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Profit Bonus: From the Debries of Boon to the Crescendo of Right in Pakistan

Abstract

There is enhanced recognition of monetary rights of the workers in contemporary jurisdictions but this doesn't always demonstrate inflated enjoyment of the rights on ground. With this background, this article ventures upon the dogmatic analysis of the parameters laid down by the legislature pertaining to the payment of bonus in Pakistan. It is true that the provisions seem to be pro-labour but it is also true that they fall far short of establishing a friendly atmosphere and are utterly bemused. For this purpose, the article has been bifurcated into three parts. Part first gives historical development of payment of bonus in pre-portioned India; part second relates to contours of bonus before the incorporation of Standing Order No.10-C and third part encompasses different aspects of bonus in post insertion of Standing Order No.10-C. Consequent upon the analysis of the legislative and judicial context, the paper argues that necessary amendments should be incorporated in the law relating to the payment of bonus to ensure the prompt enjoyment of this right in Pakistan.

Islamic Perspectives of Rights of Worker

a) As to wages

Since the advent of worker- employer relationship, efforts have been made to harness adequate wage packages for the workers and ensure their timely payment by the employers. For this purpose, the ILO has been playing a very pivotal role by evolving conventions which have been ratified by majority of the countries. Without prejudiced to the contents of the conventions, Pakistan has to withstand not only with the international pledges but to the injunctions of Islam as well. Any anti-Islamic favour of legislation would render it unconstitutional. Islam has equally emphasised the adequacy and timely payment of the wages. It has been ordained in the Holy Quran that no one should deprive the people of their due.¹ Similarly, Allah has warned of the consequences of withholding one's due by expressing dismay to those who give less than due and take full measure when they receive from the people.² On another occasion, the Almighty Allah has forbidden from depriving the people of their due, committing abuse on the earth and spreading corruption.³ The Holy Prophet (PBUH) has reportedly reiterated that, on the Day of Judgment, Allah would be opponent to him who employed a worker, fully engaged him and did not pay him his wages.⁴ Similarly, Abdullah

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bin Umar has narrated that the Prophet of Islam (PBUH) has also ordained the mode of payment of wages by saying that the wages ought to be paid before the sweat is dried up.⁵

b) Right of Choice of Profession

In present day world, the freedom to choice of work is still a hot discourse amongst philanthropist. The instances to work against one's will are rampant in the society. Bonded labour is glaring example of this menace especially in Pakistan. In this context, ratification of Convention No.82 by Pakistan seems to be an encouraging step for the eradication of this menace from the country. Islam has categorically reiterated the importance of this right of the workers. Allah ordains to do as one wish subject to the restraint that Allah will see your deeds and so will His Prophet and the believers.⁶ It has been reported by Abu Hurairah that the Holy Prophet has said that it was essential to feed and clothe the salve properly and forbidden from burdening him with the work beyond his capacity.⁷

Historical Background

The dawn of July 1917 can be reckoned as epoch making in the history of Indian workers due to a couple of factors: firstly, the entrepreneurship of Bombay and Ahmadabad decided to take pragmatic initiatives for the amelioration of the workers and, secondly, in order to lessen the miseries due to steep rise in prices, decided to pay them bonus.⁸ This benevolence remained opened till 1923, when thinking it be inadequate, the workers decided to strike in 1924 which ultimately resulted in the constitution of bonus dispute committee⁹. As a result of long deliberations, however, the committee drew the conclusion that the workers had thought the bonus to be the part of their wages and they, committee opined, were justified in holding so but, interestingly, the committee also established that the employers' reluctance as to the bonus was also not devoid of force and merit¹⁰. Issue of payment of bonus, however, re-emerged during World War II as a result of handsome profits earned by the employers and abrupt rise in the cost of living and this time the Bombay Mills Association on the pursuance of the local government had to agree the payment of bonus @ 12.5 % earnings¹¹. Thus a precedent, although transitory, was established which prompted not only the other employers to hold it to be the best way of keeping the workers contended and achieve the production targets but also relieved the government of the irksome task of periodical revision of the wages¹². After that, there ushered an era of trial and error and the pressing nature of the bonus was once again jeopardised by a verdict rendered by the said committee in 1924. It was reiterated that the proletariats had no enforceable claim to annual bonus¹³. However, at the end of second quarter of the twentieth century, there emerged a couple of decisions which, besides bringing about tranquility in troubled circles, streamlined the issue of payment of bonus to the workers. Firstly, in 1946, the Court decided a case more favorable to the workers. The award of the said court ran as under:

“The justification for such demands (more earnings, better conditions of work, etc.) arises especially when wages fall short of the living wage standard and the industry makes huge profits, part of which are due to the contribution which workers make in increasing production. The demand for bonus is therefore an industrial claim when either or both these conditions are satisfied. In the present

case there is no doubt that both these conditions are satisfied.... It is to be remembered that adequate wages and dearness allowance, if any, for increased cost of living are a first charge on the industry, but the workers may reasonably ask for a bonus when there are enhanced profits, when dividends are paid out after providing for taxation and depreciation, especially when their wages are below the living wage standard”¹⁴.

