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INDIAN FACTORIES JOURNAL

A FORTNIGHTLY JOURNAL OF THE LAW RELATING TO FACTORIES, LABOUR, WORKMEN'S COMPENSATION, INDUSTRIAL DISPUTES, EMPLOYEES' INSURANCE, PAYMENT OF WAGES, PROVIDENT FUNDS, LAW REGULATING WORK IN MINES ETC.

WITH

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

CHIEF EDITOR :

A. N. AIYAR, B.A., B.L.,

Senior Advocate, Supreme Court,
Editor, 'Income-tax Reports' and 'Company Cases'.

EDITOR :

T. A. RAJ GOPAL, B.A., B.L.,

Advocate, Madras High Court.

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INDIAN
FACTORIES JOURNAL

VOLUME XII—PART VIII

INDIAN LABOUR CONFERENCE.

Union Labour Minister's Address.

We reproduce below the full text of the address of the Hon'ble Minister for Labour, Government of India, delivered at the Indian Labour Conference on the 11th July, 1957. Apart from indicating the attitude of the Government in regard to labour problems, the significant fact which it reveals is that the Government has now discovered that all is not well with the progress of industrial relations in the country. The public sector which is now overshadowing the private sector has now made the Government look at the problems relating to industrial relations from an angle from which the Government would not or did not view them—from the angle from which an employer would view them. Even though the Government is a partner in every industry in this country—a partner who does not sweat or labour like the workmen, nor a partner who takes the risk and trouble of conducting the industry like the employers, but a partner who only comes for his share of the profits when they have been made—so far it has only been offering gratuitous advise to the employers as if it had no interest in the business or undertaking. Only the wearer knows where the shoe pinches.

The speech is replete with sound principles and advise which should have been discovered and put into practice much earlier, like principles for the fixation of wages and rationalisation and those relating to discipline in an industry, and we fervently hope that these principles will hereafter guide those who have the responsibility of moulding the future of industrial relations in this country.

Following is the text of the Minister's address :—

"I welcome you to the 15th session of the Indian Labour Conference. This is taking place under the shadow of the death of a loved and valued colleague, Shri Anugrah Narain Sinha. We mourn this loss.

I feel that I am speaking to you on a momentous occasion. I wish to talk to you with the utmost candour and without reserve. The proceedings of the Conference have an unusual significance. It arises partly from the fact that many of the subjects listed for consideration carry more than ordinary importance. It is more so because we are passing through a critical phase in the economic development of our country. My special concern at the moment is our Second Five-Year Plan.

The Plan sums up the hopes and aspirations of the people of the country. To all connected with industry, it offers an expanding horizon and a widening field of opportunity. The question that we have to ask ourselves in this context is what each one of us is prepared to do for the Plan. The question becomes pertinent now because the Plan has reached a stage in its career when to ensure its success we have to use all the energy we can muster together to push it along its path.

HIGHER PRODUCTIVITY.

The difficulties the Plan is encountering now are a matter of common knowledge. To an extent, the success of the Plan rests on factors outside our control, but in a very large measure these difficulties can be solved by ourselves through united endeavour and vigorous action. There are several measures which the country has to adopt to ensure the fulfilment of the Plan, but the most effective and the most fruitful of them all can be described as the achievement of higher productivity in every aspect of our economic life. We have to extract every ounce of advantage from our limited resources. From whatever productive assets we have at present we can achieve much bigger results than are being visualised in the ordinary course.

Those engaged in an industry in one capacity or another have a special obligation in this respect. The Plan provides for a 64% increase in industrial production in the five-year period. In terms of investment, the Second Five Year Plan steps up the share of industry in the public and private sectors from 300 crores to 1100 crores, i.e., by over 250%. The realisation of these targets of the Plan calls for very special efforts on the part of all especially the workers and the management. I hope that the claims of the Plan will occupy the centre of our thoughts in the entire course of our deliberations in this Conference.

WORKERS' EARNINGS.

From several directions the principal items of the agenda bear on this objective. We are going to consider the question of wage policy and the provision of housing accommodation. I have been expressing the feeling on every occasion that in spite of the increase in wages in recent years in money as well as in real terms, workers' earnings and their standard of living are too low. I adhere to this view. I cannot help it when I think of the houses and the

environment in which the workers live and the kind of food, education, clothing and other amenities which become available to them. I also realise that these deficiencies are a part of the general problem of poverty in the country and what the working class lacks cannot be made up to them for the most part without a corresponding increase in output and productivity. A rising standard of living must be matched by increasing levels of production.

We are going to deal with the question of rationalisation in some form in the Conference. Rationalisation is a good word but it has come to possess a bad odour. Workers are apt to resist proposals for improvements in plant and processes which may lead to a shrinkage in the volume of employment. This is a justifiable attitude in the conditions of our country. I would have no hesitation in making the admission that I myself have come in the way of several such schemes. The existing employment of those who have entered the industry must be protected in one form or another, but the manner of doing so must be such that it does not defeat the very object we have in view. The question of potential employment is also raised in the same connection. It is a valid issue. I would, however, urge that potential employment should be considered in a wider context, since too narrow a view of it may not be in keeping with our own aim of securing expanding opportunities for employment.

PLAN FOR EMPLOYMENT.

I may also make the plea that the attitudes towards industrial practices which were fully rational in the static economy of the past years become untenable in a period of all round expansion. The natural reaction of workers to innovations which have an impact on employment has now to be revised in the light of the implications of a planned economy. A plan for economic development has also to embrace a plan for employment. The massive investments in the plan must enlarge the extent and the range of employment. At the same time higher standards of living which are made possible as a result of the Plan should lead to a growing demand for the products of industry. But it is only higher productivity levels which can create the requisite surpluses for larger investments as well as higher standards of living. The labour movement owes it to the would-be new-comers into industry as well as to the rest of the community that these fundamentals are not ignored in practice.

We cannot also afford to be oblivious of the fact that every year there is a net addition of 1·8 million to 2 million persons to the working force in the country on account of the continuous increase in population. It must be our common aim that the total effect of our policies is the creation of maximum employment in the country, accompanied by a steady rise in living standards. This will also inevitably mean, for the workers and their children, opportunities of a varied kind, at higher levels of skill. If we let our ideas and proposals to be always tested on this touchstone, I am sure we can reach agreed conclusions about most things and our differences will be confined to a very small area.

INTEGRATED APPROACH

The problem of productivity has, on the worker's side to be considered in intimate relation to his outlook and attitude, his degree of training, the material incentives and the environment in which he works and lives. The various items on the agenda—wage policy, housing, training, workers' participation in management, discipline, workers education—have all to be treated as parts of an integrated approach to the attainment of higher standards in respect of worker's performance as well as their well-being.

As regards wage policy, I am not proposing a wage freeze and I am sure also that this Conference will not give countenance to any demand for a general rise in wages, irrespective of its feasibility in particular conditions. If it becomes imperative, in certain circumstances, that the workers should accept a voluntary restraint on wage increases in the national interest, I hope they will not set their face against it; but such an emergency will also call for the presence of other concomitant conditions which in my opinion do not obtain today. It is also obvious, however, that at this juncture any demands, decisions or settlements with regard to wages must keep fully in view the fact that the prevailing prices are abnormally high and wide gaps in the resources needed for seeing the Plan through are staring us in the face. Besides, the capacity of the industry to pay, the inter-relation of remuneration and output and the interests of the consumers have an immediate relevance in the present context. It is even more essential that in the case of bonus, systematic links must be developed with the profits of the enterprise on the one side and the efforts of the workers in terms of output on the other.

