



भारतीय समुद्री विश्वविद्यालय
INDIAN MARITIME UNIVERSITY
(A Central University under the Ministry of Ports, Shipping and Waterways, GoI)
HEADQUARTERS

File Ref No. IMU-HQ/R/70/22/03/2022-PUR

Dt. 27.11.2024

IMU-HQ PROCUREMENT CIRCULAR NO. 03/2024

Sub: Incorporation of appropriate clauses in the contracts/tender on applicability of the Payment of Bonus Act, 1965 to Outsourced Employees at Indian Maritime University- Reg

Ref: Legal Opinion dated 15.10.2024 by Shri. Srinivasa Murthy, Standing Counsel, IMU.

1. Vide reference cited above, a legal opinion on applicability of Payment of Bonus Act, 1965 to Outsourced Employees at Indian Maritime University is rendered by Shri. Srinivasa Murthy, Standing Counsel-IMU.
2. Accordingly, it is proposed to include the following clauses in the Outsourced Manpower (Horticulture, Housekeeping, Security, Administrative support manpower, etc) tender/contract documents and agreements of IMU: -
 - (a) It is the sole responsibility of the contractor/vendor/service provider to comply with all the applicable statutory provisions, including the obligation to pay any statutory dues (such as Bonus, etc) to their employees as per applicable laws.
 - (b) If the University (i.e. IMU) is compelled to pay any amounts due to non-compliance by the Contractor, the Contractor shall reimburse the same to IMU, failing which IMU reserves its right to recover such amounts from payments due to the Contractor or by any other means permissible under the Law.
3. The above clauses are to be included in all the future Manpower outsourcing tender/contract/agreements of IMU. The legal opinion dated 15.10.2024 is annexed for ready reference.

This issues with the approval of the Competent Authority.


27/11/24.
Deputy Registrar (Purchase)-i/c

Encl: As stated

To

**All Campus Directors,
AR (P)/ Purchase Section-HQ**

Copy to: -

**V.C
Pro-VC
Registrar
CoE
FO (i/c)
DR (A, L & S)/DR (CTR)** } - for kind info, please

K. SRINIVASA MURTHY
ADVOCATE

SENIOR PANEL COUNSEL
CENTRAL GOVERNMENT

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15.10.2024

The Registrar
Indian Maritime University
Chennai

LEGAL OPINION

Sir,

Sub: Applicability of the Payment of Bonus Act, 1965 to Outsourced Employees at Indian Maritime University - Reg.

Ref: Your letter dated 26.09.2024 and the subsequent discussion.

I have gone through your letter dated 26.09.2024 and considered the issue regarding the applicability of the Payment of Bonus Act, 1965 ("the Act") to outsourced employees of the Indian Maritime University (IMU).

As stated in your letter Section 32(v)(b) of the Act provides an exemption for employees employed by Universities and other Educational institutions. The key question here is whether this exemption also extends to the Employees engaged through outsourcing arrangements i.e. through Contractors.

In this context, courts have consistently held that where the language of a statute is clear, a plain reading should be applied. A recent judgment of the Division Bench of the Madras High Court dated 25.11.2022, in W.A. No. 3828 of 2019, the court addressed the applicability of the exemption to Employees of a Deemed University. The Hon'ble Bench ruled that the exemption under Section 32(v)(b) could not be diluted merely because the University generates a marginal profit. The Court emphasized that when the language of a Statutory provision is unambiguous, nothing should be read into the provision beyond its plain meaning.

Applying this reasoning to the present matter, the wording of Section 32(v)(b) specifically refers to "employees employed by universities or other educational institutions." This indicates that the exemption applies to individuals who are directly employed by the University. In my considered opinion, employees hired through an outsourcing contractor do not fall within the scope of this exemption, as they are not directly employed by the university but by the contractor. Thus, outsourced employees cannot be classified as Employees of the University.

Furthermore, as per Section 2(13) of the Act, the term "employee" refers to any individual whose monthly salary or wage does not exceed the prescribed limit (currently Rs. 21,000). Employees earning above this threshold are not covered under the Act. In addition, Section 12 of the Act reads as follows:

"12. Calculation of bonus with respect to certain employees.—Where the salary or wage of an employee exceeds 4 [seven thousand rupees or the minimum wage for the scheduled employment, as fixed by the appropriate Government, whichever is higher] per mensem, the bonus payable to such employee under section 10 or, as the case may be, under section 11, shall be calculated as if his salary or wage were seven thousand rupees or the minimum wage for the scheduled employment, as fixed by the appropriate Government, whichever is higher per mensem.

Explanation.—For the purposes of this section, the expression "scheduled employment" shall have the same meaning as assigned to it in clause (g) of section 2 of the Minimum Wages Act, 1948 (11 of 1948)."

Unlike other statutes such as the Employees' Provident Fund Act or the Employees' State Insurance Act, the Payment of Bonus Act does not impose an obligation on the Principal Employer (in this case, the university) to ensure that outsourced Employees receive the Bonus. Instead, the responsibility to comply with the provisions of the Act, including the payment of Bonus, lies with the contractor, who is the direct employer of the outsourced Employees.

In light of the above, it is advisable to clearly specify in the University's tender documents that it is the sole responsibility of the contractor/vendor/service provider to comply with all applicable statutory provisions, including the obligation to pay any statutory dues (such as Bonus etc) to their employees.

Further, a provision should be included stating that if the University is compelled to pay any amounts due to non-compliance by the contractor, the Contractor shall reimburse the same to the University, failing which the University reserves its right to recover such amounts from payments due to the contractor and in the manner known to Law.

In my opinion incorporating these provisions should adequately safeguard the interests of the University.

Yours faithfully,

