Question 1

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

(i) J, who is working in a social welfare organization.

(ii) D, an employee employed by an establishment engaged in an industry carried on by a department of the Central Government.

Answer

(i) As per the provisions contained in Section 32 (v) (c) of the Payment of Bonus Act, 1965, ‘J’ is not entitled to any bonus as the said Act is not applicable to institutions (including hospitals, chambers of commerce and social welfare institutions) established not for purposes of profit.

(ii) 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.

Question 2

Briefly state the categories of employees who are excluded from the operation of the Payment of Bonus Act, 1965

Answer

Under section 32 of the Payment of Bonus Act, 1965 the following are the categories of employees who are excluded from the operation of the Payment of Bonus Act, 1965:

(i) Employees employed by an insurer carrying on the business of general insurance and the 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 the 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 State Government or a local authority.

(v) Employees employed by-

(a) The Indian Red Cross Society or any other institution of a like nature (including its branches);

(b) Universities and other educational Institutions;

(c) Institutions (including hospitals, chambers of commerce and social welfare institutions) established not for purposes of profit;

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

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

(a) the Industrial Finance Corporation of India;

(b) any Financial Corporation established under Section 3, or any Joint Financial Corporation established under Section 3A, of the State Financial Corporations Act, 1951;

(c) the Deposit Insurance Corporation;

(d) the National Bank for Agriculture and Rural Development;

(e) the Unit Trust of India;

(f) the Industrial Development Bank of India;

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

(h) the National Housing Bank;

(i) any other financial institution (other than a banking company) being an establishment in public sector, which the Central Government may, by notification in the Official Gazette, specify; having regard to its capital structure, its objectives and the nature of its activities and the nature and extent of financial assistance or any concession given to it by the Government and any other relevant factor;

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

Definitions

Question 3

Who is an ‘Employee’ and ‘Employer’ under the Payment of Bonus Act, 1965?
3.3 Business Law, Ethics and Communication

Answer

Employee [Section 2(13)]: It means any person other than an apprentice employed on a salary or wage not exceeding ₹ 10,000/- 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. From the above definition it is clear that an employee under the Act can be at managerial level, clerical level or workmen level. The criterion is the salary or wage limit of ₹ 10,000 per month. Employees who draw more than ₹ 10,000 per month do not fall within the definition of employee under this Act and hence are not eligible for bonus.

Employer [Section 2(14)]: The expression ‘employer’ under the Payment of Bonus Act, 1965 includes:

(i) in relation to an establishment which is a factory, the owner or occupier of the factory, including the agent of such owner or occupier, the legal representative of a deceased owner or occupier, and where a person has been named as a manager of the factory under Section 7 of the Factories Act, 1948 the person so named; and

(ii) in relation to any other establishment, the person, who, or the authority which, has the ultimate control over the affairs of the establishment and where the said affairs are entrusted to a manager or managing director or managing agent, such manager or managing director or managing agent.

From the above definition it may be understood that the employer does not necessarily mean the owner but the person who is under the control of affairs of the establishment. In case of a factory, the occupier will be the employer in case he is different from the owner. In case there is no occupier of a factory, the owner shall be the employer.

Question 4

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

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

Examine as to which of the above payments form part of “salary” of Prakash Chandra under the provisions of the Payment of Bonus Act, 1965.

Answer

Computation of Salary / Wages: According to Section 2(21) of the Payment of Bonus Act, 1965 salary and wages means all remuneration other than remuneration in respect of overtime
work, capable of being expressed in terms of money, which would if the terms of employment, express or implied, were fulfilled, be payable to an employee in respect of his employment, or of work done in such employment and includes dearness allowance, i.e. all cash payment by whatever name called, paid to an employee on account of a rise in the cost of living. But the term excludes:

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

It has been clarified in the explanation to the section that where an employee is given, in lieu of the whole or part of the salary or wage payable to him, free food allowance or free food by his employer, such food allowance or the value of such food shall be deemed to form part of the salary or wage for such employee.

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

Who is entitled to Bonus?

Question 5

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

(i) An apprentice;
(ii) An employee dismissed on the ground of misconduct;
(iii) A temporary workman;
(iv) A piece-rated worker.
(v) An employee getting a salary of ₹ 12,000 per month
Answer

(i) An Apprentice is not entitled to bonus within the meaning of “Employee” under section 2(13) of the Payment of Bonus Act, 1965 and as also decided in the case [Wheel RIM Co. Vs. Govt. of Tamil Nadu (1971)]

(ii) An employee dismissed on the ground of misconduct shall be disqualified for any bonus under section 9 of the Payment of Bonus Act, 1965 only if the misconduct falls within the meaning of:

a. Fraud; or
b. Riotous or violent behaviour while on the premises of the establishment; or
c. Theft, misappropriation or sabotage of any property of the establishment.

It may be noted from the above grounds of disqualification, that “misconduct” is not mentioned. Misconduct is a broad term and can be interpreted to mean many things such as “insubordination”, “misbehavior” or even “deliberate sub standard performance or negligence”, but none of these will disqualify an employee from receiving bonus. Therefore, an employee dismissed on the ground of misconduct will be disqualified only if the conditions in a, b or c above can be established. [Pandian Roadways Corporation Ltd. Vs. Presiding Officer (1996)]

(iii) A temporary workman is entitled to bonus on the basis of the total number of days worked by him.