WAGE DETERMINATION

The task of wage determination is beset with so many complexities that it is not surprising that decisions sometimes present anomalous features. It is our experience that a succession of appeals does not necessarily yield satisfactory results. A fully balanced settlement of the parties' claims can only arise from a process of give and take, based on an intimate knowledge

of conditions, which the affected parties alone can undertake. It is the absence of dependable criteria and forms which hampers the work of adjudication and discourages efforts at amicable settlement between the parties. The unanimous report of the Committee on Fair Wages has presented certain useful concepts in dealing with the question of wages. The principles laid down in the Report will naturally furnish a basis for the decisions of the wage fixing authorities. But need is being felt for more precise guidance which, while providing for a variety of circumstances, may create a more sure and scientific ground for fixation of wages than is available now. The first steps in this direction have been taken through the Study Group in the Planning Commission, which has assembled a certain amount of material on the subject for your consideration.

The question of housing has been brought up for discussion because progress in this direction has not been such as to give much satisfaction. The vital importance of housing for the worker as a human being and in relation to his contribution to industry is not denied by anyone but I feel that much more could have been achieved and that the possibilities in this respect have not been fully used. Let us now give further thought to the subject and discuss it in all its bearings so that measures can be devised to ensure much speedier progress in the sphere of industrial housing.

TRAINING FOR SUPERVISORS

Training is another essential element in the programme for promotion of productivity. You have before you a paper on T.W.I. (Training Within Industry). This deals with a relatively simple form of training for supervisors. But it yields results. The crucial role that the middle and lower rungs of management play in maintaining good labour-management relations and increasing industrial efficiency is well known. There are, of course, other forms of training for such personnel. But within the limitations of our circumstances, T.W.I. offers the opportunity of training up our supervisory personnel on an extensive scale within a relatively short time. The paper before you sets out in some detail what has so far been attempted in this field. With active co-operation from the employers' and workers' organisations, the T.W.I. movement can operate as a vital force in raising the level of efficiency and improving employer-employee relations in our industrial undertakings.

Another aspect of the training programme relates to apprenticeship and training of craftsmen. We have an apprenticeship training scheme which we propose to operate on a voluntary basis. We have also a modest programme of starting a number of training centres for the purpose of training craftsmen. But we are up against difficulties in obtaining the required equipment from abroad. Yet the industrial expansion envisaged during the Second Five Year Plan makes it imperative that adequate provision be made for supply of skilled manpower. The only solution I can think of in such a situation is to seek the co-operation of the employers in providing training facilities in their undertakings. I hope the advantage of building up a regular supply of skilled manpower will be easily seen and employers will fully co-operate in making these training schemes a success.

NEW ENDEAVOUR

Workers' participation in management has figured very much in recent public discussions. The Second Five Year Plan gives it an important place in its programme in relation to labour and recommends the setting up of Joint Councils of management in selected undertakings in the first instance. There is danger that the workers' participation in management may just remain a slogan or become an eyewash. If that happens the results in the industrial field by which we lay so much store may not materialize to the extent of our expectations. Whosoever fails to do his part in this new endeavour will take on himself the burden of responsibility for holding up the progress of the country in an essential aspect. The success of the experiment will be an earnest of our faith in industrial democracy without which a socialist pattern for India can have little meaning. Our first steps should be firm and sure. Let us not think of spectacular arrangements. We need a sound set-up which will endure and grow. For this a certain amount of preparation is necessary which should begin without loss of time. The Report of the Study Group which is a part of the agenda may well provide a good basis for discussion.

WORKERS' DISCIPLINE.

From this I turn to the question of workers' discipline, because in my mind the rights and obligations of the workers are inseparably linked together. I feel very uncomfortable when I hear from many people that indiscipline is rife in offices and factories. I feel so because I am jealous about the good name of the workers, having spent a life time with them and in their service. When the workers lose their sense of discipline, they and the community have lost something very precious. Without a high standard of discipline there can be no prospect of either improved productivity or any effective participation of the workers in management. In this connection, I cannot help recalling a number of instances of rowdyism, coercion and intimidation which have occurred in recent months. Murderous assaults have taken place, the victims being managers as well as workers in several

cases. This is a measure of the breakdown of industrial relations as well as to an extent of the machinery of law and order in those parts. It will be wrong if I leave the impression that workers alone are responsible for this deplorable state of affairs. I am well aware of the fact that in the case of the serious manifestations of indiscipline to which I have referred, the sins of omission and commission of the managements concerned may have had much to do, as causes or as contributory factors. But nothing at all can constitute a justification for an assault or a murder.

For both higher productivity and better discipline, conditions will have to be created which include among other things a sense of security of employment, prompt attention to grievances, a fair deal in all matters, free latitude for organization, a practical recognition of the status of the worker as a partner and consideration for his well-being in human terms.

CODE OF BEHAVIOUR

It is my earnest request to all the participants in the Conference to address themselves to the solution of this problem with the greatest earnestness and sense of urgency. My appeal to you is to take counsel together in the course of this session and evolve a code of behaviour in the enforcement of which the employers and the various organizations of the workers will give unreserved co-operation. It may be that a close study of the various factors of the situation is needed but enough is known to enable us to make a good beginning in this direction right now.

EDUCATION OF LABOUR

There is one item on the agenda which will be of absorbing interest to us all because it lies at the root of the success of all our other programmes. This relates to workers' education. The Second Five Year Plan recommended the adoption of a programme for workers' education and necessary financial provision has been made for the purpose. We had the benefit of advice on this subject from a distinguished team of experts consisting of members from our country as well as abroad. The recommendations made by the team are before you. I hope you will like me to express our sense of appreciation and gratitude to the members of the team, particularly, the foreign experts who, at considerable personal inconvenience, went round the whole country to study the situation before formulating their views. You will go through the recommendations with the care that they deserve and come to agreed conclusions on which future action can be based.

I do not propose to take more of your time. The agenda before you is quite heavy. I earnestly hope that a spirit of mutual understanding will animate the discussions on the different subjects and it will be possible for the conference to come to agreed conclusions on which future action can be based.

Before I conclude I wish to say a word about some current events. Gratification has been expressed at the intervention by Government which led to an out of court settlement in the coal industry. On the other side there is a widespread feeling of anxiety and apprehension about developments in connection with work on the docks and with regard to the intended strike of the Post and Telegraph workers. I am not expressing any opinion about the merits of the disputes. The Transport and Communications Ministry is engaged in efforts to avert a cessation of work. These happenings are however a matter of deep concern for the representatives of the States, workers and employers assembled here. The life of the nation will be deeply affected by the stoppages if they occur and there will be serious repercussions. Those who make themselves responsible for these occurrences will be answerable to the nation and they would lose the nation's sympathy. I hope we shall find some time in the course of the session to consider the obligations of the conference in relation to the situation with which we are faced."

NATURE OF BONUS.

We would draw the attention of our readers to the recent decision of the Madras High Court in *A. Munuswami* v. *T. Viswanatha Nair* (Reports Section, page 238), which contains a learned discussion as to whether bonus can be treated as 'wages'. The decision contains a review of the various definitions of the terms 'wages' and 'bonus' in various text books and case law and the conclusion arrived at is that bonus cannot be treated as a part of the regular wages, whether deferred or otherwise, and is in essence an ex-gratia payment. It has, however, been held that it can become part of wages either by statute or by agreement.

