CHAPTER 4 - LEGAL ISSUES

LEGAL ISSUES ASSOCIATED WITH PERFORMANCE APPRAISAL:

Performance appraisal data are used to make many important HR decisions (e.g. pay, training, transfer and termination). The appraisal system is a common target of legal disputes by employees involving charges of unfairness and bias. An employee may seek the legal recourse to obtain relief from a discriminatory performance appraisal. One such case goes back to 1980’s. In 1981, 3 junior employees of willianson magor were promoted superseding 15 of their senior workmen. The basis for promotion was “recommendations of the departmental heads and other authorities”. The 15 workmen challenged the promotion given to the 3 workmen in the Supreme Court and the court upheld the contention of the petitioners on the ground that the said recommendations of departmental heads and authorities were arbitrary and could not be the main basis for effecting promotions (vide workmen of Williamson magor and co. ltd. Vs Williamson magor and co.ltd.1981)

There are several recommendations to assist employees in conducting fair performance appraisal and avoiding legal suits. Gleaned from case laws, these recommendations are intended to be prescriptive measures that employers should take to develop fair and legally defensible performance appraisal systems.
A) Legally defensible appraisal process:

- All personnel decisions should be based on a formal standardised performance appraisal system.
- Any performance appraisal process should be uniform for all employees within a job group, and decisions based on those performance appraisals should be monitored for differences according to race, sex, national origin, religion, or age of the employees. While obtained differences as a function of any of these variables are not necessarily illegal, an organisation will have more difficulty defending an appraisal system with ratings related to these variables.
- All specific performance standards should be formally communicated to employees.
- All employees should be able to review their appraisal results.
- There should be a formal appeal process for the rate to rebut rater judgements.
- All raters should be provided with written instructions and training on how to conduct appraisal properly to facilitate systematic, unbiased appraisal.
- All personnel decision- makers should be well informed of anti-discrimination laws.

They should be made aware of the fine distinctions between legal and illegal activities regarding decisions based on appraisal.

B) Legally defensible appraisal content:

- Any performance appraisal content should be based on a job analysis.
- Appraisal based on traits should be avoided.
- Objectively verifiable performance data (e.g. sales, productivity, not ratings) should be used whenever possible.
- Constraints on an employee’s performance that are beyond the employee’s control should be prevented from influencing the appraisal to ensure that the employee has an equal opportunity to achieve any given performance level.
Specific job related performance dimensions should be used rather than global measures or single overall measures.

The performance dimensions should be assigned weights to reflect their relative importance in calculating the composite performance score.

C) Legally defensible documentation of appraisal results:

- Appraisal thoroughly written record of evidence leading to termination decisions should be maintained (e.g. performance appraisal and performance counselling to advise employees of performance deficit and to adjust poor performers in making needed improvements.)
- Written documentations (e.g. specific behavioural examples) for extreme ratings should be required and they must be consistent with the numerical ratings.
- Documentation requirements should be consistent among the raters.

D) Legally defensible raters:

- The raters should be trained in “how to use an appraisal system”.
- The raters must have the opportunity to observe the rate first hand or to review important rate performance products.
- Use of more than one rater is desirable in order to lessen the amount of influence of any one rater and to reduce the effects of biases, peers, subordinates, customers and clients are possible sources.

4.1) PRODUCTION BONUS ACT:

The term production bonus is concerned with the production of the units. The employer or unit head can fix a standard production for a month or for a year. If the production of that particular month or year is exceeded from the standard production, Production Bonus PB can be given to the workers. It is not compulsory that every time when actual production is higher than standard production, PB must be given to the workers, but it can be used as a tool of motivation through which
workers can be motivated for higher production. PB can also be used as a reward for higher production.

➢ Meaning of Production: Production is the process of manufacturing or growing something in large quantities.

➢ Meaning of Bonus: A monetary payment made to an over and above their standard salary and compensation package.

Bonuses are one of the ways employers reward their employees for a job well done. And offering regular, significant bonuses is a way to keep employer’s best people from looking elsewhere for a job.

Bonuses are usually determined as a percentage of annual salary, though giving all employees the same monetary is also an option. Much depend on corporate philosophy and goals. A growing number of employers are reducing salaries and increasing the portion of compensation that’s performance based such as bonuses. Through this approach, companies can more directly and immediately reward outstanding achievement and many firms are biasing bonuses on the performance of not just the employee but the company as well in order to reward both personal and team accomplishments.

4.2) SUPER ANNUATION:

Super Annuation is a retirement benefit from the employer. It is contribution made by employer each year on employees behalf towards group Super annuation policy held by the employees. This is an important part of creating wealth for employee’s retirement.

