

SCOPE OF SECTION 32(5)(c) OF THE PAYMENT OF BONUS ACT, 1965

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INTRODUCTION

The term 'bonus' has not been defined anywhere in the Payment of Bonus Act, 1965. However in a layman's language 'bonus' refers to cash payment which is paid in addition to wages. It's not like an ex gratia payment⁶⁹ but more like a reward that is paid to employee for his productive work towards the organization.

The basic purpose of bonus was to bridge the gap between minimum wages and living wages. Additionally, bonus is given to share the profit earned by the firms amongst the employees and staff members.⁷⁰ The concept of bonus was introduced for the first time in July, 1917, at that time it was known as war bonus. It was first time paid to the employees of textile industry in India wherein certain textile mills was granted 10% of wages as war bonus to their employees.⁷¹

Afterwards in the year 1965 a principle legislation was enacted in India related to the procedure of payment of bonus by the name "Payment of Bonus Act, 1965." Later, The Code on Wages, 2019, also known as the Wage Code, was formulated by Parliament which consolidated the provisions of four labour legislation concerning wage and bonus payments.

In this research paper, the researcher will be specifically

⁶⁹ Niharika Sakshi, <https://www.linkedin.com/pulse/history-bonu-india-niharika-sakshi>, (last visited 3rd March, 2022).

⁷⁰ <https://paycheck.in/labour-law-india/work-and-wages/bonus-payment/bonus-payment> (last visited 3rd March, 2022).

⁷¹ Payment of Bonus Act, 1965.

dealing with the Scope of Section 32(5)(c) of Payment of Bonus Act 1965 and for this purpose the research paper has been further differentiated under four folds. The first-fold briefly explains the background or historical perspective behind the Payment of bonus Act 1965. The second-fold briefly analyze Section 32 of the Bonus Act which specifically deals with those institutions who are exempted from paying bonus to their employees. The third chapter briefly analyze whether hospital has to pay bonus to their employees or not and the last but not the least critically analyze whether profit making is an essential element for determining the non applicablity of non applicablity of section 32(5)(c) of the act.

AIMS AND OBJECTIVES

- 1) To study and analyze the evolution of the Payment of Bonus Act, 1965.
- 2) To briefly and critically analyze the judicial pronouncement on the basis of Section 32(5)(c) of the Payment of Bonus Act, 1965.

HYPOTHESIS

The researcher hypothesis that

Productivity and profit making is an essential requirement while determining the exemption of bonus of those institutions which falls under the ambit of Section 32(5)(c) of Payment of Bonus Act, 1965?

RESEARCH QUESTIONS

- 1) Whether in a non-profit establishment where a sale are incidental will fall under the scope of Section 32 (5) (c) of Payment of Bonus Act, 1965?
- 2) Whether the court need to consider or take into account the reality not the theoretical concept while determining the status quo of the particular institution not the objectives of its establishment?

RESEARCH METHODOLOGY

The researcher will do doctrinal type of research in which she will go through both the primary and secondary sources. The doctrinal method helps in doing analytical study of the topic. The researcher plans to go through various articles, journals, case study, research papers to understand the Scope of Section 32(5)(c) of the Payment of Bonus Act, 1965.

EVOLUTION OF PAYMENT OF BONUS ACT:

In primitive times when there used to be master and servant relationship, the workers were paid employer use to give some extra money to their workers so that they may celebrate the festival. This was done as per the will or wish of the master but gradually people felt the importance of bonus as labour class doesn't have sufficient money to vest upon.

The question of bonus has been main cause of industrial dispute during post-independence days. The famous cases are *K.S. Balan and others v. State of Kerala and another*⁷² and *Owners association v. Rastriya Mill Mazdoor Sangh*.⁷³

In 1950, Full Bench of Labor Appellate tribunal made a formula for determining bonuses. In 1959, there was a call for the introduction of this formula. At the 2nd and 3rd meetings of the 18th meeting of the Standing Labour Committee (G.O.I.) held in New Delhi in March / April 1960, the work on the issue of bonuses was dealt with and appropriate. Commission agreed to appoint a committee to develop and evolve suitable norms of bonus. The current law is the result of a tripartite committee established by the Government of India on December 6, 1965. The committee comprehensively studied the issue of profit-based bonus payments to workers employed by companies and made certain recommendations to the government.

