

22.8.2016

To

The Chairman cum Managing Director,
TANGEDCO/Chennai-2.

Respected Sir,

Sub: Tangedco – Bonus – Payment of Bonus and
Ex-gratia to the Workmen and Ex-gratia to TCL
and Contract Labourers of Tangedco – Under
Payment of Bonus Act 1965 for accounting year
2015-2016 – Regarding.

Ref: Memo No.39538/A3/A32/2016-4 dt.18.8.2016 from
the Secretary/Tangedco.

We have come across a circular dt.18.8.2016 from the Secretary/Tangedco to all the CEs and SEs and other officers of the Board requesting to make arrangements for calculation of the total wages earned by each of the employees and also to furnish the No. of employees eligible for Bonus for full year/Part of the year 2015-16, covered under the wage settlement.

From the above circular we infer that the ex-gratia alone will be paid to TCL and Contract Labourers of Tangedco instead of payment of Bonus and Ex-gratia on par with other workmen of Tangedco under payment of Bonus Act 1965 for accounting year 2015-16, as per the normal practice being followed for decades in this industry.

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In this connection we would like to submit that

- 1.The payment of Bonus Act 1965 is being covered in this industry ever since the year of its enactment.
- 2.The Act provides for payment of Bonus to persons employed in the Establishment on the basis of profits or on the basis of production or Productivity and for matters connected therewith.
- 3.The implementation of the provisions of the Act by the administration is mandatory.
- 4.According to provision 2(13) of the Act "employee" means any person (other than apprentice) employed on salary or wage not exceeding twenty one thousand rupees per mensem in any industry to do any skilled or unskilled manual, supervisory, managerial, administrative, technical or clerical work for hire or reward, whether the terms of employment be express or implied.
- 5.The above provision of the Act does not bar the 'so called Contract Labourers' engaged and paid Rs.250/- per day directly by the Board to be an employee. Further the Act also does not bar a daily rated workman i.e.TCL to be an employee. The definition is inclusive, since, the so called Contract Labour and Temporary Casual Labour are performing the duties of unskilled manual labour and as such they are "employees", under the Act. Hence, they cannot be deprived their legitimate right of Bonus payments. Even in the TNEB standing orders, Casual and Temporary are classified as Workmen.

Clerical workmen standing order No.3a
Other than Clerical workmen standing order No.3

- 6.The following High Court judgements supports our claim for Entitlement of Bonus to a Daily Wages

(i)In the case of Sumitra Devi Vs Himachal Pradesh State Elec., Board, reported in 2010 (1) LLJ 199 (HP HC) Entitlement of Bonus to a Daily Wages it has been decided as follows:

"The petitioner was a peon on daily wages with the respondent since 1993. The respondent-employer was denying her the payment of Bonus on the grounds, inter alia, that she was not an 'employee' under section 2(13) of the Payment of Bonus Act,1965. Hence, she filed writ petition under Article 226 of the Constitution of India. After having observed and considered the definition of sections 2(13), 8

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and 10 of the Payment of Bonus Act, 1965 and certain decided cases by the Supreme Court, the High Court held that the Payment of Bonus Act did not bar a daily rated workman to be an employee as the definition in Section 2(13) of the Act was conclusive and daily wage employee is covered within the definition of section 2(13) of the Act and entitled to claim bonus."

(ii) In the case of HPSEB v Krishnan Dutt, reported in 2011 LLR 111, 2010(127)FLR 577 (HP. HC.) it has been decided that

under Section 2(13) of the payment of Bonus Act 1965 it is immaterial whether an employee is daily wages, temporary, permanent, weekly paid, monthly paid etc. The only pre condition is that the employee should have worked in the establishment for not less than 30 working days in an accounting year. The term 'salary' or 'wage' is defined under section 2(21) of the Act for the purpose of calculation of bonus. Every employee shall be entitled to be paid by his employer in an accounting year, bonus, in accordance with the provisions of section 8 of the Act.

(iii) In the case of Himachala Pradesh State Forest Corporation Limited and another VS Mohan Singh and another, reported in 2014 (141) FLR 863 (HPHC)-2014 LLR474 it has been decided has follows:

"Section 8 – Bonus – Entitlement of – Every employee – Irrespective of being a daily wagger, casual, temporary or permanent, paid weekly or monthly-shall be entitled to bonus in accordance with Act-If he has worked for not less than thirty working days in that Year.

The Payment of Bonus Act, 1965 does not make any distinction as to whether an employee is daily wagger, temporary, permanent, weekly paid, monthly paid etc. The only pre-condition is that he should have worked in the establishment for not less that 30 working days in an accounting year. Subject to the above conditions, an employee is entitled to be paid by his employer the bonus as provided under the Payment of Bonus Act 1965 in case the establishment is covered under the Act."

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We would submit that if our humble request is accepted and the bonus paid under the Act the beneficiaries would be only less than fifty employees and the financial commitment will also be very meagre, but at the sametime ,implementation of the provision of the Act in its true spirit will rejuvenate the morale of the employees and facilitate efficient , faithful and loyal service to the Board.

Thanking you,

Yours faithfully,

General Secretary.

Copy to the Director/Finance/Tangedco
Copy to the Secretary/Tangedco
Copy to the Chief Engineer/Personnel/Tangedco
Copy to the Legal Advisor/Tangedco
Copy to the Industrial Relations Advisor/Tangedco.