Where there is no such agreement or statute, the Court has held that payment of bonus is purely an ex-gratia payment by the employer.

Plantations Labour Act applied to Cardamom estates in Kerala State

*Notification No. R. Dis. 726/57/L&LAD. dated 30th March, 1957.**

In exercise of the powers conferred by sub-section (4) of section 1 of the Plantations Labour Act, 1951 (Central Act LXIV of 1951), the Government of Kerala with the previous approval of the Central Government, hereby extend the provisions of the said Act to the cardamom plantations in the former Malabar District (the area referred to under sub-section (2) of section 5 of the States Reorganisation Act) of the State.

Employees State Insurance—Exemptions

*Notification No. L. Dis. 4803/57/L&LAD. dated 30th March, 1957.**

In exercise of the powers conferred by section 87 of the Employees State Insurance Act, 1948 (XXXIV of 1948), the Government of Kerala hereby exempt from the operation of the said Act, except Chapter V-A thereof every factory :—

(a) which is situated within the limits of :—

(i) Quilon area comprising the Quilon Municipal town, the revenue villages of Eravipuram, Kilikolloor, Vadakkevila, Adichanalloor, Paravoor, Quilon, Kottamkara and Perinad of the Quilon Taluk in the Quilon District.

(ii) Alleppey *cum* Shertalai area comprising—

(a) the Alleppy Municipal Town and the revenue villages of South Aryad, Mararikulam South and Alleppey of Ambalapuzha Taluk, and

(b) Shertalai Municipal town and the revenue villages of Shertalai North, Vayalar East, Vayalar West, and Mararikulam North of the Shertalai taluk of the Quilon District.

(iii) Alwaye-Ernakulam Perumbavoor area comprising—

(a) Mattancherry and Ernakulam Municipal towns and the revenue village of Rameswaram of the Cochin Kanayannoor taluk and (b) Alwaye and Perumbavoor Municipal towns and the revenue villages of Thrikkakara, Vazhakulam, Perumbavoor of Kunnathunad taluk and also the revenue villages of Varapuzha, Kadungallur and Chengamanad of Parur taluk of the Trichur District.

(iv) Trichur area comprising the Trichur Municipal Town ond the revenue villages of Ollur, Marathakara, Trichur, Koorkancherry, Aranottukara, Chiyyaram, Viyyur, Peringavu, Ayyanthol, Poonkunnam of Trichur taluk and also the revenue village of Amballoor, of Mukundapuram taluk of the Trichur District and (b) which is exclusively engaged in the manufacturing process spec fied below or any other manufacturing process which is connected with the aforesaid process for a period of one year from 1st April, 1957.

Name of manufacturing process—

Cashew processing.

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*Kerala Gaz., 2-4-57, Pt. I, p. 710.

Madras Factories Rules—Amendment

*(G.O. Ms. No. 2099, Industries, Labour and Co-operation, 18th June, 1957.)**

In exercise of the powers conferred by section 112 of the Factories Act, 1948 (Central Act LXIII of 1948), the Governor of Madras hereby makes the following amendments to the Madras Factories Rules, 1950, published with the late Development Department notification, dated the 15th March, 1950, at pages 103 to 178 of the Rules Supplement to Part I of the *Fort St. George Gazette*, dated the 25th April, 1950, as subsequently amended, the same having been previously published, as required by section 115 of the said Act :—

AMENDMENTS.

In the said rules—

for Form No. 2, the following Form shall be substituted, namely :—

Form No. 2.

Application for registration and grant or renewal of licence for the year and notice of occupation specifying instructions 6 and 7 (to be submitted in triplicate).

1. Full name of the factory with factory licence number if already registered from before.

2. (*a*) Full postal address and situation of the factory.

(*b*) Full address to which communications relating to the factory should be sent.

3. Nature of manufacturing process/processes—

(*a*) carried on in the factory during the last twelve months (in the case of factories already in existence) ; and

(*b*) to be carried on in the factory during the next twelve months (in the case of all factories).

4. Names and values of principal products manufactured during the last twelve months.

5. (i) Maximum number of workers proposed to be employed on anyone day during the year.

(ii) Maximum number of workers employed on any one day during the last twelve months.

(iii) Number of workers to be ordinarily employed in the factory.

6. (i) Nature and total amount of power (horse-power) installed or proposed to be installed.

(ii) Maximum amount of power (horse-power) proposed to be used.

7. Full name and residential address of the person who shall be the manager of the factory for the purposes of the Act.

8. Full name and residential address of the occupier—

(i) the proprietor of the factory in case of the privrte firm/proprietary concern.

*Fort St. Geo. Gaz., 10-7-57, Rules Sup. to Part I, p. 425.

(ii) directors in case of a public limited liability company/firm.

(iii) Where a managing agent has been appointed, the name of managing agent and directors thereof.

(iv) Shareholders in case of a private company where no managing agents have been appointed.

(v) The Chief administrative head in case of a Government or local fund factory.

9. Full name and address of the owner of the premises or building (including the precincts thereof) referred to in section 93.

10. In the case of a factory constructed or extended after the date of the commencement of the rules—

(*a*) Reference number and date of approval of the plans for site whether for old or new building and for construction or extension of factory by the State Government/Chief Inspector.

(*b*) Reference number and date of approval of the arrangements, if any, made for the disposal of trade waste and effluents and the name of the authority granting such approval.

11. Amount of fee Rs. (Rupees

paid in Treasury on vide chalan No.

(enclosed).

Signature of occupier

Date

Signature of manager

Date

Notes.—(1) This form should be completed in ink in block letters or typed.

(2) If power is not used at the time of filling up this form, but is introduced later, the fact should be communicated to the Chief Inspector immediately.

(3) If any of the persons named against item 8 is minor, the fact should be clearly stated.

(4) In the case of a factory, where under the proviso to sub-section (1) and (2) of section 100, a person has been nominated as the occupier, information required in item 8 should be supplied only in respect of that person.

(5) In the case of a factory where a managing agent or agents have been appointed as occupiers under the Companies Act, 1956 (Central Act I of 1956), information required in item 8 should be supplied only in respect of that person or persons.

Madras Trade Unions Regulations—Amendment.

*(G.O. Ms. No. 1980, Industries, Labour and Co-operation, 11th June, 1957.)**

In exercise of the powers conferred by section 29 of the Indian Trade Unions Act, 1925 (Central Act XVI of 1926), the Governor of Madras hereby makes the following amendment to the Madras Trade Unions Regulations, 1927, the same having been previously published as required by section 30 of the said Act:—

AMENDMENT.

In regulation 23 of the said regulations, for the words "annas eight" whereve they occur, the words "fifty naye paise" shall be substituted.

Madras Plantation Labour Rules—Amendment.

*(G.O. Ms. No. 2006, Industries, Labour and Co-operation, 13th June, 1957.)**

In exercise of the powers conferred by sections 10 and 43(1) of the Plantations Labour Act, 1951 (Central Act LXIX of 1951), the Governor of Madras hereby makes the following amendment to the Madras Plantation Labour Rules, 1955, published with Industries, Labour and Co-operation Department notification, dated the 4th January, 1956, at pages 1-30 of the Rules Supplement to Part I of the *Fort St. George Gazette*, dated the 4th January, 1956, as subsequently amended, the same having been previously published as required by the said section 43 (1):—

AMENDMENT.

In the said rules, after the proviso to rule 21 (1) the following proviso shall be added, namely:—

"Provided further that the State Government may, subject to such conditions as may be deemed necessary, extend the time-limit in respect of any plantation or class of plantations".

