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WITH

The Acts, Ordinances, Rules and Notifications passed by the Central Government and the State Governments, and Reports of Cases and Awards.

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THE
INDIAN FACTORIES JOURNAL
VOLUME XIII—PART VII

EMPLOYEES' STATE INSURANCE CORPORATION.

Annual Report for the Year 1955-56.

In pursuance of section 36 of the Employees' State Insurance Act, 1948 (34 of 1948), the Annual Report of the Employees' State Insurance Corporation for the year 1955-56, has been published in the Gazette of India, dated October 12, 1957. The Report is as follows :

1. *Introduction.*—The Employees' State Insurance Scheme continued to make progress during the year under report. As in the previous year, this year too recorded substantial progress in the extension of the Scheme to new areas. A further 3,19,000 employees in the States of Madras, Hyderabad, West Bengal, Andhra and Uttar Pradesh were brought within the purview of the Scheme, thus increasing the total coverage from 6·90 lakhs at the beginning of the year to 10·09 lakhs at its end. During the year 1954-55, it might well be said that the work was in a state of ferment inasmuch as the Corporation had to devote considerable time and effort in the solution of various problems confronting it as well as in accelerating the extension of the Scheme. In the year under report, however, extension of the Scheme to new areas was smoother being largely the fruit of the work done in the previous year, leaving more time for consolidation of the work in its various aspects.

Steps to associate different interests participating in the Scheme with its day to day working were continued by setting up Regional Boards and Local Committees. Certain improvements undertaken for the convenience of insured persons and in the standard of medical care, are mentioned in the report. Various yard-sticks laid down for establishing and equipping of offices of different sizes, were reviewed. In order to make the report more informative, statistical figures for the previous years have also been shown in some of the Appendices. This will facilitate comparison with the past activities of the Corporation without requiring reference to previous reports.

2. *Progress towards implementation.*—Efforts to extend the benefit provisions of the Scheme to various centres in the country were continued and and the Scheme was implemented in Madras City and suburbs, Hyderabad —Secunderabad area, Calcutta City and Howrah District, 7 industrial centres of Andhra State, namely, Visakhapatnam, Chittivalsa, Nellimarla, Guntur, Mangalagiri, Eluru and Vijayawada and three more industrial towns of Uttar Pradesh namely, Lucknow, Saharanpur and Agra. The number of employees covered in each area, the date of implementation of the Scheme and the commencement of the benefit periods in various places, where the Scheme has been extended, are indicated in Appendix I. The total number

of employees covered at the end of the year was 10·09 lakhs, *i.e.*, nearly half the total insurable population in the country.

In addition to the extension of the Scheme, the Corporation assisted the State Governments of Rajasthan, Orissa and Madhya Pradesh, by deputing an officer for formulating their detailed medical plans and budget estimates for the implementation of the Scheme in new areas in these States. Arrangements were also completed for its introduction in six industrial towns in Saurashtra, namely, Rajkot, Porbunder, Morvi, Surendranagar, Bhavnagar and Jamnagar, but the implementation has to be deferred as, on account of opposition from the workers' organisations, the State Government who had earlier agreed to implement the Scheme, took the view that extension of the Scheme to Saurashtra should pend till the families of the industrial workers could be included from the very beginning. As no decision on the question of extension of medical care to families, had been taken by the Central Government till the end of the year under report, the arrangements were wound up.

ADMINISTRATION

3. *Steps towards economy.*—The administrative arrangements of the Corporation were kept, as in the previous year, under constant review to effect economies consistent with efficiency, wherever possible. The following measures are of particular interest :

(i) *Revision of staff complements.*—The yard-stick for staff in Local Offices, followed hitherto, was laid down only for offices catering to a minimum of 35,000 employees. In cities like Greater Bombay and Calcutta, however, where the concentration of employees within a reasonable area happened to be very large, it became necessary to have even larger Local Offices *e.g.*, with 40,000/45,000 employees attached to them and accordingly, a new yard-strick to provide staff in such Local Offices was evolved as shown in Appendix II. The strength of the staff in Local Offices in Greater Bombay and Calcutta was revised in the light of this new yard-strick, and as a result of that review, certain Local Offices were abolished/down-graded. In Greater Bombay, there remained 20 Local Offices 2 Sub-local Offices and 2 Pay Offices instead of 24 Local Offices and one Pay Office. In Calcutta and Howrah district, the total number of offices in the area, was reduced from 16 to 13. The work-load of some of the offices in Delhi and Kanpur Regions was also reviewed. As a result of these reviews, the offices indicated below were down-graded :

Name of the Offices	*Region*	*Abolished/down-graded to*
1. Ambala Sub-Local Office	... Delhi	... Pay Office.
2. Batala Sub-Local Office	... Delhi	... Pay Office.
3. Ratlam Local Office	... Delhi	... Sub-Local Office.
4. Nawabganj Local Office	... Kanpur	... Sub-Local Office.
5. Masjid Area Local Office	... Bombay	... Abolished.
6. Matunga Local Office	... Bombay	... Abolished.
7. Borivili Local Office	... Bombay	... Sub-Local Office.
8. Bhandup Local Office	... Bombay	... Sub-Local Office.
9. Cossipore Local Office	... Calcutta	... Abolished.
10. Shambazar Local Office	... Calcutta	... Abolished.
11. Entally Local Office	... Calcutta	... Abolished.

(ii) *Abolition of posts of chowkidars in Local Offices.*—In the beginning, chowkidars had been provided in the Local Offices, established in various States in the country. The posts were, however, not considered essential, and the regular posts of chowkidars were abolished, the incumbents being absorbed as peons. Where necessary, only part-time chowkidars on a monthly remuneration of Rs. 10 to Rs. 20 were engaged, depending upon the size and the situation of the Local Office.

(iii) Despite the extension of the Scheme to new areas, the work in the Head-quarters Office was carried on with practically the same staff. The revised organisational set up of the Headquarters Office and the staff authorised for various divisions, is given in Appendix III. This Appendix also shows the total strength of officers and staff as on 31st March, 1954, 1955 and 1956.

(iv) *Savings.*—The last report mentioned revisions in staff complements resulting in administrative economy to the extent of Rs. 3,36,000 per annum. The future annual effect of the economies effected during the year under report, is indicated below :—

	Rs.
1. Abolition of 59 posts of chowkidars in Local Offices ...	45,000
2. Down-grading of certain Local Offices/Sub-Local Offices in Kanpur and Delhi Regions ...	21,840
3. Abolition/down-grading of certain Local Offices in Bombay Region ...	19,500
4. Abolition/down-grading of certain Local Offices in Calcutta Region ...	67,500
Total ...	1,53,890

4. *Recruitment and Promotions.*—The Corporation continued its policy of direct recruitment to all posts carrying a maximum salary of less than Rs. 500 through competitive examinations.

The supervisory posts, *viz.*, Junior Superintendents, Head Clerks, U.D.C. In-charge were reserved for departmental candidates. Accordingly, promotions to these posts were made by a Departmental Promotion Committee on the basis of confidential records. The resultant vacancies in various lower cadres were filled by departmental promotion upto 30 per cent. to 60 per cent. and the balance of the vacancies were filled up by direct competitive recruitment. The total number of appointments made during the year 1955-56, is indicated in Appendix IV, showing separately those made by direct recruitment and those by promotion. Similar figures for the last year, *i.e.*, 1954-55 have also been shown in the same Appendix for comparison. It will be of interest to note that during the years 1954-55 and 1955-56, 64 Class IV employees out of the total strength of 149 who possessed the requisite educational qualification, were also promoted as Lower Division Clerks.

5. *Permanency of staff.*—60 per cent. of the posts, which had remained filled up for a year or more in all the categories were declared permanent with effect from 16th February, 1955, and steps to confirm the staff against these posts were initiated.

6. *Principal Officers.*—Shri P. D. Seth, Chief Accounts Officer in the Corporation relinquished charge of his post in the Corporation on the 31st March, 1956 (AN). The Central Government appointed Shri V. R. Mahadevan, an officer of the Indian Audit and Accounts Service, as the Chief Accounts Officer in the Corporation and he assumed charge of the post on the 2nd April, 1956 (AN). All posts of Principal Officers, except that of Actuary, remained continuously filled throughout the year.

7. *Strength of the staff.*—The total strength of officers and staff of the Corporation, as on 31st March, 1955, was 1,261 as against the strength of 1,723 at the end of the year under report. The number of officers and staff of various categories employed in different regions of the Corporation, as on 31st March, 1956, is shown in Appendix V.

8. *Local/Sub-Local and Pay Offices.*—The Corporation had established 73 Local/Sub-Local/Pay Offices upto 31st March, 1955. With the implementation of the Scheme in new areas, 58 more offices were established, raising the total to 131 by the end of the year under report. The distribution of these offices region-wise may be seen in Appendix V-A. Particulars in respect of these offices are given in Appendix VI.

COMMITTEES AND CONFERENCES

9. *Corporation.*—The Employees' State Insurance Corporation met once during the year under report, *i.e.*, on 17th December, 1955. The important decisions taken by the Corporation at this meeting are given in Appendix VII.

10. *Standing Committee.*—During the year under review, the Standing Committee of the Corporation held two meetings, first on the 29th July and the second on the 15th December, 1955. It approved *inter alia* the important matters detailed in Appendix VIII, and recommended certain others to the Corporation for consideration.

11. *Medical Benefit Council.*—A meeting of the Medical Benefit Council was held on the 28th October, 1955. The Medical Benefit Council *inter alia* made recommendations on a number of matters detailed in Appendix IX.

12. *Sub-Committee.*—At its meeting held on the 14th February, 1955, the Standing Committee had appointed a Sub-Committee consisting of representatives of employers, the workers and the medical profession, together with the Director General, to make a report of the working of the Scheme

in Kanpur, Delhi and the Punjab. During the year under report, the Sub-Committee visited not only Kanpur, Delhi and Amritsar but also Bombay, Nagpur, Coimbatore and Hyderabad. Its first report which covered the working of the Scheme in Delhi, Kanpur, Amritsar and Bombay was submitted at the meetings of the Standing Committee and the Corporation held in December, 1955. The objective and critical appraisal of the Scheme made by the Sub-Committee in its first report was found very useful and the Corporation decided that it should continue on a regular basis. The report on the working of the Scheme in Nagpur, Hyderabad and Coimbatore was yet to be submitted at the close of the year.

13. *Regional Boards and Local Committees.*—(i) Regulation 10 of the E.S.I. (General) Regulations, 1950, which lays down the constitution of Regional Boards, was amended so as to provide representation to each of the States included in the Region. The *ad hoc* Regional Board which had been constituted earlier by the Director General, were then re-constituted under the revised regulation. The re-constituted Regional Board for Bombay Region had been set up in December, 1954. The Regional Boards for Calcutta, Madras and Kanpur were formed in the year under report. The Regional Board for Delhi Region was not set up as recommendations for certain nominees from the State Governments comprising the Region were not received in time. It was ultimately decided to keep the matter pending till the reorganisation of States.

During the year 1955-56, the Regional Boards, Bombay, Madras and Kanpur each met once *i.e.*, on 11th November, 1955, 21st January, 1956, and 27th September, 1955, respectively, and the Regional Board, Calcutta, held two meetings on 26th July, 1955 and 18th October, 1955.

(ii) *Local Committees.*—Under Regulation 10-A of the E.S.I. (General) Regulations, 1950, Local Committees may be set up for such areas as may be considered appropriate by the Regional Board. Pending setting up of the regular Regional Board for the Delhi Region and formation of Local Committees under this Regulation, an *ad hoc* tripartite Local Committee consisting of the representatives of employees, employers, the State Government and the Corporation was set up at Amritsar, by the Director General. This Committee met four times during the year 1955-56. Similar *ad hoc* Local Committees were also set up at Indore, Ujjain, Ratlam and Gwalior in Madhya Bharat.

14. *Publicity.*—During the period under review, special attention was paid to educative publicity with a view to apprising insured persons of their rights and obligations under the Scheme. The officers of the Corporation broadcast talks in Hindi, English and various Regional languages from different stations of All India Radio. The documentary film on the Employees' State Insurance Scheme entitled "Dawn of Social Security" was exhibited in Hindi, English and in different Regional languages and chart exhibitions were organised in labour areas prior to the implementation of the Scheme. A number of meetings of insured persons were convened and addressed all over the country and the benefits admissible under the E.S.I. Scheme explained.

(a) Multi-coloured posters with captions in Hindi, English and the regional languages were displayed at various public places, the offices of Corporation and factories from time to time. "Know your own Scheme" series of four pamphlets explaining the Scheme in simple language in English, Hindi and regional languages were distributed amongst insured persons. These pocket size pamphlets are entitled :

1. General.
2. Medical Care under the Panel System.
3. Employment Injury Benefits.
4. Some Doubts Explained.

(b) The officers of the Corporation also addressed meetings of Chambers of Commerce, students and others and explained to them the sailent features of the Scheme.

(c) The Corporation participated in the Indian Industries Fair, 1955, held in New Delhi and displayed specially designed and electrically operated exhibits. Special "Employees' State Insurance Scheme" folders were brought out in Hindi and English and distributed to visitors.

The Corporation also participated in the following other exhibitions :

(i) Indian National Congress Annual Session Exhibition, Amritsar held in January, 1956.

(ii) The A.I. Industrial Exhibition, Hyderabad in January, 1956.

(iii) The exhibition arranged by the International Social Security Association at Mexico on the occasion of XII General Meeting of International Social Security Association in November, 1955.

(d) News-items about the activities of the Scheme were carried by various newspapers. Articles explaining the different aspects of the Scheme were also contributed to leading English and regional language papers.

IMPROVEMENT IN THE STANDARD OF MEDICAL CARE

15. *Hospitalisation.*—The question of provision of hospital beds, as early as possible, in accordance with the scale approved by the Corporation namely, one general bed for every 800 employees, one T.B. bed for every 1,600 employees and one maternity bed for every 500 insured women continued to be pursued with the State Governments during the year under report. The concurrence of the Corporation was communicated to the following State Governments for provision of hospital accommodation as details given below :—

(1) *Hyderabad State.* A 32-bedded annexe of 25 general and 7 maternity beds in the KEM Hospital and a 16-bedded annexe for T.B. patients in the Iramnuma T.B. Hospital, Hyderabad, at an estimated capital cost of construction on Rs. 1,20,800.

(2) *Madras State.*—(a) *Coimbatore.*—(i) 44 general, 14 maternity and 26 T.B. beds as annexes to the District Headquarters Hospital, Coimbatore at an estimated capital cost of Rs. 2,76,300.

(ii) Reservation of 25 beds at the Ramalingam T.B. Sanitorium, Perundurai (Coimbatore District).

(b) *Madras.*—(i) Establishment of a separate 76-bedded hospital in a rented building at Poonamalee High Road, Kilpauk, Madras. This hospital has been set up as a temporary measure till a permanent building is constructed.

(ii) Reservation of 6 maternity beds at Rajah Sir Ramaswamy Mudaliar's Lying-in-Hospital, G.T., Madras and 16 beds at the Government T.B. Hospital.

(3) *Madhya Pradesh (Nagpur).*—An annnexe of 25 T.B. beds in the Mayo Hospital, Nagpur at a capital cost of Rs. 50,123.

(4) *West Bengal.*—Reservation of 165 of general beds in the existing hospitals in Calcutta City and Howrah District area and 50 T.B. beds at the K.S. Ray T.B. Hospital, Jadavpur.

(5) *Bombay State.*—Reservation of 150 additional beds for T.B. cases in hospitals at Bombay and in the mofussil has been agreed to by the Corporation.

Despite the arrangements so far agreed to between the Corporation and the State Governments, the number of hospital beds in almost all the areas was, at the end of the year, below the scale approved by the Corporation. Efforts were, therefore, continued to establish separate hospitals in areas where the number of beds authorised exceeds 100 and annexes in other areas. Pending these arrangements, reservation of beds on the scale approved by the Corporation is being attempted.

16. *Mahatma Gandhi Memorial Hospital, Bombay.*—In this connection, the proposal for establishing a hospital to be called "The Mahatma Gandhi Memorial Hospital" in Bombay deserves mention as a special co-operative effort. This hospital with about 300 beds is to be established mainly out of the funds which are being made available to the Mill Owners' Association, Bombay by the Gandhi Smarak Nidhi out of the funds donated earlier by that Association to the Nidhi. In addition the Government of Bombay has agreed to meet an expenditure upto Rs. 12 lakhs towards the cost of land required for the proposed hospital in addition to its usual share of the recurring cost. The Corporation, on its part, has agreed to meet its usual share of the cost of running the hospital and also the entire initial cost on all medical, surgical, and other requipment. The Director General and the Medical Commissioner were nominated as representatives of the Corporation on the Board of Management of the proposed Mahatma Gandhi Memorial Hospital. The Government of Bombay and the Millowners' Association have also two representatives each on this Board.

17. *Dispensaries and Panel Doctors.*—In the following new areas where medical care is being provided through the service system, 35 full-time and 10 part-time dispensaries were established thus raising the total number of full-time and part-time dispensaries to 74 and 20 respectively in various areas of the country. In West Bengal where medical benefit is being provided through the panel system 502 medical practitioners were placed on the authorised panel list.