(iv) A piece-rated worker is entitled to bonus. [Mathuradas Kanji Vs. L.A. Tribunal (1958)]

(v) Under section 2 (13) of the payment of Bonus Act, 1965 a person drawing a monthly salary of an amount in excess of ₹ 10,000, shall not fall within the meaning of an employee and consequently not eligible to receive bonus under the Act.

Question 6

Who is entitled to Bonus? Is there any disqualifications in claiming it? Give examples.

Answer

Who is entitled to Bonus: 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 thirty working days in the year and draws a salary of less than ₹ 10,000/- per month. [Section 2(13) read with Section 8].

If an employee is prevented from working and subsequently reinstated in service, employee’s statutory right for bonus cannot be said to have been lost. Nor can the employer refuse to pay such bonus. [ONGC(V) Sham Kumar Sahegal (1995) ILLJ].

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

An employee, under the Payment of Bonus Act, 1965 in the following cases is not entitled to bonus:

1. An apprentice is not entitled to bonus as he is not included in the definition of an employee under the Act as decided in the case [Wheel & RIM Co. v. Govt. of TN. (1971)].

2. An employee who is dismissed from service on the ground of misconduct as mentioned in Section 9, is disqualified for bonus of the accounting year in which he is dismissed (Pandian Roadways Corporation Ltd. v. Presiding Officer (1996) 2 CLR 1175 (Mad).

Question 7

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

Answer

Entitlement for bonus under the Payment of Bonus Act, 1965: Every employee of an establishment covered under the Act is entitled to bonus from his employer in an accounting year provided he has worked in that establishment for not less than 30 working days in the year and he draws a salary less than ₹10,000 per month. [Section 2(13) read with Section 8]

In the given case, X has worked in the establishment for 10 months and draws a salary of ₹3,000/-, hence his entitlement to bonus is established. However, the point here is, whether he is entitled to receive bonus for the period of 2 months during which he was suspended pending certain inquiry against him. Subsequently, he was exonerated from the charges and was taken back on work.

Section 14 of the Payment of Bonus Act, 1965 lays down the days in a year when an employee is deemed to have worked in the establishment even though he did not actually attend the place of work. Under the said section, an employee is deemed to have worked also on the following days during the accounting year:

(a) He has been laid off under an agreement or as permitted by standing orders under the Industrial Employment (Standing Orders) Act, 1946, or under the Industrial Disputes Act, 1947 or under any other law applicable to the establishment;

(b) he has been on leave with salary or wage;

(c) he has been absent due to temporary disablement caused by accident arising out of and in the course of his employment; and
(d) the employee has been on maternity leave with salary or wage,

In the given case, X was suspended pending an inquiry; hence he did not attend office for 2 months. These 2 months shall be treated as days worked as it can be reasonably assumed that his suspension was under the Industrial Disputes Act, 1947.

Hence, X will be entitled to receive bonus for the full year and his employer is wrong to deny him bonus.

Question 8

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

(i) A University teacher,
(ii) An employee of the 'NABARD',
(iii) A retrenched employee who worked for 45 days in a year on a salary of ₹ 4,000 per month.
(iv) An apprentice.

Answer

Every employee of an establishment covered under the Payment of Bonus Act, 1965 is entitled to bonus from his employer in an accounting year provided he has worked in that establishment for not less than thirty working days in the year and has drawn a salary of less that ₹ 10,000 per month. [Section 2(13) and Section 8] .

(i) University Employee: Under section 32 of the Payment of Bonus Act, 1965 various employees are listed to whom the Payment of Bonus Act, 1965 does not apply. Under this section persons employed by universities and other educational institutions are not eligible for bonus as the Payment of Bonus Act, 1965 does not apply to them. Therefore, a university teacher shall not be entitled to bonus under the Payment of Bonus Act, 1965.

(ii) An employee of “NABARD”: NABARD is National Bank for Agricultural & Rural Development. Under section 32 the Payment of Bonus Act, 1965 does not apply also to employees of NABARD, hence they will not be entitled to bonus under the Act;

(iii) Retrenched Employee: A retrenched employee who worked for 45 days in a year on a salary of ₹ 4,000 per month is entitled for bonus as he has worked for more than 30 days and drawn a salary of less than ₹ 10,000 per month. He shall therefore, be paid bonus for the period he has worked;

(iv) An apprentice is not included within the meaning of “employee” and hence not entitled for bonus under the Act.

Question 9

State with reasons whether the following persons are entitled to receive bonus under the Payment of Bonus Act, 1965:
(i) An employee employed through contractors on building operations

(ii) A retrenched employee

(iii) A dismissed employee reinstated with back wages.

Answer

Entitlement to Bonus

(i) An employee employed through contractors on building operations is entitled to bonus as according to the Payment of Bonus (Amendment) Act, 2007, an employee employed through contractors on building operations had been removed from the purview of the Section 32 of the Payment of Bonus Act, 1965. Hence, the Act after the amendment Act came into force became applicable to such employees.

(ii) Retrenched Employee: He is eligible to get bonus provided he has worked for minimum qualifying period of 30 days in the accounting year and who has drawn a salary of less than ₹ 10,000 per month in the year. (East Asiatic Co. (P) Ltd. Vs Industrial Tribunal)

(iii) Under section 9 of the Payment of Bonus Act, 1965 an employee who is dismissed from service for fraud or riotous or violent behaviour on the premises of the establishment or who is guilty of theft, misappropriation or sabotage of the property of any establishment, is disqualified from receiving bonus for the accounting year. A dismissed employee who has been reinstated with back wages is clearly not guilty of the above crimes nor has he been dismissed. Hence, he is entitled to bonus (Gammon India Ltd Vs Niranjan Das)

Question 10

Examine with reference to Payment of Bonus Act, 1965 if an employee drawing a salary of ₹ 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.