The dicta corroborated the assertion of the labour that bonus was a deferred wage and was further galvanized by the decision of the Bombay High Court in 1948 that bonus could be demanded as a right. Another hallmark of the said decision was that a speaking formula for computing “prior charges” prior to the grant of bonus was devised in 1948. It was named as “Full Bench Formula” of Labour Appellate Tribunal¹⁵. Rendering it to be a benchmark for onward calculation of bonus through out the country, the payment of bonus was associated with the actual and living wage:

“So long as the living wage standard has not been attained the bonus partakes primarily of the character of the satisfaction.... Of the deficiency in the legitimate income of the average worker in an industry, and once such income has been attained it would also partake of the character of profit-sharing. Owing to this dual character of bonus, it would be a mistake to regard a demand for bonus as a demand for profit-sharing pure and simple”¹⁶.

Industrialization of Pakistan, which had proceeded at a fairly rapid pace in the decade since partition, had engendered new and growing problems for industrial labour¹⁷. Surprisingly, Consequent upon getting independence from the colonial regime in 1947, no proper attention could be focused on legal reforms especially the welfare legislation. Last quarter of the twentieth century may definitely be regarded as emblematic of numerous critical developments because the areas like workers’ engagement of the workers in the affairs of the establishment participation, broadening the horizons of the labour legislation, promulgation of laws encompassing the old-age benefit, issues relating to the education of children, payment of profit bonus and group insurance schemes were given due space in legislation¹⁸. Albeit, it may be termed as a benevolent step on the part of the then democratic government but still the provisions seem to be replete with lacunae. For instance, the provisions relating to the payment of bonus have not been tailored in an exhaustive manner. So, it has become a multi-pronged issue and the areas like concept of bonus and relation thereof with the remuneration, its calculation and the conditions for its payment and, of course, its quantum are utterly bemused. Growing corpus of case law on the subject reveals that the legislative snare requires complete refurbishment.

Be that as it may, the law relating to the payment of profit bonus can best be comprehended by bifurcating it into two phases: firstly, from 1947 to 1972 and secondly from 1972 to onwards. The principal reason behind this bifurcation is that it was not until 1972 that the legal provisions pertaining to the payment of bonus found their way onto Federal Statute Book. Prior to that date, the payment of bonus was depended on a number of factors i.e. term of employment, strength of custom, usage or practice or by means of settlement between the employer and the workmen or in case of a dispute on the award of a labour court¹⁹.

Kinds of Bonus

A cursory review of the literature on the subject reveals that following types of the bonus have been in vogue in Pakistan: firstly, customary bonus, secondly, efficiency bonus and thirdly, profit bonus. It is interesting to note that there seems to be great disparity in terms of parameters for the payment of these bonuses and such incongruity has, inter alia, paved the way to an unending debate in relevant circles.

A) Customary Bonus

In Pakistani labour jurisprudence, the customary bonus occupies a very unique place as before the incorporation of the provisions pertaining to the payment of statutory bonus, it was the only one which was catering for the requirements of the bread earners in Pakistan. It is a settled position that the custom which can be recognized as a rule of law modifying the ordinary law must be ancient and invariably pleaded before the trial court apart from the fact that clear and unambiguous evidence must be given in support of its existence²⁰. However, in order to bring the claim within the ambit of customary bonus it was incumbent upon the claimant to prove that the same was paid at a uniform rate; it was paid during the years of loss as well and it had been paid for sufficiently long time and for an unbroken series of years²¹. However, the fact that the bonus was payable on profit basis in terms of settlement will not make it a customary bonus²².

B) Negotiable Bonus

Negotiable bonus or sometimes called settlement bonus is another type of bonus which has evoked a continuous stream of controversy between the two segments of the economy. As in most of the cases, the bonuses are paid under settlements even when there is no profit²³, therefore, unlike statutory bonus, the law admits the autonomous character of the parties as to the determination of pre-requisites of this kind of bonus. For instance, there is no minimum or maximum limit of such bonuses compared with statutory bonus; there is nothing in law with regard to the length of service on which the bonuses agreed upon are to be paid²⁴. In other words, all these matters are left to the parties to settle through the process of collective bargaining. The principal reason behind this autonomy being that the object and policy of the law has always been not to fix any condition or criteria for grant of benefit which is subject to the process of collective bargaining rather it is left to the parties to decide the issues in the manner they deem fit. Such criteria and condition are fixed only in the case of statutory benefits²⁵. Another hallmark of the settlement bonus is that it holds grounds notwithstanding the fact that the workers have to receive any profit bonus under any provision of law in future²⁶.