Serial No.	Name of the areas	No of dispensaries established Full time	Part time
1.	Madras City	14	1
2.	Madras (Suburbs)	5	...
3.	Hyderabad	3	8
4.	Andhra	7	1
5.	U. P. (Agra, Saharanpur and Lucknow)	6	...
		35	10

Particulars in respect of all the dispensaries including mobile dispensaries, panel doctors and the number of approved chemists as on 31st March, 1956 is given in Appendix X.

Residential accommodation for Insurance Medical Officers and essential ancillary staff was provided at the State Insurance Dispensaries at Subzimandi, Paharganj and Mori Gate in Delhi State. The construction of a three doctored dispensary building with residential quarters for staff was started in New Industrial Area, Najafgarh Road, in Delhi.

The Corporation agreed to the construction of a dispensary building at Kavadiguda (Secunderabad) at a cost of Rs. 1,72,700.

18. *Specialists' services.*—In the original standard of medical benefit there was no provision for specialists consultation and treatment or for laboratory, pathological, or X-ray examinations and investigations. In view of the need for providing these facilities, the question of appointment of various categories of specialists, the strength of insured persons for which they should be appointed as well as the honoraria to be paid to them depending upon the work load, was considered by the Medical Benefit Council at its meeting held in October, 1955. The recommendations of the Council in this regard were approved by the Corporation at its meeting held on the 17th December, 1955, and are given in Appendix XI. It will be observed that part-time specialists are to be appointed in all areas where there are not less than 10,000 employees. Such part-time specialists see insured persons in existing hospitals but at specified times, when they do not have to queue up with the general public. For areas with less than 10,000 employees, separate part-time specialists have not been authorised but the State Governments have been approached to nominate existing specialists attached to their hospitals to see insured persons also. The State Government, Punjab, has nominated specialists at Amritsar, Jullundur, Ambala and Bhiwani.

19. *Revision of medical and ancillary staff in State Insurance dispensaries.*—The recommendations of the Medical Benefit Council regarding the strength of the medical and ancillary staff required for various grades of S.I. dispensaries were approved by the Corporation at its meeting held in December, 1950. As a result of this review one doctor has been authorised for 1,750 employees as against 2,000 employees earlier. In addition, one laboratory technician has also been provided for all dispensaries with two or more doctors to help in carrying out routine laboratory examinations of sputum, stools, blood, urine, etc. Further, a microscope and all essential equipment have been provided to carry out these tests. The revised scale of dispensary staff is shown in Appendix XII.

20. *Revision of the list of medical and surgical equipment, S.I. Medical Formulary, Special list of medicines and Specialists' list of medicines.*—The lists of medical and surgical equipment and the drugs and medicines to be maintained at State Insurance dispensaries as revised by the Medical Benefit Council were approved by the Corporation in December, 1955. Similarly, the State Insurance Medical Formulary and the list of special medicines which are to be supplied by authorised chemists/Government medical store depots on prescription of Insurance Medical Practitioners was also revised and certain additions made. A list of special medicines to be prescribed by specialists appointed under the Scheme has also been formulated. These two lists are given in Appendix XIII and XIV. Previously the prescribing of medicines by specialists was not restricted to any list. This often caused delay in obtaining medicines from approved chemists in the absence of any contract rates for such medicines. The pricing Committees appointed by State Governments have also been authorised to revise and fix the price of these medicines quarterly. It will be seen that the pharmaceutical service has a wide range and in fact includes all available modern drugs of proved therapeutic value.

21. *Medical care of insured persons living at outlying places.*—Insured persons working in the implemented area but living at distant places were often unable to get themselves accepted by any panel doctor. It was, therefore, decided that when an insured person is residing at a distance exceeding three miles from the nearest panel doctor, the Insurance Medical Practitioner will be paid a visiting fee of Rs. 2 for each domiciliary visit and conveyance charges at 2 annas per mile for the actual distance travelled both ways. If the residence of the worker is within three miles from the clinic of the panel doctor the normal capitation fee alone will be paid. There is a provision also for compulsory allocation of such insured persons to panel doctors if an insured person is not able to find one to accept him.

22. *Extended medical benefit for insured persons suffering from Tuberculosis.*—The Corporation at its meeting held on 13th October, 1954, had decided that insured persons suffering from Tuberculosis should be provided medical care for an additional half a month for every contribution period in which 12 contributions have been paid subject to a maximum of 2 years for the total duration of such treatment. On re-consideration, the Corporation at its meeting held on 17th December, 1955, revised its earlier resolution and decided that the extended period of medical care should be for one year if a person has been in continuous employment for the previous three years before the commencement of the spell of sickness in which T.B. was

diagnosed. Regulation 103A was amended accordingly and draft amendments were notified for inviting comments.

OTHER MATTERS RELATING TO MEDICAL BENEFIT

23. *Provision of medical care through indigenous systems of medicine.*—In Hyderabad, the State Government appointed an Ayurvedic practitioner and a compounder in the State Insurance Dispensary, Kavadiguda for providing Ayurvedic treatment. The expenditure incurred on this account is not being debited to the Scheme but is being borne entirely by the State Government. The Ayurvedic practitioner does not, however, issue medical certificates to insured persons referred to him for treatment.

In Bombay Ayurvedic and Unani practitioners who have recognised qualifications and fulfil other necessary conditions have already been included in the panel list as Insurance Medical Practioners. There were 135 Ayurvedic practitioners and 4 Unani practitioners in Bombay at the end of March, 1956; this number includes 12 women-practitioners.

24. *Utilisation of employers' existing medical facilities.*—At the end of the year under report, the medical facilities of the following employers were being utilised for provision of medical benefit under the Scheme under conditions approved by the Corporation.

(1) Andhra State—Kistna Cement Works, Thadepalli.
(2) Madras State—Buckingham and Carnatic Mills, Madras City.
Pankaja Mills, Coimbatore.
(3) Punjab—Shri Gopal Paper Mills, Yamna Nagar.
(4) Madya Bharat—Malwa Mills, Indore.

A draft model deed of agreement to be entered into between the State Government and employers for utilisation of their medical facilities was formulated and forwarded to all State Governments for adoption.

25. *Agreement between the Co-poration and the State Governments for provision of medical care under Section 58* (3).—The Corporation approved at its meeting held in December, 1955, the draft deed of agreement to be entered between the Corporation and State Governments under Section 58(3) of the Employees' State Insurance Act, as generally approved by the Labour Ministers at their Conference held in Hyderabad in November, 1955.

26. *Number of insured persons treated.*—During the year under report 15,45,794 new and 49,88,011 old cases were treated at the various State Insurance dispensaries and clinics of the panel doctors as against 4,61,479 and 16,41,619 respectively treated in 1954-55. 14,477 cases were referred for admission to hospitals and 1,36,951 referred for specialist investigation as against the corresponding figures of 3,658 and 28,550 in the year 1954-55.

Detailed statistics of the attendance of insured persons, medical certificates issued, cases referred to hospitals for admission and for specialist investigations and the incidence of sickness in respect of important diseases are given in Appendix XV.

27. *Incidence of attendance at dispensaries and clinics of panel doctors.*—The average daily percentage of new and old attendance in various areas is

shown in Appendix XVI. The number of working days in a year has been taken as 300 for purposes of this calculation. The incidence is based on an assumed average number of insured persons as in last years' report equal to the number of employees plus 25 per cent. on account of turnover.

The incidence in Delhi had been slightly higher probably due to the out break of jaundice in epidemic form. The increase in daily attendance in Nagpur can possibly be attributed to a long term strike during the last two months of the year under report.

28. *Expenditure on medical care.*—During the year under report a sum of Rs. 51,10,680-0-9 as detailed in Appendix XVII was paid by the Corporation to the State Governments towards its share of expenditure for provision of medical benefit under the Scheme. Where audited accounts have not yet been received payments represent 'on account' provisional payments to the State Governments concerned.

29. *Medical Referees of the Corporation.*—The Corporation employs its own medical officers designated Medical Referees who examine certain short and long term cases in receipt of cash benefits as provided under Regulation 105 of the E. S. I. (General) Regulations, 1950. They also render advice where a second opinion is requested, assist doctors in the day to day working of the Scheme as well as act as liaison officers on medical care between the Corporation and the State Governments. They also represent the Corporation on Allocation and Medical Services Committees in areas where the panel system has been adopted.

At the end of the year under report, the Corporation had 13 Medical Referees posted in various Regions as indicated below:—

Greater Bombay	5	
Calcutta and Howrah Dist.	3	
Punjab	1	
Delhi	1	(With jurisdiction extending to Madhya Bharat).
Kanpur	1	(With jurisdiction extending to Saharanpur, Lucknow and Agra).
Nagpur	1	(With jurisdiction extending to Hyderabad and Andhra State).
Coimbatore	1	(With jurisdiction extending to Madras City).

The analysis of incapacity references conducted by the Medical Referees during the year under report is given in Appendix XVIII. It will be seen that as a result of this scrutiny about half the cases examined by them return to work.

CONTRIBUTIONS

30. *Income from contributions.*—The income of the Corporation is derived mainly from (1) Employers' Special Contribution; (2) employees' contribution. The employees' contribution is paid at the rates given in Schedule I to the Act, by employees of only such factories as are situated in areas where the benefit provisions of the Act have been applied. Under the

transitory provisions of Chapter V-A, however, all employers are required to pay Employers' Special Contribution at the rate of $1\frac{1}{4}$ per cent. of the wages in implemented areas, and $\frac{3}{4}$ per cent. of the wages in non-implemented areas. The higher rate for the employers in area where the scheme has been implemented is compensated for by the reduction in their liability under the Workmen's Compensation Act, the State Maternity Benefit Acts, as well as savings in the leave salary for sickness and cost of medical facilities previously provided by many employers to their employees. The employers in Delhi State, Kanpur, Punjab Areas, Madhya Bharat Areas, Nagpur Areas, Greater Bombay and Coimbatore Area paid employers' special contribution at the higher rate throughout the year under report and the employers in other implemented areas from the respective dates of implementation as given in Appendix I.

The amounts received on account of employees' contribution and from Employers' Special Contribution are shown in Appendix XIX. The total amount received in the year under report as employees' contribution and Employers' Special Contribution was Rs. 2,39,61,290 Rs. 2,25,29,288 respectively, as against Rs. 97,26,321 and Rs. 1,87,89,480 received during the year 1954-55.

Under the E.S.I. Act, as passed in 1948, the employers contribution was fixed at about twice the employees' contribution. The amendment to the Act relating to Employers' Special Contribution which was introduced in 1951 gave the Central Government the power to revise the rates of Employers' Special Contribution with a view to regulating the income from this source so that at various stages of implementation of the Scheme it may continue to correspond to the income that would have been derived from employers' contribution under the original provisions of the Act. The rates of Employers' Special Contribution were not, however, varied by the Central Government under Section 73-A (3) of the Act, though the Scheme has made rapid progress during the past two years.

With the implementation of the Scheme in new areas the income from employees' contribution has, as compared with the income from Employers' Special Contribution, been increasing with the result that in the year under report, the income from employees' contribution actually exceeded that from Employer's Special Contribution. In this connection a reference to the charts on page 30A may be made.

31. *Mode of collection of contributions.*—The employees' contributions continued to be collected by affixing special E.S.I. Stamps on contribution cards and by use of franking machines. Besides the use of 'Neo-post' and 'Universal' Insurance Franking Machines for franking contributions on the contribution cards, another make of franking machine, namely 'Stamp-master', was also approved by the Director General during the year under report. 234 licences for the use of franking machines had been issued to the employers upto the end of the year under report as against only 13 at the end of the previous year.

32. *Inspections.*—The number of Inspectors in each Region of the Corporation and the number of inspections carried out both during the year under report and the year 1954-55 are given below :

Region	*No. of Inspectors*	*No. of Inspections* 1955-56	1954-55
Bombay ...	14	2240	2113
Madras ...	11	1022	2044
Delhi ...	6	1258	1083
Calcutta ...	11	1585	1543
Kanpur ...	5	1014	994

The number of inspections carried out in Madras Region during the year under report was rather low. This is due to the fact that the Scheme was implemented in several areas of the Madras Region in quick succession and some of the trained Inspectors had to be diverted from their normal duties for posting in Local Offices.

33. *Defaults and Legal action.*—During the year under report, efforts were made to reduce the number of defaulting employers. General instructions approved by the Standing Committee for guidance and maintenance of a uniform policy in initiating legal action against employers who did not comply with the provisions of the Act were issued to all the Regional Directors and are being followed. The policy followed for the recovery of contributions and to ensure compliance is briefly indicated below :

(a) *Government factories/Local Bodies factories.*—List of defaulting factories are sent to the Central Government and to the State Governments and they are requested to instruct the departments/authorities concerned to start paying contributions and comply with the provisions of the Act.

(b) *Private factories.*—(i) Apart from the issue of regular reminders, action under Section 73-D is taken for the recovery of arrears of Employers' Special Contribution as land revenue in cases of employers defaulting for two or more quarters.

(ii) For recovery of arrears of Employees' Contribution, cases are filed under Section 75 of the Act in E.I. Courts against the employers in default.

(iii) Prosecutions are also launched against employers for persistence in non-payment of contributions, non-submission of contribution cards and returns and/or non-compliance with the various provisions of the Act.

(iv) Appendix XX shows the number of cases in which action was taken under different sections of the Act.

34. *Employees' Insurance Courts.*—Five more E.I. Courts were set up during the year under report at the following places :

Name of the place	*Jurisdiction*	*Presiding Officer*
1. Madras City	Madras city & its suburbs	The Principal Judge.
2. Vishakhapatnam	Vishakapatnam Chittivalsa Nellimarla	Subordinate Judge.

3. Vijayawada	Vijayawada Eluru Mangalagiri	Subordinate Judge.
4. Hyderabad	Hyderabad & Secunderabad areas	Judge Industrial Tribunal.
5. Calcutta City	Calcutta City & Howrah Dist.	Workmens' Compensation Commissioner.

IMPROVEMENTS IN SERVICE TO INSURED PERSONS

35. *Payment of Cash Benefit by Money Order at the cost of the Corporation.*—For the convenience of insured persons the Corporation decided to meet the money order commission on remittance of cash benefit to beneficiaries in the following types of cases :

(i) All payments not exceeding Rs. 20 in respect of sickness benefit, temporary disablement benefit and maternity benefit ;

(ii) All payments, other than the first, of permanent total disablement benefit, and dependants' benefit irrespective of the amount involved ;

(iii) Payments, other than the first, in respect of permanent partial disablement benefit irrespective of the amount involved to insured persons residing outside the municipal limits in which the appropriate local office is situated and subject to a limit of Rs. 20 where they live within such municipal limits.

The facility extended is also expected to reduce over-crowding at the Local Offices.

36. *Payment of conveyance charges to insured persons who are required by medical boards to appear before specialists, etc.*—During the year under report, the Standing Committee agreed, subject to certain conditions, to pay conveyance allowance and/or compensation for loss of wages, to disabled persons who are required by the medical board to attend at a clinic, laboratory or hospital for X-ray or for any other specialist examination.

37. *Acceptance of claim submitted even after 3 years from the date on which it became due.*—The Standing Committee empowered the Director General to authorise payment of cash benefit on a claim submitted even after 3 years from the date on which it became due provided he is satisfied that the amount involved is substantial and/or the reasons for late submission are adequate.

38. *Extended cash benefit to insured persons suffering from Tuberculosis.*—In para. 27 of the report, mention has been made regarding grant of extended medical benefit to insured persons suffering from Tuberculosis. According to the resolution adopted by the Corporation at its meeting held on 17th December 1955, insured persons suffering from Tuberculosis will in addition to extended medical benefit also be entitled to sickness cash benefit for an extended period of 18 weeks after they have exhausted their ordinary sickness benefit under the Act. The rate of extended sickness benefit, which must not exceed the full rate of sickness benefit, will be

half the rate of ordinary sickness benefit or 12 annas per day, whichever is greater. The benefit will be admissible only if the insured person was in continuous service for a period of at least 2 years in a factory to which the benefit provisions of the Act apply before the commencement of the spell of sickness in which the diagnosis was made. At the end of the year under report, these provisions were yet to come into force.

REVISION OF CERTAIN PROCEDURES

39. *Revised procedure for elimination of casual workers from receiving medical benefit indefinitely.*—A substantial percentage of persons taking up employment in factories covered under the E.S.I. Act consists fo casual workers who leave such employment after a very short period. Originally these workers remained entitled to medical benefit for a period upto 9 months from the date of their entry into insurable employment. During the year under report, a procedure was introduced, according to which a new entrant would receive medical treatment only for a period of 13 weeks on the basis of a temporary document of entitlement but those who completed 13 weeks service would be issued permanent documents entitling them to medical care until they get disentitled on ceasing to be in insurable employment. This measure will undoubtedly result in saving of expenditure which the Scheme was so far incurring on provision of medical care to casual workers for indefinitely long periods.