Answer

According to Section 2(13) every employee of an establishment covered under this Act is entitled to bonus from his employer in an accounting year provided he has worked in that establishment for not less than thirty days in the year and has drawn a salary of less than ₹ 10,000 per month.

Further, under Section 14, the days when an employee has been on maternity leave with salary or wages during the accounting year will be included in calculating the total number of days the employee has worked during the accounting year, for the purpose of payment of bonus.

In the given case, the salary is falling within the limit. Also, her maternity leave period will be treated as days worked. Hence, the days worked will be from the date of joining i.e. 20th Jan 2008 to 31st March 2008 = 12+29+31 = 72 days. Therefore, she is eligible for bonus for the accounting year 2007-08.
3.9 Business Law, Ethics and Communication

Question 11

Examine the entitlement of the following persons to receive bonus under the Payment of Bonus Act, 1965:

1. a probationer;
2. an apprentice,
3. an employee who had been laid-off for 20 days and had attended work for only 22 days in an entire accounting year;
4. an employee who is found guilty of misconduct causing financial loss to the employer.

Answer

1. A probationer is an employee within the meaning under section 2 (13) and as such is entitled to bonus per Section 8 of the Payment of Bonus Act [Bank of Madura Ltd. vs. Employee’s Union, 1970]. It is important to understand the difference between a probationer and an apprentice. A probationer is an employee who is not yet permanent but is under the probation. If he performs well, he will get to be permanent in his employment. On the other hand an apprentice is a person who is a trainee in a factory learning work on a machine and he is excluded from the definition of “employee”.

2. An apprentice, is not included in the definition of “employee” under section 2 (13) and hence is not entitled to bonus per Section 8 of the Payment of Bonus Act. [Wheel & RIM Co. vs. Government of T.N. (1971) 2 LLJ 299 40 FJR 18]

3. According to Section 14, when an employee had been laid off under:
   i. an agreement; or
   ii. as permitted by the standing orders under the Industrial Employment (Standing Orders) Act; or
   iii. under the Industrial Disputes Act, or
   iv. under any other applicable law

   then the days on which he has been laid-off shall be deemed to be the days on which the employee has worked during the accounting year.

   In the given 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 provided his lay off is covered in one of the above mentioned grounds.

4. Where in any accounting year, an employee is found guilty of misconduct, causing financial loss to the employer, the employer can deduct the amount of loss from the amount of bonus payable by him to the employee under this Act in respect of that accounting year only. Therefore, in this case employee shall be entitled to receive the
balance amount only, if any (Section 18). Thus, the employee is entitled to bonus, but
amount of loss to employer can be deducted from such bonus.

Question 12

Mr. ‘E’ joined as supervisor on monthly salary of ₹3,400 on 1. 02. 2007 and resigned from his
job on 28. 02. 2007. The company declared a bonus of 20% to all eligible employees and paid
it on time. Mr. ‘E’ knowing the facts made a claim to HRD, which in turn rejected the claim.
Examine the validity in the light of the provisions of the Payment of Bonus Act, 1965.

Answer

Under section 8 of the Payment of Bonus Act, 1965 an employee is entitled for bonus in an
accounting year if he has worked in the establishment for not less than thirty working days in
that year. Under section 2 (13) an employee is defined to include an employee drawing a
salary of less than ₹ 0,000 per month.

In the given case, Mr E was an eligible employee within the meaning of the term under section
2 (13) but became ineligible to receive bonus as he worked in the accounting year only for 28
days and hence will not be entitled to receive bonus.

Question 13

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

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

Answer

In accordance with the provisions of Section 2(13) of the Payment of Bonus Act, 1965 any
person other than an apprentice employed on a salary or wage not exceeding ₹ 10,000 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 Section 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 accounting year provided he has worked in that establishment for not less than
thirty working days in the year.

The problem as asked is based on the above provisions of the Act and the answer may be
given as follows:
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(a) **As regards the employees who resigned**: The employees who have resigned are not entitled to bonus because they worked only for 28 days in an accounting year although they are drawing salary less than ₹ 10,000 per month.

(b) **As regards full time remaining employees**: These employees are entitled to get the bonus as they fulfil both the requirements as stated under Sections 2 (13) and 8 of the Act. Although the employees in this case have been reduced to 10, once the Act is applicable, it continues to apply even if number of employees fall below 20.

(c) **As regards part time employees**: Even a part time employee is entitled to bonus on the basis of total number of days worked by him in an accounting year. The definition of an employee under the Act does not exclude part time employees from the definition of employee. Therefore, if such employees work for over 30 days in the accounting year and have drawn salary of less than ₹ 10,000 per month, they shall be entitled to receive bonus for that accounting year. The Payment of Bonus Act, 1965 does not prohibit such employees as long as they fulfill all the requirements stated above [(Automobile Karmachari Sangh vs. Industrial Tribunal (1971)].

**Question 14**

*During the financial year 2010-2011 Mr. Ram who was a temporary employee in Ayurved Products Limited and was drawing a salary of ₹ 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?*

**Answer**

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 (1984)].

