c) Has been referred to the said authority under that Section and
 - d) During the course of proceedings the accounts of the banking company duly audited are produced before it,
 - e) The said authority shall not permit any trade union or employees to question the correctness of such accounts.
2. The trade union or the employees may be permitted
 - a) To obtain from the banking company such information as is necessary for verifying the amount of bonus under this Act [Sub-section(1)].
 - b) These provisions shall not enable the trade union or the employees to obtain any information which the banking company is not compelled to furnish under Section 34A of the Banking Regulation Act, 1949 [Sub-section (2)].

AUDIT OF ACCOUNTS OF EMPLOYERS NOT BEING CORPORATION OR COMPANIES (SECTION 25):

- If the employer has any dispute relating to the payment of bonus under this Act or with respect to the applicability of this Act to an establishment in the public sector with his employees and the accounts of such employer are audited by a Chartered Accountant in Practice and such accounts are produced before the authority then the provisions of Section 23 shall so far as may be, apply to the accounts so audited [Section 25(1)]
- If the authority finds that the accounts of such employer have not been audited by any such auditor duly qualified to act under Section 141 of the Companies Act, 2013 it can, if it thinks necessary to do so ask the employer to get his accounts audited within the stipulated time.
- Thereupon, the employer must get his accounts audited within the stipulated time.
- If the employer fails to do so, then the said authority may get the accounts audited by such auditor or auditors as it thinks fit.
- The accounts thus audited, whether by the employer or on his default by the authority, shall fall within the provisions of Section 23.

SIMILAR QUESTION:

1. Enumerate the procedure concluding Presumption with respect to the accuracy of balance sheet and profit and loss account of corporations and companies as per the Payment of Bonus of Act, 1965. **(RTP – M 14)**
- A. Procedure for concluding the presumption as to the accuracy of balance sheet and profit and loss account of corporations and companies (Section 23).

Q.No.18. State the circumstances under which an employer is exempted to pay the minimum bonus? Who is empowered to exempt him? (or)

Can an employer be exempted from paying minimum bonus? What does the law say of such exemption ? **(RTP) (PM)**

POWER OF EXEMPTION (SECTION 36): The appropriate Government may, having regard to the financial position and other relevant circumstances of an establishment or class of establishment, exempt by notification in the official Gazette, such establishment or class of establishments from all or any provision of the Payment of Bonus Act.

It may do so if it is of opinion that it will not be in public interest to apply all or any of the provision of this Act to such establishment or class of establishment and impose such conditions as it may think fit to impose

There are two stages in Section 36.

1. The Government shall consider the financial position and other relevant circumstances of an establishment or class of establishment. Such a period as may be specified.
2. It should be of the opinion that it would not be in the public interest to apply all or any of the provisions of the Act.

The expression 'financial position' include loss suffered by the establishment during the accounting year. The expression 'other relevant circumstances' will include every consideration as to whether the workmen had principally contributed to the financial loss of the company during that accounting year.

If the bonus liability is negligible compared to loss suffered, company should not be relieved of liability to pay minimum bonus.

If the losses sustained by the employer is not due to any misconduct on the part of employees, the employer is liable to pay statutory minimum bonus. [J.K. Chemicals Ltd. vs. Govt. of Maharashtra].

(IMMEDIATELY REFER PRACTICAL QUESTION NO. 24)

Q.No.19. Define the following terms – Accounting year, Wages, Employer, Employee, Appropriate Government, Award, Establishment in Private sector, Establishment in Public Sector. (PM)

1. **ACCOUNTING YEAR [SECTION 2(1)]:** It means,

- a) 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
- b) 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;
- c) in any other case-
 - i) The year commencing on the first day of April; or
 - ii) 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.

An option once exercised by the employer as above shall not again be exercised except with the previous permission of the prescribed authority in writing and on such terms as the authority may think to impose.

2. **APPROPRIATE GOVERNMENT [SECTION 2(5)] :** In relation to an establishment in respect of which the appropriate Government under the Industrial Disputes Act, 1947 is the Central Government, the Appropriate Government means the Central Government. But in relation to any other establishment, the expression means the Government of the State in which the other establishment is situated.

3. **AWARD [SECTION 2(7)]:** It 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.

4. **EMPLOYEE [Section 2(13)] :**

(MTP N16 - 8M)

It means any person (other than an apprentice) employed –

- On a salary or wage not exceeding Rs. 21,000 per mensem in any industry,

- To do any skilled or unskilled, manual, supervisory, managerial, administrative, technical or clerical work,
- for hire or reward,
- Under the express /implied terms of employment

5. **EMPLOYER [SECTION 2(14)]**: includes-

(MTP N16 - 8M)

a) ***IN RELATION TO AN ESTABLISHMENT WHICH IS A FACTORY –***

- The owner or occupier of the factory, including the agent of such owner or such occupier,
- The legal representative of a deceased owner or occupier and
- Where a person has been named as a manager of that factory under Section 7(1)(f) of the Factories Act, 1948, the person so named are termed as employer.

b) ***IN RELATION TO ANY OTHER ESTABLISHMENT WHICH IS NOT A FACTORY –***

- The person or the authority which, has the ultimate control over the affairs of the establishment and
- If the said affairs are entrusted to a manager, managing director, or managing agent then such manager, managing director or managing agent are termed as employer.

6. **ESTABLISHMENT IN PRIVATE SECTOR [SECTION 2(15)]**: This expression means any establishment other than an establishment in public Sector.

7. **SALARY OR WAGE [SECTION 2(21)]**:

a) *It mean*

- 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 his employment or of work done in such employment.
- It includes dearness allowance, i.e., all cash payments by whatever name called, paid to an employee on account of a rise in the cost of living.

b) *But the term excludes:*

- Any other allowance which the employee is for the time being entitled to;
- The value of any house accommodation or of supply of light, water, medical attendance or other amenities or of any service or of any concessional supply of food grains or other articles;
- Any travelling concession;
- Any bonus (including incentive production & attendance bonus);
- 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;
- Any retrenchment compensation or any gratuity or other retirement benefit payable to the employee or any ex-gratia payment made to him; and
- 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,

1. Free food allowance or
2. Free food by his employer,
3. Such food allowance or the value of such food shall be deemed to form part of the salary or wage for such employee.