40. *Revised procedure for the issue of exit cards.*—Under the E.S.I. (General) Regulations, 1950, a person who has ceased to pay contributions in a contribution period or has paid less than 12 contributions in that period, is not entitled to medical benefit from the commencement of the corresponding benefit period. There is an interval of about 3 months between the end of the contribution period and the commencement of the corresponding benefit period. During this interval, intimation of disentitlement of each insured person is issued to the Insurance Medical Officer/Practitioner from whom he is receiving treatment. In quite a large percentage of cases, the employers failed to send contribution cards to the Corporation in time and so intimations of disentitlement were sent on the presumption that the insured person had ceased to pay contribution. Treatment was, therefore, refused to the insured person concerned and it took sometime for them to re-establish their right to treatment. In order to prevent hardship to those disentitled because of the employers' default, a procedure was introduced during the year under report under which an intimation of disentitlement is also sent to the insured person in advance. If he is still in employment, he can then immediately ask his employer to send the contribution card to the Corporation and, in the meantime, he can also get a certificate of continuing employment from his employer on the basis of which treatment is continued to him.

PAYMENT OF CASH BENEFITS

41. Claims in respect of employment injury become payable with effect from the date of implementation of the Scheme and those in respect of sickness and maternity with effect from the commencement of the first

benefit period *i.e.*, about nine months thereafter. Dates of implementation of the Scheme and of commencement of first benefit period in the various areas of each State have been indicated in Appendix I.

(a) *Sickness Benefit.*—Sickness Benefit was payable throughout the year in Delhi State, 7 centres in Punjab, and Kanpur. It became payable from 10th April, 1955, in Nagpur, from 3rd July, 1955, in Greater Bombay, from 23rd October, 1955, in Coimbatore, Gwalior, Indore, Ujjain and Ratlam; and from 29th January, 1956, in Hyderabad and Secunderabad area. Appendix XXI shows briefly particulars in respect of payments of sickness benefit in the year under report and compares them with similar particulars for the last year. The figures upto the end of the year 1953-54, have also been indicated. It will be observed that a sum of Rs. 57·35 lakhs was paid in cash sickness benefit as against a sum of Rs. 15·16 lakhs paid during the year 1953-54. A sum of Rs. 18·66 lakhs was paid upto the end of the year 1953-54. The increase in the amount of benefit is mainly due to the fact that 5·53 lakhs employees in the areas mentioned above became eligible to receive this benefit, during the year under report. It will further be seen that the average number of benefit days and the amount of benefit paid in Delhi and Punjab had been slightly more during 1955-56, than during 1954-55, whereas in Kanpur they had been slightly less during 1955-56, than during 1954-55. The slight decrease in the expenditure at Kanpur can possibly be attributed to a prolonged strike during 1954-55. During the strike, workers who were without a wage had every temptation to secure cash benefit by malingering and in spite of the vigilance of the Corporation, the incidence of cash benefits went up during this period. On the other hand, failure to pay contributions during the strike period resulted in a substantial proportion of insured persons failing to qualify for sickness benefit during part of 1955-56 which in turn led to a lower incidence. The incidence has increased slightly in Delhi possibly due to the outbreak of jaundice in epidemic form. The smaller sickness incidence in Punjab can, perhaps be attributed to a healthier climate, low wages and consequent lower rate of benefit, and a lower proportion of persons qualifying for it due to heavy labour turn over. The number of benefit days per spell of sickness ranged during 1955-56 between 7·3 to 11·8, the average being 9·4 days. The amount of benefit paid during 1955-56 per spell of sickness ranged from Rs. 11·5 to Rs. 20·2, the average being Rs. 18·9. The variation in the range of spells and payments are due partly to the variations in healthiness of climate and partly to the wages prevalent in various areas. However, it is gratifying to note that the experience in respect of the sickness incidence has been, in all areas, more favourable than the assumption made in the Interim Valuation Report of the Valuer which was received during the year under report.

(b) *Maternity Benefit.*—Maternity Benefit was also paid for the same periods as the sickness benefit in different areas during the year under report. Appendix XXII shows brief particulars in respect of payments of maternity benefit in the year under report and compares them with similar particulars for the year 1954-55. It will be seen that in 1955-56, a sum of Rs. 2,14,183 was paid as maternity benefit as against Rs. 6,925 paid during the year 1954-55. A sum of Rs. 5,345 was paid upto the end of year 1953-54. The substantial increase in the amount of benefit payment had been due mainly to the fact that in a number of areas with quite a high percentage of women employees, the insured women became eligible to receive this benefit during the year under report.

(c) *Temporary Disablement Benefit.*—Temporary disablement benefit was paid throughout the year in Delhi, 7 centres in Punjab, Kanpur, Nagpur, Greater Bombay, Coimbatore, Gwalior, Indore, Ujjain and Ratlam. It was paid from the respective dates of implementation as given in Appendix I in Hyderabad and Secunderabad, Calcutta City and Howrah District, Visakhapatnam, Vijayawada, Nellimarla, Chittivalsa, Guntur, Eluru and Mangalagiri, Madras City, Agra, Lucknow and Saharanpur. Appendix XXIII gives brief particulars in respect of payments of temporary disablement benefit in the year under report and compares them with similar particulars for the preceding two years. The average number of benefit days and average amount of benefit per annum per employee have also been indicated in the Appendix. It will be seen that in the year 1955-56, a sum of Rs. 11·23 lakhs was paid as against Rs. 3·89 lakhs paid during the year 1954-55. A sum of Rs. 2·52 lakhs was paid upto the end of year 1953-54.

The increase in the amount of benefit paid during 1955-56 is mainly due to the fact that a number of areas given above were brought within the purview of the Scheme and the experience of areas covered during 1954-55 related to the full year whereas in the last year it related to only a part of the year. The average number of benefit days and the amount of benefit paid did not vary much. The number of benefit days per spell of Temporary Disablement Benefit ranged during 1955-56 between 10 and 23 days the average being 18 days. The amount of benefit paid during 1955-56 per spell of Temporary Disablement Benefit ranged between Rs. 11 and Rs. 41, the average being Rs. 35. The difference in them is due partly to variations in length of spell of incapacity and partly to variations in wages prevalent in various areas.

(d) *Dependants' Benefit.*—Dependants' Benefit, in cases of death due to employment injury, was payable in the same areas and for the same period as for temporary disablement. Appendix XXIV shows brief particulars in respect of payments of dependants' benefit in the year under report and compares them with similar particulars for the year 1954-55. Claims in respect of 53 death cases of which 45 occurred in Bombay and 1 in Hyderabad were admitted in 1955-56, whereas the number of similar cases admitted during 1954-55, was 24. The benefit actually paid in 1955-56, amounted to Rs. 28,150 whereas amounts of benefit paid in 1954-55, was Rs. 13,076. The amount paid as dependants' benefit upto the end of year 1953-54, was Rs. 12,064. The increase in the amount of benefit had been mainly due to the death cases of areas where the Scheme was extended during 1955-56, or towards the latter half of the year 1954-55. The incidence in Delhi, Punjab and Kanpur had been quite low as compared to previous years.

(e) *Permanent Disablement Benefit.*—Permanent Disablement Benefit, in cases of employment injury, was also payable in the same areas and for the same period as for temporary disablement. Appendix XXV gives brief particulars in respect of payments of permanent disablement benefit actually made in the year under report and compares them with similar particulars for the year 1954-55. 967 cases were admitted in the year 1955-56, as against 238 cases admitted in 1954-55. The benefit actually paid during 1955-56, amounted to Rs. 90,140 whereas the corresponding figures for the year 1954-55, 1953-54, were Rs. 32,459. The number of beneficiaries at the end of the year under report was 1,415. A sum of Rs. 16,469 was paid upto the end of the year 1953-54.

No permanent disablement benefit was paid in Andhra areas, Madras City area and Agra, Lucknow and Saharanpur areas of Uttar Pradesh as the assessment of degree of permanent disablement had not been made in any case, till the end of the year under report.

The total amount paid as Cash Benefits to the insured persons during the year under report and the year 1955-56, 1954-55 and upto the end of the year 1953-54, is as follows:—

Year	BENEFIT (*in thousands of Rupees*)					*Total*
	Sickness	*Maternity*	*Temporary Disablement*	*Dependants'*	*Permanent Disablement*	
				Rs.	Rs.	
Upto 53-54 . .	1866	5	252	12	16	2151
1954-55 . . .	1714	7	389	13	33	2156
1955-56 . . .	5735	214	1123	38	84	7194
Total . . .	9315	226	1764	63	133	11501

(f) *Capitalised Value for Reserve Fund.*—It may be stated that in respect of dependents' benefit and permanent disablement benefit, the capitalised value of all periodical payments in respect of cases admitted in a year is set aside in Reserve Funds and actual payments are met from these Reserve Funds and the interest earned thereon. The capitalised values of pensions in respect of permanent disablement benefit cases and dependents' benefit cases admitted during the year 1955-56 were Rs. 10,87,400 and Rs. 3,06,100 respectively. The corresponding amounts for earlier years were as under :

Year	*Capitalised value of pensions*	
	P. D B.	*D. B.*
1952-53	85,000	67,000
1953-54	1,83,800	63,900
1954-55	3,70,000	1,05,000

The net amounts in the Reserve Funds for Dependents' Benefit and P. D. Benefit on 31st March, 1956, were Rs. 4,95,417/11/- and Rs. 16,24,908/7/- respectively.

42. *No. of Insured Persons.*—The number of insured persons continued to rise on account of fresh registrations due to labour turn-over in areas where the first benefit period has not commenced during the year and in Greater Bombay where the action regarding disentitlement of Insured Persons from medical care could only be taken towards the end of the year. This work was likely to be completed soon in Bombay and the position will come to normal as in the case of other areas such as Delhi, Punjab, Kanpur etc., Appendix XXVI shows the net No. of insured persons in implemented areas in each State at the end of each month in 1955-56. The comparison between the net number of insured persons at the beginning and end of the year 1955-56 has been indicated in Appendix I.

43. *Average size of the family of an insured person.*—After careful investigation, the Director, Labour Bureau, Simla, forwarded a note on the average size of the families of insured persons in different areas which can be taken as a reasonable estimate for the extension of medical care to families. The weighted average of these estimates indicated that after providing for some rounding up of figures for various areas, the size of the family can be assumed on an all-India basis to be 2·88 per employee excluding the employee himself.

44. *Statutory Rules and Regulations.*—During the year under report, the State Governments of Saurashtra, West Bengal, Andhra and Travancore Cochin finalised their E.I. Court Rules.

The State Governments of Saurashtra, Andhra and Travancore-Cochin finalised their Employees' State Insurance (Medical Benefit) Rules also under section 96 of the E.S.I. Act.

45. *Valuation.*—As the Valuation Report was likely to take some time more and as the Corporation was anxious to decide its policy regarding extension of medical care to families, the Valuer, Shri L. S. Vaidyanathan F.I.A. was requested to prepare an interim report with special reference to the resources available for this purpose. The Valuer accordingly submitted an Interim Valuation Report. According to this Report, the Corporation could spare Rs. 33 per annum per employee for provision of medical care to insured persons and their families if the Corporation were assured of income equivalent to that on the basis of Schedule I to the Act in respect of all employees in implemented areas. This is possible only if the rates of Employers' Special Contribution are raised suitably.

46. *Training in Social Security.*—Training facilities were afforded, as in previous years, to batches of students coming from different Universities in India.

47. *Second Five Year Plan.*—The end of the First Five-Year Plan period coincides with the end of the year under report. The areas which had been brought within the purview of the Scheme upto that date have been

indicated in Appendix I. Proposals for the extension of the Scheme during the Second Five-Year Plan were under the consideration of the Planning Commission and the Central Government at the year end. It is hoped that during the Second Five-Year Plan period the Scheme will be extended to all areas where there is a concentration of 1,500 employees or more and the medical benefit will be extended to the families of all the insured persons covered as well as those yet to be covered. The Planning Commission had not at the end of the year under report allocated the funds for these proposals but the matter was likely to be decided soon.

48. *Some Observations on Trends in Administrative Expenditure.*—From para 3 of this report and para. 5 of the report for 1954-55 it will be seen that the Corporation has been earnestly striving to effect economies in administrative expenditure. A table giving figures of income and administrative and other expenditure from year to year as also the ratio of administrative expenditure to total receipts from contributions and to the total expenditure is given on page 31. To illustrate the trend of the items of income and expenditure from year to year a set of diagrams is also shown on page 30A. It will be seen that even though substantial savings have been effected, the administrative expenses still appear to be a considerable portion of the total expenditure of the Corporation. This, however, is due to certain special features of the Scheme and to appreciate the real incidence of administrative cost, these need to be explained.

The administrative machinery of the Corporation has to deal not only with the provision of cash benefits to a large number of insured persons but also with the collection of contributions from and through employers. The latter part of the work involves payment of bank charges the cost of printing contribution stamps and all other relevant forms, and also the administrative work of watching the payment of contributions, keeping the contribution cards in order and the visiting by Inspectors of employer's premises for inspection of their records. In view of the fact that a number of employers do not comply with the requirements of the Act and the Regulations of their own accord, they have to be reminded and, in cases where compliance is still not forthcoming, legal proceedings have to be taken against them. Work falling on the organisation in connection with the collection of contributions is therefore, quite substantial and accounts for a considerable proportion of the administrative expenditure. This is true in spite of the fact that the main function of the Corporation, however, is to provide benefits to insured persons and, as such, the major portion of the administrative work done in all the offices of the Corporation and almost the entire work done in the Local Offices is in connection with disbursement of benefits. In these circumstances though, in the table, a comparison had been given of the ratio of the administrative cost to the income from contributions on one hand and to the total disbursements on the other, a comparison with only one or the other is really not entirely correct. A better idea may perhaps be obtained from the ratio of administrative cost to the total of the amounts collected and disbursed as benefits whether in cash or in kind.

The proportion, which the administrative expenditure bears to the total disbursement during the years for which the figures are given in the table however, appear very high and needs some explanation. Under the Act, the major cash benefits, *viz.*, sickness and maternity benefits become payable not from the date of implementation in any area but from 9 months thereafter. Administrative expenses on the other hand commence about 7 months before the appointed day for any area as considerable preliminary work is to be done before implementation. The effect of these factors would ordinarily wear off in a year in respect of any one area but since the scheme is being implemented in stages, this distortion will continue to be in evidence in respect of the total administrative cost for the whole country so long as the Scheme is being extended to new areas. The effects of both these factors is that expenditure and income for any year do not relate to the same number of insured persons. Out of the expenditure itself, a part relates to insured persons who have been eligible to all the benefits throughout the year while the rest relates to insured persons who were not eligible to claim sickness and maternity benefits, or, to prospective insured persons who have yet to be covered under the Scheme.

There is one other factor which will increase the expenditure on benefits and relatively bring down substantially the ratio of administrative expenditure. Hospital and specialist treatment is not being provided at present on the approved scale in most areas, while some State Governments are not making any charges for beds occupied by insured persons in their hospitals. As the scale of hospital treatment under the Scheme is made more adequate, the expenditure on medical care will increase substantially.

There is another factor, though of minor importance, which vitiates the picture. Medical benefit under the Act is provided by the State Governments who bear one fourth of its cost. The remaining three-fourths is reimbursed by the Corporation on receipt of claims from the State Governments concerned. The State Governments naturally require some time for claiming these amounts with the result that every year a substantial liability of the Corporation on this account remains outstanding as unclaimed. If, the amount actually to be reimbursed to the State Governments in any year could be included in that year's account, it would make a substantial difference in the amount paid out in benefits. Thus, in respect of the year under review, a sum of Rs. 27 lakhs is estimated to be outstanding on account of the share of the cost of medical benefit to be paid to State Governments though figures from all Governments are not yet available. If this were to be added to the other expenditure, administrative cost would form only 21·5 per cent of the total expenditure as against 24·7 per cent as at present.

With the phased extension of the Scheme, the cost of medical benefit is also increasing from year to year so that the outstanding amounts also show an increase from year to year. Once the Scheme is in operation throughout India, these outstanding will themselves stabilise and then this factor may cease to effect materially the ratio of administrative cost to total expenditure in any one year.

The fact that the incidence of administrative cost is steadily going down with extension of coverage would be apparent from a perusal of the accounts for the last four years. Due to the need for an All-India Organisation, the administrative cost formed 73·85 per cent of the total expenditure in 1952-53 when the number of employees covered under the Scheme was 1·2 lakhs and sickness and maternity benefits were paid only for part of the year. As the number increased to 1·5 lakhs in 1953-54 and the first group of 1·2 lakhs drew benefits for a full year, this ratio dropped to 49·9 per cent. It further declined to 42·4 per cent in 1954-55 when the Scheme covered 7 lakhs employees of whom only 1·2 lakh drew all the benefits all the year round. The year under review registered a further sharp decline when the ratio came down to 24·71 per cent with 10·15 lakh employees covered and 6·88 lakhs in receipt of all benefits. This process will be more easily followed from the diagrams on page 30A.

Only 9·6 per cent of the contribution income has been spent in the year under review on administration. It is estimated that as the Scheme covers the rest of India and the offtake in benefits, which is increasing, stabilises, administrative cost would also stabilise around 8 per cent of contribution income or below.

FINANCIAL AND ACCOUNTING ARRANGEMENTS AND INVESTMENTS

49. (1) *Financial and Accounting Arrangements.*—(a) The Revised Budget Estimates for 1955-56 and Budget Estimates for 1956-57 for the sanctioned measures as well as for the new proposals, were adopted by the Corporation and approved by the Central Government.

