

THE PAYMENT OF BONUS ACT, 1965

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, $\leq 21,000$ /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

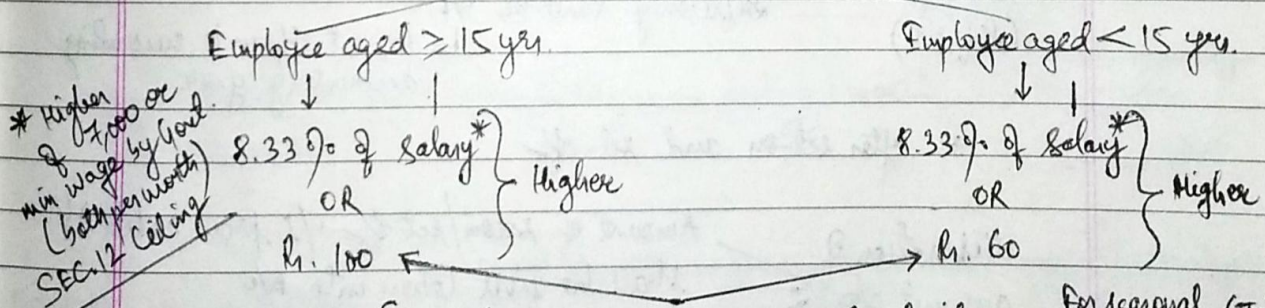
SEC. 2(21) Salary/Wage — For work done, Payable if terms fulfilled
 Includes DA (whichever name)
 (+) Food Allowance / Value of free food in lieu of salary
 All others included

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

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

Note:- Diminished Employee $\rightarrow$ not eligible for any unpaid bonus (current/previous accounting year)

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



SEC. 13 { Rs. 100/60 to be proportionately reduced, if employee not worked on all working days }
 For seasonal (JD) establishment days of the year emp. actually allowed to work

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

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

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

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

Date _____
Page _____

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

How 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
SET ON &
SET OFF

Set-On (Excess)

Allocable Surplus* > Minimum 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

SEC 17

Adjustment of Bonus

→ Employer entitled to deduct from bonus payable
paid amount of

customary bonus
(paya bonus)

Interim bonus
(paid before it was due)

SEC 18

Reductions from Bonus

→ When
↓
Then

- Employee found guilty of misconduct
- Actual financial loss to employer
- 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 profit or productivity

If there is an agreement between employer & employees

Overrides entire Act

Terms

Bonus payment annually

" linked with profit or productivity

" paid in lieu of bonus based on profit

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

SEC 21

Application for recovery
of bonus from employer

incl. not in
employment

By employee, authorised person, legal heir
within 1 year of bonus becoming due
→ can be extended by govt.
if sufficient cause

Made to govt.

If govt. satisfied → issues recovery certificate

By collector

(as if arrears of land revenue)

SEC 16

Special Provisions
for new establishments

↓
Change in location,
management name
not considered as new

1st 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 arrears of depⁿ and losses

Δ first year, following the year in which sale of goods/services is not
↓
end-trial run sale

SEC 23

Presumption about
accuracy of B/s & P/L

→ Applicable

Bonus Payment Dispute

Bonus Act Applicability

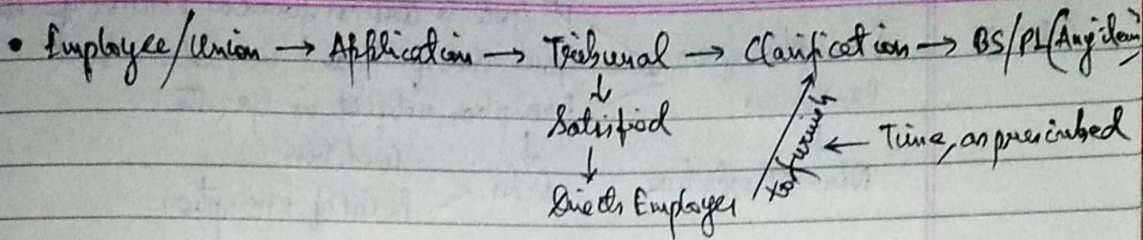
- Dispute filed with Tribunal
- Employer: Corp./Company → audited
- During proceeding, B&P/L of employer produced before Tribunal

Presume B&P/L as accurate (1)

Tribunal

Not necessary for employer to prove accuracy (2)

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



SEC 24 Continuing with Sec. 23,
If the Employer is banking company

Tribunal cannot question audited accounts
Presume as accurate

Similarly, employees can seek clarification
EXCEPT, imp. o/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 Stock Workers Act
- Reg. / Listed Employers
- Inland Water Transport (bouts through other country)
- RBI, CG, SC, 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

Govt. to consider financial position of establishment
Govt. satisfied and in public interest
Exemption notified in Gazette

↓
Order

Condition
Period of exemption

SEC 2(b)

Establishment in
Public Sector

→ Owned, controlled, managed by

Govt. Co.

'OR'

Corporation

↓
≥ 40% Capital

CG, SG, RBI

'OR'

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 ≥ 20% of gross
total income

②