

THE RIGHT TO BONUS OF CONTRACT LABOUR UNDER THE PAYMENT OF BONUS ACT, 1965- A CRITICAL ANALYSIS

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ABSTRACT

Labour laws play an important role in keeping industrial peace and harmony. Various labour legislation endows some subject with rights while putting obligation on others, the Payment of Bonus Act, 1965 is a similar legislation which interacts with several other labour legislations. Through this paper, the author will seek to provide clarity about the relation between the Contract Labour (Regulation and Prohibition) Act, 1970 and the Bonus Act by focusing on the question of the liability of the principal employer to pay bonus to the contractual labour. Various decisions rendered by the Indian Judiciary and the legislations have been analysed to find the answer of the question and the reasoning behind it.

Keywords: Labour Law, Bonus, Contract Labor, Industrial Relations, Employer's Liability.

INTRODUCTION

The Payment of Bonus Act, 1965¹ provides for a statutory right to employees to claim their share in the profit of the organization. It provides for payment of bonus to persons employed in private sector factories, employing 20 or more persons, on the basis of profits or on the basis of production or productivity and matters connected therewith. The minimum bonus of 8.33% is payable by every industry and establishment under section 10 of the Act. The maximum bonus including productivity linked bonus that can be paid in any accounting year shall not exceed 20% of the salary/wage of an employee under section 31 A of the Act².

The Bonus act provides for eligibility cap and also maximum bonus limit on the basis of wages, the 1965 Act provided for an eligibility limit of Rs. 1600 per month and a calculation ceiling of Rs. 750, after various amendments this limit now rests on Rs. 21000 as eligibility limit and a calculation ceiling of Rs. 7000 or the minimum wage as applicable.³

The Contract Labor (Regulation and Abolition) Act 1970⁴ was enacted with a view to prevent exploitation of contract labour, it regulates the employment of contract labour in certain establishments while providing for its abolishment in others. It provides for registration⁵ and licensing⁶ in case one employs more than 20 contract labourers in the organization. It puts liability both on the Contractor and also on the principal employer. It also provided for various right to the contract labourers such as right to be paid wages⁷ including overtime wages and allowances without any delay and according to the Minimum Wages Act⁸. The principal employer is also put under an obligation to ensure safety measures⁹ for these workers and provide facilities such as rest rooms¹⁰ and canteens¹¹ to the workmen. Further, section 21 of the Act makes it a duty of the principal employer to make payment of wages to the contract labourers on a failure of the contractor to do so.

¹ The Payment of Bonus Act, 1965 (Act No. 21 of 1965).

² Ministry of Labour & Employment, Government of India, *Information on Payment of Bonus Act*, <https://labour.gov.in/wageboard/information-payment-bonus-1965> Last accessed: 29th Nov. 2018 at 2:33 PM.

³ The Payment of Bonus (Amendment) Act, 2015 (Act No. 6 of 2016).

⁴ The Contract Labour (Regulation And Abolition) Act, 1970. (Act No. 37 of 1970)

⁵ Section 7, The Contract Labour (Regulation And Abolition) Act, 1970.

⁶ Section 12, The Contract Labour (Regulation And Abolition) Act, 1970.

⁷ Section 21 (1), The Contract Labour (Regulation And Abolition) Act, 1970.

⁸ Rule 25 (2) (iv), The Contract Labour (Regulation And Abolition) Central Rules, 1971.

⁹ Section 20, The Contract Labour (Regulation And Abolition) Act, 1970.

¹⁰ Section 17, The Contract Labour (Regulation And Abolition) Act, 1970.

¹¹ Section 16, The Contract Labour (Regulation And Abolition) Act, 1970.

The labour laws are a web of inter-connected and inter-dependent legislations. Therefore, at times it becomes difficult to understand the rights and duties of the various subjects. There have been questions and doubts regarding the duties of the principal employer under the various legislations. In this paper, the author seeks to provide clarity regarding the right of the contractual workers to receive bonus from the principal employer under the Payment of Bonus Act.