(b) The audit of the Accounts of the Corporation for the year 1954-55 was conducted, as in the previous years, by Government Auditors appointed by the Central Government during the year 1955-56. At the request of the Central Government, the Comptroller and Auditor General of India appointed the Accountant General Central Revenues, to carry out the audit.

(c) During the year under report, 21 Bank Accounts for Local Offices and two for Regional Offices were opened as indicated below :—

A. With the State Bank of India in :—

(*i*) West Bengal	...	...	2 accounts.
(*ii*) Bombay	...	...	3 accounts.
(*iii*) Uttar Pradesh	...	...	3 accounts.
(*iv*) Madhya Pradesh	...	...	4 accounts.
(*v*) Rajasthan	...	...	2 accounts.
(*vi*) Hyderabad	...	...	1 account.
(*vii*) Andhra	...	...	2 accounnts.
(*viii*) Madras	...	...	3 accounts.

B. With the Central Bank of India Ltd.

in Punjab	...	...	1 account for Regional Office.

C. With Bank of Baroda Ltd.,		...	1 account for local Office.
in Baroda	...	...	1 account for Regional Office.

Arrangements were also made with the branches of the above referred banks for sale of contribution stamps.

During the year under report 12 bank accounts with the State Bank of India as indicated below, were closed due to abolition/down-grading of certain Local Offices.

With the State Bank of India in :—

(*i*) Madras	...	...	1 account.
(*ii*) West Bengal	...	...	4 accounts.
(*iii*) Madhya Pradesh	...	...	2 accounts.
(*iv*) Madhya Bharat	...	...	1 account.
(*v*) Punjab	...	...	1 account.
(*vi*) Bombay	...	...	2 accounts.
(*vii*) Hyderabad	...	...	1 account.

(2) *Investments.*—After meeting the expenditure during the year under report, a sum of Rs. 3,65,70,174/4/- was invested in Government of India Securities. This brought the total amount invested (including investments relating to certain funds) upto the close of the year to Rs. 8,11,39,968/13/3, after excluding Rs. 63,98,766/2/- for securities realised. The details of the Securities held at the close of the year are given in Appendix XXVII.

50. *Income and expenditure account for the year 1955-56.*—A statement at Appendix XXVIII gives the Income and Expenditure Account of the Corporation for the year 1955-56.

51. *Conclusion.*—The Corporation is indebted to State Governments, employers and employees but for whose understanding and co-operation, the considerable expansion of the Scheme would not have been possible.

If the work of the Corporation in the previous year be regarded as consisting of skirmishes in varied directions in comparatively unknown pieces of territory, the year under report may well be considered as a period of digging in and critical stock-taking of its success. This position could not have been achieved without the whole-hearted co-operation of the Staff. The Local Offices were hard put to with having to cope with inevitable time-lags in obtaining their full complements of equipment and staff. The Regional Offices were particularly overworked and had to put up with constant reviews in establishments due to unforeseen difficulties in the working of the procedures, proceed with the extension of the Scheme to new areas and at the same time contend with day-to-day problems.

Credit also goes to the Principal Officers and their branches for their patience, perseverance and flexibility in harmonising the often contradictory viewpoints of the Medical, Insurance, Accounts, Actuarial and Administrative disciplines in tackling the problems confronting the Corporation. The Administrative Officer and his branch deserves special mention for their intensive studies and continuous assessment of the requirements of the cash benefit organisation and for the considerable economies effected.

REVIEW.

Indian Labour Code by S. N. Bose. Third edition, 1957. Published by Eastern Law House Private Ltd., P13, Ganesh Chunder Avenue, Calcutta. 1600 pp. Royal 8vo. Price Rs. 25.

This third edition of the compendious work, which must have been produced by the learned author after a great deal of revision, recasting, rearrangement and re-writing occasioned by the Five Year Labour Programme, the Five Year Plan of the Planning Commission and the numerous amendments of the various enactments, merits sincere appreciation as an outstanding work on labour laws in this country.

The book has now been divided into ten main heads: Factory and Establishment Legislation, Plantation, Mining, Transport, Child Labour, Wages, Social Security, Industrial Relations and Miscellaneous Legislation. A striking feature of the publication is the fairly exhaustive historical note under each head, accompanied by the legislation and rules relevant thereto. All the Acts under the various heads enacted during the past 100 years and more, have been briefly summarised and referred to. The historical background thus traced in respect of each law—not to mention the notes relating to the various Labour Inquiry Committees and Conferences, both here and abroad, and excerpts from Parliamentary debates with suitable references to the reports of the various committees —has made the publication a veritable *Magnum Opus* on labour law. The appendices have been amplified to cover Fundamental Rights, The Philadelphia Charter, Central Government's Industrial Policy of 1956, collective agreements and excerpts from the Industrial Relations Handbook (U.K.). These must have entailed considerable labour and skill and afford very instructive and helpful information on International Labour Law to anyone referring to the book. Model constitutions of Joint Industrial Councils, Works Committees, Joint Production Committees etc., have been given. A special feature of the Index which covers exactly 30 pages of closely printed matter is that apart from the General Index, there is a separate index of statutory definitions. The fact that no reference has been made to case-law is not really a shortcoming in this fine publication as that would have considerably added to the bulk of the already heavy volume and does not really fall within the scope of the work.

The printing and get up of this book maintains the usual tradition of the well known publishers.

We need hardly point out that such a valuable book of reference on labour laws must be within arm's reach of every person who has anything to do with industrial management and labour relations in this country.

THE KERALA MATERNITY BENEFIT ACT, 1957.

KERALA ACT 19 OF 1957*.

[Received the assent of the President on November 3, 1957.]

An act to prevent the employment of women in factories, plantations and other establishments for some time before and some time after confinement and to provide for payment of maternity benefit and medical benefit to them.

Preamble.—Whereas it is expedient to prevent the employment of women in factories, plantations or other establishments for some time before and some time after confinement and to provide for the payment of maternity benefit and medical benefit to them;

Be it enacted in the Eighth Year of the Republic of India as follows:

1. *Short title, extent and commencement.*—(1) This Act may be called the Kerala Maternity Benefit Act, 1957.

(2) It extends to the whole of the State of Kerala.

(3) It shall come into force on such date as the Government may, by notification in the Gazette, appoint.

(4) It shall apply, in the first instance to all factories and plantations.

(5) The Government may after giving one month's notice of their intention of so doing by notification in the Gazette extend the provisions of this Act to any other establishment or class of establishments, industrial, commercial or otherwise wherein fifty or more persons are employed or were employed on any day of the preceding twelve months.

2. *Definitions.*—In this Act, unless there is anything repugnant in the subject or context—

(*a*) "employer" includes the occupier and the manager of a plantation or a factory or an establishment;

(*b*) "establishment" means an establishment to which the provisions of this Act have been extended under section 1, sub-section (5);

(*c*) "Certifying Surgeon" means a qualified medical practitioner appointed as such for purposes of this Act;

(*d*) "factory" means a factory as defined in the Factories Act, 1948;

(*e*) "Inspector" means an Inspector appointed under section 14;

(*f*) "worker" in relation to a factory has the same meaning assigned to it by the Factories Act, 1948, and in relation to a plantation or in relation to any other establishment means a person employed directly or through an agency whether for hire or not, to do any work, skilled or unskilled, manual or clerical or any person so employed under a contractor engaged in the execution of the whole or any part of any work which is ordinarily part of

*Kerala Gaz. Exty., 9-11-1957, Vol. II, No. 117.

the trade or business of the employer, but does not include a person whose total emoluments exceed three hundred rupees per mensem or any member of the managerial staff, that is to say, the Manager, Assistant Manager, or other Agent of the employer;

(*g*) "plantation" means any estate which is maintained for the purpose of growing cinchona, rubber, coffee, tea or cardamom, and

(i) which is fifty acres or more in extent; or

(ii) in which fifty or more persons are employed or were employed on any day of the preceding twelve months for that purpose;

(*h*) "maternity benefit" means the amount of money payable under the provisions of this Act to a woman employed in a plantation or a factory or an establishment;

(*i*) "prescribed" means prescribed by rules made under this Act; and

(*j*) "woman" means a woman worker.

3. *Prohibition of employment of women in certain period.*—(1) After this Act comes into operation no employer shall employ a woman in any factory, plantation or other establishment after she has given notice under sub-section (1) of section 5 or knowingly employ any woman in any such factory, plantation or other establishment during the 8 weeks immediately following the day of her confinement.

(2) During the period of pregnancy a woman shall not be knowingly employed on work which is arduous or which requires long hours of standing at one place or which may in any way interfere with her pregnancy and is likely to cause miscarriage or adversely affect her health or interefere with the normal development of foetus.

4. *Right to maternity benefit of women in factories, plantations and other establishments.*—(1) Subject to provisions of this Act, every woman in a factory, a plantation or an establishment shall be entitled to, and her employer shall be liable for, the payment of maternity benefit at the rate of five rupees and twentyfive naye paise a week or calculated at a rate of 7/12 of the average daily wage multiplied by seven for a week, whichever is higher, during the period of her actual absence immediately preceding and including the day of her confinement and for the eight weeks immediately following her confinement.

Explanation.—For the purpose of this section and sections 6 and 7, "Average daily wage" means average of her total full-time earnings for the days on which she worked during the month immediately preceding the date on which she gives notice under sub-section (1) of section 5:

Provided that a woman shall not be entitled to maternity benefit unless she has been employed in the factory or plantation or an establishment of the employer from whom she claims maternity benefit for at least one-hundred and fifty days whether continuously or intermittantly during the period of twelve months or she has been on the rolls of the said factory, plantation or establishment for a period of nine months immediately preceding the date on which she gives notice under sub-section (1) of section 5.

(2) Notwithstanding anything contained in sub-section (1), if at or before the commencement of this Act, an employer has been paying to women workers in any factory or plantation or in any other establishment, maternity benefit at a rate higher than that payable under sub-section (1), then every woman worker in such factory or plantation or an establishment shall be entitled to and the employer shall be liable for the payment of maternity benefit at such higher rate.

(3) The maximum period for which any woman shall be entitled to the payment of maternity benefit shall be twelve weeks, that is to say, four weeks up to and including the day of her confinement and eight weeks immediately following that day.

5. *Notice of claim of maternity benefit and payment thereof.*—(1) Any woman in a factory or plantation or in an establishment entitled to maternity benefit under the provisions of this Act may give notice in writing to her employer stating that her maternity benefit may be paid to her or to such other person as she may nominate in this behalf and that she will not work in any employment during the period for which she receives maternity benefit. If the woman has not been confined such notice shall state that she expects to be confined within four weeks from the date of the notice; if she has been confined, such notice shall be given within one week of her confinement.

(2) The employer shall on receipt of the notice permit such woman to absent herself from the factory or plantation or establishment until the expiry of eight weeks after the date of her confinement.

(3) The amount of maternity benefit for two weeks shall be paid in advance to the woman and the balance amount for the period up to and including the day of confinement shall be paid by the employer to the woman within forty-eight hours of the production of such proof, as the Government may by rules prescribe, that the woman has been confined. The amount due for the subsequent period shall be paid punctually each week in arrear.

6. *Leave for miscarriage.*—In case of miscarriage, a woman shall on production of a certificate signed by the Certifying Surgeon or any other qualified medical practitioner or on production of such other proof of miscarriage as may be prescribed be entitled to three weeks leave from the date of her miscarriage with wages at the rate of five rupees and twenty five naye paise a week or calculated at the rate of 7/12 of the average daily wage multiplied by seven for a week, whichever is higher, during the period of her absence.

Explanation.—For the purpose of this section any premature delivery or abortion within a period of six months of pregnancy shall be alone deemed to be miscarriage.

7. *Leave for illness arising out of pregnancy or confinement.*—(1) A woman shall be entitled to leave with wages for a maximum period not exceeding thirty days in cases of illness arising out of pregnancy or confinement in addition to the maternity leave to which she is entitled to under section 4 at the rate of five rupees and twenty five naye paise a week or

calculated at the rate of 7/12 of the average daily wage multiplied by seven for a week, whichever is higher on production of such proof as may be prescribed.

8. *Payment of medical bonus.*—Every woman entitled to maternity benefit under section 4 shall also be entitled to receive from her employer a medical bonus of ten rupees if no prenatal confinement or postnatal care is provided for by the employer free of charge, on production of such proof as may be prescribed.

9. *Payment of maternity benefit in case of claimant's death.*—If a woman entitled to maternity benefit under the provisions of this Act dies during the period for which she is entitled to maternity benefit the employer shall pay the amount of maternity benefit due to the person who undertakes the care of the child, if the child is living, and if the child is not living, to the nominee mentioned in the notice given under sub-section (1) of section 5, and if there is no such nominee, to the heirs of the deceased woman.

10. *Dismissal during pregnancy or absence.*—(1) When a woman absents herself from work in accordance with the provisions of this Act, it shall be unlawful for her employer to dismiss her during or on account of such absence, or to give notice of dismissal on such a day that the notice will expire during such absence.

(2) The dismissal of a woman at any time during her pregnancy if the woman but for such dismissal would have been entitled to maternity benefit under this Act shall not have the effect of depriving her of that maternity benefit.

(3) If the confinement involves illness incapacitating a woman for work the employer shall not be entitled to dismiss her if she fails to return to duty on the expiry of eight weeks after her confinement, in addition to the leave provided for in section 7, without getting the approval of a Certifying Surgeon who may increase the period of absence if he considers fit.

11. *Power of Inspector to direct payments to be made.*—(1) Any woman claiming that maternity benefit to which she is entitled under this Act and any person claiming that a payment due under section 9 is improperly withheld may make a complaint to the Inspector.

(2) On receipt of such complaint or on his own motion without any such complaint being made, the Inspector may make inquiry or cause an inquiry to be made, and if satisfied that a payment has been wrongfully withheld may direct the payment to be made in accordance with his orders.

(3) Any person aggrieved by the order of the Inspector under sub-section (2) may appeal to the Labour Commissioner or such other officer as may be empowered by the Government in his behalf within such time and in such manner as may be prescribed.

(4) Any amount payable under this section shall be recoverable as arrears of land revenue under the Revenue Recovery Act for the time being in force.

12. *Forfeiture of maternity benefit.*—If a woman works in any factory or plantation or establishment after she has been permitted by her employer to absent herself under the provisions of section 5, she shall forfeit her claim to the payment of the maternity benefit to which she is entitled.

13. *Nursing breaks.*—Every woman in a factory or plantation or in an establishment who returns to duty after confinement shall be allowed in the course of her daily work two intervals of sufficient time to feed the child till the child attains the age of two.

14. *Appointment of Inspectors.*—The Government may by notification in the Gazette appoint such officers of the Government as they think fit to be Inspectors for the purposes of this Act and may assign to them such local limits as they think fit.

15. *Powers and duties of Inspectors.*—Subject to any rules made in this behalf, an Inspector may, within the local limits for which he is appointed, enter any place which is used or which he has reason to believe is used, as a factory or a plantation or an establishment with such assistants as he thinks fit and inspect the premises and such registers, records and notices as may be prescribed.

16. *Inspectors to be public servants.*—Every Inspector shall be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code.

17. *Penalty for contravention of Act by employer.*—If any employer contravenes any of the provisions of this Act, he shall be punishable with fine which may extend to two-hundred and fifty rupees and where the contravention is of the provision relating to the payment of maternity benefit, and where the amount has not been already recovered the court shall recover the amount due on account of maternity benefit as if it were a fine and pay such amount to the person entitled thereto.

18. *Jurisdiction of Courts.*—(1) No Court inferior to that of a Magistrate of the First Class shall try any offence against this Act or any rules thereunder.

(2) No prosecution for any offence against this Act or any rules thereunder shall be instituted except by or with the previous sanction of the Inspector.

19. *Period of limitation for prosecution under Act.*—No Court shall take cognisance of, or convict a person for, any offence against this Act or any rule thereunder unless complaint thereof has been made within six months of the date on which the offence was committed. In computing the period of six months aforesaid, the time, if any, taken for the purpose of obtaining the previous sanction of the Inspector under sub-section (2) of section 18 shall be excluded.

20. *Rules.*—(1) The Government may make rules for the purpose of carrying into effect the provisions of this Act.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for—

(a) the preparation and maintenance of a muster roll and the particulars to be entered in such roll,

(b) the inspection of factories, plantations and other establishments for the purposes of this Act by Inspectors,

(c) the exercise of powers and the performance of duties by Inspectors for the purposes of this Act,

(d) the method of payment of maternity benefit and other benefits under this Act in so far as provision has not been made therefor in this Act,

(e) the nature of proof under sub-section (3) of section 5 and sections 7 and 8, and

(f) all matters which are to be or may be prescribed.

(3) Any such rule may provide that a contravention thereof shall be punishable with fine which may extend to fifty rupees.

(4) The making of rules under this section shall be subject to the condition of previous publication.

21. *A copy of Act and Rules to be exhibited in factories, plantations and other establishments employing women.*—A copy of the provisions of this Act and Rules thereunder in the local language shall be exhibited in a conspicuous place by the employer in every factory, plantation and establishment in which women are employed.