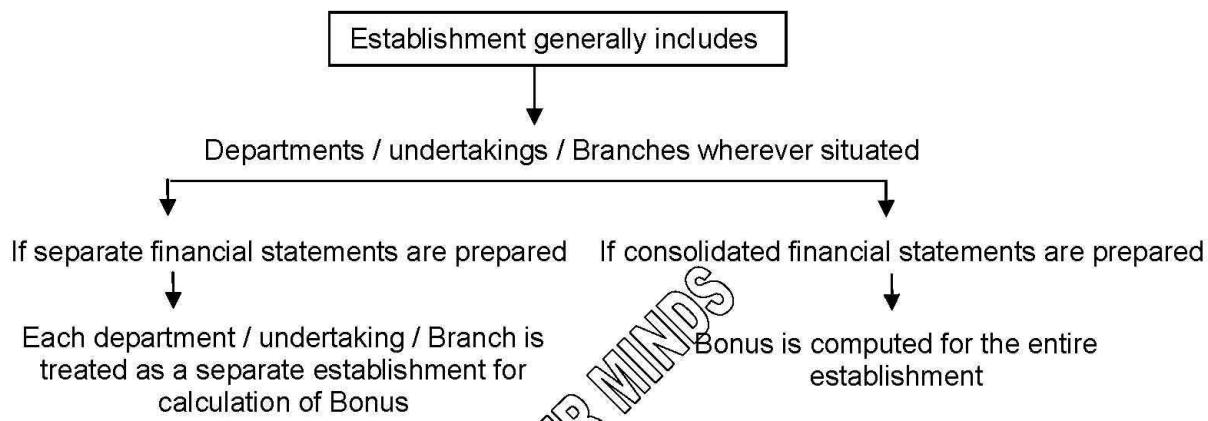
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(IMMEDIATELY REFER PRACTICAL QUESTION NO. 25)

Q.No.20. Circumstances under which different departments of a company can be treated as a separate establishment for the payment of bonus. (RTP)

ESTABLISHMENT TO INCLUDE DEPARTMENTS, UNDERTAKINGS AND BRANCHES (SEC 3)

1. Where an establishment consists of departments or undertakings, or has branches irrespective of whether they are situated in the same place or in different place, all such departments or undertakings or branches are to be treated as part of the same establishment for the purpose of computation of bonus under this Act.
2. If for any accounting year, a separate balance sheet and profit and loss account are prepared and maintained in respect of any such departments etc. then such department, undertaking or branch shall be treated as separate establishments for the purpose of calculation of bonus for that year, unless such department, etc., were, immediately prior to the commencement of that accounting year, treated as part of the establishment for the purpose of computation of bonus.



(IMMEDIATELY REFER PRACTICAL QUESTION NO. 26)

QUESTIONS FOR ACADEMIC INTEREST ONLY

Q.No.21. What are the provisions relating to offences by Companies and also state the penal provisions under the Payment of Bonus Act? (C) (PM)

1. **OFFENCES BY COMPANIES [SECTION 29]:** If a company commits the offence under this Act, then every person who, at the time when the offence was committed was in charge of and responsible to the company for the conduct of its business and also the company would be deemed to be guilty of the offence and liable to be proceeded against and punished accordingly.
2. But such person shall be excused from liabilities and incidental punishment, if he proves that the offence was committed without his knowledge or that he exercised all due diligence (Care fullness) to prevent the commission of such offence.
3. If it is proved that such offence has been committed by a Co. with the involvement of or is attributable to any neglect on the part of, any director, manager, secretary, or other officer of the Co., such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Note: Company means any Body Corporate and includes - A partnership firm or AOP and Director - includes a partner in the firm.

Penal Provisions [Sec 28]:

Offence	Punishment
Where a person is found guilty of	<ul style="list-style-type: none"> • Imprisonment upto 6 months, or

<ul style="list-style-type: none"> Contravention of any of the provisions of this Act or any Rules made there under, or Failure to comply with the direction given or requisition made under this Act. 	<ul style="list-style-type: none"> Fine upto Rs.1,000 (or) both
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Q.No.22. State the nature of disputes arising between an employer and his employees regarding the bonus payable under the Payment of Bonus Act, 1965. [Sec 22] (C) (RTP - M12)

- MEANING OF DISPUTE:** Disputes may arise between an employer and his employees either regarding
 - Bonus payable under this Act or
 - Regarding the application of this Act to an establishment in public sector.
- NATURE OF DISPUTE:** Disputes arising between an employer and his employees regarding bonus payable under this Act, 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 State and the provisions of that Act or as the case may be such law shall, save as otherwise expressly provided, apply accordingly.

Q.No.23. State the provisions relating to cognizance of offences under the payment of bonus Act, 1965. (C)

COGNIZANCE OF OFFENCES (Section 30):

- No Court shall take cognizance of any offence which means any Act or omission made punishable by any law for the time being in force punishable under this Act, except on complaint made by or under authority of the Appropriate Government or an officer of the Government (not below the rank of A Regional Labour Commissioner in the case of an officer of the Central Government and not below the rank of Labour Commissioner in the case of an officer of the State Government) specially authorised in this behalf by that Government.
- No Court inferior to that of presidency magistrate or a magistrate of the first class try any offence punishable under this Act.
- Thus it is evident that Section 30 makes it obligatory, on every Court before it takes cognizance of a complaint against any person for an offence under this Act that the necessary sanction is obtained or complaint is made under the authority of the appropriate Government or specified officer of the Central Government or the State Government.

PROTECTION OF AN ACTION TAKEN UNDER THE ACT (Section 31):

- No suit, prosecution or other legal proceedings shall be taken against the Government or any officer or the Government for anything which is in good faith done or intended to be done in pursuance of this Act or any rule thereunder.
- It may be noted that a thing shall be deemed to be done in good faith, where it is in fact done honestly, whether it is done negligently or not.