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

**Question 15**

**Under the provisions of the Payment of Bonus Act, 1965 decide whether the following employees are entitled for bonus:**

(i) Employee employed by educational institutions;

(ii) A reinstated employee without wages for the period of dismissal.

**Answer**

The Payment of Bonus Act, 1965- According to Section 2 (13) and Section 8, every employee of an establishment covered under the Payment of Bonus Act, 1965 is entitled to bonus from his employer in an accounting year provided he has worked in that establishment for not less than thirty working days in the year and on a salary less than ₹10,000 per month.

i. Employee employed by Universities and other Educational Institutions are not entitled for bonus because the employees of such institutions are excluded from the operation of the Act as per section 32 of the Payment of Bonus Act, 1965.

ii. According to section 14 of the Payment of Bonus Act, 1965, an employee shall be deemed to have worked in an establishment in any accounting year in the following cases:

- being laid off under an agreement or under the Industrial Disputes Act, 1947, or any other applicable law
- on leave with salary / wages
- absent due to temporary disablement caused by an accident in the course of employment
- on maternity leave with salary / wages

Since an employee reinstated without wages for the period of dismissal does not fall in any of the aforementioned cases, in fact, use of word dismissal here presumes that he was not laid off but terminated and so he is not entitled to bonus for the period of dismissal.
Establishment to include departments, undertakings and branches (Section 3)

Question 16

What are the conditions upon which unit-wise profitability is the basis for payment of bonus by an establishment?

Answer

Under section 3 of the Payment of Bonus Act, 1965 where an establishment consists of different departments or undertakings or has branches whether situated at the same place or in different places, all such departments or undertakings or branches shall be treated as parts of the same establishments for the purpose of computation of bonus under this Act.

However, the Proviso to section 3 states that where for any accounting year a separate balance-sheet and profit and loss account are prepared and maintained in respect of any such department or undertaking or branch, then, such department or undertaking or branch shall be treated as a separate establishment for the purpose of computation of bonus under this Act for that year except when such department or undertaking or branch was, immediately before the commencement of that accounting year treated as part of the establishment for the purpose of computation of bonus.

Question 17

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?

Answer

According to Section 3 of the Payment of Bonus Act, 1965, where an establishment consists of departments or undertakings or has branches irrespective of whether they are situated in the 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 the Act. But proviso to the section states that where for any accounting year a separate balance sheet and profit and loss account are prepared and maintained in respect of any such department or undertaking or branch, then, such department or undertaking or branch shall be treated as a separate establishment for the purpose of computation of bonus under this Act for that year, unless such department or undertaking or branch was, immediately before the commencement of that accounting year treated as part of the establishment for the purpose of computation of bonus.

Referring to the provisions of Section 3, Nimbaheda Textiles Ltd., is engaged at three different units located at three separate places in the country where separate balance
sheet and profit & loss account are being maintained for the three units separately and hence the proviso to Section 3 will be applicable in this case. For the purpose of Bonus under the Act, the units will be treated as three separate establishments and accordingly, the employees of the unit incurring losses cannot claim bonus on the ground that the unit incurring loss is a part of one single establishment. However, the employees of the loss making unit can claim the minimum bonus as per section 10 of the Payment of Bonus Act, 1965.

The First Schedule

Question 18

The employer is a banking company. Mention the items which 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.

Answer

Under section 4 (a) of the Payment of Bonus Act, 1965 the calculation of gross profit in case of banking company shall be in accordance with 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 employment for any reason.
3. Donations 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 the Reserve Bank 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. Add also income, profit or gains (if any) credited directly to published or disclosed reserves, other than:
3.15 Business Law, Ethics and Communication

(i) capital receipts and capital profits (including profits on the sale of capital assets on which depreciation has not been allowed for income tax).

(ii) profits of, and receipts relating to any business situated outside India.

(iii) income of foreign banking companies from investment outside India.

The Third Schedule

Question 19

What deductions are allowed under the Third Schedule of the Payment of Bonus Act, 1965 in determining the ‘Available Surplus’, in case of a non-banking company?

Answer

Deduction allowed under Third Schedule under the Payment of Bonus Act, 1965:

According to Section 6 of Payment of Bonus Act, 1965 the available surplus in respect of any accounting year shall be the gross profits for that year after deducting therefrom the sums referred to the section. The third Schedule of the Act states the prior charges to be deducted from gross profits in respect of a company other than a banking company (a non-banking company) as follows:

1. The dividends payable on its preference share capital for the accounting year calculated at the actual rate at which such dividend are payable;

2. 8.5% of its paid-up equity share capital as at the commencement of the accounting year.

3. 6% of its reserves shown in the balance sheet as at the commencement of the accounting year, including any profits carried forward from the previous accounting year.

Where the employer is a foreign company within the meaning of section 2(42) of the Companies Act, 2013, the total amount to be deducted under this item shall be 8.5% of the aggregate of the value of the net fixed assets and the current assets of the company in India after deducting the amount of its current liabilities (other than any amount shown as payable by the company to its Head Office whether towards any advance made by the Head Office or otherwise or any interest paid by the company to its Head Office) in India.

Question 20

What matters may not be taken into account while calculating direct tax payable by the employer under the Payment of Bonus Act, 1965.