22. *Repeal.*—The Travancore-Cochin Maternity Benefit Act, 1952 (Act XX of 1952) and the Madras Maternity Benefit Act, 1934 (Act VI of 1935) in its application to the Malabar District referred to under sub-section (2) of section 5 of the States Reorganisation Act, 1956, are hereby repealed.

Employees' State Insurance—Sickness Benefit for persons suffering from Tuberculosis.

*Notification No. INS II(10)-01/57 dated New Delhi, 6th November, 1957.**

It is notified for general information that the Corporation passed the following resolution at its meeting held on the 17th December, 1955:

"Under the powers vested in it under section 99 of the Employees' State Insurance Act, 1948, and in supersession of the resolution passed on the subject of extended cash benefit under Item No. 7(iii) of the Agenda at its meeting held on the 15th October, 1954, the Corporation hereby resolves that, with effect from such date as the Chairman of the Corporation may fix, the sickness benefit granted under the Employees' State Insurance Act, 1948, shall be extended for persons suffering from tuberculosis in the manner indicated below:

1. To be entitled to the extended sickness benefit, an insured person shall have been, at the beginning of the spell of sickness in which tuberculosis is diagnosed, in continuous employment for a period of two years or more in a factory or establishment to which the benefit provisions of the Act apply.

*Gaz. of India, 16-11-1957, Pt. IV, p. 220.

Note—Employment shall be held to be continuous—

(a) for periods preceding the Appointed Day, if the person was in continuous service as defined in the Industrial Disputes Act, 1947;

(b) for periods after the Appointed Day, if contributions paid by him in each of the respective completed contribution periods entitle him to sickness benefit in the corresponding benefit period.

2. The extended sickness benefit shall be granted only if the insured person has exhausted under the second proviso to section 49 the sickness benefit due to him.

3. The extended sickness benefit shall be limited to a period of 18 weeks following, whether immediately or after an interval, the last day for which sickness benefit at the full rate was due under the Act.

4. Subject to the condition that the rate of extended sickness benefit shall not exceed the full rate of sickness benefit, the rate of cash benefit during the aforesaid period shall be at -/12/- a day or at half (such half being rounded, where there is a fraction of an anna, to the next higher anna) the rate of sickness benefit applicable when such benefit was last payable under the Act, whichever is higher.

5. The extended sickness benefit shall be payable if the sickness due to tuberculosis is duly certified in accordance with the Act and the Regulations.

6. Where an insured person, during any period for which he is entitled to extended sickness benefit under this resolution, again becomes entiteld to sickness benefit at the full rate, he shall be entitled for the duration of such period either to receive the extended sickness benefit, or the sickness benefit at the full rate whichever he chooses provided that, if the insured person chooses to receive sickness benefit at the full rate during this period, the total duration of extended benefit shall not thereby be extended.

7. An insured person shall be entitled to receive extended sickness benefit only once for any spell of tuberculosis provided that if the insured person again qualifies for the extended benefit, it shall again be admissible for any further spell of tuberculosis which follows the date of recovery shown in the final certificate in respect of the previous spell after an interval of not less than 24 months."

In pursuance of the above Resolution the Chairman of the Corporation fixed 1st June, 1956 as the date with effect from which extended cash benefit became payable to insured persons concerned.

Mysore Plantation Labour Rules, 1956—Amendment.

*Notification No. LLH 204 LBW 57, dated Bangalore, 5th November 1957.**

In exercise of the powers conferred by section 43 of the Plantation Labour Act, 1951 (Central Act LXIX of 1951), the Government of Mysore hereby makes the following amendment to the Mysore Plantation Labour

*Mysore Gaz. 14-11-57, Pt. IV, Sec. IC, page 2783.

Rules, 1956, the draft of the same having been previously published in Notification of even number, dated 22nd July, 1957, as required by the said section, namely :—

AMENDMENT.

In the said rules, after sub-rule (2) of rule 84, the following item shall be inserted :—

"(3) Every employer shall furnish to the Inspector and the Chief Inspector by the 31st January and 31st July every year a half-yearly progress report in duplicate, in regard to provision of the medical facilities in Form No. 22."

Minimum Wages in Plantations—Amendments.

I

*Notification No. L1. 13631/56/L & LAD dated, Trivandrum, 22nd August, 1957.**

In exercise of the powers conferred by clause (b) of sub-section (1) of section 3 of the Minimum Wages Act, 1948, (Central Act XI of 1948) the Government of Kerala hereby direct that Notification No. LI. 13631/56/L & LAD dated 27th July, 1957, published in the Gazette dated 30th July, 1957, shall be deemed to have taken effect from 1st July, 1957.

II

*Notification No. L1. 13631/56/L & LAD dated, Trivandrum, 22nd August, 1957.**

In exercise of the powers conferred by clause (b) of sub-section (1) of section 3 of the Minimum Wages Act, 1948 (Central Act XI of 1948) the Government of Kerala after considering the advice of the Advisory Committee appointed under section 6 of the said Act and the Minimum Wages Advisory Board constituted under section 7 of the Act hereby revise the minimum rates of wages fixed as per Notification No. L1. 9632/51/DD. dated 30th June, 1952, and subsequently amended by Notification No. L1. 13631/56/L & LAD dated 28th June, 1956, and 24th June, 1957, as payable to the classes of employees in plantations by making the following further amendment in the Schedule to the said Notification dated 30th June, 1952, namely :—

AMENDMENT.

In the said Schedule, under V sliding scales, for the entry
"Women do. 6 pies"

the following shall be substituted, namely :—
"Women (tappers) 6 ps.
Women (other than tappers) 5 ps."

This notification shall be deemed to have come into force on and from 1st July, 1957.

*Kerala Gaz., 7-8-57, Pt. I, p. 1856.

justice and fair play in the relations between contractors and their workmen. The helpless workers who are entirely left to the mercy of the contractors must be given all protections of law. Industrial Tribunals and Courts are not only to enforce the rigidities of law but rather have to keep their objective. In a labour dispute, the objective is not to find out who is guilty and who is correct and punish the guilty. The objective is to settle the dispute, the continuance of which vitally affects the very social fabric. A contractor should not be allowed to "hire and fire" as he likes. According to the availability of work a contractor has to provide work to the workers. As in the case of employers, no worker should be allowed to be victimised by contractors. The companies may not be able to avoid contract work when they have to carry on seasonal and intermittent work but that does not mean the workmen should be submerged by contractors.

14. The General Shipping and Forwarding Service is the contractor for several industrial establishments in Mattancherry and Cochin and has plenty of opportunities to provide employment and all the workers concerned in this dispute will be given employment according to availability of work under the contractor. The workmen concerned will be given employment not only in the Palluruthy godown of Parry & Co., but also in other establishments where the General Shipping and Forwarding Service is having contract work. The contractor will give timely information about the availability of work to the Union of which the workmen concerned are members. For the period of involuntary unemployment each worker will be paid Rs. 100.

15. The contractor will give employment to all the workmen concerned according to availability of work not only in the godown at Palluruthy under the Parry & Co., but in other establishments also where work is available under the contractor. As compensation each worker will be paid Rs. 100. The contractor will pay Rs. 200 towards expenses of the Union. I pass the award on the terms and conditions given above. The names of all the workmen concerned are given below as 'annexure'. The award will become enforceable after thirty days of its publication in the Government Gazette.

[IN THE INDUSTRIAL TRIBUNAL, BOMBAY.]

TATA OIL MILLS CO., LTD., BOMBAY

v.

THEIR WORKMEN.

Shri M. R. Meher.

September 27, 1957.

BONUS—COMPUTATION OF SURPLUS PROFITS—PRINCIPLES—ITEMS OF INCOME TO WHICH LABOUR HAS NOT CONTRIBUTED—PROFIT ARISING ON ACCOUNT OF REVALUATION OF CLOSING STOCKS—WHETHER TO BE INCLUDED—ALLOWANCES—DEPRECIATION—WHEN FULL DEPRECIATION SHOULD BE ALLOWED—DISTRIBUTION OF SURPLUS PROFITS.

Though, as a general principle, employees are entitled to bonus out of profits because they have contributed to them, it does not mean that the accounts should he dissected and nice distinctions made whether in respect of every item labour has contributed or not and then allow or disallow it. Where certain items of income to which labour has not contributed, like estate revenue, sale of empty containers and scrap, etc., form part of the profits earned in the course of the concern's business, they should not be deducted from the profits for the purpose of awarding bonus to the employees.

The profits which arise on account of the change in the valuation of closing stock as required by the Companies Act, 1956, (closing stock having been valued previously at less than their real value), must be included in computing the surplus profits.

Where the concern is not able to write off its full statutory depreciation, the amount actually written off must be allowed in full even though it includes amounts towards inadequate provision for depreciation in the past years.

After the computation of the residuary surplus of profits after meeting the prior charges, the entire surplus is not to be given to labour. The claims of the employees, the shareholders and the requirements of the industry must be taken into consideration in awarding bonus.

Reference (IT) No. 119 of 1957.

Y. D. Joshi for the management.

K. T. Sule and *V. K. Tambe* for the workmen.

AWARD.

This is a reference under sub-section (5) of section 12 of the Industrial Disputes Act, 1947, for adjudication of a dispute between the Tata

Oil Mills Company, Limited, Bombay, and the workmen employed under it over the following demand:

"In view of the improved working conditions of the Company all employees drawing wages/salary of less than Rs. 500 per month should be paid unconditionally a sum equivalent to four months' wages/salary as bonus for the twelve months working for the year 1955-56. The bonus as demanded should be paid on *pro rata* basis to all employees who were on the roll of the Company during the year for which demand is made.

"The rate of wages/salary for the purpose of calculation of bonus as demanded will be the rate of wages/salary as on 31st March, 1956, or in case where an employee's services has been terminated for whatsoever reason prior to 31st March, 1956, the rate at which the last wages/salary was drawn."

2. In the statement of claim filed on behalf of the workmen by the Tata Oil Mills Employees' Union it is stated that the Company has made record profits in the year and has declared a dividend of 12 per cent. free of income-tax; that the employees are getting much less than the living wage and the dearness allowance is not even at the revised textile rate. The Company has paid 2½ months' basic wages as bonus for the year 1955-56. In the statement of claim filed by the Chemical Mazdoor Sabha it is stated that the wages of the workmen are much below the living wage and it is, therefore, necessary to bridge the gap by an adequate bonus, particularly when the concern has made huge profits.

3. The Company has in its written statement admitted that it is one of the largest Indian Companies in the business of oils, soap, glycerine, toiletries and vegetable products, but it has stated that it has to face severe competition from a gigantic foreign combine. The Company has a provident fund scheme for its employees since 1951. While in the textile industry wages are fixed, the Company has graded scales of wages with annual and biennial increments. As regards dividend the Company has pointed out that though it was started in 1917 the shareholders did not start to get dividend till 1940. The Company has submitted that the bonus paid is adequate. A large proportion of the turnover of the Company is practically unrelated to the workers' efforts, *viz.*, agency commission amounting to Rs. 4·36 lacs.

4. I now come to the items regarding which there is dispute. The Company seeks, for the purpose of bonus calculations, to deduct the following items from the profits on the ground that they relate to extraneous income and are unrelated to the efforts of the workmen:

	Rs.
Income earned by way of rent, light and power	0·24 lacs.
Estate Revenue	0·08 lacs.
Profit on sale of empty barrels ...	0·89 lacs.
Sale proceeds of tin cans, scrap, logs, planks, gunnies, etc.	2·11 lacs.

Now, it cannot be denied, as a general principle, that employees are entitled to bonus out of profits because they have contributed to them and that as both capital and labour contribute to the earnings of an industrial concern, it is fair that labour should get bonus to supplement the wage, if there is surplus after meeting the fair claims of capital and of the Company; but I do not think the accounts should be dissected and nice distinctions made whether in respect of every item labour has contributed or not and then allow or disallow it. The above items form part of the profits earned in the course of the Company's business and I can see no good reason for deducting them from the profits. As regards income earned by way of rent, light and power, it is not disputed that expenditure in respect of buildings from which this rent is derived, such as repairs, is included in the expenditure side of the account and taxes and rates for these buildings are paid out by the Company. I, therefore, see no good reason why the rent, etc. realised from the buildings belonging to the Company should be deducted from the profits, nor do I see any reason for deducting from profits the other items referred to above for the purpose of bonus calculation. Another item of dispute is one of Rs. 3 lacs which the Company seeks to exclude. On page 20 of the balance sheet it is stated that the change in the mode of valuation of closing stocks in process has resulted in the gross profits of about Rs. 3 lacs. An affidavit has been filed by the Chief Accountant of the Company in which it is stated that the Company was valuing its stocks in process at or below cost, that due to the changes made by the Indian Companies Act, 1956, the Company has to value its closing stocks at cost and so the gross profits have increased. It seems to me that if the correct mode of valuation of stock according to the provisions of the Companies Act would show a larger profit, and previously the stocks in process were valued at less than their real value, it cannot be said that the amont of Rs. 3 lacs is extraneous income which should be deducted from the profits. I am, therefore, of the opinion that the Company has made out no good case for deduction of this amount from the profits.

5. The Unions seek to add to the profits the following items shown on the expenditure side of the profit and loss account:

Value of cars, lorries, etc. written off ...	Rs. 0·78 lacs.
Loss on sales of furniture, etc.	Rs. 0·02 lacs.
Loss on dismantling machinery, buildings, etc.	Rs. 0·22 lacs.

A similar objection was raised before me in the bonus case between the parties for the year 1953-54 (*Bombay Government Gazette*, Part I-L, dated July 28, 1955, p. 2365) and I took the view that in view of the provisions of section 10(2) (*vii*) of the Indian Income-tax Act the company is entitled to debit such amounts which have been actually written off to the trading account. I see no reason to alter the view taken in that case but it has been pointed out that section 10 (2) (*vii*) of the Act allows such items to be allowed only in respect of buildings and machinery and not furniture. The loss written off on sale of furniture will, therefore, have to be added to the profits. The amount is quite negligible, and whether it is allowed or not, it would not make any difference in the bonus to be awarded.

6. The next item of dispute is with regard to depreciation. The company has actually written off Rs. 11·75 lacs as depreciation. At page 20 of the balance sheet it is stated that this amount includes Rs. 3 lacs towards inadequate provision in past years. The statutory depreciation which the company would be entitled to under the provisions of the Income-tax Act is Rs. 13·19 lacs, as per certificate of the Chartered Accountants which has been produced. Ordinarily a company should be allowed the statutory depreciation if it has actually made provision for it, but if in any year installations of new machinery are so large that the statutory depreciation (including development rebate) would either wipe off the available surplus to the detriment of labour or not allow a reasonable bonus, it might be permissible to allow less than the statutory depreciation for the year and spread the amount over, say, 2 or 3 years. I have given full reasons for this view in the case of *The Indian Hume Pipe Co., Ltd., Bombay* v. *Their Workmen* (*Bombay Government Gazette,* Part I-L, dated January 31, 1957, at page 531) at paragraph 11, and it is, therefore, not necessary to repeat them here. In the present case the company has written off less than the statutory depreciation and though it has been stated in the balance sheet that Rs. 11·75 lacs written off includes Rs. 3 lacs towards inadequate provision in past years, I am of the opinion, that as the depreciation written off is less than the statutory depreciation for the year, the amount actually written off should be allowed in the calculations.

7. In the result the calculations made by me are as follows :—

	(Rs. in lacs.)
Profits for the year	15·53
Add Taxes	14·51
Add Depreciation	11·75
Add Provision for bonus	7·76
Add Loss on sale of furniture, which is not admissible as trading expenditure under the Income-tax Act. ...	0·02
	49·57
Less Depreciation actually written off	11·75
	37·82
Less Bonus paid to officers and employees drawing Rs. 500 per mensem basic pay and over at the rate of 2½ months' basic salary.	1·17
	36·65
Less bonus equal to 7/24ths of the basic wages/salary to those who receive less than Rs. 500 per mensem. ...	10·01
	26·64
Less Dividend on preference shares at 4½ per cent. which is not free of income-tax.	1·34
	25·30
Less Tax at 7 annas in the rupee	11·07
	14·23
Less Return at 6 per cent. on paid-up capital ...	4·20
	10·03
Less Return at 4 per cent. on working capital (Rs. 31·88 lacs.)	1·28
SURPLUS ...	8·75

From the above it will be seen that the Company can afford to pay bonus equal to 7/24ths of the annual basic earnings which comes to about 3½ months' basic wages/salary. The Union has made the demand only in respect of workmen who draw less than Rs. 500 basic pay, because the amount of bonus already paid, *viz.*, 2½ months' basic salary is adequate for officers and employees who draw Rs. 500 basic salary or more. Shri Sule has argued that as after

the allocation of the prior charges the whole demand can be met the whole demand should be conceded. But it is an accepted principle that the entire residuary surplus after meeting the prior charges is not to be given to Labour. As was observed by the Full Bench of the Labour Appellate Tribunal in the case of the *Mill-owners' Association, Bombay* v. *Rashtriya Mill Mazdoor Sangh*, [1950] 2 F.J.R. 107, after the deduction of the prior charges, the needs of the employees, the claims of the shareholders and the requirements of the industry have to be taken into consideration. In the present case it has been pointed out, on behalf of the company, that from 1918 to 1939 the company made no profits and declared on dividends, that it had to reduce its capital in 1928 from Rs. 100 lacs to Rs. 25 lacs. The company has, out of the profits, transferred Rs. 50,000 to reserve for bad and doubtful debts, Rs. 1,50,000 to sales promotion reserve, Rs. 1,00,000 to development reserve and Rs. 3,00,000 to deferred taxation reserve. In deciding to allocate about 3½ months' basic wages as bonus, I have taken into account the existing wages in the company, the requirements of the industry and other relevant factors.