ELIGIBILITY FOR PAYMENT OF BONUS UNDER THE ACT

Section 8 of the Act provides that any employee who has worked for 30 days or more working days in the given year shall be entitled to get bonus from the employer as per the provisions of the Act. This section creates a right in the employee to be paid the bonus, every right has a corresponding duty and this duty in case of bonus is laid down in Section 10 of the Act, which provides for the corresponding duty of the employer to pay the bonus.¹² In the case of *J. K. Ginning & Pressing Factory v. P.O., Second Labour Court, Akola & Others*¹³, where a factory had employed 10 seasonal workers and the question arose as to their eligibility for bonus. The Bombay High Court held that the Act does not exclude such seasonal workers, the only requirement for eligibility is that if the criteria as laid down under Section 8 is met with. Therefore, even the seasonal workers were held to be entitled to payment of bonus as per the Act. Similarly, in *Arun Mills Ltd.v. Dr Chandra Parshad C. Trivedi*¹⁴ it was held that Employees working on a part-time basis are eligible for bonus.

Further, in *Kale Khan Mohd. Hanif vs. Jhansi Bidi Mazdoor Union And Ors.*¹⁵ The Allahabad High Court held that Workers (in this case Packers) who have the option to attend to work at the factory premises are also entitled to bonus. The Court held that “the packers, who were claiming payment of bonus did not constitute casual, heterogeneous, miscellaneous and irregular group but were irregularly working as packers in the premises of the petitioner. It is true that on any particular day they may choose to attend to the work at the premises of the

¹² D.P. Kelkar vs Ambadas Keshav Bajaj And Ors. AIR 1971 Bom 124

¹³ (1991) 62 FLR 207 (Bom).

¹⁴ (1976) 32 FLR 323.

¹⁵ (1980) IILLJ 283 All.

factory or not but nonetheless they were employees of the petitioner within the meaning of the Bonus Act since, on those days on which they did work, they worked under the control and supervision of the petitioner, and the mere fact that the payment was on daily wages did not affect their status as employees.”¹⁶

In a case¹⁷ where the employee was denied bonus on account of him being suspended from his duties, the Gujarat High Court stated “...if everything is normal, the worker to sustain a case for bonus or to be eligible for it, should work in the establishment for not less than 30 working days in that year. But in abnormal circumstances wherein he is prevented from working by an overt act on the part of the employer which is ultimately set aside and the employee is reinstated in service, then the reasonable inference is that the employee's statutory eligibility for bonus within the meaning of Section 8 of the Payment of Bonus Act, 1965 cannot be said to have been lost. Nor can employer refuse to accede to a demand for such bonus, if it is otherwise payable under the provisions of the Act.”

PAYMENT OF BONUS TO CONTRACTUAL LABOUR

Various cases highlighted above clearly show that the approach taken by courts in the interpretation of this welfare legislation has been lenient and beneficial interpretation has been applied by court to serve the purpose of the labour laws. However, the courts have also taken a balanced approach to ensure that these welfare legislation does not render unjustifiable gain or loss to anyone. Although there have been many instances where provisions of the Act have been interpreted by the courts to answer rather complicated questions, there have been only a few cases when it comes to question regarding the applicability of the Payment of Bonus Act to the contractual employees. The following two judgements clarify the question that whether the principal employer is liable to pay bonus to the employees hired on a contractual basis.

In *Cominco*,¹⁸ where a factory had hired contractual labour to run and maintain the canteen as per the provisions of section 46 of the Factories Act, a dispute arose regarding payment of bonus to the contractual workers. The Kerala High Court held that the contractual labour does

¹⁶ *Ibid* at Para 7.

¹⁷ *The Project Manager, Ahmedabad Project, O.N.G.C. Vs. Sham Kumar Sehgal (Since Decd.) Through His Heirs and Lrs. Krishnadevi*, [1995(71)FLR176].

¹⁸ *Cominco Binani Zinc Ltd. Vs. Pappachan*, 1989 (1) LLJ 452.

not become the employees of the company merely because of the fact that they were managing the canteen on behalf of the management and claim bonus. As per section 21(4) of the Contract Labour (R& A) Act 1970, the principal employer is liable to pay the arrears of wages, however, wages do not include gratuity and bonus. The court drew an inference from the definition of the term 'wages' under the Industrial Disputes Act and Payment of Wages Act. It was highlighted that both these enactments expressly excludes bonus and gratuity from the definition. Hence, under the Contract Labour Act, the principal employer cannot be held liable to pay bonus to the contractual workers.