C) Efficiency/ Production Bonus

A production bonus is a wage incentive plan devised in the hope or expectation that profit will thereby accrue to the employer but this is not necessarily based on profits²⁷. Production bonus is, indeed, an extra compensation for putting in extra labour beyond the specified standard by the workmen. It was owing to this reason that all these plans like “Halsey Premium Plan”, “Bedaux Point Premium Plan”,

“Haynes Maint System and Emerson Efficiency” are reckoned as “Incentive Wage Plans” and had almost no bearing on profits. So, instead of depending on extra profit, the extra payment always depended on extra production²⁸.

Efficiency bonus is, it is submitted, not a bonus on profit rather the same is an allurements to the workers to put in more and more labour, therefore, the same has become part of the wages. The concomitant benefit is that it enables the administration to reward the efficient workers by putting them in the next cadre. However, the payment of efficiency bonus is contingent with the labour to be put in by the workers. It is calculated for making payment of overtime work and its calculation towards wages is based on reasons. Therefore, it was held that efficiency bonus was part of wages and it had to be calculated as extra wages of an extra and efficient work²⁹.

D) Statutory Bonus

In a sense, statutory bonus has been given preference over any other kind of bonus. The reason seems to be the beneficial aspect of the Standing Order No. 10 (C)³⁰ of the Industrial and Commercial Employment (Standing Orders) Ordinance, 1968. The law enjoins upon an employer, who earns profit, to pay the amount of bonus, over and above the normal wages, to all such workers who have rendered at least ninety days service in that establishment³¹. Interestingly, the bonus is to be paid as per choice of the worker i.e. either in cash or in the form of N.I.T Units in accordance with a formula laid down in the standing order within three months of the declaration of the accrual of profit³². The payment of bonus has, however, been made subject to the condition that the same would bear to worker’s monthly wages the same proportion as the total bonus would bear to the aggregate of the total wages³³. For the purposes of calculation of bonus under the said law, all the wages except the bonus to be received by the worker under section 2(vi) of the Payment of wages Act, 1936, would be excluded³⁴.

Criterion for Statutory Profit Bonus

According to Standing Order No.10-C (1) of the Ordinance, every workman putting in, in an accounting year, a uninterrupted service of at least ninety days would be entitled to receive bonus and for the purposes of this Ordinance, the term workman meant “any person employed in any industrial or commercial establishment to do any skilled or unskilled, manual or clerical work for hire or reward”³⁵. Whether a particular person was worker or not, his nature of work would be the decisive factor; his pay or designation would be immaterial³⁶. The other eligibility for bonus for a workman was “employment in that year for a continuing period of not less than ninety days”³⁷. The law didn’t enjoin upon the worker to be actually on duty rather his relationship as an employee should have continued for at least ninety days³⁸.

The provisions adumbrated in Standing Order No. 10 (C) of the Ordinance provide the parameters for the payment of statutory bonus. The employer has to pay it within three months from the date of earning profit. Albeit the concept of statutory bonus is associated with the earning of profit but the workers are not in a position to know whether in a particular year the employer got earned profit or not, if so, to what extent? So, the time starts from the date on which the employer declares

whether it earned profit or not³⁹. On the contrary, in the light of the report of the auditor⁴⁰ in case of loss to the company, there is neither a right in the workers to receive profit bonus nor is the liability for the company to pay the bonus⁴¹. The judicial approaches as have been demonstrated in these cases depict that the onus of establishing the fact of earning profit has been cast on the workers. In case they fail in doing so, there is likelihood of their deprivation of bonus. No doubt, the provision has been made ambiguous by not putting corresponding duty on the employer to provide accurate and timely provision of the accounts. So much so, an order directing an anticipatory calculation of the bonus has been held to be reasonable⁴².