8. I direct the Company to pay to the workmen who have drawn less salary/wages than basic salary/wages of Rs. 500 per mensem bonus equivalent to seven-twenty-fourths of the annual basic earnings for the year 1955-56 (less bonus already paid) within a period of six weeks from the date this award becomes enforceable subject to the following conditions :

(*a*) Any employee who has been dismissed for misconduct resulting in financial loss to the company shall not be entitled to bonus to the extent of the loss caused.

(*b*) Persons who are eligible for bonus but who are no longer in the service of the company on the date of payment shall be paid the same provided that they make a written application for the same within three months of publication of this award. Such bonus shall be paid within one month of receipt of application provided that no claim can be enforced before six weeks from the date this award becomes enforceable.

[IN THE INDUSTRIAL TRIBUNAL, BOMBAY.]

ANTHONY ALMEIDA

v.

RICHARDSON & CRUDDAS LTD., BOMBAY.

Shri S. H. Naik.

September 30, 1957.

INDUSTRIAL TRIBUNAL—JURISDICTION—CONTRAVENTION OF SECTION 33, INDUSTRIAL DISPUTES ACT, 1947—TRIBUNAL NOT HAVING JURISDICTION TO ACT UNDER SECTION 33(2)—JURISDICTION GIVEN WITH RETROSPECTIVE EFFECT LATER ON—EFFECT—COMPLAINT UNDER SECTION 33A—WHETHER LIES—INDUSTRIAL DISPUTES ACT, 1947, SECTIONS 2(R), 33, 33A.

Though the definition of 'Tribunal' in section 2(r) of the Industrial Disputes Act, 1947, has been amended by Act XVIII of 1957, with retrospective effect from 10th March, 1957, it cannot have the effect of invalidating action taken in accordance with the provision then existing before the date on which the Act came into force. Where an Industrial Tribunal was without jurisdiction to accord sanction for action under section 33(2) of the Act, and, therefore, the employer took action without such sanction, the fact that the definition of 'Tribunal' was amended later on so as to give jurisdiction to that Tribunal with retrospective effect cannot have the effect of making the action of the employer illegal or penal under section 31 of the Act.

Complaint under section 33A, Industrial Disputes Act, 1947.

H. R. Gokhale for the workmen.

R. Setlur for the management.

AWARD.

This is a complaint under section 33A of the Industrial Disputes Act, 1947. The undisputed facts of this case are that the industrial dispute between Richardson and Cruddas Ltd., and its workmen (excluding clerical and subordinate staff) regarding revision of wages, dearness allowance, etc., was referred by the Government of Bombay to Shri Salim M. Merchant for adjudication under section 10(2) of the Industrial Disputes Act, 1947, by an order dated September 15, 1954. The dispute was registered as Reference (IT) No. 127 of 1954, before the Industrial Tribunal. During the pendency of that dispute, the services of Shri Merchant ceased to be available. Government, therefore, appointed Shri

M. I. Ahmadi, in his place as Industrial Tribunal, under section 8 of the Industrial Disputes Act, 1947. While the dispute was pending before Shri Ahmadi, the services of the complainant, who had been appointed as a "Boy Learner," by the Company since March 28, 1954, were terminated by the Company by a notice dated May 5, 1957. The complainant filed the present complaint on May 15, 1957 for his re-instatement and compensation alleging that the opponent company's action in terminating his services without obtaining the prior permission of the Tribunal concerned is illegal.

2. I was appointed as an Industrial Tribunal by the Government of Bombay under its Notification No. IDA, 1157, dated July 1, 1957. In exercise of the powers conferred on the President of the Industrial Court Bombay, under Government Notification, Labour and Social Welfare Department, No. IDA, 1157 (1), dated the 12th March 1957, read with section 33B of the Industrial Disputes Act, 1947, he transferred the present complaint to me for disposal as Industrial Tribunal.

3. The Industrial Disputes Act, 1947, was amended by the Industrial Disputes (Amendment and Miscellaneous Provisions) Act, 1956 which was published in the Gazette of India (Extraordinary) on August 28, 1956. By that Act, *inter alia*, sections 33 and 33A of the Industrial Disputes Act, 1947, were amended. These amended provisions of sections 33 and 33A were brought into force from March 10, 1957 by a Government of India Notification dated 1st March, 1957. The Industrial Disputes Act, 1957 was further amended by Act 18 of 1957 by which the definition of "Tribunal" given in section 2(*r*) of the former Act was amended by section 2 of the latter Act. While the main dispute [Reference (IT) No. 127 of 1957] and the present complaint were pending before Shri Ahmadi his services ceased to be available with effect from June 19, 1957.

4. For the sake of convenience I shall call the Industrial Disputes Act, 1947, prior to its amendment by the Industrial Disputes (Amendment and Miscellaneous Provisions) Act, 1956, as the unamended Act, and after its amendment, as the amended Act. I shall refer to the Industrial Disputes (Amendment and Miscellaneous Provisions) Act, 1956, as the amending Act.

5. Sections 33 and 33A of the amended Act were brought into force from March 10, 1957. If after that date an employer contravened the provisions of section 33 of the said Act, a complaint would lie under section 33A of the same Act. The termination of the complainant's services by the respondent took place in May, 1957. Without going into the question whether, on the facts stated by the Company, namely,

that the services of the complainant were terminated, not for any misconduct on his part, but for his unsatisfactory work during the period of his training, it was necessary for the Company to obtain approval of the Tribunal for the action taken by it under sub-section (2) of section 33 of the amended Act, it may be said that in law the Company should have sought such approval simultaneously with its action for termination of the complainant's service on May 5, 1957. At this material time, it was urged by Shri Setlur, Shri Ahmadi was not competent as Tribunal to accord approval to the respondent's action under the amended section 33 (2). He pointed out that under the amended section 2 (*r*) a "Tribunal" means an Industrial Tribunal constituted under section 7-A but Government had not constituted him as "Tribunal" by issuing a notification under section 7-A (*1*) of the said Act. He, therefore, urged that at the material time there was no Tribunal competent to accord approval to the respondent's action under section 33 (2) of the amended Act.

6. The definition of "Tribunal" given in section 2 (*r*) of the amended Act was further amended by Act 18 of 1957 and, according to the last amended definition "Tribunal" means an Industrial Tribunal constituted under section 7-A and also an Industrial Tribunal constituted before the 10th day of March, 1957. It was submitted by Shri Gokhale that the amended definition of "Tribunal" has been given retrospective effect from March 10, 1957, under the amending Act 18 of 1957 and therefore, Shri Ahmadi who had been constituted as "Tribunal" before 10th March, 1957, was competent to accord approval as Tribunal, to the respondent's action at the material time in May, 1957. If so, it was urged by Shri Gokhale, the respondent committed a breach of section 33 of the amended Act and, therefore, the complaint under section 33-A is tenable.

7. It is true that the definition of "Tribunal" was amended by Act 18 of 1957, so as to give retrospective effect to the amended definition from March 10, 1957. But the fact remains that till that Act was passed on June 6, 1957, Shri Ahmadi was without jurisdiction to accord approval under amended section 33(2). By amending the definition of the word "Tribunal" with retrospective effect the Legislature could not have sought to make the respondent's action illegal and penal under section 31 retrospectively. It was held in *Lauri* v. *Renad*, (1892) 3 Ch. 402 at p. 421, that a statute is not to be construed so as to have a greater retrospective operation than its language renders necessary. In *Eyre* v. *Wynn-Mackenzie* (1896) 1 Ch. 135, it was held by the lower Court that the plaintiff was not entitled to charge the mortgagors with profit costs

notwithstanding that the mortgage deed contained a convenant by the mortgagors to pay not only the mortgagor's debt but also "every other sum of money which may hereafter be advanced or paid by the mortgagor to or on account of or become owing to the mortgagee" by the mortgagors. The plaintiff did not appeal within the time limited by the rules of the Supreme Court for so doing. Some time later the Mortgagors Legal Costs Act, 1895, was passed. Section 8 of that Act was retrospective in operation. It was held by Lindlay, L.J., that the Act was not intended to interfere with judgments which had already been given by the Court.

8. The retrospective effect given to the definition of "Tribunal" by Act 18 of 1957, could not compel the Company to do what it was not required to do at the material time. If it was the intention of Legislature that all those employers who had not obtained approval to their action under section 33(2) of the amended Act on account of some legal impediment in their way should obtain such approval within a specified time after the amending Act (Act 18 of 1957), came into force, the Legislature should have specifically laid down a time limit after the passing of that Act to enable employers to obtain the necessary approval of the Tribunal. No such time limit was prescribed under Act 18 of 1957. I, therefore, hold that the present complaint even if it is construed as a complaint under the amended section 33A, cannot lie.

9. Shri Gokhale relied on section 30 of the amending Act and contended that this complaint is maintainable under section 33A of the unamended Act and, as Shri Ahmadi was a Tribunal appointed under section 8 of the unamended Act he could entertain a complaint for breach of section 33 of the unamended Act. Section 30 of the amending Act runs as follows: "If, immediately before the commencement of this Act, there is pending any proceeding in relation to an industrial dispute before a Tribunal constituted under the Industrial Disputes Act, 1947, as in force before such commencement, the dispute may be adjudicated and the proceeding disposed of by that Tribunal after such commencement, as if this Act has not been passed." Shri Gokhale submitted that a proceeding under section 33A is a proceeding in relation to an industrial dispute and it has to be disposed of as if the amending Act had not been passed. But it has to be noted that the proceedings in this complaint were not pending before the commencement of section 33 and 33A of the amended Act on March 10, 1957 and, therefore, they are not saved by section 30. In fact, the cause of action for the present complaint arose after that date and the complaint was also filed in about the middle of May 1957. Shri Gokhale tried to repel this ground by relying on the

wording of section 33A of the Industrial Disputes Act which lays down that a complaint under that section should be adjudicated upon as if it were a dispute referred to or pending before it. He laid stress on the words *or pending before it* and urged that a complaint under section 33A must be deemed to be pending so long as the main dispute is pending. According to him, the life of a proceeding under section 33A is co-extensive with that of the main dispute. This contention leads to startling results. The cause of action for a complaint under section 33A generally arises some time after the main dispute is referred for adjudication, that is, when the employer commits a breach of section 33. To date back the proceedings relating to such a complaint to the date of reference of the main dispute will have no basis on fact. Besides, it will be against all canons of construction to hold that a complaint, which has been disposed of during the pendency of the main dispute, is still surviving because the main dispute is pending. I cannot, therefore, agree that the present complaint is tenable under section 33A of the unamended Act. In any view of law, the complaint is not tenable, and, therefore, it is unnecessary to go into the question of fact. The complaint is, therefore, dismissed.

[IN THE SUPREME COURT OF INDIA.]

CROWN ALUMINIUM WORKS

v.

THEIR WORKMEN.

N. H. Bhagwati, S. K. Das and P. B. Gajendragadkar, JJ.

October 15, 1957.

WAGE STRUCTURE—ADJUDICATION OF—SCOPE OF ADJUDICATION UNDER INDUSTRIAL DISPUTES ACT, 1947—RIGHT OF INDUSTRY NOT ABLE TO PAY EVEN MINIMUM WAGE TO CONTINUE—REVISION OF WAGE STRUCTURE TO PREJUDICE OF WORKMEN—WHETHER PERMISSIBLE—DECISION OF TRIBUNAL AS TO NATURE OF PAYMENT MADE BY EMPLOYER—DECISION BASED ON SUFFICIENT GROUNDS—WHETHER SUPREME COURT WOULD INTERFERE WITH DECISION.

Their Lordships have laid down in this judgment the principles which should guide adjudication of industrial disputes under the Industrial Disputes Act, 1947, with special reference to disputes as to wage structure.

It has also been Held, *that* :

(*i*) *No industry has a right to exist unless it is able to pay its workmen at least a bare minimum wage. If an employer cannot maintain his enterprise without cutting down the wages of his employees below even a bare subsistance or minimum wage, he would have no right to conduct his enterprise on such terms.*

(*ii*) *There is no rigid and inexorable rule that a wage structure once fixed by an Industrial Tribunal can never be changed to the prejudice of the workmen.*

(*iii*) *Where there are sufficient grounds for the decision of a Tribunal that certain payments made by the employer to the workmen were not matters of bountry but formed part of the basic wage and dearness allowance payable to the workmen, the Supreme Court will not interfere with such a decision.*

Civil Appeal No. 235 of 1956.

B. Sen, S. N. Mukherjee and *B. N. Ghosh* for the management.

N. C. Chatterjee, D. L. Sen Gupta and *D. D. Chaudhury* for the workmen.

JUDGMENT.

The Judgment of the Court was delivered by

GAJENDRAGADKAR, J.—This appeal by special leave arises out of an industrial dispute between the appellant M/s. Crown Aluminium Works, Belur, represented by Jeewanlal (1929) Ltd., and its workmen represented by Bengal Aluminium Workers' Union. By their order dated July 31, 1952, the Government of West Bengal referred thirteen matters for adjudication to Shri S. K. Niyogi, who was appointed to constitute the Sixth Industrial Tribunal, for adjudication under section 10 of the Industrial Disputes Act, 1947. The learned adjudicator considered the pleas raised, and the evidence led, by the parties before him, investigated into the financial position of the appellant and pronounced his award on October 9, 1953, on all matters referred to him. Both parties were aggrieved by the award and that led to two cross appeals. On July 11, 1955, the Labour Appellate Tribunal disposed of these appeals by a consolidated order. The workmen appear to be satisfied with this order but the appellant is not and so the present appeal. The main grievance which Mr. Sen has made before us on behalf of the appellant is in respect of the revision made by the Appellate Tribunal in the wage structure which was constituted by the original Tribunal. Thus, the controversy between the parties in the present appeal lies within a very narrow compass ; nevertheless, it would be necessary to mention the history of the dispute in some detail in order to appreciate properly the points at issue between them.

It appears that in 1947 the first Omnibus Engineering Tribunal was constituted to adjudicate upon the industrial disputes for the engineering industry in West Bengal and the matters referred to the Tribunal included *inter alia* disputes in regard to basic wages, dearness allowance and leave. This Tribunal gave a comprehensive award which was published on June 30, 1948. The appellant was a party to these adjudication proceedings and was governed by the said award. Soon thereafter industrial disputes again arose between the engineering industry and its employees and these were referred to another Tribunal which in due course examined the disputes and pronounced its award. This award was published on September 21, 1950. By this award the dearness allowance fixed by the first Tribunal was increased on the ground of rise in the cost of living index and the leave rules prescribed by the earlier award were modified in the light of the provisions of the Indian Factories Act, 1948. After the first award had come into force the appellant revised its facility bonus from time to time with the object of keeping pace with the rise in the cost of living index. The result was that several components which constituted the wage structure paid by the appellant to its workmen left no cause for grievance to the workmen. So they did not raise any dispute for increase in their dearness allowance and the appellant and its workmen were not parties to the second arbitration proceedings. Meanwhile, a minor industrial dispute arose between the appellant and its workmen and it was referred to the arbitration of Shri G. Palit by the Government of West Bengal by their order dated November 24, 1950. One of the points referred to the Tribunal was in regard to the amount of increment which should be granted to workers in 1950, and the date from which it should be so granted. The appellant denied its liability to pay the increment on the ground that there was no wage structure which permitted such a claim. The appellant also urged before Shri Palit that its workers were on the whole handsomely remunerated. In this connection reliance was placed by the appellant on the payments made by the appellant to its workmen by way of special allowance and bonus, besides dearness allowance and standard wages. It would thus appear that the appellant resisted the claim of its workmen for the increment in wages on the ground that in the wage structure of the appellant additional components had been introduced which made ample provision for the rise in the cost of living. Shri Palit was, however, not impressed with this plea. He thought that by introducing these components in the wage structure the Managing

Director "chose to hold the key in his own hands so that he can manipulate the quantum of benefit under this head and could adjust it to the output in the factory". Shri Palit, therefore, granted the workmen's demands by allowing one anna per day increment though he frankly confessed that this was not based on any actual calculation. He accordingly directed the appellant to pay the arrears within one month of the award coming into operation to all workmen who were in the roll of the appellant at the end of 1950. Then Shri Palit addressed a word of caution to the appellant and said that it was necessary that the appellant should fix a wage structure as soon as practicable to secure durable peace in the factory. "It will be prudent", observed Shri Palit in his award, "for the Company to have a hide bound wage structure instead of having so many flexible component parts of the wage which merely will create unrest". This in brief is the previous history of the dispute between the appellant and its workmen.