Some other points are:

a) Super Annuation fund is a retirement benefit given to employees by the company.
b) Normally, the company has the link with agencies LIC, Super Annuation fund, where their contribution is paid.

c) The company pays 15% of basic wages as Super annuation contribution. There is no contribution from the employee.

d) This contribution is invested by the fund in various securities as per investment pattern prescribed.

e) Interest on contributions is credited to the members account. Normally, the rate of interest is equivalent to the PF interest rate.

f) On attaining the retirement age, the member is eligible to take 25% of the balance in his/her a/c as a tax free benefit.

g) The balance 75% is put in a annuity fund, and the agency (LIC) will pay the member a monthly/quarterly/periodic annuity returns depending on the option exercised by the member. This payment received regularly is taxable.

h) In the case of resignation of the employee, the employee has the option to transfer his amount to the new employer. If the new employer does not have a Super annuation scheme, then the employee can withdraw the amount in the a/c, subject to deduction of tax and approval of income tax department, or retain the amount in the fund, till the Super annuation age.

What is Super annuation amount?

<table>
<thead>
<tr>
<th>Years of Employment</th>
<th>Amount of Super annuation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Less than 1 year</td>
<td>Nil</td>
</tr>
<tr>
<td>Between 1 to 2 years</td>
<td>50% of contribution + Interest earned</td>
</tr>
<tr>
<td>Between 2 to 3 years</td>
<td>75% of contribution + Interest earned</td>
</tr>
<tr>
<td>More than 3 years</td>
<td>100% of contribution + Interest earned</td>
</tr>
</tbody>
</table>

Rule of super annuation on maturity:

Once the employee completes 3 years of service and works till his/her retirement, he/she can make use of super annuation balance as form of pension.
He/she can withdraw 1/3\(^{rd}\) of the accumulated balance after retirement and the rest can be availed as monthly pension till the end of life.

Super annuation is typically an enterprise employing substantial outsourcing. Most trustees outsource many aspects of fund operations and, as a group, they report reasonably good practice in managing these outsourced arrangements.

### 4.3) PAYMENT OF BONUS ACT (1965):

The object of the Act is to maintain peace and harmony between labour and capital by allowing the employees to share the prosperity of the establishment reflected by the profit earned by the contributions made by capital, management and labour.

- **Application of Act:** The Act is applicable to:
  
  a.) Every factory
  b.) Every other establishment employing 20 or more persons.

The government can, however, apply the act to any establishment employing less than 20 but not less than 10 persons. An establishment to which the act applies shall continue to be governed by the act. Irrespective of any fall in the number of persons employed therein.

- **Who are entitled to be paid?** (Sec.8)
  
  Every employee who is drawing a salary or wage up to Rs. 10,000 per month and who has worked for minimum period of 30 days in a year is entitled to be paid bonus.

- **What is to be included in and excluded from a salary or Wage for the purpose of calculating bonus:** Sec.2(21)
For the purpose of calculation of bonus a salary of wage includes a basic salary and D.A but doesn’t include any other allowances, OT salary, HRA, Travelling concessions, gratuity or commission.

➢ **What is the time limit for making payment of bonus to the employees?** (Sec.19)

Bonus must be paid within a period of 8 months from the close of the accounting year.

➢ **Are there any categories of employees who are excluded from the application of the Act?** (Sec.32)

The employees of Life Insurance Corporation of India, Reserve bank of India, Unit trust of India, Central Government and state Government industrial establishments and universities and other educational institutions are some of the excluded categories.

➢ **In what circumstances an employee is disqualified from receiving bonus?**

If an employee is dismissed from services for a) Fraud  b) violent behaviour while on the premises of the establishment  c) theft, misappropriation of any property of the establishment; he is disqualified from receiving bonus. *(Sec.9)*

**Establishment:** Establishment includes departments, undertakings and branches etc.

**Separate establishment:** (Sec.3)

Profit and loss a/c are prepared and mainland in respect of any such department or undertaking or branch, then such department or undertaking or branch is treated as a separate establishment.

➢ **Deduction of bonus:** (Sec.1)

- on dismissal of an employee for fraud, or
- Riotous or violent behaviour while on the premises of the establishment or theft, misappropriation or sabotage of any property of the establishment, or
- Misconduct of causing financial loss to the employer to the extent that bonus can be deducted for that year.

➢ **Payment of minimum bonus: (Sec.10)**

8.33% of the salary or Rs. 100 (on completion of 5 years after first accounting year even if there is no profit).

➢ **Maintenance of registers and records: Sec.2(21)**

A register showing the computation of the allocable surplus referred to in clause (4) of section 2, in Form A.

