Q&A

I work for a Company based in Delhi. I joined the Company on 20 Feb, 2016, which is about one and a half months before the close of the Financial Year as a typist and my monthly salary is Rs. 18,500. Would I be entitled to bonus for the previous year? If so, how much money am I entitled to?

Please note that every employee receiving a salary of up to Rs. 21,000 per month is entitled to bonus during every accounting year, if he/she has worked for at least thirty (30) working days in that financial year. The wage threshold for determining eligibility of bonus for employees has been revised from INR 10,000 to INR 21,000 per month in order to cover a larger pool of employees. As you may know, in India, the financial year starts from April 1 and ends on March 31 of the next year.

Therefore, the answer to your query is yes. This is so because you have worked for more than 30 days in the financial year 2016-17 and also fall within the aforementioned salary bracket of up to Rs. 21,000 per month. The amount you will be entitled to will depend on the bonus declared by your employer company. Please note that subject to relevant provisions of The Payment of Bonus Act, 1965, every employer is bound to pay a minimum bonus of 8.33% of the salary or wage earned during the accounting year.

I am a woman working for a Private Company based in Delhi. I am frequently asked to work in the office till 11 P.M. I have no problem working late, but staying late in the office and thereafter travelling in the night does not feel safe. I want to know if there is any rule that women should not be allowed to sit beyond a particular time. Should I make a complaint with the labour department? Is there some other way in which I can handle this issue?

The Delhi Shops and Establishment Act prohibits any employer to allow any woman whether as an employee or otherwise to work in any establishment between 9 P.M. and 7 A.M. during the summers and between 8 P.M. and 8 A.M. in winters. The summer season starts from 1st April and ends on 30th September while the winter season starts from 1st October and ends on 31st March of the following year. You may consider bringing the above to the knowledge of your employer, and if that does not work, you may make appropriate complaint with the labour inspector having jurisdiction over the area in which your company's office is situated.

I am the owner of a cement distribution company in Delhi and I have employees who work on a daily wage basis. Recently, some of these employees have started claiming that they should be paid wages for the holidays, despite the fact that these daily wage employees are not regular permanent employees. Since this has not been the practice in our company, there are murmurs that a union affiliated to a political party will take up the matter with the labour commissioner. We have taken a stand that daily wage employees, even if they have been regularly employed, are day to day employees and expectations that they be paid for holidays is wrong and against the law. However, the employees are sticking to their views. I would like to know the legal position. Would I be required to pay them for the holidays?

Daily paid employee refers to employees who get their wage or salary only on the days they actually worked, except in cases of regular holidays wherein they are paid their wage or salary, even if they do not work during those days, provided that they are present or on leave of absence with pay on the working day immediately preceding the regular holiday. Therefore, the answer to your query is yes and you would be required to pay all the employees including the employees who work on a daily wage basis for the holidays, and where the employee is paid on piecemeal rates, he shall receive the average of the wages received during the week.

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Employee Status For Contractual Staff

BY **KRISHNA VIJAY SINGH**

In the matter of Balwant Rai Saluja vs. Air India Ltd, the question before the Hon'ble Supreme Court was whether the workmen engaged in statutory canteens, through a contractor, could be treated as employees of the principal establishment? The matter reached the Supreme Court after Judges Constituting the Division Bench of the Delhi High Court differed in their views regarding the liability of the principal employer running statutory canteens and the status of the workmen engaged therein. The difference of view was on the aspect of supervision and control which was exercised by the Air India Ltd. ("the Air India") and the Hotel Corporations of India Ltd. ("the HCI") over the said workmen employed in the canteens. The learned Judges also had varying interpretations regarding the status of HCI as a sham and camouflage subsidiary by the Air India, created mainly to deprive the legitimate statutory and fundamental rights of the concerned workmen, and the necessity to pierce the veil to ascertain their relation with the principal employer.

The Division Bench expressed contrasting opinion on the prevalence of an employer employee relationship between the principal employer and the workers in the said canteen facility. The Bench also differed on the issue pertaining to whether such workmen should be treated as employees of the principal employer only for the purposes of the Factories Act, 1948 ("the Act") or for other purposes as well. The Supreme Court held that the workers engaged by a contractor to work in the statutory canteen of a factory would be the workers of the said factory, but only for the purposes of the Act, and for the said workers to be called the employees of the factory for all purposes, they would need to satisfy the test of employer-employee relationship, and it must be shown that the employer exercises absolute and effective control over the said workers.

In the matter of Workmen of Nilgiri Coop. Mkt. Society Ltd.vs. State of Tamil Nadu and Ors, an industrial dispute was raised by potters and graders engaged in the job of unloading, unpacking of gunny bags, stitching the gunny bags and putting them into lorries and gradation of potatoes, weighing the auctioned potatoes and packing them into gunny bags at the yards owned by 'Nilgiris Cooperative Marketing Society Limited', a Society formed in 1935 with the intent to assist small vegetable growers in and around Mettupalayam, a small town in the Nilgiris, Tamilnadu. The Society had two big marketing yards at Mettupalayam where the vegetables were auctioned. Infrastructure such as offices, godowns yards, weighing machines etc. were provided by the Society. The primary members of the Society brought their agricultural produce to the yards by hired lorries or trucks. They remained present till the agricultural produce brought by them was auctioned/ sold and they received the sale price. During the peak season about 100 lorries arrived everyday whereas during the 'off season' average number of lorries arriving at the yard were around 10.

The Society contended that for doing various items of work in the yards, services of certain third parties were made available to the members. They were always available in the yards and any member whether producer or merchant could engage them. The work was done through the workers of the concerned third parties (contractors). Payment was to be made by the persons engaging them to the said third parties. However, sometimes as the producer members did not have enough money with them, the Society made the payment on their behalf by way of advance for which allegedly written authority was obtained. The Society further contended that the farmers and merchants were at liberty to engage their own men for doing these items of work and some of them did the work themselves. There was no obligation on the part of any member to bring his produce to the Society's yards. He was free to sell his produce in any manner he thought fit. It was not in dispute that the Society did not maintain any attendance register or wages register. The third parties were free to engage men of their own choice and no working hours were fixed or insisted upon. Any person normally doing the job may come on any day to work. The porters and graders who raised the industrial dispute were free to take up any other job.

The union, however, served a charter of demands upon the Society claiming, inter alia, permanency in service and other benefits. A strike notice was also given after which conciliation proceedings were initiated. The Society thereafter filed a suit. A writ petition was also filed before the High Court praying for minimum facilities like drinking water, toilet, rest-room, maternity benefits, etc. The Society is said to have declared a lock out and the conciliation proceedings thereupon started again. The writ petition was subsequently withdrawn. The conciliation proceedings ended in a failure. The totality of the circumstances according to the Tribunal and affirmed by the High Court clearly showed that the Society in general did not have the necessity of employing any workman either for the purpose of loading, unloading or grading. Although rendition of such services may amount to carrying out an industrial activity within the meaning of the provisions of the Industrial Disputes Act, 1947 the Court held that the same was immaterial since the concerned workmen have not been able to prove that they were workmen of the Society. In view of the aforesaid findings, the Hon'ble Supreme Court was of the opinion that the decision of the Tribunal as affirmed by the High Court cannot be said to be perverse warranting interference. However, while dismissing the appeal, the Supreme Court observed that in view of the assurances given to the High Court by the Society, the Society will continue to see that the concerned employees are provided with employment.