On March 28, 1952, the appellant issued a notice to its workmen proposing to make certain modifications. The notice indicated that a reduction of the factory hours from 47 to 40 would be made, the facility bonus would be reduced by 3 as. per day and temporary dearness allowance for the salaried workers would be similarly reduced by 10% of the then current rates. The appellant pleaded in this notice that these economy measures had become necessary owing to the financial set-back of the appellant and would come into effect on June 1, 1952. The Union opposed these changes. A joint discussion was then arranged on June 2 and June 26, 1952. It appears that further economy measures were introduced for discussion between the parties by the notice dated May 30, 1952. These further economy measures related to the reduction of the facility bonus by a further amount of 6 as. per day, withdrawal of two hours' concession of special bonus and discharge of workers of the rolling mills department. The Union did not agree to any of these measures except the reduction of working hours from 47 to 42½ hours a week. Since joint consultations did not lead to any agreement, the appellant, by its notice dated June 27, 1952, intimated to the workers that the reduction of working hours and in the facility bonus and dearness allowance as notified on March 28, 1952, would be brought into operation from June 1, 1952. The workers were also told that the two hours' concession would be withdrawn from 1st July, 1952, and the workers in the rolling mills department would be discharged with effect from 1st August, 1952. The workmen resisted these proposals and took the industrial dispute arising therefrom to the Labour Commissioner immediately. Thereafter, a joint conference of the appellant and its workmen was held on 4th July, 1952. The intervention of the Labour Commissioner was not effective as the proposals made by him to resolve the dispute between the parties amicably were not acceptable to the parties. The Appellant thereupon discharged the workmen of the rolling mill department, 52 in number, with 14 days' notice pay and retrenched other 227 workers of various categories as from 26th July, 1952, with a similar notice pay. The Government of West Bengal found that conciliation was not possible and so the industrial dispute in question was referred to the Sixth Industrial Tribunal for adjudication.

As we are concerned in the present appeal only with the constitution of the wage structure and some questions incidental thereto we will now refer to the decisions of the lower Tribunals only in respect of these matters. The Sixth Industrial Tribunal considered the financial position of the appellant and revised and re-constituted the wage structure and the dearness allowance in the light of the Omnibus Engineering Awards in West Bengal published in 1948 and 1950. The Tribunal held that the two hours' concession, facility bonus and the food concession were in the nature of bounty gratuitously paid by the appellant and as such they could be withdrawn by the appellant at its pleasure. The Tribunal also came to the conclusion that since the wage structure had been revised and reconstituted properly, the appellant should be given liberty to abolish the said three concessional payments. It may be relevant to observe that the Tribunal's conclusion in regard to the character of the alleged concessional payments was based principally on the view that in his award Shri Palit had held that these payments were purely concessional payments and that the workmen had no right to claim them as constituents of their wage structure.

The Labour Appellate Tribunal has not agreed with this conclusion. The view that the Appellate Tribunal has taken is that these so-called concessional payments have been enjoyed by the workmen for a pretty long time as of right and as part of their basic wages and dearness allowance and as such they have become a term of the conditions of their service. Besides, the Appellate Tribunal has observed that it has been the convention with Industrial Tribunals not to reduce the existing emoluments of the workmen to their prejudice. In the result the wage structure constituted by the Tribunal was modified by the award of the Appellate Tribunal in respect of existing workmen. The main conditions introduced by these modifications were three :

"1. The total basic wages of a time-rated worker together with the two hours' concession immediately before 1-6-'52 shall hereinafter be called his existing basic wage.

2. The total of the temporary dearness allowance and the facility bonus as was available to a worker prior to 1-6-'52 and the food concession wherever admissible to a worker under the rules of the company shall hereinafter be called his existing dearness allowance, no matter if any portion of these benefits has been curtailed or stopped in the meantime.

3. The two hours' concession, the facility bonus and the food concession shall cease to have any separate existence distinct from the basic wages and the dearness allowance of the worker on and from the date when this decision comes into force, hereinafter called the relevant date."

Both the original and the Appellate Tribunals have agreed in providing that the existing basic wages and the existing total emoluments shall not be reduced.

For the appellant Mr. Sen has contended that the Labour Appellate Tribunal was in error in assuming that it has been the convention in industrial adjudications not to reduce the existing emoluments of the workmen to their prejudice in any case. He contends that just as the rise in the cost of living index or similar relevant factors may justify the revision of the wage structure in favour of the workmen, so should the revision of the wage structure be permissible in favour of the employer in case financial position of the employer has considerably deteriorated or other relevant factors indicate such a revision. Indeed Mr. Sen made it clear during the course of his arguments that in the present appeal he was more concerned to challenge the validity of the assumption made by the Labour Appellate Tribunal in that behalf, rather than the propriety or correctness of the actual modifications made by the Appellate Tribunal in its award. The point thus raised by Mr. Sen is no doubt of general importance and it must be considered in all its aspects.

Before dealing with this point, it would be relevant to refer to the findings made by both the Tribunals in regard to the financial position of the appellant. The present unit of the aluminium industry which was originally started by the Americans was taken over by the appellant from the Americans on August 9, 1951. The main business of the appellant is to manufacture house-hold utensils from aluminium circles. These circles were imported until the last war. During the war, import of these articles became difficult and so a rolling mills department for manufacturing circles from scrap materials was started. It is true that utensils made from such circles were inferior in quality, but import difficulties were insurmountable and so even these inferior utensils found a good market. As soon, however, as better quality circles became available the demand for these utensils rapidly decreased and the business began to incur loss. The management was thus compelled to close down the rolling mills permanently in February, 1952. As we have already mentioned, the workmen employed in the rolling mills were ultimately discharged on 15th July, 1952.

The appellant placed before the Tribunals below the relevant figures from the statements of accounts from 1947 to September 1952. Both the Tribunals have examined these figures and have come to the conclusion that the economic position of the appellant on the whole was none too bright. Fall in the sale of utensils was noticeable during these years and if the utensils were not disposed of in the market quickly they are likely to lose their lustre and glaze and would be even stained if they were to be stored in the godown for any length of time. This in turn would involve extra expenditure and would contribute to further losses. It appears to be the concurrent finding of both the Tribunals that the manufacturing cost in 1952, as in some preceding years, exceeded the sale price and this undoubtedly would be a disquieting feature in any industrial concern. The original Tribunal did not see any prospect of improvement in the appellant's financial position; whereas the Appellate Tribunal was disposed to take the view that as a result of the substantial retrenchment effected by the appellant "financial position of the relevant unit of the aluminium industry appears to have improved". It is in the background of these findings that Mr. Sen has contended that the wage structure constituted by the Appellate Tribunal would work a hardship on the appellant and his grievance is that in re-constituting the wage structure the Appellate Tribunal was very much influenced by the assumption that the wage structure can never be revised to the prejudice of workmen.

In dealing with this question, it is essential to bear in mind the main objectives which industrial adjudication in a modern democratic welfare state inevitably keeps in view in fixing wage structures. "It is well known", observes Sir Frank Tillyard, "that English Common Law still regards the wage bargain as a contract between an individual employer and an individual worker, and that the general policy of law has been and is to leave to the two contracting parties a general liberty of bargaining, so long as there are no terms against public policy. (The Worker and the State by Sir Frank Tillyard, 3rd Ed., p. 37). In India as well as in England and other democratic welfare states great inroad has been made on this view of the Common Law by labour welfare legislation such as the Minimum Wages Act and the Industrial Disputes Act. With the emergence of the concept of a welfare state, collective bargaining between trade unions and capital has come into its own and has

received statutory recognition; the State is no longer content to play the part of a passive onlooker in an industrial dispute. The old principle of the absolute freedom of contract and the doctrine of *laissez faire* have yielded place to new principles of social welfare and common good. Labour naturally looks upon the constitution of wage structures as affording "a bulwark against the dangers of a depression, safeguard against unfair methods of competition between employers and a guaranty of wages necessary for the minimum requirements of employees" ("Wage Hour Law" Coverage by Herman A. Wecht, p. 2). There can be no doubt that in fixing wage structures in different industries, industrial adjudication attempts, gradually and by stages though it may be, to attain the principal objective of a welfare state, to secure "to all citizens justice, social and economic". To the attainment of this ideal the Indian Constitution has given a place of pride and that is the basis of the new guiding principles of social welfare and common good to which we have just referred.

Though social and economic justice is the ultimate ideal of industrial adjudication, its immediate objective in an industrial dispute as to the wage structure is to settle the dispute by constituting such a wage structure as would do justice to the interests of both labour and capital, would establish harmony between them and lead to their genuine and wholehearted co-operation in the task of production. It is obvious that co-operation between capital and labour would lead to more production and that naturally helps national economy and progress. In achieving this immediate objective, industrial adjudication takes into account several principles such as, for instance, the principle of comparable wages, productivity of the trade or industry, cost of living and ability of the industry to pay. The application of these and other relevant principles leads to the constitution of different categories of wage structures. These categories are some times described as living wage, fair wage and minimum wage. These terms, or their variants, the comfort or decency level, the subsistence level and the poverty or the floor level, cannot and do not mean the same thing in all countries nor even in different industries in the same country. It is very difficult to define or even to describe accurately the content of these different concepts. In the case of an expanding national economy the contents of these expressions are also apt to expand and vary. What may be a fair wage in a particular industry in one country may be a living wage in the same industry in another country. Similarly, what may be a fair wage in a given industry today may cease to be fair and may border on the minimum wage in future. Industrial adjudication has naturally to apply carefully the relevant principles of wage structure and decide every industrial dispute so as to do justice to both labour and capital. In deciding industrial disputes in regard to wage structure, one of the primary objectives is and has to be the restoration of peace and goodwill in the industry itself on a fair and just basis to be determined in the light of all relevant considerations. There is, however, one principle which admits of no exceptions. No industry has a right to exist unless it is able to pay its workmen at least a bare minimum wage. It is quite likely that in under-developed countries, where unemployment prevails on a very large scale, unorganised labour may be available on starvation wages; but the employment of labour on starvation wages cannot be encouraged or favoured in a modern democratic welfare state. If an employer cannot maintain his enterprise without cutting down the wages of his employees below even a bare subsistence or minimum wage, he would have no right to conduct his enterprise on such terms. In considering the pros and cons of the argument urged before us by Mr. Sen, this position must be borne in mind.

The question posed before us by Mr. Sen is: Can the wage structure fixed in a given industry be never revised to the prejudice of its workmen? Considered as a general question in the abstract it must be answered in favour of Mr. Sen. We do not think it would be correct to say that in no conceivable circumstances can the wage structure be revised to the prejudice of workmen. When we make this observation, we must add that even theoretically no wage structure can or should be revised to the prejudice of workmen if the structure in question falls in the category of the bare subsistence or the minimum wage. If the wage structure in question falls in a higher category, then it would be open to the employer to claim its revision even to the prejudice of the workmen provided a case for such revision is made out on the merits to the satisfaction of the Tribunal. In dealing with a claim for such revision, the Tribunal may have to consider, as in the present case whether the employer's financial difficulties could not be adequately met by retrenchment in personnel already effected by the employer and sanctioned by the Tribunal. The Tribunal may also enquire whether the financial difficulties facing the employer are likely to be of a short duration or are going to face the employer for a fairly long time. It is not necessary, and would indeed be very difficult, to state exhaustively all considerations which may be relevant in a given case. It would, however, be enough to observe that, after considering all the relevant facts, if the Tribunal is satisfied that a case for reduction in the wage structure has been established then it would be open to the Tribunal to accede to

the request of the employer to make appropriate reduction in the wage structure, subject to such conditions as to time or otherwise that the Tribunal may deem fit or expedient to impose. The Tribunal must also keep in mind some important practical considerations. Substantial reduction in the wage structure is likely to lead to discontent among workmen and may result in disharmony between the employer and his employees; and that would never be for the benefit of the industry as a whole. On the other hand, in assessing the value or importance of possible discontent amongst workmen resulting from the reduction of wages, Industrial Tribunals will also have to take into account the fact that if any industry is burdened with a wage structure beyond its financial capacity, its very existence may be in jeopardy and that would ultimately lead to unemployment. It is thus clear that in all such cases all relevant considerations have to be carefully weighed and an attempt has to be made in each case to reach a conclusion which would be reasonable on the merits and would be fair and just to both the parties. It would be interesting to notice in this connection that all the Tribunals that have dealt with the present dispute have consistently directed that existing wages should not be reduced to the prejudice of the workmen. In other words, though each Tribunal attempted to constitute a wage structure in the light of materials furnished to it, a saving clause has been added every time protecting the interests of such workmen as were drawing higher wages before. Even so, it would not be right to hold that there is a rigid and inexorable convention that the wage structure once fixed by Industrial Tribunals can never be changed to the prejudice of workmen. In our opinion, therefore, the point raised by Mr. Sen must be answered in his favour subject to such relevant considerations and limitations as we have briefly indicated.

Mr. Sen is, however, not right in contending that the final decision of the Appellate Tribunal is based solely or even chiefly on the alleged convention to which the Appellate Tribunal has referred. As we have already pointed out, the tribunal has also found that substantial retrenchment which has been sanctioned by both the Tribunals would improve the financial position of the appellant. In the opinion of the Appellate Tribunal, the downward tendency in the cost of living index on which the appellant partly relied could not be considered in the present proceedings since no specific issue had been referred to the Tribunal in that behalf. Besides, enough material had not been produced to show to what extent the cost of living index had fallen and whether this fall was temporary or had come to stay. The Appellate Tribunal, it appears, thought that the wages paid by the appellant to its workmen are the irreducible minimum or may at best be in the region of fair wages with a small margin over the minimum wage". If, in reaching its final conclusions, the Appellate Tribunal has relied not only upon the alleged convention but also upon the other circumstances just mentioned, it would not be fair to say that its conclusion is vitiated in law or is otherwise unsound. Normally, this Court would be slow to entertain an objection that some of the considerations which have weighed with the Appellate Tribunal in reaching its final decision are either invalid or are not borne out by sufficient evidence on record.

There is another point which Mr. Sen has raised before us in regard to the true character of the concessional payments made by the appellant to its workmen and which have been incorporated by the Appellate Tribunal in the wage structure. The Appellate Tribunal has taken the view that these concessional payments really amounted to payments made to the workmen as a matter of right and it is the correctness of this conclusion that is challenged before us by Mr. Sen. Let us then consider the genesis of these payments. Prior to the new Factories Act, the appellant's workmen worked on an average for 59 hours of work made up of the usual 54 hours of work and overtime. After the Factories Act came into force, the working hours had to be reduced but in order to compensate the time-rate workers for reduction in their wages, the management added to the daily earnings of such workers the wages for two hours. The additional two hours' wages thus awarded to the workers came to be known as two hours' concession or special bonus. This bonus was introduced in August, 1946. In April, 1945, facility bonus had been introduced at 3 as. per day for workers getting basic wages equal to or less than 10 as. per day and 4 as. per day for workers whose basic wages were over 10 as. per day. It appears that this facility bonus was revised from time to time in the upward direction, and it used to be paid prior to June, 1952, at a graduated scale linked to the basic wages in slabs varying from 6 as. to 12 as. per day. Besides, the appellant introduced food concession to workers employed prior to 1951. Thus the constitution of the wage structure in the appellant's concern included dearness allowance, facility bonus and food concession. In dealing with the true nature of these payments it is necessary to take into account the appellant's case as deposed to by the appellant's Labour Officer and Assistant to the Manager, Shri Jaisuklal Shah. According to Shri Shah, the facility bonus was an additional allowance for the high cost of living very much on the same footing as dearness allowance. "Two hours' allowance", said Shri Shah, "is referred to as special bonus or extra bonus. It was paid *because the workers demanded* and it was

possible to pay it at that time". These statements lend considerable support to the workmen's case that the payments in question constituted a part of the wage structure of the appellant. Indeed, even in the statement of the appellant before the Industrial Tribunal in the present proceedings, it is specifically averred in paragraph 2 that prior to June, 1952, the Company's pay structure consisted of five items, *viz.*, (1) basic wage, (2) dearness allowance, (3) special bonus or extra bonus, (4) facility bonus or special allowance, and (5) food concession. The attitude adopted by the appellant before Shri Palit is also consistent with this pleading and with the evidence given by Shri Shah in the present proceedings. Before Shri Palit, the appellant had urged that there was no occasion to grant increment to its workmen because under the categories of several allowances the Company had substantially constituted its wage structure to the benefit of the workmen. In this connection, it would also be material to point out that it was because these additional payments were made by the appellant to its workmen that the workmen did not raise any dispute and did not join the arbitration before the Second Engineering Tribunal. Besides, these payments have been made for some years and that also is a relevant factor to consider in dealing with the true character of these payments. If the Labour Appellate Tribunal took into account all these facts and held that the payments in question are not matters of bounty but that, in essence and in substance, they form part of the basic wage and dearness allowance payable to the workmen, we see no reason to interfere with its conclusion. It is not disputed before us that if this conclusion is right, the Labour Appellate Tribunal has properly revised the wage structure as constituted by the original Tribunal and included the payments in question in appropriate categories.

There is one more point which may be mentioned before we part with this case. Mr. Sen incidentally argued that the result of the award passed by the Labour Appellate Tribunal is that there will be two scales of wage structure, one for those who are already in the employment of the appellant and the other for the new entrants. Since we have held that the modifications made by the Appellate Tribunal in favour of the existing workmen cannot be successfully challenged by the appellant, we do not think it necessary to consider whether wage structure which has been fixed by the Appellate Tribunal in regard to new entrants into the service of the appellant is justified or not.

