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261. Should employees have the right to demand a bonus higher than 8.33% if the company has paid it in the past?

The Payment of Bonus Act, 1965, establishes clear provisions regarding an employee's entitlement to a minimum and maximum bonus. While employees are eligible to receive a minimum bonus and, in certain cases, a higher bonus, the Act does not automatically grant them the right to demand a bonus higher than 8.33% unless specific conditions are met.

Part 1: When Employees Are Eligible to Receive a Bonus

1. Minimum Bonus (Section 10) – Guaranteed Entitlement

As per Section 10, every eligible employee is entitled to receive a minimum bonus of 8.33% of their salary or wages, irrespective of whether the employer has earned profits or has an allocable surplus.

2. Maximum Bonus (Section 11) – Conditional Entitlement

- If the employer has an allocable surplus, then instead of paying only 8.33%, the employer must pay a higher bonus, up to a maximum of 20% of the employee's salary or wages.
- The bonus percentage in such cases depends on the company's allocable surplus, which is calculated as per Sections 4, 5, and 7 of the Act.

Example:

- If a company has an allocable surplus, the employer must pay more than 8.33%, but not necessarily 20%.
- Suppose the allocable surplus allows for only a 12% bonus, then employees are entitled to 12%, not 20%.

Part 2: When Employees Are NOT Eligible to Demand a Higher Bonus

1. Bonus Beyond 8.33% is Not an Absolute Right

- The minimum bonus of 8.33% is statutory and mandatory.
- Any bonus above 8.33% depends on the company's financial condition, particularly the allocable surplus under Section 11.
- If the allocable surplus does **not permit** a higher bonus, employees **cannot demand** more than 8.33%.

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Example:

- A company had an allocable surplus in previous years and paid a 15% bonus.
- However, in the current year, allocable surplus is lower, permitting only 10% bonus.
- Employees cannot demand 15% just because it was paid before.

2. No Allocable Surplus = No Higher Bonus (Section 11)

- If the allocable surplus is insufficient, the employer is not bound to pay more than 8.33%.
- Employees cannot demand a higher bonus just because it was paid in previous years.

Example:

- Suppose in 2022, a company had high profits and paid a 20% bonus.
- In 2023, due to reduced profits, the allocable surplus supports only 9% bonus.
- Employees cannot insist on 20% because allocable surplus does not justify it.

3. Employer's Right to Decide Bonus Based on Financial Condition

- The Act mandates a minimum and maximum range, but the exact percentage between 8.33% and 20% depends on the employer's financials.
- Employees have no legal basis to demand a specific percentage beyond 8.33%.

Example:

- A company assesses financials and decides on a 10% bonus.
- Employees demand 18% based on previous payments.
- Legally, the employer is not obligated to meet this demand if the allocable surplus does not justify it.

Conclusion: No Automatic Right to Demand Higher Bonus

1. Employees are entitled to a minimum bonus of 8.33%, regardless of company performance.
2. Employees can receive up to 20% bonus, but only if the company has an allocable surplus (Section 11).
3. Employees cannot demand a higher bonus just because it was paid before.
4. The employer has the final discretion (within the Act's limits) to decide the exact bonus percentage based on financials.

Thus, while employees may request a higher bonus, they do not have a legal right to demand more than 8.33% if the company's allocable surplus does not permit it.

Supporting Judicial Precedents**1. Pharmaceutical Chemical & Allied Employees Union v. The Management of J.L. Morrison (India) Ltd. (2018 - Karnataka HC)**

- The Karnataka High Court ruled that bonus beyond 8.33% cannot be claimed as a right unless it qualifies as a "customary bonus."

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- The court emphasized that for a bonus to be considered customary, it must be uniform, continuous, and independent of profitability.
- Since the Bengaluru unit of the company failed to establish an uninterrupted payment of 16.66% bonus over an extended period, the court rejected the employees' demand.

2. Graham Trading Co. (India) Ltd. v. Its Workmen (1959 SC 1151)

- The Supreme Court held that customary bonus must be supported by a long, unbroken practice and must have been paid consistently, regardless of financial conditions.
- A mere past payment of a higher bonus does not automatically establish a right to claim it in future years.

3. Churakulam Tea Estate (P) Ltd. v. Its Workmen (1969 SC 407)

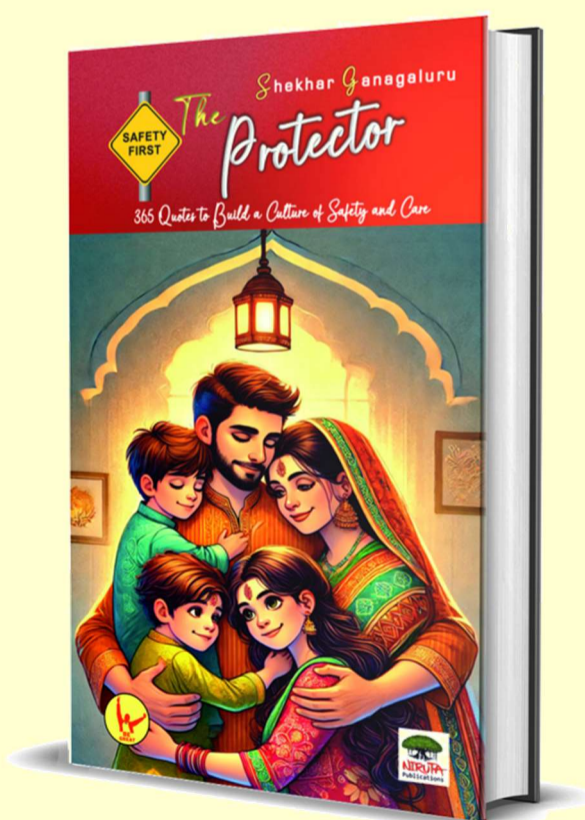
- The Supreme Court reiterated that an employer is obligated to pay only the statutory minimum bonus (8.33%) unless the company has a sufficient allocable surplus.
- If no allocable surplus exists, employees cannot demand a higher bonus simply because it was paid in the past.

4. Hamdard (Wakf) Laboratories v. Dy. Labour Commissioner (2007 SC 281)

The Supreme Court ruled that bonus is not automatically part of wages and cannot be enforced beyond statutory limits unless explicitly agreed upon or established through a binding customary practice.

5. Summary:

These judicial precedents and statutory provisions collectively establish that a higher bonus (above 8.33%) is not a legal right unless justified by financial eligibility or an unbroken customary practice. Employees can request a higher bonus, but they cannot legally enforce it if the company does not have sufficient allocable surplus or a proven history of customary payments.



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