Another set back with the extant law is that the industrial dispute with regard to the benefits allowed under Standing Orders Ordinance cannot be raised in view of the definition of the term provided by section 2 (XIII) as amended by Ordinance No.XIX of 1974. According to this definition, “any right guaranteed or secured to the workman by or under any law, other than Industrial Relations Ordinance” was to be excluded from the definition. As the right to statutory bonus has been guaranteed by Standing Order Ordinance, therefore, any controversy relating to enforcement thereof doesn’t amount to an industrial dispute. So, even if there was an agreement between the parties which prohibited the payment of bonus that would be violative of the rights of the workers and would be null and void⁴³. But, the restriction that the fact of non-payment of bonus doesn’t amount to industrial dispute is valid only to the extent of profit bonus payable under clause (1) of the Standing Order No-C of the Industrial and Commercial Employment (Standing Orders) Ordinance, 1968. As to the issue of payment of bonus under Clause (4) of the said Ordinance, it is submitted that the same may be espoused as an industrial dispute in case of any controversy. For this purpose, the lost faith of the legislation can be redeemed by enlarging the infinitesimal character of the term industrial dispute.

Calculation of Bonus

Another rather regrettable dimension of the extant law is the calculation of bonus in Pakistan. No doubt, the provisions pertaining to bonus have find place onto statute down to quite lately and it was supposed to be exhaustive by encompassing its all aspects. In this respect, the non provision of exact formulas for its calculation has paved to uncertainties. For instance, it has been said that the bonus is to be paid in proportion to the monthly wages⁴⁴. In this regard, plethora of case law has ripened on the issue of the term wages. It is pertinent to mention here that the term wages has not been defined in the law relating to the payment of bonus rather it has been laid down that the term wages does not for the purpose of calculating the bonus payable to a person under clause (1) of the Standing Order No. 10-C includes the bonus referred to in clause (vi) of section 2 of the Payment of Wages Act, 1936⁴⁵. So, there emerged a question in a number of cases, whether, in calculating the amount of bonus, all the allowances would be taken into account. The courts, on this issue, have categorically turned down the averments made by the workers by excluding the allowances admissible to the workers. Thus, the scope of the bonus has been bogged down by narrowing the scope of wages.

The said term is wider its scope and embraces all monetary payments which can be expressed in terms of money, provided the stipulations of contract of employment, be it express or implied, were fulfilled⁴⁶. Therefore, the words wages has to be interpreted according to its ordinary meaning. In this ordinary sense wages would include all payments made to workman by his employer in regular and permanent bases periodically in lieu of the services. As a corollary, therefore, payments made to a workman, which are contingent in nature, would not form part of the wages. So, in order to render a particular payment as part of the wages of a workman it is necessary to ascertain the nature of such payment⁴⁷. The term wages means pay which was intended to remain permanent. Various allowances except cost of living allowance allowed by law, held, could not be considered to have degree of permanence making part of wages. Allowances, other than statutory cost of living allowance, held could not be considered to be the part of wages for the sake of computation of gratuity and bonus under Standing Order No. 10-C⁴⁸. Non inclusion of such allowances in the ambit of wages, *prima facie*, curtails and abridges the rights of workmen as to the quantum of statutory bonus to which they are entitled under the Standing Order No. 10-C but unlike its definition under The Payment Of Wages Act, 1936⁴⁹. The term wages, could not attract the judicial favour for its enlargement. The upshot of the above discussion is that for the purposes of computing the profit bonus under Standing Order No.10-C, the term wages doesn't include house rent allowance and if there is a settlement which prohibits the parties to include certain allowances in wages for this purpose that will neither curtail the statutory right of the workers to receive bonus under the said law nor is such provision in violation of any provision of the Industrial Relations Ordinance, 1969 50.

Conclusion

The notion of welfare legislation can only come out of present malaise if the extant legislation is modified according to new situation. Albeit, the addition of Standing Order may be reckoned as a beneficial step on the part of the government yet the provisions of the said Standing Order do not seem to have been tailored in an exhaustive fashion. For instance, it neither defines the terms "wages for the sake of calculation of bonus nor does it enjoins that its definition as adumbrated in the Payment of the Wages Act, 1936 would be applicable to the Standing Orders. Similarly, in case of customary bonus, the requirement, *inter alia*, that it should have been paid for "sufficiently long" time is source of constant discontentment amongst the proletariat circles as in this respect, no hard and fast rule has been laid down. Another telling shortcoming in the extant law is non-inclusion of bonus disputes in the inventory of matters constituting industrial dispute. So, the ramification of the law on the subject will be instrumental in bolstering the rhetoric of bonus as a right in Pakistan.