Q.No.24. The employer is a banking company. Point out so as to what items are required to be added to the "Net Profit" by the employer for calculating the "Gross Profit" in accordance with the First Schedule of the Payment of Bonus Act, 1965. (C) (PM)

While calculating Gross Profit in the case of banking company as per the first schedule of the Payment of Bonus Act, 1965, the following are to be added to the Net Profit as shown in the Profit and Loss Account after making usual and necessary provisions:

1. Provision for Bonus to employees, Depreciation, Development Rebate Reserve and any other Reserve.
2. Bonus paid to employees in respect of previous year, amount debited in respect of Gratuity paid or payable to employees in excess of the aggregate of:
 - a) The amount, if any, paid or provided for payment, to an approved Gratuity fund; and
 - b) The amount actually paid to employees on their retirement or on termination of their employees for any reason.
3. Donation in excess of the amount admissible for Income tax.
4. Capital expenditure (other than capital expenditure on scientific research which is allowed as deduction under any law for the time being in force relating to Direct taxes) and capital losses other than losses on sale of capital assets on which depreciation has been allowed for Income tax).
5. Any amount certified by RBI in terms of Section 34A(2) of the Banking Regulation Act, 1949.
6. Losses of or expenditure relating to any business situated outside India.
7. Also add income, profit or gains (if any) credited directly to Published or Disclosed reserves other than:
 - a) Capital receipts and Capital profits (including profits on the sale of capital assets on which depreciation has not been allowed for Income tax).
 - b) Profits of and receipts relating to any business situated outside India.
 - c) Income of foreign companies from investment outside India.

FOURTH SCHEDULE OF PAYMENT OF BONUS ACT

In this Schedule, 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 entitled to be paid (twenty percent of the annual salary or wage of all the employees) would be Rs. 2,50,000.

Year	Allocable surplus	Amount payable as bonus	Set on or Set off of the year carried forward	Total Set on or Set off carried forward
(1)	(2)	(3)	(4)	(5)
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 (2), 1,25,000 (4)
5	1,40,000	2,50,000 (inclusive of 1,10,000 from year 2)	Nil	Set on 1,10,000 (2), 1,25,000(4)
6	3,10,000	2,50,000	Set on 60,000	Set on Nil (2) (@), 1,25,000 (4), 60,000 (6)
7	1,00,000	2,50,000 (inclusive of 1,25,000 from year-4 & 25,000 of year-6)	Nil	Set on 35,000 (6)
8	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 (8), 94,167 (9)

10	2,15,000	1,04,167 (after setting off 69,167 from year 8 and 41,666 of year 9)	Nil	Set off 52,501 (9)
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@ Lapses, since time period of 4 years got completed.

PRACTICAL QUESTIONS

Q.No.1. Examine whether the Payment of Bonus Act, 1965 be applicable to the following cases:

- a. J, who is working in a social welfare organization.
- b. D, an employee employed by an establishment engaged in an industry carried on by a Department of the Central Government. **(M - 07) (For students self study)**

a) 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 institutions (including hospitals, chambers of commerce and social welfare institutions) established not for purposes of profit..

b) Similarly the Payment of Bonus Act, 1965 is not applicable to the employees of an establishment which is engaged in an industry carried on by or under the authority of a department of the Central Government or the state government or a local authority under section 32 (iv) of the said Act.

Q.No.2. PQR Limited, New Delhi refused to pay bonus to its employees on the ground that an authorized controller appointed by the Delhi Government controls its management and as such is exempt from the liability to pay bonus. Referring the provisions of the Payment of Bonus Act, 1965, decide whether the plea of the company is tenable. **(M - 09 PE - II)**

Provisions of law: Sec. 32 – Act does not apply to certain class of employees

Relevant case law: RMS Vs the Model Mills (1984).

Analysis: Sec. 32(iv) of the Payment of Bonus Act, 1965 provides that the Act shall not apply to employees employed by an establishment engaged in any industry carried on or under the authority of any department of the Central Government or the State Government or a local authority.

However in the above mentioned case, it was held by the Supreme Court that Sec. 32(iv) will not extend to the case where the establishment was not under the direct authority of Central/State Government or local authority.

By applying the above provisions in the given case, appointment of the controller in the company by the Delhi government was temporary phenomenon. The PQR Ltd was therefore held liable to pay bonus to its workmen.

Conclusion: The plea of PQR Ltd. is not tenable.

Q.No.3. S joins as a worker with Gokale Sugar Factory on 2nd February, 04. Will he be eligible for Bonus for the financial year 2003- 04? **(For students self study)**

Sec.8 of the Payment of Bonus Act provides that an employee is entitled to bonus if he has worked in the establishment for not less than 30 days. Since S has worked for more than 30 days in the accounting year, he would be eligible for Bonus for 2003-04.

Q.No.4. A builder employed a labour on the daily wages for 2 months for the construction of the site on the payment of Rs 300 per day. Throw a light with respect to the Payment of Bonus Act, 1965 whether a labour is entitled for the bonus in the given instance.

Provisions of law: Section 2(13) read with Section 8 – Entitlement to bonus

Relevant case law: Himachal Pradesh State Electricity Board and Others Vs Krishan Dutt

Analysis: As per 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-(i) for not less than thirty working days in that year, (ii) on a salary or wage not exceeding Rs 21,000 per mensem.

The Act does not make any distinction as to whether an employee is daily wager, temporary, permanent, weekly paid, monthly paid etc. the only precondition is that he should have worked in the establishment for not less than 30 working days in an accounting year.

According to the given facts, labour who was on daily wages, have fulfilled the requirements of the above stated provisions. He has worked for the 2 months i.e., more than 30 working days and on the daily wages of Rs. 300 which amounts the wages(Rs. 300 x 30 days= Rs. 9000 p.m) not exceeding Rs. 21,000 p.m.

Conclusion: Thus it can be concluded that labour is entitled for the payment of bonus.

