

THE BONUS ACT,

Meaning

The dictionary meaning of the word 'bonus' is 'something to the good', 'especially extra dividend to the shareholders of a company', 'distribution of profits to insurance policy-holders' or 'gratuity to workmen beyond their wages'. It is the last meaning of the word which has acquired significance for labour-management relations in India.

Object of the act

The object of the act is to provide for the payment of bonus to persons employed in certain establishments and for matters connected therewith. The scheme of the act, broadly stated, is four-dimensional, i.e.,

- 1) To impose statutory liability upon an employer of every establishment covered by the act to pay bonus to employees in the establishment ;
- 2) To define the principle of payment of bonus according to the prescribed formula ;
- 3) To provide for payment of minimum and maximum bonus and linking the payment of bonus with the scheme of 'set-off' and 'set-on', and
- 4) To provide machinery for enforcement of the liability for payment of bonus\

A minimum bonus of 8.33 per cent of the wages or salary. Bonus is no longer linked with production and profitability. Liability for bonus is a statutory liability and not a contingent liability (section 10).

Application of the act

The act extends to the whole of India [sec. 1(2)].

It applies to:-

- a) Every factory [as defined in sec . 2(m) of the factories act, 1948];
- b) Every other establishment in which 20 or more persons are employed on any day during any accounting year [sec. 1(3)].

Allocable surplus [sec. 2(4)]

It means :-

- a) **In relation to an employer, being a company** (other than a banking company) which has not made the arrangements prescribed under the income-tax act, 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 the income-tax act, 1961, 67 per cent of the available surplus in an accounting year ;
- b) **In any other case**, 60 per cent of the available surplus.

The allocable surplus is the workers' share in the available surplus as defined in sec. 2 (6).

Available surplus [sec .2 (6)]

It means the available surplus computed under sec. 5.

The other relevant sections which deal with calculation of available surplus are secs. 4, 6 and 7. Under sec. 4 gross profits are to be calculated in the manner specified in the first and second schedules.

The available surplus in respect of any accounting year is the gross profit for that year after deducting there from the sums referred to in sec. 6 (sec. 5).

According to sec. 6 the sums to be deducted from the gross profit as priority charges are any amount of depreciation, any amount by way of development rebate or investment allowance or development allowance, any direct tax calculated according to the provisions of sec. 7 (which deals with calculated of direct tax by the employer), and other sums mentioned in the third schedule.

Eligibility and disqualification for bonus

Eligibility for Bonus (SEC. 8)

Every employee shall be entitled to be paid by his employer in an accounting year, bonus, in accordance with the provisions of the act, provided he was worked in the establishment for not less than 30 working days in that year (sec .8). where an employee has not worked for all the working days in any accounting year, the bonus payable to him under sec. 10 shall be proportionately reduced (sec .13).

Disqualification of Bonus (SEC .9)

Notwithstanding anything contained in the act, an employee shall be disqualified from receiving bonus under the 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.

Penalties [SEC. 28]

If any person contravenes any of the provisions of the act or any rule made thereunder, he shall be punishable with imprisonment for a term which may extend to 6 months, or with fine which may extend to RS. 1,000 or with both. Likewise, if any person to whom a direction is given or a requisition is made under the act fails to comply with the direction or requisition, he shall be subject to a like penalty.

THE MINIMUM WAGES ACT, 1948

Objective of the wage policy

The object of the Act is to secure the welfare of the workers in a competitive market by fixing. The minimum of wages in employments The Legislature undoubtedly intended to apply the Act to those industries or localities in which by reason of causes such as unorganized labor of absence of machinery for regulation of wages paid to workers were in the light of the general level of wages and subsistence level inadequate

Definitions

Competent authority [ses.2(c)]:

Competent authority Means he authority appointed by the appropriate Government by notification in its official Gazette to ascertain from time to time the cost living index number applicable to the employees employed in the scheduled employments “{i.e., employments specified in the schedule to the Act)specified in such notification.

