THE PAYMENT OF BONUS ACT, 1965

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SEC 1 Applicability

Every factory

Every establishment : ≥ 20 persons employed on any day of the accounting year

Other establishments : Notified by appropriate government

No of persons ≥ 10 and < 20

Before notification – 2 months notice

Once applicable, forever applicable

SEC 3.

For computation of bonus, establishment incl. dept, branches, undertaking

Not included, if

- Branch prepares separate BS, PL
- AND
- Never treated as branch etc. for bonus computation

SEC 2(1)

Accounting Year

- Corporation — Day on which a/c closed & balanced
- Company — Period for which P/L is prepared
- Other Case — 1st April to 31st March
  - Closing date: any other date (every year)
    - can do so only once

SEC. 2(13)

Employee

- Any person (other than apprentice)
- Employed on a salary or wage, ≤ 21,000/month
- any industry, any work, hire or reward
- Terms: express/implied

Note:- Salary increase/decrease during the Accounting Year
Consider avg. salary for Sec. 2(13)

SEC. 2(14)

Employer

- Factory – Owner, Occupier, Agent, Legal Representative, Manager (Factories Act)
- Other Establishment
  - Person with ultimate control
  - Manager or MD

SEC.

SEC. 2(21) Salary/Wage
- For work done, Payable if terms fulfilled
- Includes DA (whatever name) (+) Food Allowance / Value of free food in lieu of salary
- All others excluded

SEC. 8 Eligibility
- Employee worked for ≥ 30 working day in the year
- Seasonal employee : = 30 working days

SEC. 9 Disqualification — dismissed for
- Fraud
- Riotous/Violent behaviour on premises of establishment
- Theft, misappropriation, sabotage property of establishment

Note:- Dismissed Employee → not eligible for any unpaid bonus (current/previous accounting year)

SEC. 10 Minimum Bonus (for an accounting year)
[Employer bound to pay to every eligible employee even if there is no allocable surplus]

Employee aged ≥ 15 yrs
↓
8.33 % of salary* OR Rs. 100 — Higher

Employee aged < 15 yrs.
↓
8.33 % of Salary* OR Rs. 60 — Higher

* Higher of 7,000 or min wage by Govt (both per month) SEC. 12 Ceiling

SEC. 13 {Rs. 100/60 to be proportionately reduced, if employee not worked on all working days}

For seasonal establishment (JD) Days of the year emp. actually allowed to work

If min. bonus is more than 100/60, then working days calculation not required

SEC. 14 Following deemed as working days
1. Laid off
2. On leave with pay
3. Maternity leave with pay
4. Absent due to temporary disablement in the course of employment

Judicial decision for Minimum Bonus
- Reasonable
- In Public Interest
- Constitutional

The amount of seton (excess) and set off (deficit) u/s 15 shall be considered

↑

SEC. 11 Maximum Bonus

- Allocable Surplus > Minimum Bonus
- Whole allocable surplus paid as bonus to employees in proportion of their salary

↓

if exceeds 20%

- excess C/F for set on in 4 succeeding accounting year
- Bonus to employee 20% of salary ↓ maximum bonus

Here Sec 12 ceiling also applicable

Salary higher of 7000 or min wage by govt (both per month)

Note:- How bonus % is calculated

$$\frac{\text{Allocable Surplus}}{\text{Total salary earned}} \times 100$$

(This % will be compared with min. & max. % for applicability)

SEC. 15 SETON & SETOFF

Set-On (Excess)

- Allocable surplus* > Maximum Bonus
- Excess above 20% shall be C/F ↓ for set on in 4 succeeding accounting year

Set-off (Deficit)

- Allocable Surplus* < Minimum Bonus
- Deficiency shall be C/F ↳ for set-off in 4 succeeding accounting year

* after set-on and set-off

Utilisation of amount C/F

- Amount of seton/set off C/F from earlier AY
- shall be first taken into A/c
- for calculating bonus of any succeeding AY

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SEC 17 Adjustment of Bonus → Employer entitled to deduct from bonus payable → paid amount of
- customary bonus (Puja bonus)
- Interim bonus (paid before it was due)

SEC 18 Deduction from Bonus → When
- Employee found guilty of misconduct
- Actual financial loss to employer