Madras Employees' State Insurance Courts Rules—Amendment.

*(G.O. Ms. No. 2071, Industries, Labour and Co-operation, 15th June, 1957.)**

In exercise of the powers conferred by section 96 of the Employees' State Insurance Act, 1948 (Central Act XXXIV of 1948), the Governor of Madras hereby makes the following amendment to the Madras Employees' State Insurance Courts Rules, 1951, published with the late Development Department notification, dated the 9th July, 1951, at pages 421-432 of the *Fort St. George Gazette*, dated the 24th July, 1951, the same having been previously published as required by sub-section (1) of the said section:—

AMENDMENT.

In the said rule—

for the sub-rules (2) and (3) of rule 1, the following sub-rule shall be substituted, namely:—

"(2) They extend to the whole of the Madras State including the Kanyakumari district and the Shencottah taluk of the Tirunelveli district."

*Fort St. Geo. Gaz., 3-7-57, Pt. I, p. 413.

[IN THE LABOUR APPELLATE TRIBUNAL OF INDIA.]

TATA OIL MILLS COMPANY LTD.

v.

V. C. MATHEW.

Shri F. Jeejeebhoy, Chairman and Shri P. D. Vyas.

April 29, 1957.

APPEAL—APPEAL TO APPELLATE TRIBUNAL—ABOLITION OF APPELLATE TRIBUNAL—EFFECT—RIGHT OF APPEAL FROM PROCEEDINGS PENDING BEFORE INDUSTRIAL TRIBUNALS—WHETHER CONTINUES—INDUSTRIAL DISPUTES (AMENDMENT & MISCELLANEOUS PROVISIONS) ACT, 1956, SECTIONS 30 AND 33.

Section 33 of the Industrial Disputes (Amendment & Miscellaneous Provisions) Act, 1956, dissolves the Appellate Tribunal and there is no forum to which appeals could be filed from awards of Industrial Tribunals as from the date on which that section came into force. Section 30 of the Act only enables proceedings pending before Industrial Tribunals to be continued and disposed of without any break and does not have the effect of preserving the right of appeal to the Appellate Tribunal.

Appeal Bom. No. 2 of 1957.

G. B. Pai for the management.

No appearance for the workman.

JUDGMENT.

1. This appeal has been placed before us for admission, as it has been presented after the 1st of September, 1956, on which date Section 33 of the Industrial Disputes (Amendment and Miscellaneous Provisions) Act, 1956, was brought into operation. Section 33 provides that the Industrial Disputes (Appellate Tribunal) Act, 1950 "is hereby repealed". Notwithstanding such repeal, if immediately before the commencement of this section, there is an appeal or other proceeding pending before the Labour Appellate Tribunal constituted under the said Act, the appeal or other proceeding shall be decided and disposed of by the Appellate Tribunal as if the said Act had not been repealed by this Act; and barring that, no appeal or other proceeding shall be entertained by the Appellate Tribunal after the commencement of the section. It is, therefore, clear in terms that no appeal or other proceeding can be entertained by the Appellate Tribunal after the 1st of September, 1956. It is true that the wording of the section contains a certain degree of over-lapping, but otherwise the intention and the language are clear. The provision that "no appeal or other proceeding shall be entertained by the Appellate Tribunal after the commencement of the section" is categorical and this destroys the very forum to which appeals can be made.

2. This should dispose of the matter before us, but Shri Pai on behalf of the appellant has contended that Sections 30, 31 and 33 if read together indicate that the present appeal is maintainable, and that all persons who had References pending in Tribunals on 1st September, 1956, had a vested right to an appeal to the Labour Appellate Tribunal, and that such vested right has not been taken away by the Statute.

3. Attention has been drawn to section 6 of the General Clauses Act which embodies the law on the subject:

"Where this Act, or any Central Act or Regulation made after the commencement or this Act, repeals any enactment hitherto made or hereafter to be made, then unless a different intention appears, the repeal shall not—

(a) ....

(b) affect the previous operation of any enactment so repealed or anything duly done or suffered thereunder; or

(c) affect any right, privilege, obligation or liability acquired or incurred under any enactment so repealed; or

(d) ....

(e) affect any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid; and any such investigation, legal proceeding or remedy may be instituted, continued or enforced, any such penalty, forfeiture or punishment may be imposed as if the repealing Act or Regulation had not been passed."

4. In the case of the *Colonial Sugar Refining Co.* v. *Irving*, [1905] 74 P.C.C. page 77, it was held that a right of appeal to a higher tribunal is a matter of substance and not of procedure, and such a right, unless expressly or by necessary intendment retrospectively abolished, is not taken away by subsequent legislation. Thus the right of appeal to the King in Council, which was taken away by the Australian Commonwealth Judiciary Act, 1903, but is not respective, still subsists in a suit pending when the Act was passed. Lord Macnaghten delivering the judgment of their Lordships made the following observations:

"As regards the general principles applicable to the case there was no controversy. On the one hand, it was not disputed that if the matter in question be a matter of procedure only, the petition is well founded. On the other hand, if it be more than a matter of procedure, if it touch a right in existence at the passing of the Act, it was conceded that in accordance with a long line of authorities extending from the time of Lord Coke to the present day, the appellants would be entitled to succeed. The Judiciary Act is not retrospective by express enactment or by necessary intendment. And therefore the only question is, was the appeal to His Majesty in Council a right vested in the appellant at the date of the passing of the Act, or was it a mere matter of procedure. It seems to their Lordships that the question does not admit of doubt. To deprive a suitor in a pending action of an appeal to a superior tribunal which belonged to him as of right is a very different thing from regulating procedure. In principle their Lordships see no difference between abolishing an appeal altogether and transferring the appeal to a new tribunal. In either case there is an interference with existing rights contrary to the well known general principle that statutes are not to be held to act retrospectively unless a clear intention to that effect is manifested."

5. Shri Pai has argued that section 30 provides against retrospective application of the Statute. Section 30 says—

"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 had not been passed."

6. Shri Pai has also quoted section 31 of the Act which provides that if, immediately before the commencement of the Act, there is in force in any State any Provincial Act or State Act relating to the settlement or adjudication of disputes, the operation of such an Act in that State in relation to matters covered by that Act shall not be affected by the Industrial Disputes Act, 1947, as amended by this Act.

7. It is Shri Pai's contention that the words in section 30 "the dispute may be adjudicated and the proceeding disposed of by that Tribunal after such commencement, as if this Act had not been passed" indicate that the prohibition of appeals was not to apply to industrial proceedings already in existence on 1st September, 1956. He supports his argument by making a comparison between the qualifications of a Member of a Tribunal under the Industrial Disputes Act, 1947, and the qualifications which are required for a Member of a Tribunal under the amended Industrial Disputes Act. It is his contention that the right of appeal has been taken away because in future the Tribunals will be manned by judges of a higher calibre, that so long as the judges under the older Act were continuing with adjudications, there was a necessity for an Appellate Tribunal and consequently our Tribunal's powers were not taken away as to such class of cases. This contention however is not factually well founded. The qualifications for a Member of an Industrial Tribunal under the Act of 1947 are contained in section 7 of the Act. Where the Tribunal consists of one Member only that Member, and where it consists of two or more Members, the Chairman of the Tribunal shall be a person who is or has been a Judge of a High Court or a District Judge or is qualified for appointment as a Judge of a High Court. Under the amended Act the Tribunal shall consist of one person only who is or has been a Judge of a High Court or has held the office of the Chairman or any other member of the Labour Appellate Tribunal or 'of any Tribunal' for a period of not less than two years. Therefore since one of the qualifications for membership of a Tribunal under the new Act is that the

Presiding Officer should have been a Member "of any Tribunal for a period of not less than two years," it cannot be said that the Tribunals under the new Act will necessarily carry higher qualifications than the Tribunals under the Industrial Disputes Act, 1947. Shri Pai's arguments on this ground are therefore not well founded.