Fixation and revision of wages [SECS.3 TO 5]

Fixing of minimum rates of wages (sec. 3)

The responsibility for fixing the minimum rates of wages is that of the appropriate government. Sec.3 provides that the appropriate Government-

- (a) Shall fix the minimum rates of wages payable to employees in an employment specified in Part 1 and Part 2 of the schedule
- (b) May, in respect of employees employed in an employment specified in Part 2 of the schedule. Instead of listing minimum rates of wages for the whole state, fix such rates for a part of the State or for any specified class or classes of such employment in the whole state or part thereof (Proviso to Sec. 3(1) (a)).
- (c) Shall review of such intervals not exceeding 5 years, the minimum rates of wages so fixed and revise the minimum rates if necessary [Sec. 3 (1)(b)].

Minimum number of employees:

The appropriate government may refrain from fixing minimum rates of wages in respect of any scheduled employment in which there are in the whole State less than 1000 employees engaged in such employment. But if at any time, the appropriate government comes to a findings after an inquiry that the number of employees in any scheduled employment has risen to 1000 or more, it shall fix minimum rates of wages payable as soon as may be after such finding [Sec.3 (1 - A)].

Minimum rates:

The appropriate Government May fix-

- (a) A minimum rate of wages for time work (referred to as 'a minimum time rate')
- (b) A minimum rate of wages for piece work (referred to as 'a minimum piece rate')
- (c) A minimum rate of remuneration to apply in the case of such employees employed on piece work for purpose of securing to such employees a minimum rate of wages on a time work basis (referred to as 'a guaranteed time rate ').
- (d) A minimum rate (whether a time rate or a piece rate) to apply in substitution for the minimum rate which would otherwise be application, in respect of overtime work done by employee (referred to as 'overtime rate') [Sec. 3 (2)].

Different minimum rates:

In fixing or revising minimum rates of wages, different minimum rates of wages may be fixed for-

- i) Different scheduled employment;
- ii) Different classes of work in the same schedule employment;
- iii) Adult, adolescents, children and apprentices; and
- iv) Different localities [sec. 3 (3)(a)].

Further in fixing or revising minimum rates of wages under sec.3, minimum rates of wages may be fixed by any one or more of the following wage-period, namely;

- i. By the hour,
- ii. By the day,
- iii. By the month, or
- iv. By such other large wage-period as may be prescribed.

Where such rates are fixed by the day or by the month, the manner of the calculating wages for a month or for a day, as the case may be, may be indicated [sec. 3(3)(b)]. Also where any wage-period have been fixed under sec. 4 of the payment of Wages Act, 1936, minimum wages shall be fixed in accordance therewith [Proviso to sec. 3(3)(b)].

Minimum rate of wages (sec. 4)

Any minimum rate of wages fixed or revised by the appropriate Government in respect of scheduled employment under sec. 3 may consist of :-

1. A base rate of wages and a special allowance.
2. A basic rate of wages with or without the cost of living allowance, and the cash value of the concessions in respect of suppliers of essential commodities at concessional rates, where so authorized; or
3. An all inclusive rate allowing for the basic rate, the cost of living allowance and the cash value of the concessions, if any [sec. 4 (1)].

Procedure for fixing and revising minimum wage (SEC. 5)

Sec. 5 provides 2 separate modes of procedure for fixing and revising minimum wages and the primary object of both the procedures is to enable the Government to reach a balanced conclusion with regard to fixation of a minimum wage. In one case a committee [sec. 5(1) (a)] is appointed and in the other a notification [sec. (1)(b)] is made and objections are invited.

Appointment of committees:

The appropriate Government shall appoint as many committees and sub-committees as it considers necessary to hold inquiries and advise it in respect of fixation or revision of minimum rates of wages, as the case may be [sec. 5(1)(a)];

Publication of proposals in the official gazette:

The appropriate Government shall by notification in the Official Gazette, publish its proposals for the information of persons likely to be affected by the fixation or revision of minimum rates of wages. It shall also specify a date on which the proposals will be taken into consideration. The date so specified shall not be less than 2 months from the date of the notification [sec. 5(1)(b)]. The fixation or revision shall come into force on the expiry of 3 months from the date of the issue of notification, unless the notification otherwise provides [sec. 5(2)].