Answer

Under section 7 of the Payment of Bonus Act, 1965 in calculating the direct tax payable by an employer (excluding a religious or a charitable institution or an individual or HUF) for any accounting year, no account shall be taken on the following, namely:

(i) any loss incurred by the employer in respect of any previous accounting year and carried forward under any law for the time being in force relating to direct taxes;
(ii) *any arrears of depreciation* which the employer is entitled to add to the amount of the allowance for depreciation for any following accounting year or years under Section 32(2) of the Income-tax Act;

(iii) *any exemption* conferred on the employer under Section 84 of the Income Tax Act or of any deduction to which he is entitled under Section 101(1) of the Income-tax Act, as in force immediately before the commencement of the Finance Act, 1965.

**Payment of Minimum Bonus**

**Question 21**

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

**Answer**

Section 10 of the Payment of Bonus Act, 1965 provides that subject to the other provisions of this Act, every employer shall be bound to pay to every employee in respect of the accounting year commencing on any day in the year 1979 and in respect of any subsequent year, a minimum bonus which shall be 8.33% of the salary or wage earned by the employee during the accounting year or ₹ 100, whichever is higher. The minimum bonus is payable whether or not the employer has any allocable surplus in the accounting year.

Therefore based on the above provision (Section 10) in the given case the employees will get relief minimum bonus as above is payable.

**Question 22**

*Skypark 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:*

(a) *How much minimum and maximum bonus may be paid to the workmen?*

(b) *Whether the company may adjust the puja bonus already paid to the workmen while calculating the amount of bonus payable to workmen for that accounting year.*

(c) *Company wants to give wooden toys as bonus instead of cash. Whether the company can do so?*

**Advise Skypark Wooden Toys Limited, stating the provisions of the Payment of Bonus Act, 1965.**
Answer

Payment of bonus: In accordance with the provisions of Section 10 of the Payment of Bonus Act, 1965, every employer shall be bound to pay to every employee in respect of any accounting year, a minimum bonus which shall be 8.33 percent of the salary or wage earned by the employee during the accounting year or hundred rupees, whichever is higher, whether or not the employer has any allocable surplus in the accounting year. Therefore, even in the case of loss, the minimum bonus has to be paid.

Further, in accordance with the provisions of Section 11(1) the maximum bonus payable to an employee is 20% of the salary or wage earned by him in any accounting year. Bonus at a rate higher than the minimum bonus of 8.33% is payable only when the allocable surplus computed in accordance with the provisions of the Payment of Bonus Act, 1965 exceeds the amount of minimum bonus payable subject to the maximum limit of 20%.

Section 17 of the Act provides for the adjustment of any customary or puja bonus or any advance bonus against the bonus payable under this Act for an accounting year and pay only the balance bonus after such deduction / adjustment to the employee.

Bonus should be paid only in cash by the employer.

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

(a) As regards minimum and maximum bonus: The company has surplus profits after setting off past losses. It appears therefore, that the allocable surplus is higher than the minimum bonus payable under the Act which is 8.33%. Hence, the company is bound to pay bonus at a rate higher than the minimum bonus rate but upto a maximum of 20%. Therefore, Skypark Wooden Toys Ltd is bound to pay bonus at a rate higher than 8.33% depending on its allocable surplus but upto a maximum of 20%.

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

(c) The amount payable to an employee by way of bonus under the Payment of Bonus Act, 1965, shall be paid only in cash by the employer. Therefore, Skypark Wooden Toys Ltd. cannot distribute wooden toys, instead of cash, as bonus. It is against the statutory provisions.
Question 23

Can an employer be exempted from paying minimum bonus? What does the law say of such exemption?

Answer

Though the Act creates liability on the part of employer to pay the minimum bonus and confers a right to the workmen, as mentioned in Section 10, the obligation and right is subject to exemption under Section 36. Under section 36 if the appropriate Government having regard to the financial position and other relevant circumstances of any establishment or class of establishment is of opinion that it will not be in public interest to apply all or any of the provisions of this Act thereto, it may by notification in the Official Gazette, exempt for such period as may be specified therein and subject to such conditions as it may think fit to impose, such establishment or class of establishments from all or any of the provisions of this Act.

There are two preconditions to the granting of exemption under section 36:

(1) The Government shall consider the financial position and other relevant circumstances of an establishment or class of establishments; AND

(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’ includes 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 the loss suffered, company will not be relieved of the liability of paying the 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 (1996) Bombay H.C.]

Question 24

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

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.
Answer

i. The statement is false as the maximum bonus payable to employees under Section 11 is 20% of salary, irrespective of the available surplus being more.

ii. The statement is false as under Section 2(21), “salary or wage” includes dearness allowance.

iii. The statement is false as under Section 2(1), the accounting year in relation to a corporation means the year ending on the day on which the books and accounts of the corporation are to be closed and balanced. It does not mean therefore, the year commencing on 1st of April.

iv. The statement is true as a part-time employee is engaged on regular basis and thus is eligible for bonus [Automobile Karmchari Sangh Vs. Industrial Tribunal (1970) 38 FJR 268].

v. The statement is true as per Section 17 of the Payment of Bonus Act, 1965.

Question 25

State with reason whether the following statements are correct or incorrect.

“Employees can relinquish their right to receive minimum bonus by an agreement with employer”.

Answer

The given statement is Incorrect. According to Section 31A of the payment of Bonus Act, 1965 any such agreement 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 to receiving minimum bonus.

Question 26

What is the amount of minimum bonus to be paid to the employees under the provisions of the Payment of Bonus Act, 1965?