8. It is undoubtedly true that the right of appeal to the Labour Appellate Tribunal was a substantive right to which every party to a reference was entitled. It is also true that that substantive right has not been taken away in so many words. But we cannot agree that the expression in section 30: "The dispute may be adjudicated and the proceeding disposed of by that Tribunal after such commencement as if this Act had not been passed" provides for any continuance of the right of appeal. It must be appreciated that section 30 of the new Act has reference to savings as to proceedings before Tribunals, and section 31 refers to the point that the Act is not to override state laws. Section 30 was necessary to enable References existing at the time of the change over to the new Act to be continued and disposed of without any break, and that object is achieved by that section.

9. We are of the view that section 33 of the new Act dissolves the forum to which appeals could be filed as and from the 1st of September, 1956, and that the general tenor of the amendments indicates that whatever right of appeal there was has been taken away by the Statute as from 1st September, 1956. Even if we were to hold that the right of appeal in respect of all References pending on 1st September, 1956 has not been taken away, there is at present no forum to which such appeals can lie, and we cannot provide a forum. This appeal, therefore, cannot be accepted and will be returned to Shri Pai with the endorsement: "As no appeal can be entertained after the 1st of September, 1956, this appeal is returned to the sender along with the sum of Rs. 25 tendered."

[IN THE FIRST INDUSTRIAL TRIBUNAL, WEST BENGAL.]

In re AWARD FOR JUTE TEXTILE INDUSTRY IN WEST BENGAL

Shri M. C. Banerji.

March 18, 1957.

AWARD—INTERPRETATION OF—REFERENCE BY GOVERNMENT FOR INTERPRETATION OF AWARD—VALIDITY—AWARD MODIFIED ON APPEAL—EFFECT—BENGAL INDUSTRIAL DISPUTES RULES, 1947, RULE 20-A—WHETHER *ultra vires.*

Rule 20-A of the Bengal Industrial Disputes Rules, 1947, which provides for a reference by the Government to an Industrial Tribunal of questions arising

as regards the interpretation of any award made by a Tribunal, is not ultra vires *the powers of the State Government under section 38 of the Industrial Disputes Act, 1947. A reference by the State Government of such matter for interpretation by an Industrial Tribunal will, therefore, be valid.*

Where a reference has been made for the interpretation of an award under Rule 20-A of the Bengal Industrial Disputes Rules, the Industrial Tribunal to which the reference is made will have jurisdiction to deal with the matter even if the original award has subsequently been modified on appeal by the Labour Appellate Tribunal. The award as modified by the Appellate Tribunal will be treated as the award as passed by the original Tribunal.

Reference under Rule 20-A, Bengal Industrial Disputes Rules, 1947.

P. K. Sanyal and *Nikhil Roy* for the workmen.

K. B. Basu, R. M. Sen Gupta, R. L. Moitra and *P. R. Mukherji* for the managements.

ORDER.

The Government of West Bengal, in the Labour Department, by order No. 3393 Dis./D/3A-10/54, dated 12th July, 1954 read with addendum No. 3537 Dis./D/7L-47/54, dated 21st July 1954 and its corrigendum No. 4130 Dis./D/7L-47/54, dated 26th August 1954, referred, under sections 7 and 10 of the Industrial Disputes Act, 1947 (XIV of 1947), the industrial disputes in the Jute Textile Industry in West Bengal between 101 Jute Mills mentioned in the list attached to the said order, dated 12th July 1954, read with the said addendum, dated 21st July 1954 and corrigendum, dated 26th August 1954 and their workmen represented by six Unions, viz.—

(1) National Union of Jute Workers,
(2) Jute Workers' Federation,
(3) Bengal Chatkal Mazdoor Union,
(4) Bengal Provincial Chatkal Mazdoor Union,
(5) Paschim Banga Chatkal Mazdoor Federation, and
(6) Howrah Zilla Chatkal Mazdoor Union,

in regard to matters specified in a schedule mentioned to the order of reference to an Industrial Tribunal, consisting of Shri M. C. Banerji, District Judge (Retd.), as Chairman, and Shri S. C. Mukherji, District Judge, as member, for adjudication. This Tribunal shall be referred to hereinafter as the Jute Textile Tribunal. The award of the Tribunal in respect of the proceedings on that order of reference, which will be mentioned hereinafter as the Jute Textile Tribunal award, was made on 20th September 1955 and was published under notification No. 4730Dis./D/7L-12(A)/55, dated 30th September 1955, in the *Calcutta Gazette*, dated 6th October, 1955.

As some questions arose as to the interpretation of the award mentioned above, the Government of West Bengal, in the Labour Department, by order

No. 648Dis./D/7L-20/56, dated 17th February 1956, referred, under rule 20A of the Bengal Industrial Disputes Rules, 1947, the following questions which had arisen as to the interpretation of the said award to this Tribunal for decision.

(1) Whether all the workmen of the Jute Textile Industry other than Mistries, Clerks and Durwans are entitled to increase in basic wages by Rs. 8-10-9 per month in terms of the award published under the Government of West Bengal, Labour Department, order No. 4730Dis./D/7L-12(A)/55 dated the 30th September 1955, made by the Tribunal referred to in the said order.

(2) Whether the Mistries, including the Oilers, in the Jute Textile Industry are entitled to a nett increase of Rs. 3-12-9 in their total wages per month in terms of the aforesaid award.

(3) Whether all the Durwans in the Jute Textile Industry are entitled to increase in basic wages by Rs. 8 per month in terms of the said award.

Notices were issued on the parties to the award and written statements were filed by (1) The Jute Workers' Federation, (2) The Bengal Chatkal Mazdoor Union, (3) The National Union of Jute Workers, and (4) The Bengal Provincial Chatkal Mazdoor Union, out of the six Unions of workmen who were parties to Jute Textile Tribunal Award and by the Indian Jute Mills Association and Victory Jute Products, out of the employers who were parties to that award. The parties abovementioned, except the National Union of Jute Workers, filed written statements suggesting answers to the questions referred for decision to the Tribunal. The National Union of Jute Workers questioned the jurisdiction of the Government in making the order of reference for interpretation of the award under rule 20A, as it had done, and also the jurisdiction of the Tribunal to make an interpretation of the said Jute Textile Tribunal Award on the basis of the order of reference of the Government. The Indian Jute Mills Association representing the majority of the employers involved in the Jute Textile Tribunal Award, however, opposed this plea in bar raised by the National Union of Jute Workers, besides suggesting answers to the questions referred and these two parties were heard in a preliminary proceeding on the question of jurisdiction of the Tribunal to entertain the reference made by the Government under rule 20A of the Bengal Industrial Disputes Rules, 1947. After the decision of this preliminary point, the question referred to the Tribunal for decision will, if necessary, be heard on merits.

It is necessary to mention here that an appeal was preferred by some of the parties to the aforesaid award to the Hon'ble Labour Appellate Tribunal of India at Calcutta and the decision of the Hon'ble Labour Appellate Tribunal was made by judgment delivered on 31st May 1956. By this judgment, the award of the Jute Textile Tribunal was modified in part.