Committee Recommendation was received by the Government on January 24, 1964. On September 2, 1964,

the Government of India accepted the Commission's recommendations, subject to some amendments. To implement these recommendations, the 1965 Bonus Payment Order was enacted on May 29, 1965. To implement these recommendations the Payment of Bonus Ordinance, 1965 was promulgated on 29th May, 1965 and this ordinance was later replaced the Payment of Bonus Act, 1965.

SECTION 32 OF THE PAYMENT OF BONUS ACT, 1965.

Section 32 of Payment of Bonus Act specifically deals with those institutions who are exempted from applicability of this Act. This Act will not be applicable on those institutions which are mention herewith,

The following section of employees is exempted from the applicability of this act.

1. Life Insurance employees
2. Seamen defined under clause 42 of the merchant shipping act 1958
3. Employees who are registered/ listed under the dock workers act 1948 and are employed under the registered/ listed employers
4. Employees of Indian red cross society
5. Employees of University and Educational institutions
6. Employees who are employed by hospital, Chamber of commerce and other social welfare institutions, established not for the purpose of profit.
7. Employees working in the Reserve Bank of India
8. Industrial Finance Corporation of India (IFCI)
9. Employees employed by Financial corporation stated under Section 3 or 3a of the SFC (State Financial Corporation) Act 1951
10. Employees employed by Deposit Insurance Corporation (DIC)
11. Employees employed by the National Bank for Agriculture and Rural Development
12. Employees employed by the Unit Trust of India

⁷² (1988) ILLJ 111 Ker.

⁷³ Bombay 1950 LLJ 1247.

13. Employees employed by the Industrial Development Bank of India
14. Employees employed by the Small Industries Development Bank of India established under section 3 of the Small Industries Development Bank of India Act, 1989
15. Employees employed by the National Housing Bank
16. Employees employed by any other financial institution except a banking company
17. Inland water transport employees

Section 32(5)(c) of the Payment of Bonus Act, 1965 provides for the exemption to pay bonus to the employees employed by hospital, chamber of commerce and other social welfare institutions which are not established for the purpose of profit. While determining whether particular institution the court take into consideration if the institution is earning profit or not and also the productivity of the institution is also taken into account. Moreover if the institution initially is not earning profit or is established for the welfare purpose but with the course of time it starts earning profit then the institution has to pay bonus to their employees.⁷⁴

WHETHER HOSPITALS IN INDIA HAS TO PAY BONUS TO THEIR EMPLOYEE OR NOT?

There are arguments for and against paying bonuses to hospital staff, but the judiciary has yet to make a final decision. At the same time the courts have in some cases declared it payable under the Bonus Payments Act 1965 and in some cases it has been declared not payable. There are many arguments for and against the payment of bonuses to hospital staff and the court has yet to make a final decision. Also, in a number of cases courts have declared the fee payable under the Premium Payments Act of 1965 and in some cases the sum has been declared not to be paid. More often, in Labor Courts operating in

⁷⁴ Christian Medical College Hospital Employees' Union &Anr. V Christian Medical College Vellore Association & Ors, 1988 AIR 37, 1988 SCR (1) 546.

different parts of India and in High Courts, authorized representatives/attorneys of trade unions cite the famous case of Christian Medical College Hospital.⁷⁵

In this case an industrial dispute was raised by The Christian Medical College and Hospital Employees' Union before the Industrial tribunal in reference to the payment of bonus and enhancement in pay scales.