Q. No.5. Answer the following situations.

- A person has worked only for 35 days in an accounting year. Is he eligible or entitled to be paid bonus by his employer for that year?
- Examine the entitlement of the following persons to receive bonus under the Payment of Bonus Act 1965: An employee who had been laid –off for 20 days and had attended work for only 22 days in an entire accounting year;

(For students self study)

- Provisions of law:** Sec.8 of the Payment of Bonus Act provides that an employee is entitled to bonus if he has worked in the establishment for not less than 30 days. Since in the given case he worked for more than 30 days in the accounting year, he would be eligible for Bonus.

Analysis & Conclusion: The employee in the given case Also as he has not worked for all working days in an accounting year Sec 13 provides for proportionate reduction of bonus in such cases. The employees shall hence be entitled to bonus for 35 working days only as a ratio of the bonus payable for the total working days.

- Provisions of law:** According to Section 14, when an employee had been laid off under an agreement, those days on which he has been laid-off shall be deemed to be working days for the employee and it shall be counted while calculating the total days on which he has been on work for the purpose of payment of bonus.

Analysis & Conclusion: In the instance case, the employee had been laid off for 20 days and had attended work for 22 days in the entire accounting year equaling to 42 total working days. An employee is entitled to bonus when he has worked in the establishment for not less than thirty working days in the year (Section 13). So, in this case, the employee is entitled to get bonus.

Q.No.6. 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 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. Examine the validity of employer's refusal?

(RTP M15) (For students self study)

Provisions of law: Sec. 13-Applicability of proportionate reduction of bonus in certain cases.

Relevant case of law: ONGC Vs Sham Kumar Sahegal.

Analysis: 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. 21,000 per month.

Sec. 13 provides for proportionate reduction of bonus in such cases. But Sec. 13 does not cover a case where an employee was prevented from working by reason of an illegal order of termination and employer's statutory liability for bonus cannot be said to have been lost and the employee concerned shall be entitled to the bonus.

Thus based on the above ruling and the provisions of the Act, 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. 21,000 and not disqualified for any other reason.

Conclusion: Employer's refusal to pay bonus to X is not valid.

Q.No.7. Mr. 'E' joined as supervisor on monthly salary of Rs.13,400 on 1.2.2016 and resigned from his job on 28.2.2016. 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 to claim. Examine the validity in the light of the provisions of the payment of Bonus Act, 1965.

(PM) (N 07- 5M, M 07, 08 - 5M) (CMA J 13 – 2M)(RTP- N16)

Provisions of law: As per provision of Sec.2 (13) of the payment of Bonus Act 1965, an employee means any person other than an apprentice employed on a salary or wage not exceeding Rs. 21,000 per month.

Further Sec.8 provides that an employee to be entitled for bonus in the accounting year should have worked in the establishment for not less than 30 days in that year.

Analysis & Conclusion: Thus in view of the above, Mr. E is not entitled for bonus as he had not worked for 30 days in the accounting year.

Q.No.8. During the financial year 2010-2011 Mr. Ram was a temporary employee in Ayurved Products Limited and drawing a salary of Rs 6000/- per month. On the basis of charge of violent behavior within the premises of the company, he was prevented from working in the company for 60 days pending inquiry. Since there was no adverse conclusion against him, he was reinstated in the service with back salary. He worked for the remaining ten months in that financial year and thereafter resigned from the service. Afterwards, when bonus was paid to others employees, the company refused to pay bonus to Mr. Ram. Decide whether Mr. Ram will be entitled to bonus under the provisions of the Payments of Bonus Act, 1965?

(MTP N15) (M11 – 8M)(RTP- N16)

As per Section 9 of the Payment of Bonus Act, 1965, 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.

The above provision involves the following legal process:

- i) When an employee is charged for any of the above acts, an inquiry is essential;
- ii) The allegedly guilty employee is suspended for the period of the inquiry till submission of the inquiry report. In case he is found guilty, he may be dismissed or reinstated after warning but without wages for the period of suspension. On the other hand if he is found innocent, he will have to be reinstated with back wages as per the various labour laws including the Industrial Disputes Act.
- iii) It makes no difference whether the employee is temporary or permanent

It is clear from the above provision that if an employee is reinstated with back wages, it means he did not commit the disqualifying act and hence his disqualification does not arise. Therefore, he is entitled to receive bonus for the full year. [Gammon India Ltd. Vs. Niranjan Das].

Therefore, refusal of company is not valid and Mr. Ram will be entitled to the bonus under the Payment of Bonus Act, 1965.

Q.No.9. An employee working in an establishment commits fraud during the accounting year 2009-2010, but continues to work during the subsequent accounting years 2010-2011 and 2011-2012, and has a clean record during the subsequent years. On the basis of the fraud committed in 2009-2010, the employee is dismissed from service at the end of the accounting year 2011-2012. In this case, does he lose the bonus for the accounting year of misconduct i.e. 2009-2010 or for all 3 accounting years ending with 2011-2012?

Discuss in the light of the provisions of the Payment of Bonus Act, 1965.

(PM)(RTP – N14)

Provisions of Law: Sec. 9 – Disqualifications of an employee

Relevant case law: Pandian Road ways corporation Ltd Vs .Presiding officer.

Analysis: According to Sec.9, 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 damage of any property of the establishment is not entitled for bonus.

An employee, who is dismissed from service on the ground of misconduct as mentioned in Sec.9, is disqualified for any bonus and not merely for bonus of the accounting year in which he is dismissed.

Conclusion: The employee loses the Bonus for all three accounting years.

Q.No.10. ABC Textiles Ltd. employed 20 full-time and 5 part-time employees who were drawing salary 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 court for relief. Decide, stating the provisions for the Payment of Bonus Act, 1965, whether the employees who resigned, remaining full-time employees and part-time employees will get relief.

(N09 - 5M, N 08 - 5M) (PM)(RTP – N17, N14)(MTP – 4M)

Provisions of law: Sec. 2(13) – Definition of employee & Sec. 8.

Analysis and Conclusion: In accordance with the provisions of Sec. 2(13) of the payment of Bonus Act 1965. Any person other than an apprentice employed on a salary or wage not exceeding Rs.21,000 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 is eligible for bonus.