The National Union of Jute Workers objects to the jurisdiction of the Tribunal in the present proceedings on the following grounds:—

(1) Rule 20A of the Bengal Industrial Disputes Rules, 1947, purported to have been framed by the Government of West Bengal, is *ultra vires* the Industrial Disputes Act.

(2) Order No. 648Dis./D/7L-20/56, is *ultra vires* the powers of the Government of West Bengal and is on the face of it erroneous.

(3) This Tribunal cannot assume or arrogate to itself the jurisdiction to make an interpretation of the Jute Textile Tribunal award and such assumption will be in excess of the Tribunal's jurisdiction as vested by law.

(4) The specific questions purported to have been referred to this Tribunal for interpretation have been some of the subject matters of the appeal before the Hon'ble Labour Appellate Tribunal and are pending decision by the said Hon'ble Tribunal.

It is, therefore, prayed that the aforesaid reference should be rejected on the finding that the Tribunal is not competent to make the interpretation purported to have been asked for.

The Indian Jute Mills Association opposed all the grounds raised by the National Union of Jute Workers and urged that rule 20A of the Bengal Industrial Disputes Rules, 1947, was *intra vires* the Government of West Bengal and that the Tribunal had ample jurisdiction to decide the question referred to it by the order of reference made by the Government of West Bengal mentioned above.

Considering the fact that in the appeal against the award of the Jute Textile Tribunal, the Hon'ble Labour Appellate Tribunal modified the award, it was futher argued by the learned Advocate for the Union that according to section 16 of the Industrial Disputes (Appellate Tribunal) Act, the award of the original Tribunal was not in existence and this Tribunal had, therefore, no jurisdiction to deal with it for interpretation as the order of reference desires it to do. In view of this fact, a further ground of objection has to be considered which is as follows:—

(5) Can this Tribunal entertain the order of reference for interpretation under rule 20A of the Bengal Industrial Disputes Rules, 1947, in view of section 16 of the Industrial Disputes (Appellate Tribunal) Act, inasmuch as the award of the Jute Textile Tribunal was modified by the Hon'ble Labour Appellate Tribunal in appeal?

These five grounds of objection will be considered below. Grounds Nos. 1, 2 and 3 are inter-connected and involve the same question. They will be taken up together for consideration. Similarly, grounds Nos. 4 and 5 also involve the same question and shall be considered together.

Ground Nos. 1, 2 and 3: The learned Advocate for the Union maintains that rule 20A, Bengal Industrial Disputes Rules, 1947, purported to have been framed by the Government of India was *ultra vires* the Industrial Disputes Act, that the order of reference for interpretation to this Tribunal was also *ultra vires* the powers of the Government of West Bengal and was erroneous and that this Tribunal could not assume jurisdiction to make an interpretation of the said award and such assumption will be in excess of the Tribunal's jurisdiction as vested by law.

Rule 20A of the Bengal Industrial Disputes Rules runs as follows:—

"20A. *Reference for interpretation of award.*—If any question arises as to the interpretation of any award made by a Tribunal, the State Government may make a reference to a Tribunal for a decision on such question and the Tribunal may decide the matter after hearing the parties."

This rule was made under the rule-making powers of the appropriate Government, being in the present case the Government of West Bengal, under section 38, clause (1) of the Industrial Disputes Act, which provides that the appropriate Government may, subject to the condition of previous publication, make rules for the purpose of giving effect to the provisions of this Act. A similar rule has been made by the Bombay Government and that also is numbered rule 20A. That rule runs as follows:—

"*Reference for interpretation of award.*—If any question arises as to the interpretation of any award made by a Tribunal, the State Government may make a reference to the Tribunal for a decision on such question and the Tribunal may decide the matter after hearing the parties."

The objection that this rule was *ultra vires* the Government under the rule-making authority derived under section 38 of the Industrial Disputes Act was taken before the Hon'ble High Court at Bombay in the case of *Claridge and Co., Ltd.* v. *Industrial Tribunal* [1951] 3 F.J.R. 153, and the objection was overruled by the Hon'ble Court. It was decided that rule 20A which provides for clarification of the award made by the Tribunal was not *ultra vires* the Government under the rule-making authority derived under section 38 of the Act. The difference between rule 20A of the Bombay Government and that of the Government of West Bengal is that under the Bombay Government rule the reference for interpretation of the award is to be made to the Tribunal that made the award, and according to the rule of the West Bengal Government, the reference for interpretation of the award may be made to any Tribunal, irrespective of the question as to which Tribunal made the award. I do not consider that this difference has any bearing on the question as to whether the framing of the rule was within the rule-making powers of the appropriate Government under section 38 of the Industrial Disputes Act. I would, therefore, respectfully follow the decision of the Hon'ble High Court at Bombay and decide that rule 20A, as framed by the Government of West Bengal for making a reference for interpretation of an award when a question arises as to such interpretation, is not *ultra vires* the Government under the rule-making authority derived under section 38 of the Act. In the result, it is decided that order No. 648Dis./D/7L-20/56, making the reference for interpretation of the award by the Jute Textile Tribunal to this Tribunal is not *ultra vires* the powers of the Government of West Bengal. This Tribunal can and is even obliged to assume jurisdiction to make an interpretation of the said award as called for in the said order of reference and such assumption will not be in excess of the jurisdiction as vested in it by law. These points are accordingly answered.

Ground Nos. 4 and 5: The award was made by the Jute Textile Industry Tribunal on 20th September, 1955, which was published under notification No. 4730Dis./D/7L-12(A)55, dated 30th September, 1955, in the *Calcutta Gazette*, dated 6th October, 1955. An appeal against this award was preferred by some of the parties and the Hon'ble Labour Appellate Tribunal of India at Calcutta, delivered judgment on this appeal on 31st May, 1956. By this judgment, the award of the Tribunal was modified. The learned Advocate for the Union pressed that in view of the fact that the award of the Jute Textile Tribunal, that has been referred to this Tribunal for interpretation, has been modified by the Hon'ble Labour Appellate Tribunal of India, the award of Jute Textile Tribunal was not in existence and could not be interpreted by this Tribunal. It was pressed that the only effective award between the parties at present was the decision of the Hon'ble Labour Appellate Tribunal of India, which modified the original award of the Jute Textile Tribunal. Section 16 of the Industrial Disputes (Appellate Tribunal) Act was referred to by the learned Advocate as the authority for his proposition. The learned counsel for the Indian Jute Mills Association, however, pressed that under section 16 of the Industrial Disputes (Appellate Tribunal) Act, this Tribunal had the jurisdiction to interpret the award of the Jute Textile Tribunal Award as modified by the decision of the Hon'ble Appellate Tribunal of India. On giving my most anxious consideration to the matter, it appears to me that this contention should be upheld for the following reasons. Section 16 clearly states that where on appeal from any award of an Industrial Tribunal the Appellate Tribunal modifies in any manner whatsoever that award, the decision of the Appellate Tribunal shall, when it becomes enforceable under section 15, be deemed to be substituted for that award of the Industrial Tribunal and shall have effect for all purposes in the same manner and in accordance with the same law under which the award of the Industrial Tribunal was made as if the Industria Tribunal made the award as modified by the decision of the Appellate Tribunal. Under section 15 of the Appellate Tribunal Act, the decision of the Appellate Tribunal becomes enforceable on the expiry of 30 days from the date of its pronouncement. Section 16, therefore, provides that on the expiry of 30 days from the date of pronouncement of the decision of the Appellate Tribunal, it is deemed to be substituted for the award of the Industrial Tribunal which it modifies and it shall be effective for all purposes in the same manner and in accordance with the same law under which the award of the Industrial Tribunal was made, as if the Industrial Tribunal made the award as modified by the decision of the Appellate Tribunal. In the present case, the reference for interpretation was made by the Government of West Bengal on 17th December, 1956, at a date prior to the date of the decision of the Appellate Tribunal. At that date, the award of the Jute Textile Tribunal was in existence and this award was referred to this Tribunal for interpreation under rule 20A. On 31st May, 1956, the decision of the Appellate Tribunal was made, modifying the award of the Jute Textile Tribunal. It became enforceable on the expiry of 30th June, 1956, and after that date, in accordance with section 16, it shall be deemed to be substituted for the award of the original Tribunal and shall have effect for all purposes in the same manner and in accordance with the same law under which the award of the original Tribunal was made as modified by the decision of the Appellate Tribunal. It, therefore, appears that by a statutory provision the decision of the Appellate Tribunal was substituted for the award of the Jute Textile Tribunal with effect from 1st July, 1956, and this substituted award shall be subject to the same law as the original award was. I conclude that this award is subject to interpretation by a Tribunal under rule 20A as the original award of the Jute Textile Tribunal was. It is, therefore, clear that this Tribunal will now consider the order of reference by the West Bengal Government for interpretation of the Jute Textile Tribunal award to be really for the interpretation of the award of the Jute Textile Tribunal as modified by the decision of the Appellate Tribunal.