Then
- Loss caused to employer to be recovered from bonus payable to employee
- For deduction, accounting year should be same for loss and bonus payable

SEC 19 Payment
- Only in cash
- Within 8 months from the end of accounting year
- Govt. may extend the time, if:-
  1. Application made by employer
  2. Sufficient reasons & govt. must be satisfied
  3. Total extension ≤ 2 years

Dispute in Payment → When to pay → Within 1 month of
- award becoming enforceable 'OR'
- Settlement

SEC 31A Payment of Bonus linked with Prodn or Productivity
- If there is an agreement between employer & employees
- Overrides entire Act
- Terms
  - Bonus payment annually
  - " linked with prodn or productivity
  - " paid in lieu of bonus based on profits
- Void if deprives employee from min. bonus right → Bonus as per agreement < Min. Bonus, then employee has the right to receive min. bonus
- Such linked bonus cannot > 20% of salary in the AY

incl. not in employment

SEC 21 Application for recovery of bonus from employer
- By employee, authorised person, legal heir
- Within 1 year of bonus becoming due
  - → can be extended by govt. if sufficient cause
- Make to govt.
- If govt. satisfied → issues recovery certificate
  - By Collector (as if arrear of land revenue)

SEC 16. Special Provisions for new establishments
↓ Change in location, management, name not considered as new

- △ first 5 year
  - Bonus only in the year of * profit
  - set on/off not applicable
- 6th year
  - set on/off applicable
  - consider 5th & 6th year
- 7th year
  - set on/off applicable
  - consider 5th, 6th & 7th year
- 8th year — as usual to any establishment

* profit after depⁿ of the year and arrear of depⁿ and losses

△ first year, following the year in which sale of goods/services is made
↓ excl. trial run sale

SEC 23. Presumption about accuracy of B/S & P/L → Applicable
- Bonus Payment Dispute
- Bonus Act Applicability

- Dispute filed with Tribunal
- Employer: Corp. / Company
- During proceeding, BS + PL of employer produced before Tribunal → audited

Tribunal
- Presume BS + PL as accurate (1)
- Not necessary for employer to prove accuracy (2)

- Otherwise Tribunal will take necessary steps to find accuracy if presumption not made

• Employee/Union → Application → Tribunal → Clarification → BS/PL (Any item)

Tribunal ↓ Satisfied ↓ Directs Employer → Clarification (Time, as prescribed)

SEC 24 Continuing with Sec. 23,

If the Employer is banking Company
- Tribunal cannot question audited accounts
- Presume as accurate

Similarly, employer can seek clarification
EXCEPT, info. u/s 34A of Banking Regulation Act, 1949

SEC 25 Continuing with Sec. 23,

Employer → other than Corp./Company
- Tribunal may presume audited accounts as accurate
- Not necessary for employer to prove accuracy

If A/c's not audited
- Tribunal orders employer to get them audited
- Time and auditor, specified in order

↓

If employer does not do so
- Tribunal gets them audited
- Auditor Remuneration (+) other incidental exp → Both paid by employer

↓

Such audited A/c's presumed accurate

SEC 32 Non-Applicability of Act to employees of :→
- • General Insurance Co. • LIC • Seamen
- • Reg. under Dock Workers Act • Reg./Listed Employers
- • Inland Water Transport (Route through other country)
- • RBI, CG, SG, LA, Red Cross, SFC, NHB, NABARD, IFCI, IDBI, SIDBI, UTI • Notified Financial Institution
- • Universities/other edu. inst. • NPO

SEC 36. Exemption from Provisions → Non-retrospective

- 1st Govt. to consider financial position of establishment
- Govt. satisfied and in public interest
- Exemption notified in Gazette
  ↓
  Order
  - Condition
  - Period of exemption

SEC 2(14) Establishment in Public Sector → Owned, controlled, managed by

'OR'
- Govt. Co.
- Corporation
  ↓
  $\geq$ 40% Capital
  'OR'
  - CG, SG, RBI
  - Corp. owned by CG, SG, RBI

SEC 20 Applicability of Act to Public Sector → Only if 2 conditions satisfied

- Sells goods/Service in competition with private sector ①
- Income from ① is $\geq$ 20% of gross total income ②