Further, in accordance with the provisions of Sec.8 of the payment of Bonus Act, 1965, every employee of an establishment covered under the Act is entitled to bonus from his employer in an establishment for not less than 30 working days in the year on a salary less than Rs.21,000 per month.

The question 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 have given their services only for 28 days in an accounting year although they are drawing salary less than Rs. 21,000 per month. So, they are not entitled to the bonus.

b) **As regards full time remaining employees:** Although the employees in the case have been reduced to 10 once the Act is applicable it continues to apply even if number of employees fall below 20.

So, these employees are entitled to get the bonus as they fulfill both the requirements of Sec.2(13) and Sec.8 of the Act.

c) **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 fulfill all the requirements stated above. [Automobile, karmachari sangh Vs. Industrial Tribunal]

Q.No.11. A Company in a particular accounting year suffered losses and hence was not able to pay even the minimum bonus to its workmen. State in this connection, whether the minimum bonus is payable irrespective of losses and any circumstances that the Company may get exemption under the Payment of Bonus Act, 1965.

CMA J 12 – 2M) (PM) (For students self study)

Provisions of law: Sec. 10-Payment of minimum bonus

Sec. 36-Power of exemption

Analysis: As per the Act, minimum bonus is payable whether or not the employer has any allocable surplus in the accounting year i.e. even if the employer suffers losses during the accounting year, he is bound to pay the minimum bonus.

But as per Sec. 36, the Appropriate Government has powers under the section to exempt any establishment or class of establishments From all or any of the provisions of the Act on satisfying the following two conditions:

- a) Having regard to its financial position and other relevant circumstances and.
- b) It will not be in the public interest to apply the bonus Act.

Conclusion: A company must pay minimum bonus even if it suffers from losses. A company on application to government shall be exempted from payment of bonus.

Q.No.12. In an accounting year, a company to which the payment of Bonus Act, 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.

(M 07- 5M)(P.M) (For students self study)

Provisions of law: Sec. 10-Payment of minimum Bonus.

Analysis: Sec. 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 the employee in respect of every accounting year a minimum bonus which shall be 8.33% 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) which is higher. The minimum bonus is payable whether or not employer has any allocable surplus in the accounting year.

By applying the provision as contained in Sec.10 the employees are entitled to get 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.

Conclusion: The employees will be entitled to get relief.

Q.No.13. The amount of bonus payable to N, a probationer chemist in Global Chemical Limited, is Rs.12,000 during the accounting year 2007-2008. A sum of Rs.10,000 was paid to her and Rs. 2,000 was deducted by the company under the pretext of proportionate deduction in bonus for two months maternity leave on full pay availed by her during the year. N files a suit against the company for recovery of the deducted amount. Examine the validity of N's claim under the provisions of the Payment of Bonus Act, 1965.

Provision of law: Sec.14 - Procedure for calculation of working days.

Sec.13 - Proportionate reduction in bonus.

Analysis: As per Sec.8 of the payment of Bonus Act 1965, an employee shall be entitled to get bonus (including minimum bonus) only if he has worked in the establishment for not less than 30 working days in that year.

As per Sec.14 of the Act, an employee shall be deemed to have worked in an establishment in any accounting year also on the day on which:

- a) He has been laid off under an agreement or as permitted by standing orders under the Industrial Employment (standing order) 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 course of his employment, and
- d) The employee has been on maternity leave with salary or wages during the accounting year. Where an employee has not worked for all the working days in an accounting year the minimum bonus of Rs. 100 or as the case may be of Rs. 60 (in case of an employee who has not completed 15 years of age) if such bonus is higher than 8.33% of his salary or wage of the days he has worked in that accounting year, shall be proportionately reduced. (Sec.13).

In the given case Mrs. N was on maternity leave on full pay of two months which are the part of total working days for payment of bonus as per Sec. 14 of the Act as stated above.

Conclusion: The claim made by Mrs. N is valid.

Q.No.14. Mr. Sharma is a supervisor in a factory drawing a salary of Rs.3,500 per month. In a particular accounting year he was on one month leave with salary. His employer declared minimum bonus as per the Payment of Bonus Act, to all eligible employees. State in this connection:

- a. What shall be the salary that shall be taken into account for the purpose of calculating bonus payable to him?
- b. What shall be the total bonus payable to him in that accounting year?
- c. What would be your answer if the company suffers losses in that accounting year?
- d. Is bonus payable to him if he was illegally terminated?

(N13 4M) (CMA J 14 – 4M)

Provisions of law: Sec.14 - Calculation of number of working days.

Sec.10 - Payment of minimum bonus

Sec.13 - Proportionate reduction of Bonus

Analysis:

- a) Where the salary or wage of an employee exceeds Rs.7,000 per month the bonus payable to such employee shall be calculated as if his salary or wage were Rs. 7,000 per month.
In the instant case Mr. Sharma is drawing a salary of Rs. 3,500 per month.
- b) According to Sec. 14, for the purpose of calculating the total working days leave with salary or wages shall be deemed to be working day of an employee.
The total bonus payable to him in that accounting year = $3,500 \times 12 \times 8.33\%$
- c) Sec. 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, a minimum bonus which shall be 8.33% 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.
- d) Sec. 13 & 14 do not apply where an employee was prevented from working by reason of an illegal order of termination.

Conclusion: Therefore, Mr. Sharma is eligible for bonus.

Q.No.15. 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.

(PM)(M 08 - 5M)(For students self study)

Provisions: Quantum of Bonus (The Payment of Bonus Act, 1965)

The HRD view is not correct. The wage limit for payment of bonus was Rs.7,000 p.m. being the wages as defined in the Payment of Bonus Act, 1965. This upper limit has been revised to Rs.21,000 p.m. by way of notification dated 15th November 2007. Therefore, the contention of supervisor is correct.

Q.No.16. An employer had been paying to his employees every year at the time of Deepawali one month's basic wages as Deepawali Bonus for the last 10 years, in addition to the bonus payable under the Payment of Bonus Act. The bonus had been paid even in those years when there were losses. The employer now wants to adjust Deepawali Bonus paid by him for the current accounting year against the bonus payable by him under the Act, for the current accounting year. State whether it is possible for the employer to make the above adjustments.