- A register showing the set on and set off of the allocable surplus, under section 15, in Form B.
- A register showing the details of the amount of bonus due to each of the employees, the deductions under sec.17 And 18 and the amount actually disbursed in Form C.

➢ **Penalty : (Sec.28)**

For contravention of any provision of the Act for the rules: up to 6 months or with fine up to Rs.1000

➢ **Amendments to the payment of Bonus Act,1965:**

Eligibility limit for payment of bonus to the employee earning salary or wage has been enhanced from Rs.3500 per month to Rs.10,000 per month.

➢ **Is a seasonal worker entitled to get bonus? (Sec.8)**

It relates to the eligibility for bonus. The only requirement of that section is that the employee should have worked in an establishment for not less than 30
working days in an accounting year. Therefore, if a seasonal worker has worked in an establishment for more than 30 working days, he shall be entitled to get bonus.

Bonus Summary of OPM, Amlai:-

The last bonus that Orient paper and Industries had announced was in 1986 in the ratio of 1:1.

Bonus History:

<table>
<thead>
<tr>
<th>Announcement Date</th>
<th>Bonus Ratio</th>
<th>Record Date</th>
<th>Ex-Bonus Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>04-10-1986</td>
<td>1:1</td>
<td>-</td>
<td>-</td>
</tr>
</tbody>
</table>

Definitions:-

1.) Appropriate Government:-(Sec.2(b))

Appropriate Government in relation to any scheduled employment carried on by or under the authority of the central Government or a railway administration, or in relation to a mine, oilfield or major port, or any corporation established by a central act, means the Central Government.

2.) Employer (Sec.2(e))

Employer means any person who employs, whether directly or through another person, or whether on behalf of himself or any other person, one or more employees, in any scheduled employment in respect of which minimum rates of wages have been fixed under the Act.

3.) Employee (Sec.2(i))

Employee means any person who is employed for hire or reward to do any work, skilled or unskilled, manual or clerical, in a scheduled employment in respect of which minimum rates of wages have been fixed. The term includes an out out-
worker to whom any articles or materials are given out by another person to be made up, cleared, washed, altered, ornamented, finished, repaired, adapted or otherwise processed for sale for the purpose of the trade or business of that another person where the process is to be carried out either in the home of the outworker or in some other premises not being premises under the control and management of that other person. The term also includes an employee declared to be an employee by the appropriate Government. It does not however include any member of the Armed Forces of the Union.

4.) Wages (Sec.2 (h))

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 to a person employed in respect of his employment or work done in such employment.

5.) Factory (Sec.2(i))

It means a factory as defined in sec.2 (m) of the factories Act,1948 and includes any place to which the provision of the Factories Act, 1948 have been applied under sec.85(1) of that act.

➢ Wage Policy in India:

Wage policy refers to all systematic efforts of the government in relation to the national wages and salary System. It includes orders, legislations, and so on to regulate the levels of wages and salaries with a view to achieving economic and social objectives of the Government. Specifically, the objectives of wage policy are:

1.) To obtain for the workers a just share of the fruits of economic development.
2.) To set minimum wages for workers whose bargaining position is weak.
3.) To bring about a more efficient allocation and utilisation of human resources through wage and salary differentials.
4.) To abolish malpractices and abuses in wages and salary payments.

The first step towards the evolution of a wage policy was the enactment of the payment of wages Act, 1936.
The next step was the passing of the Industrial Dispute Act, 1947.
Another notable development that led to the evolution of wage policy was the enactment of the Minimum wages act, 1948.

4.4) PAYMENT OF MINIMUM WAGES ACT (1948):

Minimum wage is the one which provides not merely for bare sustenance of life, but also for the preservation of the efficiency of the worker. For this purpose, the minimum wage must also provide for some measure of education, medical requirements and amenities. Minimum wage may be tied by an agreement between the management and the workers, but is usually determined through legislation. This is more so in the unorganised sector where labour is unionised. In the fixation of minimum wages, besides the needs of workers, other factors like ability of the concern to pay, nature of the jobs, and so on, are also considered.

The purpose of the Act is the fixation of minimum rates of wages to workers in sweated industries such as woollen, carpet making, flour mills, tobacco manufacturing, oil mills, plantations, quarrying, mica, agriculture and the like.

The Act was amended several times to make it applicable to more and more industries.

The object of the Act is to secure the welfare of the workers in a competitive market by fixing the minimum rates of wages in certain employment.
The minimum wages Act was passed in 1948 enabling the central and state Governments to fix the minimum rates of wages payable to employees in a selected number of ‘sweated’ industries. The act applies to the whole of India.
The legislature undoubtedly intended to apply the Act to those industries or localities in which, by reason of causes such as unorganised labour or absence of machinery for regulation of wages, wages paid to workers were, in the light of the general level of wages and subsistence level, inadequate.