Answer

Minimum Bonus under the Payment of Bonus Act, 1965: In accordance with the provisions of section 10 of the Payment of Bonus Act, 1965, every employer shall be bound to pay to every employee in respect of every accounting year, minimum bonus which shall be 8.33% of the salary or wage earned by the employee during the accounting year or ₹ 100, whichever is higher, whether or not the employer has any allocable surplus in the accounting year.

Even if the employer suffers losses during the accounting year he is bound to pay minimum bonus as prescribed by Section 10 of the Payment of Bonus Act, 1965 [State vs. Sardar Dalip Singh Majithia, 1979, Lab. I.C. (913) (All)].
Payment of Maximum Bonus (Section 11)

Question 27

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.

Answer

Where, in respect of any accounting year referred to in Section 10 of the Payment of Bonus Act, 1965, the allocable surplus exceeds the amount of minimum bonus payable to the employees under that section, the employer shall, in lieu of such minimum bonus, be bound to pay to every employee in respect of that accounting year bonus which shall be an amount in proportion to the salary or wage earned by the employee during the accounting year subject to a maximum 20% of such salary or wage.

In the given case therefore, the company will be free to give bonus at any rate exceeding 8.33% upto a maximum of 20% of the salary or wage earned by the employees during the accounting year. From the facts given, it may be presumed that the bonus at 20% may be payable.

However, in relation to the maximum bonus payable the most important term to understand is “allocable surplus”. The eligibility for maximum bonus arises from the “allocable surplus” but is not limited by it, as the allocable surplus may justify a bonus at a rate higher than 20% but bonus will still be limited to 20%.

Procedure for calculation of working days and proportionate reduction in Bonus

Question 28

Briefly explain the procedure for calculation of number of working days and proportionate reduction in bonus under the Payment of Bonus Act, 1965.

Answer

Section 14 of the Payment of Bonus Act, 1965 provides computation of number of working days for the purposes of Section 13. 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:

(i) 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.

(ii) he has been on leave with salary or wage.

(iii) he has been absent due to temporary disablement caused by accident arising out of and in the course of his employment and
(iv) the employee has been on maternity leave with salary or wages during the accounting year.

Section 13 in turn prescribes a scale whereby bonus can be proportionately reduced in certain cases. Under section 13 where an employee has not worked for all the working days in an accounting year, the minimum bonus of rupees 100 or ₹60, if such bonus is higher than 8.33% of his salary/wage for the days he has worked in that accounting year shall be proportionately reduced.

**Special provisions with respect to certain establishments (Section 16)**

**Question 29**

*Explain the special provisions with respect to newly set up establishments.*

**Answer**

Section 16 of the Payment of Bonus Act, 1965 deals with the special provisions regarding payment of bonus of newly set up establishments. Under section 16, where an establishment is newly set up, the employees of such an establishment shall be entitled to be paid bonus in accordance with the provisions of sub-sections (1A), (1B) and (1C).

Under section 16 (1A) in the first five accounting years following the accounting year in which the employer sells the goods produced or manufactured by him or renders services, as the case may be, to such establishment, bonus shall be payable only in respect of the accounting year in which the employer derives profit from such establishment. Such bonus shall be calculated in accordance with the provisions of this Act relating to that year but without applying the provisions of Section 15.

It has been clarified by the second explanation to section 16 that an employer shall not be deemed to have derived profit in accounting year unless:

(a) he has made provision for that year’s depreciation to which he is entitled under the Income-tax Act or as the case may be, under the Agricultural Income Tax law; and

(b) the arrears of such depreciation and losses incurred by or in respect of the establishment for the previous accounting years have been fully set off against his profits.

Sub section 1B of section 16 further states that in the sixth and seventh accounting year, the provisions of Section 15 for the purpose of computing bonus, shall apply subject to the following modifications, namely:

(i) for the sixth accounting year, set on or set off, as the case may be, shall be made in the manner illustrated in the Fourth Schedule, taking into account the excess or deficiency, if any, as the case may be, of the allocable surplus set on or set off in respect of the 5th and 6th accounting years;

(ii) for the seventh 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 year has to be taken into account;
In term of section 16 (1C) from the eighth accounting year following the accounting year in which the employer sells the goods produced or manufactured by him or renders services, as the case may be, from such establishment, the provisions of Section 15, shall apply in relation to such establishment as they apply in relation to any other establishment.

Explanation 1 to section 16 has clarified that a newly set up establishment does not mean one which has been set up merely by reason of a change in its location, management, name or ownership.

**Question 30**

A is an employee of a company. The amount of the bonus payable to A during the year 2006-07 is ₹ 10,000, but the company paid him ₹ 7,000 only and a sum of ₹ 3,000 was deducted from bonus against the loss suffered by the company due to misconduct of A during the same accounting year. A files a suit against the company for recovery of the deducted amount. Decide whether A would be given any relief by the court under the provisions of the Payment of Bonus Act, 1965? What will be your answer, if the losses are related to the accounting year 2005-06?

**Answer**

Under section 18 of the Payment of Bonus Act, 1965, where in an 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. In this case, the employee shall get only the balance, if there be any.

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

In the second case, A will get relief from the Court because the losses are related to the accounting year 2005-06. According to section 18 the employer can deduct the loss suffered from the bonus payable to an employee only in the accounting year in which such loss was incurred due to the misconduct of the employee.

**Question 31**

Explain with reference to the provisions of the Payment of Bonus Act, 1965 the possibility of a non-banking company relying on its Balance Sheet and Profit and Loss Account in the case of a dispute with its employees relating to bonus payable under the Act and the limitations, if any, in this regard.