The Kerala High Court had another opportunity to interpret section 8 of the Act. In *Kerala State Civil Supplies Corporation vs. Industrial Tribunal*,¹⁹ the Appellant, a PSU had hired contractual labour for carrying out the task of loading and unloading of material. No bonus was paid to these employees by the appellant on the contention that the definition of term 'employee' under the Bonus Act does not include contractual labour. The respondents on the other hand, made a claim to wages on the ground that since the workers had worked for more than 30 days in the year, the eligibility under section 8 has been met and therefore, they have a right to get bonus.

The Court found that these workers worked for multiple employers simultaneously on the basis of availability of work. The Tribunal has held that in such a situation "every employer under whom an employee has worked for more than 30 days in a year is entitled to bonus."²⁰ The High Court found this stand to be erroneous and held that the provision does not provide for claiming bonus from simultaneous employers, it can only be done in case of exclusive employers at different time frames. Further, the court held that the work was given on a contractual basis and the conditions of work were governed by a contract, which did not provide for payment of bonus to the workers, there existed no employer-employee relationship between the appellant and the workmen and the workers did not fall within the definition of employees under the Bonus Act, and therefore the employer had no liability to pay bonus.

This position has been further highlighted by the Karnataka High Court in the case of *Mr Shachindra Kumar vs State of Karnataka*²¹ where the labour department penalized the factory on ground that the contractual labour was not paid bonus equal to the regular employees of the company. In this case, the contract labourers were paid Minimum Bonus as per Section 10 of

¹⁹ 2007 (1) KLJ 522

²⁰ Ibid at Para 4.

²¹ 2013 LLR 595 (Karn Hc)

the Payment of Bonus Act, the department demanded that the contract labour should be paid bonus at par with regular employees in accordance to Section 11 which provides for Maximum Bonus to employees.