(CMA D 12 - 2M)(For students self study)

Provisions of law: Sec.17-Adjustment of customary or interim bonus against bonus payable.

Relevant case law: Mumbai Kamgar Sabha, Bombay Vs. Abdul bhai faizullahbhai.

Analysis: According to Sec. 17 of the Payment of Bonus Act, if the employee has paid in any accounting year Deepawali, puja or any customary bonus to his employees, the employer is within his right to deduct the amount of bonus so paid from the amount of bonus payable by him under the Act in respect of that accounting year.

Conclusion: It is possible for the employer to make the adjustment of the customary or interim bonus against bonus payable.

Q.No.17. spark Wooden Toys Limited was established at Kolkata 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:

(PM) (M 16 4M) (M 09 - 5M)(RTP M 16)

- How much minimum and maximum bonus may be paid to the workmen?
- 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.
- Company wants to give wooden toys as bonus instead of cash. Whether the company can do so?

Advise Skylark Wooden Toys Limited, stating the provisions of the Payment of Bonus Act, 1965.

Provisions of law: Sec.10 - Payment of minimum bonus

Sec.11 - Payment of maximum bonus

Sec.17- Adjustment of customary or interim bonus against bonus payable under the Act.

Analysis and Conclusion:

- As regards to minimum and maximum bonus:** In accordance with the provisions of Sec. 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% of the salary or wage earned by the employee during the accounting year or Rs. 100, Rs. 60 (in case of an employee who has not completed 15 years of age) whichever is higher, whether or not the employer has any allocable surplus in the accounting year. Even in case of losses, minimum bonus is to be paid.

Further in accordance with the provisions of Sec. 11(1) the maximum bonus payable to the employee is 20% of the salary or wage earned by the employee during any accounting year.

The workmen of the Sky Park 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.

b) **As regards to adjustment of puja bonus:** In accordance with the provisions of Sec.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 Sky Park 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 Sky Park Wooden Toys Ltd. cannot distribute wooden toys as bonus instead of cash. It is against the statutory provision.

Q.No.18. 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 filed 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, 1965? What will be your answer, if the losses are related to the accounting year 2005-06?

Provisions of Law: Section 18 - Deduction of certain amounts from bonus payable under the Act.

Analysis: 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).

Conclusion:

a) 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.

b) 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.

Q.No.19. A Company could not pay bonus to its employees even after the expiry of six months from the close of its accounting year. Can the employees sue the employer for this reason?

(For students self study)

All amounts payable to an employee by way of bonus shall be paid in cash by his employer, within a period of 8 months from the close of the accounting year. This period of 8 months may be extended upto a maximum of 2 years by the appropriate government, on an application being made by the employer. Since the periods of 8 months have not expired, employees cannot sue the employer.

Q.No.20. X was an employee of Universal Limited. He retired from the company on 31st March, 2010 and died after few months. Y, the heir of X, applied within the prescribed time to the company for payment of due bonus of X. The company refused to pay the bonus. Examine the validity of the company's refusal and also state the procedure to recover the bonus under the provisions of the Payment of Bonus Act, 1965.

(PM) (RTP M15) (N10 – 8M)(For students self study)

Provisions of Law: Section 21 - Recovery of bonus due from an employer.

Analysis:

a) As per Section 21 of the Payment of Bonus Act, 1965 it may so happen that an amount of bonus is due to an employee from his employer under a settlement or an award or agreement and it is not paid.

- b) In such a case, the employee is to make an application for the recovery of the amount to the Appropriate Government.
- c) Even his assignee or heirs can make this application when the employee is dead.
- d) The application is to be made within one year from the date on which the bonus becomes due but it may be entertained even after the expiry of the said period of one year, if the Appropriate Government is satisfied that the applicant had sufficient cause for not making the application within the said period.

Conclusion: In the given case, the Universal Limited's action is not valid. Y is entitled for payment of bonus as per the above provision. Y should apply for the payment of bonus to the Appropriate Government within 1 year from the date on which bonus becomes due. On the receipt of the aforesaid application for the recovery of the bonus amount, the Appropriate Government or such authority as it may specify in this connection is to be satisfied that the money is so due. On being thus satisfied, it must issue a certificate for that amount to the Collector. There upon, Collector shall proceed to recover the same in the same manner as an arrear of land revenue.

Q.No.21. In 2009, the Electronics Corporation, a Public Sector establishment under the Department of Science and Technology, Government of Rajasthan starts to sell mobile sets manufactured by it, in addition to T.V. sets, so as to compete with private sector establishments of mobile sets in the market. The income from sale of mobile sets is 30 percent of the gross income of the Corporation. The employees of the corporation went to strike for demand of Bonus.

Decide, whether the demand of the employees is tenable under the provisions of the Payment of Bonus Act, 1965. Would your answer be different if the income from sale of mobile sets is only 10 percent of the gross income of the Corporation? (M10 – 5M) (PM)

Provision of law: Sec.20(1) – Application of Act to the establishment in private sector in certain cases.

Analysis: As per Sec.20(2) of the payment of Bonus Act, 1965. The Act does not apply to an establishment in public sector. But section 20(1) of the Payment of Bonus Act, 1965, provides that, in any accounting year an establishment in public sector may sell goods produced or manufactured by it or it may render any services in competition with an establishment in private sector. And if the income from such sale or service or both is not less than 20% of the gross income of establishment in public sectors, then the provisions of the payment of Bonus Act, 1965 shall apply in relation to establishment in public sectors also.

Conclusion: By applying the above provisions in the given case, the establishment is competing with the private sector establishment in the sale of mobile phones and T.V. sets.

- a) If the income from such sale is 30% of the gross income of corporation, then the demand of employees is tenable.
- b) If the income from such sale is 10% of the gross income of the corporation, then the demand of employees is not tenable.