**Answer**

Under section 22 of the Payment of Bonus Act, 1965 any dispute 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 a state and the provisions of that Act shall apply accordingly.

Section 23 of the Payment of Bonus Act, 1965 further provides that where, during the proceedings before any arbitrator or Tribunal under the Industrial Disputes Act, 1947, or under any corresponding law relating to investigation and settlement of industrial disputes in force in a State, 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 auditors duly qualified to act as auditors of companies under the Companies Act, are produced before it, then, the said authority may presume the statements and particulars contained in such balance-sheet and profit and loss account to be accurate and 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.

Provided that where the said authority is satisfied that the statements and particulars contained in the balance-sheet or the profit and loss account of the corporation or the company are not accurate, it may take such steps as it thinks necessary to find out the accuracy of such statements and particulars.

Further, the trade union and if there is no trade union, employees being a party to the dispute may apply to the specified authority seeking clarification relating to any item in the balance sheet or profit and loss account. On receipt of such application the specified authority is to satisfy itself as to the necessity of such clarification. On being thus satisfied, the specified authority may direct the corporation or the company to furnish to the trade union or the employees such clarifications within such time as may be specified in the direction. Thereupon, the company or the corporation must comply with such direction [Section 23(2)].

**Question 32**

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

**Or**

*Is the employer entitled to deduct or adjust any interim bonus paid to the employees?*

**Answer**

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

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

Question 33

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?

Answer

In terms of section 20(2), the provisions of the Payment of Bonus Act, 1965 do not apply to an establishment in public sectors, except as provided under sub section 1 of section 20.

Section 20 of the Payment of Bonus Act, 1956 provides that, if in any accounting year, an establishment in public sector sells any goods produced or manufactured by it or if it renders 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 such establishment, then the provisions of the Payment of Bonus Act, 1956 shall apply in relation to establishment in private Sector.

In the given problem therefore, the demand of the employees is tenable in first case but it is not tenable in second case.

Question 34

State the provisions relating to the following items under the Act:

(a) Time Limit for Payment of Bonus.
(b) Recovery of Bonus due from an employer.

OR

Explain the provisions of the Payment of Bonus Act, 1965 relating to the time limit within which an employer must pay the amount of bonus due to an employee.

Answer

(a) Time Limit for payment of bonus (Section 19): Under section 19(1)(a) in the case of a dispute between the employer and the employees regarding the payment of bonus and
such dispute is under reference to the prescribed authority, the employer is bound to pay his employee bonus in cash within one month from the date on which the award becomes enforceable or the settlement comes into operation, in respect of such dispute.

Under clause (b) of section 19 (1), in all other cases, however, the payment of the bonus is to be made within a period of 8 months from closing of the accounting year.

But this period of 8 months may be extended upto a maximum of 2 years by the Appropriate Government or by any authority prescribed by the Appropriate Government only on an application to it by the employer and if satisfied that sufficient reasons exist for granting the extension. Moreover, the extension can be made only by an order.

(b) **Recovery of the bonus due from an employer (Section 21):** It may so happen that an amount to bonus is due to an employee from his employer under a settlement or an award or agreement and it is not paid by the employer. In such a case, the employee is required to make an application for the recovery of the amount to the Appropriate Government. This application can be made even by his assignee or heirs when the employee is dead.

The application is required to be made within one year from the date on which the money (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.

If 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 satisfied that the money is so due, it shall issue a certificate for that amount to the Collector who shall proceed to recover the same in the same manner as an arrear of land revenue.

**Question 35**

_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._

**Answer**

In the given case, the key point to be evaluated is whether X was eligible for bonus for the accounting year ending 31st March 2010. If we presume that it was so, then Y is eligible to claim the bonus as the legal heir of X.

Under section 19 of the Payment of Bonus Act, 1965 the employer is bound to pay in cash the bonus payable to an employee within eight months from the close of the accounting year, which in this case should be 30th November 2010.

The company’s refusal is illegal under the Act.
The remedy available to Y the heir of X lies in section 21 of the Payment of Bonus Act under which an employee, his assigns or his heirs, can make an application for the recovery of the amount to the Appropriate Government within one year from the date on which the bonus becomes due. If the appropriate government or the prescribed authority is satisfied that any money is so due, it shall issue a certificate for that amount to the Collector who shall proceed to recover the same in the same manner as an arrear of land revenue.

**Question 36**

_Explain the provisions relating to appointment, powers and functions of an Inspector under the Payment of Bonus Act, 1965?_

**Answer**

**Appointment of powers and functions of the Inspectors:** Section 27 of the Payment of Bonus Act, 1965 provides that the Appropriate Government may, by notification in the Official Gazette, appoint such persons as it thinks fit to be inspectors for the purposes of this Act and may define the limits within which they shall exercise jurisdiction.

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:-

(i) Require an employer to furnish such information as he may consider necessary;

(ii) At any reasonable time and with assistance, if any, as he thinks fit, enter any establishment or any premises connected therewith and require any one found in charge thereof to produce before him for examination any account books, register and other documents relating to the employment of persons or the payment of salary or wage or bonus in the establishment;

(iii) Examine, with respect to any matter relevant to any of the purpose aforesaid, the employer, his agent or servant or any other person found in charge of the establishment or any premises connected therewith or any person whom the inspector has reasonable cause to believe to be or to have been reasonable cause to believe to be or to have been an employee in the establishment;

(iv) Make copies of or take extract from, any book, register or other document maintained in relation to the establishment; and

(v) Exercise such other powers as may be prescribed.