Notes and References

¹ Sura Al-Araaf Verses No.85

² Sura Al-Mutaffifin Verses No. 1

³ Sura HUD Verses No. 85

⁴ Sahi Al-Bukhari, Chapter No.10 Hadith No. 2070

⁵ Ibn Majah

⁶ Sura Al-Tawbah Verses No.105

⁷ Muslim

⁸ Michael J. Van den Bogaert, S.J ‘*The Bonus Question in India: From Ex Gratia Payment to Industrial Claim*’ (1968) 1 Economic Development and Cultural Change 17, 50

⁹ Ministry of Labour and Employment, Report of the Bonus Commission (1964), p.3 as quoted by Michael J. Van den Bogaert, S.J in ‘*The Bonus Question in India: From Ex Gratia Payment to Industrial Claim*’ (1968) 1 Economic Development and Cultural Change 17, 50

¹⁰ *ibid*

¹¹ *ibid*

¹² *ibid*

¹³ *ibid*

¹⁴ *Rashtriya Mill Mazdoor Sangh Textile Workers’ Union v Bombay Mill Owners Association* [1946-47] Industrial Court Reporter 390-91, quoted in Michael J. Van den Bogaert, S.J. n.1 above

¹⁵ *Ibid*

¹⁶ *Ibid*

¹⁷ Nikki R. Keddie, ‘*Labour Problems of Pakistan*’ (1957) 4 The Journal of Asian Studies 16, 575

¹⁸ Obaidur Rehman, *The Law of Industrial Relations in Pakistan* (Karachi: Pakistan Law House, 4th ed, 2004) “87”.

¹⁹ M.Shafi, *Profit Bonus: Law and Practice* (Karachi: Bureau of Labour Publications, 2nd ed, 1980) “12”.

²⁰ *Diamond Silk Mills Workers Union v Diamond Silk Mills (Management)* [1975] PLJ Tr. C (Labour) 149

²¹ *Employees’ Union V Messrs International Advertising Ltd.* Karachi, [1978] PLC 453.

²² *American International Underwriters (Pak) LTD Karachi v The Presiding Officer, Fifth Labour Court Karachi and Others* [1978] PLC 87

²³ *Employees Union Pak-American Fertilizers Ltd V Management, P.A. Fertilizers Ltd.* Mianwali, [1978] PLJ Tr.C (Labour) 235

²⁴ *ibid*

²⁵ *ibid*

²⁶ *London Assurance V Employees Union* [1974] PLJ Tr. C. (Labour) 122

- ²⁷ Employees' union V Messrs Fauji Sugar Mills Ltd [1982] PLC 947
- ²⁸ *ibid*
- ²⁹ Workers' Union v. Carrier Telephone Industries Islamabad, [1978] PLC 177
- ³⁰ Employees Union (C.B.A) v Messrs New Jubilee Insurance Company Ltd. [1984] PLC 232
- ³¹ Standing Order No. 10- C of the Industrial and Commercial Employment (Standing Orders Ordinance, 1958
- ³² *Ibid*
- ³³ *Ibid*
- ³⁴ *Ibid*
- ³⁵ Industrial and Commercial Employment (Standing Orders) Ordinance 1968, s 2(1)
- ³⁶ M. Shafi, Profit Bonus: Law and Practice (Karachi: Bureau of Labour Publications, 2nd ed, 1980) "5".
- ³⁷ *ibid*
- ³⁸ *ibid*
- ³⁹ Muhammad Suleman Malik v Factory Manager, Lever Brothers (Pak) Ltd [1989] PLC 909
- ⁴⁰ Multan Cotton Industries, Multan v Mehant Kash Union [1978] PLC 97
- ⁴¹ Workers' Union v Messrs Enwar Jamal Ltd, Karachi, [1981] PLC 380
- ⁴² Golden Industries Ltd; Karachi v Workers' Union [1978] PLC 406
- ⁴³ International General Insurance Company of Pakistan Ltd v I.G.I Staff Union [1974] PLJ Tr. C. (Labour) 389
- ⁴⁴ Industrial and Commercial Employment (Standing Orders) Ordinance, 1968, S.O. 10-C
- ⁴⁵ *ibid*
- ⁴⁶ General Manager Pakistan Railways and Others V Anwar Ahmad Khan and Others, [1995] PLC 627
- ⁴⁷ Zain Packing Industries Limited Karachi V Abdul Rashid and 2 others [1994] SCMR 627
- ⁴⁸ Employees' Union v Messrs R.C.D Ball Bearings Ltd [1983] PLC 317
- ⁴⁹ According to Section 2 clause (vi) The Payment of Wages Act, 1936, "wages means all remuneration, capable of being expressed in terms of money, which would, if the terms of the contract of employment, express or implied, were fulfilled, be payable, whether conditionally upon the regular attendance, good work or conduct or other behavior of the person employed otherwise".
- ⁵⁰ Employee' Union V Messrs New Jubilee Insurance Co. Ltd [1982] PLC 817