The issue raised/ discussed while determining the case were as follows:

- a) Whether Christian Medical college is an educational institutions or not?
- b) Whether productivity of the hospital has anything to do with the payment of bonus?
- c) Whether it is important to determine whether a hospital is non-profit making institution?

Whether Christian Medical college is an educational institutions or not?

Going by the history of CMC the institution was initially set up to provide basic health treatment to women but later it transform itself as training courses for nurses and medical schools for women. . The historic change happened in the year 1947 when men also were admitted to the medical college in response to the national need. This resulted in steady expansion

Whether productivity of the hospital has anything to do with the payment of bonus?

The court observed that when the hospital was started it consist of only 40 beds but presently it expanded to 1484 beds catering different faculties and specialized treatments indicating the hospital has witnessed a tremendous growth and it cannot be exclusively treated as an educational institution and this was the main contention from the side of employees for their demand of bonus. In the course of its development, the hospital has grown over many times than the minimum requirement, as could be evident from its income and expenditure.

⁷⁵ Christian Medical College Hospital Employees' Union &Anr. V Christian Medical College Vellore Association & Ors, 1988 AIR 37, 1988 SCR (1) 546.

Whether it is important to determine whether a hospital is non-profit making institution?

The expression not for profit has got to be made on merits.⁷⁶In the instant case the hospital used to provide free care to 40% out-patient and 10% to in patient. Out of 1484 beds only 161 beds were intended to be used for free treatments. Although initially the hospital was a educational institution but with period of time it has witnessed a growth from exclusive educational institution to hospital running on profit. It was observed even if the purpose and the establishment of the objective is to serve the poor and impart education would not mean that the same objectives continues to do so.

In this case, in the judgment of 20.6.2003, a two-judge court of the Hon'ble High Court of Madras ruled that the bonus was to be paid to employees of the Christian Medical College & Hospital (hereinafter CMC). The matter was then filed as an appeal with the Hon'ble Supreme Court of India however during that time both management and the union had reached an agreement under which, among other things, management agreed to pay the Christmas gift bonus to its employees and both parties have decided to set aside the provisions of the judgment of the High Court, Madras.

The hon'ble Supreme Court in this case upheld the Writ petition of the High Court held that the appellant is not an educational institution coming under Section 32(5)(b) of the Payment of Bonus Act and secondly that the appellant is not a hospital which is run on a non-profit basis and hold the issues against the Management.

Furthermore In its recent judgment, the Hon 'ble High Court of Madras in **The Management of Hindustan Bible Institute and College, Kilpauk, Chennai-Id v. B. Krishnamurthy & Ors.**, it was held the onus of proving that institution is making profit will be on the Petitioner-Union/ worker and not the institution in order to seek the bonus from its employee.

Hence, from the above, it is clear that the judgment it is clear that hospital which was earlier set up for the purpose of providing free medical facilities and education but with the course of time it started earning profit then they have to pay bonus to their employees.

PROFIT MAKING AS AN ESSENTIAL ELEMENT FOR DETERMINING THE NON APPLICABILITY OF SECTION 32(5)(C) OF THE ACT

It is important to determine whether particular institution is earning profit or not in order to decide whether Section 32 (5)(c) will be applicable on particular hospital, chamber of commerce and social welfare institutions. There are several judgements where the court has considered profit making as one of the most essential element while determining the non-applicability of the Bonus Act.

The Supreme in the case of **National Dairy Development Board v. National Dairy Development Board Bonus Employees Union Ahmedabad, the Workmen of National Dairy Development** raised an dispute asking for the maximum bonus for the year 1979-80 and the same was referred for adjudication. The employee contended that the Board were not exempted under Section 32 of the Act and on the other side the Board contended that they were exempted from paying Bonus , since the Council is not an enterprise but engaged in industry exercised by the Minister of Agriculture or under the authority of the Minister of Agriculture and that the board is an institution established for the purpose of conducting business without profit and loss and therefore exempt under Section 32 (5) (c) of the Bonus Payment Act.

