

K.J. Somaiya Institute Of Management Studies & Research
Vidyavihar (E), Mumbai - 400 077
Program: MMM (2018 – 2021) Batch
Subject: Personnel Law

Total Marks: 25

Duration: 90 Minutes

Date: 11/04/2019

*Note: 1. All questions are compulsory.
2. All questions carry equal marks.*

Q.1. Write explanatory notes on the following:

- a) Explain the need for Labour Legislation in the country.
- b) Discuss the provisions relating to annual leave with wages for a worker under the Factories Act, 1948.

Q.2. Answer the following:

- a) While an employee may increase his share of Provident Fund contribution, is the employer also liable to proportionately increase his share of contribution under the Employees Provident Fund and Miscellaneous Provisions Act, 1952?
- b) Is statutory protection provided to the amount of contribution to provident fund from attachment to any court decree?

Q.3. What are the conditions for the payment of maternity benefit under the Maternity Benefit Act, 1961? When is this benefit forfeited?

Q.4. A licensed salt producer engaged workmen in open land in which work was done to convert sea water into crystals of salt. Whether the workmen working in open land are employed in the premises of the factory?

Q.5. Answer the following:

- i) Who amongst the following are eligible for bonus under the Payment of Bonus Act, 1965:
 - a) Ward boys of District Hospital
 - b) Peons of a University
 - c) Printers in Newspaper Press
 - d) Pilots of Indian Air Force
 - e) Cattle-catchers of Municipal Corporation 55
 - f) Teachers of St. XYZ Pvt. Sr. Secondary School
- ii) Sewak is working in a social welfare institution. Will the Payment of Bonus Act, 1965 be applicable in his case?

SOLUTION SET

A.1. Write explanatory notes on the following:

- a) **Why Labour Laws** – Labour laws are enacted with an object of providing job security to the Labour and to check exploitation and oppression by the employers. Provisions in these legislations have also been made to curb unfair practices, such as strikes, go-slow, etc. to resolve the industrial dispute and to harmonize the labour management relations.

Labour laws provide for just and humane conditions of work and maternity relief and the government shall take steps by suitable legislation or in any other way to secure the participation of employee in the management of undertaking/establishments engaged in any industry.

- b) Provisions relating to **annual leave with wages** for a worker fall under Chapter VIII of the Factories Act.

According to Sec 78, these provisions shall not apply to:

- Workers of any factory of railways, administration by the Government.
- Where service contract provides for longer annual leave with wages, such longer annual leaves with wages, such longer annual leave shall prevail.
- However in case provisions of service contract are less favourable the provisions of the Act will apply.

According to Sec 79, a worker who has worked for 240 days or more (in a calendar year) shall be entitled to leave with wages, which shall be computed in the following manner:

- Children-one day for every fifteen days of work performed during the previous year.
- Adults- One day for every twenty days of work performed during the previous year.
- While computing, 240 days include:
 - Layoff period (according to standing order)
 - Maternity leave
 - Leave earned of prior period

As per sec 79(5) facility of carry forward/accumulation of leaves shall be provided to workers who have not availed earned leave, subject to a maximum of :

Adult – 30 days

Child – 40 days

A.2. Following are the answers:

- a) According to EPF scheme employer and employee are required to contribute the prescribed percentage of amount. Employee if they desire, may make contribution exceeding the prescribed rate but such increased contribution made by the employee will not make any obligation on employer to contribute over and above the contribution payable as prescribed by the government from time to time under the Act. Thus employer will not be liable to proportionately increase his share of contribution under the Act.
- b) Under the EPFM Act, 1952 a welfare legislation and statutory protection is

provided to the amount of contribution to Provident Fund under Section 10 from attachment to any court decree.

This amount shall not be capable of being assigned or charged and shall not be liable to attachment under any decree or order of any Court.

A.3. According to sec 4(6)(b) of The Payment of Gratuity Act, 1972, in case where the services of an employee have been terminated:

- a) For riotous and disorderly conduct or any other act of violence on his part, or
- b) For any act which constitutes moral turpitude committed in course of employment.

In the above two cases the gratuity payable to the employee may be wholly or partially forfeited.

In this case the act of stealing in the course of employment amounts moral turpitude, thus gratuity can be forfeited.

A.4. Yes, the workmen working in open land are employed in the premises of the factory.

The ruling of the Supreme Court in case of Ardishir H Bhiwandiwalla Vs State of Bombay, it was held that salt made from sea water is considered as a manufacturing process and according to section 2(m) of the Factories Act, 1948 factory is defined as a premise including its precincts wherein 10 or more persons are engaged if power is used or 20 or more persons where power is not used in case of manufacturing process. The term premises even includes land and hence workmen working in open land will be said to be working in the premises of the factory.

A.5. Answer the following:

- i)
 - a) No
 - b) No
 - c) Yes
 - d) Yes
 - e) No
 - f) No

- ii) Sec 32 of the Act provides that the Act shall not apply to the employees employed by institutions (including hospital, chambers of commerce and social welfare institutions) whose establishment is not for the purpose of profit)