To my mind, a complete identity is established by a statutory enactment between the appellate decision and the original award and a clear jurisdiction is vested on the original Tribunal to treat the decision of the Appellate Tribunal as its own award for all purposes.

It is, therefore, clear that this Tribunal is now bound to make an interpretation of the award of the Jute Textile Tribunal as modified by the decision of the Appellate Tribunal in obedience to the order of reference under rule 20A of the Bengal Industrial Disputes Rules, 1947, by the Government of West Bengal as made on 17th December, 1956.

These points are accordingly answered.

[IN THE MADRAS HIGH COURT.]

A. MUNUSWAMI

v.

T. VISWANATHA NAIR

Ramaswami, J.

January 25, 1957.

'BONUS'—NATURE OF—WHETHER 'WAGES'—EXEMPTION OF WAGES FROM ATTACHMENT BY CREDITORS—WHETHER APPLICABLE TO BONUS—CIVIL PROCEDURE CODE, 1908, SECTION 60(H).

On the question whether bonus granted to an employee by his employer falls within the definition of 'wages' in section 60(h) of the Code of Civil Procedure, 1908, and is exempt from attachment by a creditor, Held, *that bonus is not a regular part of the wages, deferred or otherwise, and is in essence an ex-gratia payment, but, by statute or by agreement, it can assume permanency and become part of the wages.*

On the facts of the case, Held, *that the bonus was only an ex-gratia payment and was not protected by section 60(h) of the Civil Procedure Code, 1908.*

Civil Miscellaneous Petition No. 4380 of 1956 in Civil Revision Petition No. 665 of 1956.

V. Nagarajan for the petitioner.

M. S. Venkatarama Aiyar for the respondent.

JUDGMENT.

The point for determination in this application for stay is whether the bonus granted to a workman is exempt from attachment under section 60(h) of the Code of Civil Procedure.

2. The facts are:—T. Viswanatha Nair employed in WIMCO at Tiruvothiyur filed a suit against Munuswami, the petitioner before us, for Rs. 400 odd. This Munuswami had been granted a bonus of about Rs. 200 by the Western India Match Factory in which he was employed. This Viswanatha Nair filed an application for attachment before judgment and attached that sum. Munuswami has thereupon filed this civil revision petition and obtained an order of interim stay.

3. In order to decide this controversy we must first of all find out the meaning of the terms "wages" and "bonus" as can be gathered from (a) standard lexicons, (b) various Acts, and (c) case-law on the subject.

4. Meaning of the word "*Wages*":

Webster (International Dictionary of English Language, 1927). 1. Pay given for labour, usually manual or mechanical, at short stated intervals, as distinguished from salaries or fees.

2. Theoretical Economics. The share of the annual product or national dividend which goes as a reward to labour, as distinct from the remuneration received by capital in its various forms. This economic or technical sense of the word wages is broader than the current sense, and includes not only amounts actually paid to labourers, but the remuneration obtained by those who sell the products of their own work, and the wages of superintendence of management, which are earned by skill in directing the work of others.

Funk & Wagnalls: Payment for service rendered, especially the pay of artisans or labourers receiving a fixed sum per day, week, or month, or for a certain amount of work (piece work); hire, usually in the plural, often construed as singular.

Plural Econ. The remuneration received by labour in its broadest sense as distinguished from that received by capital, and including the expenses incurred for superintendence and management) called respectively wages of superintendence and wages of management. (Ballentine, Law Dictionary, II Edn., 1948). As the word is employed in common parlance, it refers specifially to the payment made for manual labour, or other labour of menial or mechanical kind, as distinguished from "salary" and from "fee" which denote compensation paid to professional men. In its application to labourers and employees, it conveys the idea of subordinate occupation which is not very remunerative, of not much independent responsibility, but rather subject to immediate supervision. 35 Am.Jur. 496.

As the word is used in the exemption statutes, it is intended to include what an employer owes his employee for personal services rendered in that relation, and it matters not whether it is called wages or salary. 22 Am.Jur. 57.

Burrows: (Words and Phrases Judicially Defined, 1943). By codicil a testator bequeathed two years "wages" to his head gardener. The question is what the testator meant by the word "wages". I can find no assistance from the Truck Acts or the Workmen's Compensation Acts, nor is there any authority, curiously enough, which covers the question. Suppose a friend had asked the testator what he paid his head gardener. No doubt the testator would have said that he paid King £. 3, 9 s. 9 d. a week, and he might have added: "Remember that we are in the country and he has a house." In the ordinary use of the language the testator would have mentioned the cash payment made week by week...........................It appears to me that in the gift in the 14th codicil cash wages were meant." Re. *Peacock, Public Trustee* v. *Birchenough* 1929—45 T.L.R. 301; per Clauson, J. at page 302. 1901 W.N. 78; 1907 A.C. 386; 2 B. and B. 67; 1882—9 Q.B.D. 45.

Wharton: The compensation agreed upon by a master to be paid to a servant, or any other person hired to do work or business for him.

Wages of any "servant, labourer, or workman" cannot be attached to satisfy judgments—Wages Attachment Abolition Act, 1870 (33 and 34 Vict. c. 30).

Murray (New English Dictionary). A payment to a person for service rendered. Formerly used widely, e.g., for the salary or fee paid to persons of official or professional status. Now (exc. in rhetorical language) restricted to mean: the amount paid periodically, esp. by the day or week or month for the labour or service of a workman or servant.

Stroud's Judicial Dictionary, Vol. 4, p. 3243: "Though this word might be said to include payment for any services, yet, in general, the word "salary" is used for payment of services of a higher class, and "wages" is confined to the earnings of labourers and artisans" (per Grove J. in *Gordon* v. *Jennings*, 51 L.J.Q.B. 417. See hereon per Parke B. *Riley* v. *Warden*, 2 Ex. 59; per Bramwell B. *Sleeman* v. *Barrett*, 33 L.J. Ex. 153; and in *Ingram* v. *Barnes*, 26 L.J.Q.B. 322). In that case, Bramwell B. said, "Whatever definition one gives to the term "wages", a portion of what the plaintiff here gets is "profits", made and makeable by the employment of other people under him. If a portion is that, the whole is not wages"; see also per Cockburn C.J. same case. It would therefore seem that "wages" are the personal earnings of labourers and artisans.