Q.No.22. On 1st January, Aryan Textiles Ltd agreed with its employees, for the payment of an annual bonus linked with production or productivity instead of bonus based on profits subject to the limit of 30% of Salary & Wages during the relevant accounting year. It was also agreed by the employees that they will not claim Minimum Bonus stated U/s.10 of the payment of Bonus Act, 1965. As per the agreement the employees of the company claimed the annual bonus linked with production or productivity in the relevant accounting year. On refusal of the Co., the employees of the Company moved to the Court for relief. Decide whether the employees will get the relief. Inspite of the aforesaid agreement whether the employees are still entitled to receive Minimum Bonus? (PM)(N16 – 4M)

Provisions of law: Sec.31A-Special Provision with respect to bonus, linked with production or productivity.

Analysis: As per Sec.31A 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 restrictions imposed by Sec. 31A.

- Any such agreement/ settlement where by the employees relinquish their right to receive minimum bonus under Sec.10 shall be null and void as it purports to deprive the employees of the right of receiving minimum bonus.
- 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 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 bonus based on profits subject to the limit of 30% of their salary / wages during the relevant accounting year. According to Sec.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. 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 Sec.10. Such an agreement shall be null and void as it purports to deprive the employees of their right to receive minimum bonus. Hence, the relief may be given by the court, as regards to the payment of Bonus Act 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 Sec. 10 of the Act even though they have relinquished such right as per the agreement.

Conclusion: Employees are still entitled to receive minimum bonus irrespective of the agreement.

Q.No.23. 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.

(For students self study)(PM)(MTP N14 - 4M)

Provisions of Law: Section 31A - Agreement between employers and employees for payment of bonus linked with productivity.

Analysis: Section 31A allows an agreement between employers and employees for payment of bonus linked with productivity. But such payment is subject to two restrictions:

- That such agreement whereby the employees relinquish their right to receive minimum bonus under Sec.10, shall be null and void.
- 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.

Conclusion: 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.

Q.No.24. 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.

(N 09 - 5M) (PM)

Provisions of law: Sec. 36 (power of exemption)

Relevant case law: Nav Bharat Potteries Vs. state (1987)1LLN 117 (Bombay).

Analysis: 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 for exemption fully or partly from the provisions of Payment of Bonus Act, 1965.

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 there in and subject to such conditions as it may think fit to impose, such establishment or class of establishments from all or any other 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.

Decisions under Sec.36 must be an objective one. If the employer establishes that, losses are being incurred continuously and entire capital and assets have been wiped out, the State Government cannot refuse to grant exemption under Sec. 36. However employees should be heard before granting such exemption.

The facts of the problem meet the criteria specified in Sec. 36.

Conclusion: Standard Airways may be allowed exemption.

Q.No.25. Rajesh 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 (a) Overtime Allowance, (b) Dearness Allowance, (c) Commission on Sales, (d) Employer's Contribution towards Pension Fund, and (e) Value of Free Food. Examine as to which of the above payments form part of "Salary" of Rajesh, under the payment of Bonus Act, 1965. (RTP N15)

Provisions of law: Sec. 2(21)-Definition of salary or wages.

Analysis and Conclusion: According to Sec 2(21) of the Payment of Bonus Act, 1965, salary and wages means all emoluments 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 payments by whatever name called paid to an employee on account of rise in the cost of living. But the term excludes:

- a) Any other allowance which the employee is for the time being entitled for.
- b) 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.
- c) Any travelling concession.
- d) 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.
- e) Any retrenchment compensation or any gratuity or other retirement benefit payable to the employee or any ex-gratia payment made to him and.
- f) 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 value of such food shall be deemed to form part of the salary or wage for such employee.

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

Q.No.26. T Ltd. carried on three business ventures viz., manufacturing sugar, cement and heavy engineering machinery, locating them in three different places in North India. They employed workmen on different terms in the different units. One of these units was financially feeling ill. The workers of this unit demanded bonus on the basis of treating these three units as one composite establishment. Can the workmen succeed in getting bonus? (or)

Nimbaheda Textiles Limited has three separate units at three separate places in the country. Every unit of the said company prepares and maintains separate Balance Sheet and Profit and Loss Account. One of these units is incurring continuous losses and hence bonus is not paid to the employees of this unit. Decide, under the Payment of Bonus Act, 1965, whether the employees of the said unit can claim bonus on the ground that the unit incurring loss is a part of one single establishment? (M14 – 4M) (CMA D 13 - 3M)(M 14 – 4M) (P.M) (For students self study)

Provisions of law: Section 3-Establishment to include departments, undertakings and branches.

Analysis: According to Sec.3, where an establishment consists of departments, or has branches irrespective of whether they are situated in same place or in different places, all such departments or undertakings or branches are to be treated as part of the same establishment for the purpose of computation of bonus under this Act.

It has been provided that if, for any accounting year, a separate balance sheet and profit and loss account are prepared and maintained in respect of any such departments, etc then such department undertaking or branch shall be treated as separate establishment for the purpose of calculation of bonus for that year, unless such department etc. was, immediately prior to the commencement of that accounting year, treated as part of the establishment for the purpose of computation of bonus.

By applying the above provision if nothing is specified in the question, it should be assumed that no separate Balance sheet and profit and loss A/c are maintained for each unit. And so all the units shall be treated as part of the same establishment.

Q.No.27. An employee was drawing a salary of Rs. 9000 per month .He joined his service on January 22nd 2013 and remained absent from February 10th 2013 till April 7th 2013 due to temporary disablement caused by an accident arising out of and in due course of his employment. Examine with reference to the payment of bonus act 1965.whether he is eligible for bonus for the year 2012-13?

(N13 – 4M)

Provisions of law : Calculation of working days: sec 14 of the payment of bonus act 1965 states the way of calculating the number of working days for the reason of section 13 which in turn prescribes the scale where by bonus can be proportionately reduced in certain cases .

As per sec 14 the following days will be considered as working days of an employee and will be counted while calculating the total working days on which who has been on work for the purpose of bonus :

- a) He has been laid off under an agreement or as permitted by standing orders under the Industrial Employment (standing order) 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 course of his employment, and
- d) The employee has been on maternity leave with salary or wages during the accounting year. Where an employee has not worked for all the working days in an accounting year the minimum bonus of Rs. 100 or as the case may be of Rs. 60 (in case of an employee who has not completed 15 years of age) if such bonus is higher than 8.33% of his salary or wage of the days he has worked in that accounting year, shall be proportionately reduced. (Sec.13).