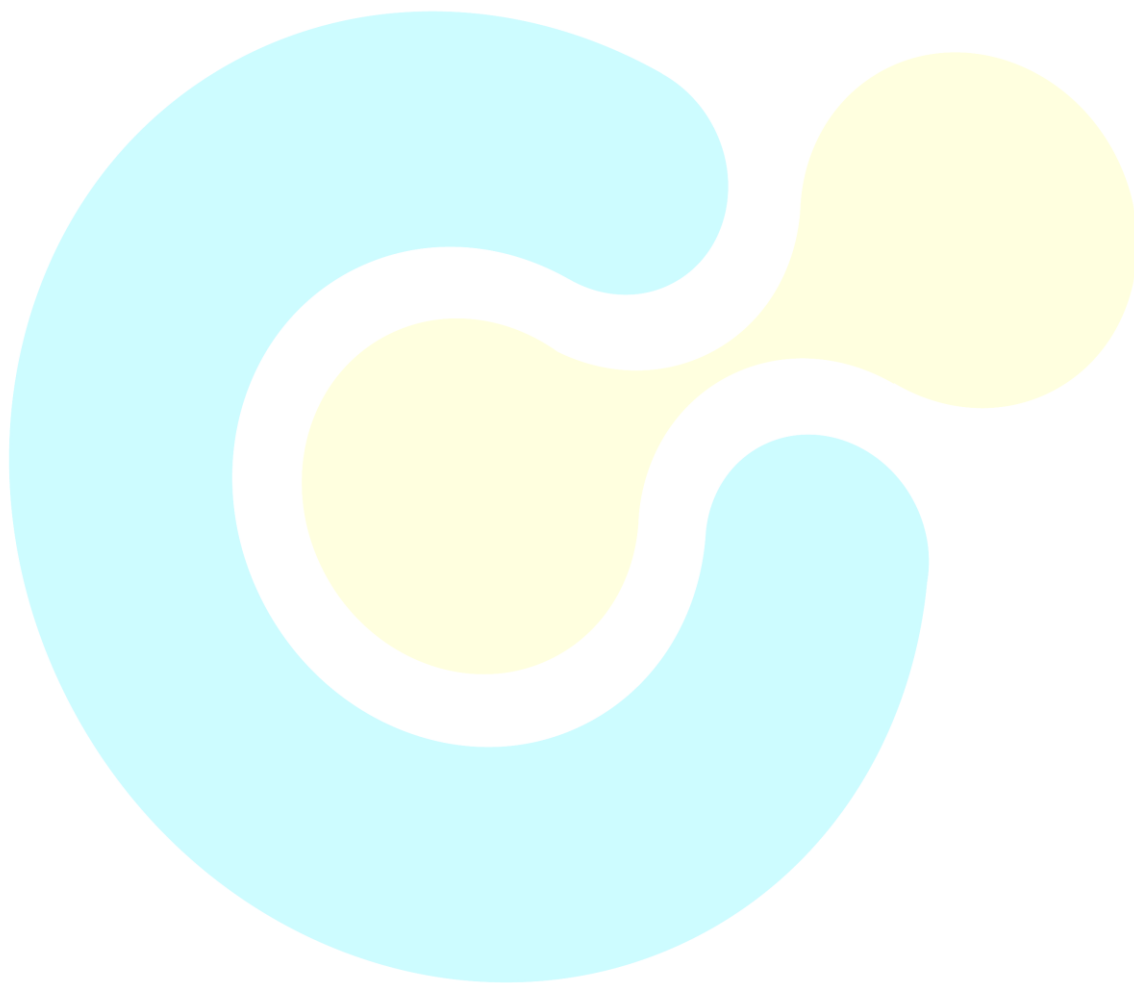
The court held that to claim the benefit of Bonus, first the applicability of the Act to contractual employees is required to be looked into. While comparing the definition of term 'employee' under section 2(13) of the Payment of Bonus Act, section 2(9) of the Employee State Insurance Act & section 2(f) of the Employees' Provident Fund and Miscellaneous Provision Act, the court observed that unlike the Bonus Act which neither expressly nor impliedly provide for contractual labour in the definition, the other two enactments specifically include contractual labour. Therefore, having regard to the definition of employee, the court held that the contract labourer cannot be treated on par with the regular employees for the purpose of Payment of Bonus. The court quashed the proceedings against the factory and stated "When the contract labourers are not 'employees' as defined under Payment of Bonus Act, there is no obligation on the part of the employer to pay bonus on par with regular employees, therefore, it does not constitute violation as contemplated by Section 11 punishable under Section 28 of Payment of Bonus Act."

The Cominco, and the Sachindra Kumar Judgement clearly state that the contractual employees will not be entitled to bonus. The reasoning is two-fold, First, the definition of employee under the Payment of Bonus Act does not include Contract Labourers, and hence the Act is not applicable in case of contract labourers and Second that the Principal employer is not liable to pay bonus to the contractual labourers under the provisions of the Contract Labour (R & A) Act either.

CONCLUSION

Bonus plays an important part in well-being of the workers at the lowest levels in industry and helps in marginalizing the gap between living wage and minimum wage. The views taken in these decisions by the courts are in consonance with the general approach of judiciary in interpretation of the provisions of such welfare legislations. For payment of bonus under the Act a person must establish his right clearly. The Bonus Act is a complete code so far as the

right to bonus is concerned²² and therefore, only the applicability of the Act to a given subject shall be the primary criteria to determine the right to bonus. It can be concluded that the principal employer does not have the liability to pay bonus to the contractual labour under the provisions of the Payment of Bonus Act, 1965. However, the industrial relations and labor management shall be the factors an employer shall consider while making a decision about payment of bonus and not just his legal obligation²³ as bonus is an important tool to bring and maintain industrial peace and harmony.



²² Kohinoor Tobacco Products (Private) Ltd., Adyal v. Second Labour Court, Nagpur and Ors., 1986 (2) LLN 490.

²³ Union of India & Ors. vs R. C. Jain & Ors, 1981 AIR 951