Fixing of Minimum rates of Wages (Sec.3):

The responsibility for fixing the minimum rates of wages is that of the appropriate Government. Sec.3 provides that the appropriate Government-

a) shall fix the minimum rates of wages payable to employed in an employment.

b) May fix such rates for a part of the state or for any specified class of such employment.

Minimum rates of wages (Sec.4):

Any minimum rate of wages fixed or revised by the appropriate Government in respect of scheduled employments under Sec.3 may consist of –

a) a basic rate of wages and a special allowance. The rate shall accord as nearly as practicable with the variation in the cost of living index number applicable to such workers.

b) A basic rate of wages with or without the cost of living allowance, and cash value of the concessions.

Procedure for fixing minimum wages (Sec.5):

Sec. 5 provides separate modes of procedure for fixing minimum wages and the primary object of both the procedures is to enable the Government to reach a balanced conclusion with regard to fixation of a minimum wage.

Wages in kind (Sec. 11):

Minimum wages payable under the Act shall be paid in cash. But where it has been the custom to pay wages wholly or partly in kind, the appropriate Government
may, by notification in the official Gazette, authorise the payment of minimum wages either wholly or partly in kind.

➢ Payment of minimum rate of wages (Sec.12):
In respect of any scheduled employment minimum wages have been fixed, the employer shall pay to every employee wages at a rate not less than the minimum rate of wages fixed for that class of employees in the employment. Such wages shall be paid without any deductions except as may be authorised.

➢ Fixing hours for a normal working day (Sec.13):
In regard to any scheduled employment where minimum rates of wages have been fixed, the Government may-
- Fix the number of hours.
- Provide for a day rest in every period of 7 days.

➢ Rates of overtime (Sec.14):
The employer shall pay in excess, wages at the rates fixed for overtime work under the Act.

➢ Wages of workers who works for less than normal working day (Sec.15):
He is entitled to receive wages in respect of work done by him on that day if he had worked for a full normal working day except:
a) where his failure to work is caused by his unwillingness to work, and
b) Circumstances may be prescribed.

➢ Wages for two or more classes of work (sec.16):
The employer shall pay wages at not less than the minimum rate in force in respect of each such class.
Minimum time rate wages for piece work (Sec.17):
The employer shall pay to such employee wages at not less than the minimum time rate.

Maintenance of registers (Sec.18):
Every employer shall maintain registers of employees employed by him, the work performed by them, the wages paid to them, the receipts given to them and such other particulars.

4.5) PAYMENT OF WAGES ACT, 1936:
It is the first step towards the evolution of a wage policy. The main objective of the Act is to prohibit any delay or withholding of wages legitimately due to the employees.
In a country where even living wages are not paid to workers, the need to protect the wages earned by them can hardly be over-emphasised. Before the payment of wages Act, 1936 was passed, evils of withholding wages, delays in paying wages and making unreasonable deductions out of wages were quite prevalent.
The payment of wages Act, 1936 was passed to regulate the payment of wages to certain classes of persons employed in industry. It is essentially meant for the benefit of industrial employees not getting very high salaries and the provision of the Act was enacted to safeguard their interest. It also provides against irregularities in payment of wages and unauthorised deductions there from by the employers. Further, it ensures payment of wages in a particular form and at regular intervals without unauthorised deductions.

Extent of the act:
The Act extends to the whole of India. It was extended to Jammu and Kashmir by the Central Labour Laws Act, 1970.

Application of the Act:
The Act applies to the payment of wages to persons employed in any factory or other establishment.

The Act does not apply to persons whose wages exceed Rs. 6,500 per month. The latest amendment to the Act was made in 2005.

➤ **Responsibility for payment of wages (Sec.3):**

Every employer shall be responsible for the payment to persons employed by him of all wages required to be paid under the payment of wages Act.

➤ **Fixation of wage periods (Sec.4):**

Every person responsible for the payment of wages shall fix periods, known as wage periods, in respect of which such wages shall be payable.

➤ **Time of payments of wages (Sec.5):**

The wages of every person shall be paid before the expiry of 7th day of the following wage period. All payment of wages shall be made on a working day.

➤ **Medium of payment of wages (Sec.6):**

All wages shall be paid in current coin or currency notes or both. The provision in the amendment Act for paying wages by cheques or depositing wages in bank account will also inculcate the banking habit among the workers and also make the process of payment simpler for the employer.

➤ **Rule making power (Sec.26):**

The state Government may make rules to regulate the procedure to be followed by the authorities and courts referred to in sec.15 and 17. All rules made under Sec.26 shall be subject to the condition of previous publication, and the date to be specified under Sec.23(3).