The Supreme Court while adjudicating the case found out National Dairy Development Board was a self-governing body registered under the Bombay Public Trust Act, 1950, and governed by its Memorandum of Societies. It was further observed by the Court that it is not a government department although its activities continue under the direction of the national government from time to

⁷⁶ [In The Workmen of Tirumala Tirupati Dewasthanam vs. Management](#) [1980 (1) M.L.J. 211

time. It carries out commercial and industrial activity pursuant to its article and statute as a separate legal entity. The board does not act as a representative of a central government department. Therefore, it does not operate any industry under the authority of the central government ministry and also the memorandum and bylaws of the Board of Directors state that it is not a not-for-profit entity, as required by Section 32(v)(c) of the Payments Act bonuses. Therefore, workers are entitled to the bonus under the law. 32(v)(c) of the Premium Payments Act.

The Bombay High Court in the case of Bombay High Court in **Maharashtra State Electricity v M.C. Chitale**⁷⁷ dealt with the question that is whether or not the Board was established for the purpose of profit by looking at the scheme of the Act under which the Electricity Board was constituted. The court concluded that the primary and dominant function of the Electricity Board was to serve the interest of the people and provide them with basic requirements of existence. It was further observed that “Working out the electricity project on commercial basis it is indispensable and necessary to provide for the required current or capital expenses in order to ensure the stability and continuity of the project and hence, for this it would be essential to ensure surplus of the income over expenses. Irrespective of the object, such surplus amounts to profit.”

Therefore The Board for this reason alone cannot be said to have been established not for the purpose of profit and hence the electricity board has to pay bonus to their employees.

Also in the case of **Swaraj Ashram Karamchari Sangh v/s Swarajya Ashram, Sarvodaya Nagar, Kanpur**⁷⁸ an industrial dispute was raised by the respondent-Swarajya Ashram Sarvodaya Nagar, Kanpur with regard to the payment of bonus to the extent of 20% of the wages for the years 1965-66 to 1970-71. The Industrial Tribunal contended that they were exempted under Section 32(v)(c) of the Payment of Bonus Act, 1965 being an institution

which was not established for the purposes of profit and on the other side Petitioner contended that although the institution was established not for the purpose of profit it has been making profit, therefore, they are not exempted to give bonus. The court after hearing both the parties held that the sales are incidental to the object of the institutions. The major objective of the institution is to provide employment and in fact there is no superannuation age for the workmen and also the workmen are given benefits such as provident fund on an enhanced scale, education allowance for children etc. which benefits are not available ordinarily anywhere else. On these facts institutions falls within the exemption of Bonus Act.

CONCLUSION

After going through several articles, books, research paper, journals the researcher came to following conclusion:

The goal of a bonus is to transmit the benefit that the company has gained to the employees. This extra benefit boosts the productivity and morale of the employee. It also motivates them to work efficiently towards their objective, allowing the institutions to reach new heights.

There are certain institutions which are exempted from the Payment of Bonus Act, 1965. These exemptions are mainly dealt under Section 32 of the Payment of Bonus Act. This project specifically focuses on those institutions which are exempted from paying bonuses that is, institutions (including hospitals, chambers of commerce and social welfare institutions.) While determining exemption of Payment of Bonus Act the court minutely examines whether the institution is established for the purpose of profit or not, if the answer is affirmative then those institutions are entitled to pay bonus to their employee.

The hypothesis made in this paper stands true i.e., Productivity and profit making is an essential requirement while determining the exemption of bonus of those institutions which falls under the ambit of Section 32(5)(c) of Payment of Bonus Act, 1965. This

⁷⁷ 1981 (I) L.L.J. 462.

⁷⁸ Civil Appeal No. 1865 of 1985.

can be inferred from the above mention judgements. In all the above mention the court while determining the question whether particular institution has to pay bonus are not has taken into account or posed the question of the profit making and productivity of the employees.