Consultation with Advisory Board

Where the appropriate Government proposes to revise the minimum rates of wages by the mode specified in SEC. 5(1)(b), it shall also consult the advisory Board (constituted under sec. 7) [Proviso to sec. 5 (2)]

Government not bound to accept the recommendation of the committee appointed under sec. 5(1)(a).

Correction of errors (sec. 10)

The appropriate Government may, at any time, by notification in the official Gazette, correct Clerical or arithmetical mistakes in any order fixing or revising minimum rates of wages under the Act, or errors arising therein from any accidental slip or omission [sec. 10 (1)]. Every such notification shall, as soon as may be after it is issued, be placed before the Advisory Board (constituted under sec. 7) for information [sec. 10 (2)]

Advisory board and central advisory board (SECS. 7 TO 9 AND 29)**Advisory board (sec. 7)**

For the purpose of co-ordination the work of committees and sub-committees appointed under Sec. 5 and advising the appropriate Government generally in the matter of fixing and

revising minimum rates of wages, the appropriate Government shall appoint an Advisory Board (sec. 7).

No procedure is prescribed in the Act for the Advisory Board to function. It can devise its own procedure.

Composition of committees and advisory board (sec. 9):

Each of the committees, sub-committees and the Advisory Board shall consist of persons to be nominated by the appropriate Government representing employers and employee in the schedule employment, who shall be equal in number, and independent persons shall be appointed the Chairman by the appropriate government

CENTRAL ADVISORY BOARD (SEC. 8)

The central Government shall appoint a Central Advisory Board

- a) For the purpose of advising the central and state Government on the matter of the fixation and revision of minimum rates of wages and other matters under the Act, and
- b) For co-ordinating the work of the Advisory Boards [sec. 8(1)].

Composition of the central advisory boards [sec. 8 (1)].

It shall consist of persons nominated by the Central Government representation employers and employees in the scheduled employments, who shall be equal in number, and independent persons not exceeding 1/3rd of its total number of members. One of the independent.

Safeguards in payment of minimum wages (secs. 11 to 18)

- Wages in kind (sec. 11)
- Payment of minimum rate of wages (sec. 12)
- Fixing hours for a normal working day, etc. (sec. 13)
 - ⇒ Provisions of sec. 13 (1) to apply subject to conditions
 - ⇒ Intermittent employment
- Rates of over time (sec. 14)
- Wage of worker who work for less than normal working day (sec. 15)
- Wages for two or more classes of work (sec. 16)
- Minimum time rate wages for piece work (sec. 17)
- Maintenance of registers and records (sec. 18)

Offences and penalties

Penalties for certain offences (sec. 22)

Any employer who:-

- a) Pay to any employee less than the minimum rates of wages for that employee's class of work, or less than the amount due to him under the provisions of the Act, or
- b) Contravenes any rule or order made under sec. 13, shall be punishable with imprisonment for the term which may extent to Rs. 500, or with both (sec. 22)

In imposing any fine for an offence under sec.222, the Court shall take into consideration the amount of any proceedings taken under sec. 20 (Proviso to sec. 22).

General provision for punishment of other offences (sec. 22-a)

Any employer who contravenes any provision of the Act or of any rule or order made there under shall, if no other penalty is provided for such contravention by the act, be punishable with fine which may extend to Rs. 500.

Cognizance of offences (sec. -b)

No Court shall take cognizance of a complaint against any person for an offence:-

- a) Involving payment of less than the minimum wages unless an application in respect of the facts constituting such offence have been duly presented under sec. 20 and granted and the appropriate Government or an officers authorized by it in this behalf has sanctioned the making of the complaint;
- b) Involving contravention of any rule or order made under sec. 13 or sec. 22-A except on a complaint made by, or with the sanction of, an Inspector [sec. 22-B(1)]

Further, no Court shall take cognizance of an offence:-

- a) Under, sec. 22, unless complaint thereof is made within 1 month of the grant of sanction under sec. 22-B.
- b) Under, sec. 22-A, unless complaint thereof is made within 6 month of the date on which the offence is alleged to have been committed [sec. 22-B (22)]