The inspector appointed as aforesaid is deemed to be a public servant under the Indian Penal Code.

Any person, whom an Inspector calls upon to produce any accounts, book, register or other document or to give information, shall be legally bound to do so.

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.

Question 37

What are the penalties for contravention of the provisions of the Act by a person and offences by companies?

Answer

Penalty (Section 28): A person shall be liable for punishment: (i) if he contravenes any of the provisions of this Act or any rules framed thereunder; or (ii) if he fails to comply with any direction or requisition which may have been given or made to him under this Act. The punishment may be imprisonment for a term extending up to 6 months or of fine extending up to ₹ 1,000 or both.

Offences by Companies (Section 29): If any person committing an offence under this Act is a company, and it is proved that such offence has been committed in connivance or consent of any director, manager or secretary or other officer of the company, then such persons shall also be guilty of such offence and shall be liable to be proceeded against and punished accordingly.

Special Provision with respect to bonus linked with production or productivity (Section 31A)

Question 38

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

Decide in reference to the provisions of the Payment of Bonus Act, 1965 whether the employees will get the relief? Inspite of the aforesaid agreement whether the employees are still entitled to receive minimum bonus.

Answer

As per Section 31 (A) of the Payment of Bonus Act, 1965, there may be an agreement or settlement by the employees with their employer for payment of an annual bonus linked with production or productivity in lieu of bonus based on profits, payable under the Act. 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;

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(a) any such agreement/settlement whereby the employees relinquish their right to receive minimum bonus under Section 10, shall be null and void in so far as it purports to deprive the employees of the right of receiving minimum bonus.

(b) If the bonus payable under such agreement exceed 20% of the salary/wages earned by the employees during the relevant accounting year, such employees are not entitled to the excess over 20% of salary/wages.

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

If the company, in the agreement, agrees to pay more than 20% then it is going against the provisions of the Payment of Bonus Act, 1965 and cannot be enforced.

The employees of Aryan Textiles also agreed not to claim minimum bonus stated in Section 10 of the Payment of Bonus Act, 1965 such an agreement shall be null and void as it purports to deprive the employees of their right of receiving minimum bonus.

Hence, the relief may be given by the court, by enforcing the payment of bonus to the employees, based on the production or productivity, as agreed, plus the minimum bonus payable under the Payment of Bonus Act, 1965, subject to a maximum of 20%.

**Question 39**

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.

**Answer**

No, such an agreement is null and void to the extent to which it purports to deprive the employees from claiming the minimum bonus payable under the Payment of Bonus Act, 1965 as laid down in section 31A read with the Proviso thereto, of the said Act.

The given case is based on Section 31A of the Payment of Bonus Act, 1965 which allows an agreement between employers and employees for payment of bonus linked with productivity and the binding of such agreement but subject to two restrictions:

(i) That such agreement whereby the employees relinquish their right to receive minimum bonus under Sec.10, shall be null and void to that extent, and
(ii) The bonus payable under such agreement together with the minimum bonus payable under the Act, shall not exceed 20% of the salary/wages earned by the employees during the relevant accounting year.

Accordingly, in the given problem, the agreement to forego the right of receiving minimum bonus is null and void to that extent only and not fully. The employees shall not be entitled to receive the total bonus over 20% of salary/wages comprising of the bonus payable linked with productivity and the minimum bonus payable under the Act. Thus if the productivity bonus exceeds 20% of the salary earned by employees during the accounting year, he shall not be able to claim minimum bonus in addition to the productivity bonus.

**Power of exemption (Section 36)**

**Question 40**

*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 Tamil Nadu requesting to exempt the company fully from the application of the provisions of the Payment of Bonus Act, 1965.*

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

**Answer**

An employer who is unable to comply with the provisions of the Payment of Bonus Act, due to paucity of funds or for other reasons, can make an application to the Appropriate Government for exemption fully or partly from the provisions of the Payment of Bonus Act, 1965 as laid down in Section 36 of the 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, it is of the opinion that it will not be in public interest to apply all or any of the provisions of the Act thereto, it may, by notification in official Gazette, exempt for such period as may be specified therein and subject to such conditions as it may think fit to impose, such establishment or class of establishments from all or any of the provisions of the Act. Such relevant considerations for granting exemptions are industrial peace, law and order situation, effect on production of consumer goods, difficulties of management, etc.

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

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

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
   [Hints: (i) Not entitled for bonus as per Section 32(iv),
   (ii) Not entitled for bonus as per section 32(v),
   (iii) Not entitled as per section 32(iv)]

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.
   [Hint: No, as per the proviso of the Section 3 of the Payment of Bonus Act, 1965]

3. The limit of salary of a worker entitled to get bonus is
   (a) 5000/- per month.
   (b) 3,500/- per month.
   (c) 2,500/- per month.
   (d) None of the above.
   [Hint: Option (b) as per section 12 of the Payment of Bonus Act, 1965]

4. Ordinarily, the Payment of Bonus Act, 1965 cannot apply on an establishment employing less than 20 persons.
   (a) True.
   (b) False.
   [Hint: True as per section 1(3)(b) of the Payment of Bonus Act, 1965]

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.
   [Hint: True, as per section 1(5) of the Payment of Bonus Act, 1965]