The result is that both the contentions raised by Mr. Sen substantially fail. The appeal must accordingly be dismissed with costs.

[IN THE INDUSTRIAL TRIBUNAL, BOMBAY.]

ARVIND BOARDS & PAPER PRODUCTS LTD.

v.

GAJARI LADI AND OTHERS.

Shri S. H. Naik.

August 22, 1957.

INDUSTRIAL DISPUTES ACT, 1947, SECTION 33(2)—APPROVAL OF ACTION TAKEN BY EMPLOYER AGAINST WORKMAN—SCOPE OF ENQUIRY BY TRIBUNAL—WHETHER TRIBUNAL CAN SIT ON APPEAL OVER ACTION OF EMPLOYER.

MISCONDUCT—ILLEGAL AND UNJUSTIFIED STRIKE—DISMISSAL BY MANAGEMENT AFTER PROPER ENQUIRY—SELECTION OF LEADERS FOR PUNISHMENT—LACK OF EVIDENCE BY WORKERS ON BEHALF OF MANAGEMENT—WHETHER AFFECT LEGALITY OF DISMISSAL—DISMISSAL ORDER SIGNED BY WORKS MANAGER ALSO—WHETHER INVALID.

The words "......pass, as expeditiously as possible such order in relation thereto as it deems fit" in section 33(2) of the Industrial Disputes Act, 1947, only mean that the Industrial Tribunal should determine whether a prima facie *case has been made out by the employer and the employer is not actuated by any* mala fides, *or unfair labour practice or victimisation. The Tribunal should pass an order either allowing the application of the employer or dismissing it according as it deems fit in the circumstances of each case and not impose any conditions on the employer when granting the permission.*

The management arranged for the exercise of their franchise by their workmen on an election day by closing the first shift two hours earlier and starting the second shift two hours later. The workmen, however, wanted that the factory should be closed on the election day, and struck work on that day. The strike being during the pendency of proceedings before the Industrial Tribunal, was illegal. The management charge-sheeted the leaders who had instigated the strike and after a proper enquiry dismissed them for instigating an illegal and unjustified strike. On an application by the management under section 33(2) of the Act for confirmation of their action, Held:

(i) that the management having made adequate arrangements for voting by its workmen and given notice of the arrangements, the strike was unjustified;

(ii) that the management was justified in selecting the leaders who instigated the strike and taking action against them;

(iii) that the fact that during the enquiry by the management only the managerial staff gave evidence against the workmen and that not even

one worker was cited by the management, did not vitiate the enquiry, especially when ill will on the part of the management's witnesses was not even suggested; and

(iv) that where the enquiry was held by the manager and the dismissal order was also signed by him, the fact that the works manager also signed the dismissal order would not invalidate the order of dismissal.

The action of the management in dismissing the workmen was, therefore, approved.

Applications (IT) Nos. 117 to 126 of 1957 in Reference (IT) No. 188 of 1956.

I. M. Nanavaty with *T. T. Pandya* for the management.

K. K. Khadilkar with *N. P. Desai* for workmen.

ORDER.

These are ten applications under section 33(2) of the amended Industrial Disputes Act, 1947, filed by the Arvind Boards and Paper Products Ltd., Bilimora (hereinafter referred to as "the Company") for approval of their action of dismissal taken against ten workmen who are the opponents in these applications. These applications were originally pending before Shri M. I. Ahmadi, but they were transferred to me along with Reference (IT) No. 188 of 1956, by the President of the Industrial Court to whom Government have delegated their power of transfer vested in them by virtue of section 33 B of the Industrial Disputes Act. As the misconduct complained of arose out of the same set of circumstances and, as the points of fact and law arising in all of them are the same, they were all consolidated and heard together and are disposed of by this common decision.

2. The opponents in applications Nos. 119, 120 and 134 of 1957, were the workmen working in the second shift of the Company's factory and the opponents in the remaining applications were those working in the first shift. The first shift commences at 8-00 a.m. and closes at 4-00 p.m. and the second shift starts at 4-00 p.m. and closes at 12-00 p.m. The third shift starts at 12-00 p.m. The process of manufacture carried on by the Company in its factory is a continuous process and, therefore, the three shifts work one after the other in suceession. The 6th March, 1957, was an election day at Bilimora. The Company did not close its factory on that day but it says that in order to enable their workmen to exercise their franchise it had directed the first shift to be closed at 2-00 p.m. instead of at 4-00 p.m. and the second shift to begin at 6-00 p.m. instead of at 4-00 p.m. The Company alleges

that it had put up a notice to the above effect on its notice board on March 4, 1957. The case made out by the Company in these applications is that in spite of the facility provided as above for the workmen to exercise their votes most of the workmen of all the three shifts illegally struck work on March 6, 1957, and did not report for work. A few men who came for work were marked present in the musters. The opponents took part in the said illegal strike and also instigated other workmen to strike work and they carried on picketing at the gate of the factory to prevent workers from going for work. On March 7, 1957, after the workmen of the first shift started work at 8-00 a.m. most of them struck work at 8-30 a.m. acting in a concerted manner and left their respective departments and went away. They however, resumed work later on at 10-30 a.m.

3. For the above act of misconduct the opponents were served with a show cause notice with an order of suspension pending inquiry on March 6, 1957. After the opponents submitted their explanations an inquiry was held when the witnesses for the Company were examined in their presence and they were cross-examined by the opponents. At the close of the inquiry the opponents refused to submit their explanations and they also refused to sign the inquiry papers.

4. As a result of the inquiry held against the opponents the Company came to the conclusion that they did take part in a strike which was not only illegal but unjustified. The Company, therefore, passed an order of dismissal against the opponents. The order of dismissal was served on the opponents with the order for payment of one month's wages and, therefore, the Company has made these applications for approval of their action as required by the provisions of sub-section (2) of section 33 of the Industrial Disputes Act.

5 The opponents have resisted the applications on the following grounds. The Company had in the beginning charge-sheeted 12 workmen most of whom were either the office-bearers of their Union or were active members thereof. In the case of two workmen Naran Jiva and Kantilal Revel, the management, after completing the inquiry and arriving at the same findings as in other cases, re-instated them from April 5, 1957, and paid them their lost wages. The language used in all the charge-sheets is the same irrespective of whether a particular workmen was not on duty on the day in question or was on casual leave on that day and whether the worker concerned was in the second or the third shift. The management issued charge-sheets indiscriminately and without any foundation for the same. They brought a charge of strike against the opponents to disrupt their Union.

6. The workmen had sent a representation on February 28, 1957, to the management to close their factory on March 6, as that was the polling day so as to facilitate the casting of votes by the workmen living in different villages. But the management paid no heed to this request. They did not put up a notice on March 4, on the notice board regarding the change in the shift hours as alleged by them. The notice in fact was put up at 9-30 a.m. on the 6th March by one Jayantilal Desai who is a clerk working in the Company. The Company put up this notice when they saw that the workers had not reported themselves for duty. The Government of India as well as the Government of Bombay had made a recommendation to industrial concerns to close their establishments on March 6, but this management did not respect that recommendation.

7. It is not true that the workmen went on strike on March 6, and picketed at the factory's gate. It is not true that they went on strike on the 7th March, from 8-30 a.m. till 10-30 a.m. When the workmen went to work on the 7th at 8-00 a.m. the supervisors insulted them for not having come for work on the previous day and, put out by these insults, they went out of the factory but came back for work when the management assured them that they did not mean any insult to the workers. The evidence given by the Company's witnesses is false and untrue. The workmen of the Company live in different villages within a radius of about ten miles from the factory and they had to attend the polling stations set up in different villages by walking on foot.

8. The first contention raised by Shri Khadilkar who appeared for the opponents is as to the scope of an inquiry under sub-section (2) of section 33 of the Industrial Disputes Act. He urged, relying on the expression "hear such application and pass, as expeditiously as possible, such order in relation thereto as it deems fit" of sub-section 5 of section 33 that a Tribunal hearing an application made under sub-section 2 of section 33 has full power to go into the merits of the matter and pass such orders on merits as it deems fit. This point has been answered against the opponents by my learned predecessor Shri Ahmadi* in an exhaustive decision. It has been now well established by a series of decisions of the Supreme Court that an Industrial Tribunal has no jurisdiction in an application under section 33 to consider whether the punishment meted out by an employer to his workmen is harsh or excessive and that the only jurisdiction it has under that section is to determine whether a *prima facie* case for meting out such punishment has been made out by the employer and the employer is not actuated by any *mala fides*, or unfair labour practice or victimisation. Once the Tribunal comes to the conclusion that the inquiry held by the employer was fair

*See [1957] 12 F.J.R. 334—Ed.

and no principles of natural justice have been violated in the conduct of the inquiry and the employer *bona fide* comes to the conclusion that a particular punishment should be meted out to the workers concerned, the Tribunal has no jurisdiction to substitute its own judgment in place of the employers in regard to the quantum of punishment. The latest authority on this point is the decision of the Supreme Court in *Caltex (India) Ltd.* v. *Eugene Fernandes and another*, [1956] 11 F.J.R. 287. Judged in the light of these principles the words "pass, as expeditiously as possible such order in relation thereto" occurring in sub-section 5 of section 33 can only mean that the Tribunal should pass an order either allowing the application or dismissing the application according as it deems fit in the circumstances of each case, and not impose conditions on the employer while granting the permission. I have, therefore, to decide these applications bearing in mind the above principles with regard to the scope of my jurisdiction in deciding them.

9. The next contention urged by Shri Khadilkar was that these applications are not tenable as they were not made on the same date on which the order of dismissal was served on the opponents. It is, however, not necessary to go into the merits of this contention as the statements Ex. C-1 put in by the Company show that the applications were made on the very day on which the order of dismissal was served on the opponents.

10. Shri Khadilkar next submitted that the action taken by the Company against the opponents is not *bona fide* and the Company was actuated with a desire to victimise the office bearers and active members of his trade union and, therefore, the Company has selected for dismissal only such of the workmen as are either office bearers of the Union or are active members thereof. He further submitted that the inquiry itself was not an honest and *bona fide* inquiry and there was no independent evidence on behalf of the Company to foist any responsibility on the opponents. It is important to note, however, that the opponents are not all office bearers of the Union. Some of them were members of the Union. There is no significance in their description as "active members" of the Union, because it is not known what the word "active" connotes. There is no evidence that they are the "active" members of the Union. The secretary or secretaries of the Union are not among the opponents and the treasurer, though charge-sheeted, was let off as a result of the inquiry. Besides, it is quite natural that the office bearers of the Union, being the leaders of the Union, should take a more prominent part in the strike than ordinary members and, therefore, it is easy for the management to find out who had taken a leading role in the strike. The notice put up by the Company after the strike states

that the management had taken a note of the persons who had carried on picketing at the factory gate. Among the opponents are three women who are not office bearers of the Union. Neither in the written explanations of the opponents nor in the cross-examination of the Company's witnesses was it ever hinted that either the management or the witnesses who gave evidence against the opponents in the inquiry bore any ill will or grudge against the opponents. The opponents have admitted in their written statement that on the 28th February, some of the workmen had made a representation to the Company to close the Factory on the 6th March, and, as they did not do so, the workers did not turn up for work. The fact that there was a strike on the 6th March is tacitly admitted by the opponents in their written statement. If so, some people must have played a leading part in it.

11. The next contention urged by Shri Khadilkar was that the charge against all the opponents had been framed in almost the same language and the charge reads as if they had all proceeded on strike even though one of them was on leave, another on weekly off and two others were not working in the first shift. As instances, he referred to the opponents Maria Babar, Rama Dahya, Bala Jina and Amli Mangi. It is true that Maria Babar and Rama Dahya were not the workers working in the first shift but the charge against them is not of having taken part in the strike but of having instigated it. Amli Mangi, no doubt, was on leave on March 6, but the charge against her clearly states that, although she was not to work on the 6th morning she came to the factory gate to organise the strike and carry on picketing. Similarly, although a charge was first brought against Bala for having taken part in the strike the charge was amended later on and a charge similar to that framed against Amli Mangi was framed against him. I cannot, therefore, accept the contention that charges divorced from facts were indiscriminately framed against the above opponents.

12. Now with regard to the evidence brought against the opponents it is the works manager Shri Zaveri, the shift supervisors Desai and Chayya and the time-keeper Raval who gave evidence against them and their evidence brings home to the oppoents the charge brought against them. As I have shown above, it is neither alleged nor proved that these persons carried any rancour against the opponents. There is no reason to discard their evidence as unworthy of credence. Shri Khadilkar stated that the Company should have called some from among the few workers that worked in the factory as witnesses in support of their case. But it is not the quantity but the quality of evidence that should weigh with the management in inquiries like this. Besides, there was no assurance

that those few workers would have stated the truth when all the workers belonged to the same Union or when they were afraid of risk to their person or property if they gave evidence against the majority. I am not, therefore, prepared to accede to Shri Khadilkar's contention that the inquiry held against the opponents and the action taken against them are both *mala fide*.

13. The next point taken by Shri Khadilkar is that the Company has not complied with the rules of natural justice. I do not know wherein lies the want of compliance with the rules of natural justice in this case. A charge was framed against each of the opponents and he was called upon to submit his explanation thereto. Witnesses for the Company were examined in the presence of the opponents and they were asked to cross-examine the witnesses. The opponents were asked to give their explanation to the circumstances in the evidence brought by the Company and to bring in defence evidence, if any. The Company held the inquiry in accordance with the procedure prescribed in Standing Order 24 which embodies in itself the principles of natural justice.

13A. Shri Khadilkar relied on the decision of the Labour Appellate Tribunal in *Caltex (India) Ltd., Madras* v. *Their Workmen*, [1955] 2 L.L.J. 693, wherein it has been held that mere participation in an illegal strike could not be considered to be a ground for dismissal of workmen concerned and that where such strike was started by the workmen in respect of a legitimate and *bona fide* grievance, and when it was conducted in a peaceful manner, without indulging in acts of violence or subversive activities, participation in such strike could not be considered to be a ground for dismissal. He urged that the strike in this case was justified and it was in assertion of a *bona fide* claim for closure of the factory on the 6th March. He did not contend that the strike was not illegal. The strike was resorted to during the pendency of the dispute in Reference (IT) No. 188 of 1956.

13B. I cannot agree that the strike in this case was justified when the management had made sufficient arrangement for the workers to cast their votes and had given timely intimation of such arrangement to the workers. The workers selected for punishment are all those who had taken a leading part in the strike. Besides, it is clear on the authorities referred to above that it does not lie within my jurisdiction in these proceedings to go into the question of the quantum of punishment meted out to the opponents.

14. Shri Khadilkar complained that the manager had not taken into consideration the gravity of the misconduct alleged, the previous record of the opponents and the extenuating or aggravating circumstances that

existed in this case as required by clause 6 of the Standing Order 24 and that is why the punishment meted out to the opponents is unduly harsh. According to the decision of the Supreme Court cited above it does not lie in my power to substitute my judgment in place of the management's with regard to the quantum of punishment. The fact that the procedure prescribed under Standing Order 24 was followed in this case shows that the above requirement of clause 6 must also have been taken into account by the manager. The management in this case had made arrangements to enable the workers to cast their votes by closing the first shift at 2-00 p.m. and commencing the second shift at 6-00 p.m. A notice to this effect had been put up on the notice board on the 4th March. No doubt the opponents have denied the posting of this notice on the 4th but the Company's witnesses have made a categorical assertion as to the date of notice in their evidence given in the inquiry and they have not been cross-examined on that point. The notice bears the date 4th March, and I have no basis to hold that it is ante-dated. In the letters which some of the workers addressed to the Company they did not complain of the notice not having been posted on the 4th. Not only was a notice put up on the 4th about the arrangement made by the management to exercise their votes but the arrangement had been personally explained by the works manager and the shift supervisor concerned to the workers of the first and second shifts on the 3rd March. Having previous notice of the arrangement made by the management the workers must not have begun their first shift work at 8-00 a.m. but carried on demonstrations and picketing at the gate on the morning of the 6th. The management took a serious view of the action taken by the opponents on account of the arrangement they had made to enable workers to exercise their votes and the previous notice thereof given by them. Any way, I have no basis to hold that the punishment meted out to the opponents is unduly harsh and I have no jurisdiction to go into that question.

15. Shri Khadilkar made a grievance of the fact that no finding was recorded by the management on the charge and that the order of dismissal passed against the opponents was signed by Shri Zaveri, the works manager, who gave evidence against the opponents. The inquiry was held by Shri Pandya, the manager of the factory. Shri Zaveri, the works manager of the factory who was a witness to the incident in question, gave evidence before him. The order of dismissal was signed by both the works manager as well as the manager of the factory. The authority competent to hold the inquiry was the "manager" which, according to the Standing Orders, means the person who for the time being managed Arvind Boards and Paper

Products Ltd. That was Shri Pandya. He held the inquiry and he signed the dismissal order. The fact that Shri Zaveri also signed the dismissal order would not invalidate that order. The dismissal order clearly states what the finding of the inquiry officer was.

16. From the evidence adduced in this case, I find that the Company has complied with all the requirements laid down by the Supreme Court. I, therefore, approve of the action taken by them against the opponents.

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