In the present case salary is falling with in the limits (i.e not exceeding Rs.21,000 pm).

Analysis: So the employee is eligible for bonus. The leave period is due to temporary disablement caused by accident arising out of and in due course of employment and as such it will be treated as working days

Conclusion: The workmen can succeed in getting the bonus

PENALTIES & PUNISHMENTS

<u>PARTICULARS</u>	<u>PENALTIES & PUNISHMENTS</u>
Where a person is found guilty of <ul style="list-style-type: none"> • Contravention of any of the provisions of this Act or any Rules made there under, or • Failure to comply with the direction given or requisition made under this Act. 	<ul style="list-style-type: none"> • Imprisonment upto 6 months, or • Fine upto Rs.1,000 (or) • both

STATUTORY LIMITS

<u>PARTICULARS</u>	<u>LIMIT</u>
Applicability of the payment of the bonus act, 1965.	Every establishment in which 20 or more persons are employed on any day during an accounting year.
Eligibility of probationer for payment of bonus under the payment of bonus act.	He has worked for not less than 30 days in the year on a salary less than or equal to Rs.10,000 per month.
Eligibility of retrenched employee for payment of bonus under the payment of bonus act	Worked for 45 days in a year on a salary of Rs.12,000 per month is entitled for bonus
Salary limit for payment of bonus	Less than or equal to Rs.21,000 per month
Percentage of available surplus to be used for bonus in an accounting year, in relation to an employer, being a company, other than banking company .	67% of available surplus
Minimum bonus if employee has completed 15 years of age at the beginning of the accounting year.	8.33% of the salary or wage earned by the employee during the accounting year or Rs. 100 , whichever is higher (↑)
Minimum bonus if Employee has not completed 15 years of age at the beginning of the accounting year .	8.33% of the salary or wage earned during the accounting year or Rs.60 , whichever is higher (↑)
Maximum bonus	Up to 20% of such salary or wages.

TIME PERIODS

<u>PARTICULARS</u>	<u>PERIOD</u>
Time-limit for payment of bonus by the employer (section 19).	within a period of 8 months from the closing of the accounting year. The period of 8 months may be extended up to a maximum of 2 years by the appropriate Government or by any authority specified by the appropriate Government
Time limit: for payment of bonus where there is a dispute regarding the payment of bonus pending before any authority	within a month from the date on which the award becomes enforceable or the settlement comes into operation.
Application is to be made for claiming of bonus	within one year from the date on which the money (bonus) became due

TEST YOUR KNOWLEDGE

1. State whether the following establishment are entitled to payment of bonus under the Payment of Bonus Act, 1965.
 - i. Defense canteen
 - ii. Institutions engaged in Social or welfare activities
 - iii. Delhi Development authority
2. A company was engaged in three separate ventures under three different units. Separate accounts were prepared in each unit. One of the units was not doing well. Its employees wanted to be paid bonus along with the employees of the other two units as part of one single establishment. Decide.
3. The limit of salary of a worker entitled to get bonus is
 - a) 5000/- per month
 - b) 7,000 rupees or the minimum wage for the scheduled employment, as fixed by the appropriate Government, whichever is higher
 - c) 2,500/- per month
 - d) None of the above.
4. Ordinarily, the Payment of Bonus Act, 1965 cannot apply on an establishment employing less than 20 persons.

a) True	b) False
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5. Once the Bonus Act is applicable on an establishment, the Act will continue to apply even if the number of employees comes below the required minimum.

a) True	b) False
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6. What is the time limit for filling return under the payment of Bonus Act?
7. Is the rule made under the Payment of Bonus Act required to be laid before both the Houses of Parliament?
8. What is the effect of decision of Houses of Parliament on the rule made under the payment of Bonus Act?
9. Shall the modification or annulment by the Houses of parliament effect any previously done act under that rule under the Payment of Bonus Act?
10. Distinguish between 'Available Surplus' and 'Allocable Surplus'.
11. When is employer bound to pay maximum bonus
12. What is maximum limit of maximum bonus?
13. List the registers to be prepared and maintained by every employer under the Payment of Bonus Act.
14. State the time limit for filling return under the Payment of Bonus Act.
15. When shall a person not be liable to punishment in case of offences by companies?
16. When shall director, managers, secretary or other officer be liable in case of offences by companies?
17. The power to make/frame rules under the Payment of Bonus Act, 1965 is vested with-----
18. Referring the provisions of the Payment of Bonus Act, 1965, state whether the following persons are entitled to bonus under the Act: **(PM)**
 - i) An employee dismissed on the ground of misconduct;
 - ii) A temporary workman;
 - iii) A piece-rated worker.

iv) An employee getting a salary of ₹ 22,000 per month

v) A dismissed employee reinstated with back wages.

vi) an employee who had been laid –off for 20 days and had attended work for only 22 days in an entire accounting year;

19. State whether the following statements are true or false and give reasons therefor with reference to the Payment of Bonus Act, 1965. **(PM)**

- i) The maximum bonus payable to employees is limited to the available surplus.
- ii) "Salary or wage" does not include dearness allowance.
- iii) Accounting year in relation to a corporation means the year commencing on 1st of April.
- iv) A part-time employee engaged on regular basis is eligible for bonus.
- v) If any interim bonus has been paid it may be adjusted against the statutory bonus that is payable under the Payment of Bonus Act, 1965.

20. State whether following statements is correct or incorrect with respect to the Payment of Bonus Act, 1965. **(MTP M 15 - 4M)**

- a) The provisions of the Payment of Bonus Act does not apply on public sector establishments.
- b) As employee by his misconduct caused financial loss to the employer. As of consequences employer denied to pay employee the bonus to compensate the financial loss.

21. A limited company earned super profits during financial year. It intends to give maximum bonus to its employees. In this regard you are asked to advice the company on permissible maximum bonus under the Payment of Bonus Act, 1965. **(PM)**

MASTER MINDS
THE END