5. *Meaning of the word Bonus:* Meaning of the word in *Murray's:* The boon or gift over and above what is normally due as a remuneration to the receiver, and which is therefore something wholly to the "Good."

(a) Money or its equivalent, given as a premium or as an extra or irregular remuneration in consideration of offices performed, or to encourage their performance; sometimes merely a euphemism for douceur, bribe.

(b) An extra dividend paid to shareholders in a joint stock company from surplus profits; a portion of profits of an insurance company distributed, "*pro rata*" to the policy holders.

(c) A gratuity paid to workmen, masters of vessels etc., over and above their stated salary.

Webster's: Something given in addition to what is ordinarily received by, or strictly due to, the recipient.

(a) A premium given for a loan, or for a charter, or other privilege granted to a company.

(b) An extra dividend to the shareholders of a company, out of accumulated profits.

(c) Money or other valuable given in addition to an agreed compensation.

(d) Life Insurance—an addition or credit allotted to policy holders out of accumulated profits, as in mutual companies, usually, by the reduction of a premium;—In America usually called dividend.

Funk and Wagnall's: (1) An allowance in addition to what is usual, current, or stipulated; as, a bonus on stocks.

(2) Compensation for the obtaining of a loan. *Ballentine's*: An absolute gift or donation. The word is used in some connections as meaning a gratuity, a voluntary donation, a gift, but that is not Webster's definition. He defines it as "a premium" given for a loan or charter or other privilege granted to a company; as the bank paid a bonus for its charter; a sum paid in addition to a stated compensation. (21 L.Ed. 319).

As applied to the state aid to a rail road given for building its road in the state, the word does not imply a gift or a gratuity but a sum paid for the services, or upon a consideration in addition to or in excess of that which would ordinarily be given (21 L.Ed. 319).

The term is also applied to that share or the portion of the earnings of a rail road which the State requires the road to pay to the State as a condition in granting the rail road company its charter (22 L.Ed. 678).

In employment contracts, the term conveys an idea of something which is gratuitous or which it may be claimed is gratuitous, over and above the prescribed wage which the employer agrees to pay.

Burrows:—The sole question in this case is whether or not a bonus agreed to be paid to a seaman as recorded in the ship's articles is to be treated as wages, or whether it can be regarded as something apart from wages. "Bonus" in such a case as the present one is in truth nothing else but a euphemism for "addition to wages". There may be special reasons for calling it a bonus. The definition of the word wages in section 742 of the Merchant Shipping Act, 1894, makes it clear that wages include emoluments, and I hold a bonus also, although the statute does not expressly use the word bonus—*Shelford* v. *Mosey*, 1917—1 K.B. 154, C.A.

It is hard to lay down any general rule as to what bonus is; but I think, that whatever comes from an accumulated fund which has either become too large or else unnecessary, is a bonus; but what is usually called so, being merely an extra dividend is not so in reality. *Hollis* v. *Allen*. 1866—12 Jur. N.S. 638.1894 W.N.p. 30 re: Eddystone Marine Insurance Co.

Whartons (Law Lexicon, XIV Edn. 1938). Premium or advantage; an occasional extra dividend; a gratuity. As to the respective rights of tenant for life and remaindermen is a bonus declared by a company. 60 L.J. Ch. 488; 12 A.C. 385.

Stroud's Judicial Dictionary, Vol. 1 (3rd Edn. 1953) pages 318—319. In *re Eddystone Marine Insurance*, 1894 W.N. 30, Stirling J. adopted the definition of "bonus" as given in the New English Dictionary, viz., "a boon, or gift, over and above what is nominally due as remuneration wholly to the good"; and, therefore, that a certificate for shares crossed with the words "bonus" was notice to a transferee for value that they had been issued gratis; and, in a liquidation, he must be settled on the list of contributories. "It may be a mere gift or gratuity as a gesture of goodwill, and not enforceable, or it may be something which an employee is entitled to on the happening of a condition precedent and is enforceable when the condition is fulfilled." (per O'Conner J. in *Great Western Garment Co. Ltd.* v. *Minister of National Revenue*, 1947 Ex. C.R. 458).

The definition of "wages" can also be gathered from the following Acts (a) The Payment of Wages Act, 1936; (b) The Minimum Wages Act, 1948; (c) The Madras Shops and Establishments Act, 1947; and (d) The Workmen's Compensation Act, 1923. The Payment of Wages Act, defines "wages" as follows:

"Wages" means all remuneration, capable of being expressed in terms of money, which would, if the terms of the contract of employment, express or implied, were fulfilled, be payable, whether conditionally upon the regular attendance, good work or conduct or other behaviour of the person employed otherwise, to a person employed in respect of his employment or of work done in such employment, and includes any bonus or other additional remuneration of the nature aforesaid which would be so payable and any sum payable to such person by reason of the termination of his employment, but does not include—(a) the value of any house-accommodation, supply of light, water, medical attendance or other amenity, or of any service excluded by general or special order of the State Government; (b) any contribution paid by the employer to any pension fund, or provident fund: (c) any travelling allowance or the value of such travelling concession; (d) any sum paid to the person employed to defray special expenses entailed on him by the nature of his employment; or (e) any gratuity payable on discharge."

The Minimum Wages Act defines wages as follows:

"Wages means all remuneration, capable of being expressed in terms of money, which would, if the terms of the contract of employment, express or implied, were fulfilled, be payable to a person employed in respect of his employment or of work done in such employment, but does not include—(i) the value of—(a) any house-accommodation, supply of light, water, medical attendance, or (b) any other amenity or any service excluded by general or special order of the appropriate Government; (ii) any contribution paid by the employer to any pension fund or provident fund or under any scheme of social insurance; (iii) any travelling allowance or the value of any travelling concession; (iv) any sum paid to the person employed to defray special expenses entailed on him by the nature of his employment; or (v) any gratuity payable on discharge."

The definition of "wages" given in the Madras Shops and Establishments Act, is the same as in the Payment of Wages Act.

The Workmen's Compensation Act defines "wages" as follows:

"Wages includes any privilege or benefit which is capable of being estimated in money, other than a travelling allowance or the value of any travelling concession or a contribution paid by the employer of a workman towards any pension or provident fund or a sum paid to workman to cover any special expenses entailed on him by the nature of his employment."

7. The English case law on the subject is summarised in Halsbury's Laws of England, 2nd Edn. Vol. 14, para 1227, page 650 in the following statement:

"Any money or other thing had or contracted to be paid, delivered, or given as a recompense, reward or remuneration for any labour done or to be done, whether within a certain time or to a certain amount, or for a time or an amount uncertain, is deemed to be the wages of such labour.

Any agreement, understanding, device, contrivance, collusion or arrangement whatsoever on the subject of wages, whether written or oral, direct or indirect, to which the employer and workman are parties or are assenting, or by which they are mutually bound to each other, or whereby either of them has endeavoured to impose an obligation on the other of them, is deemed to be a contract."

8. The American Law on the subject is summarised in 67 Corpus Juris, pp. 284-285, as follows:

"It has been said that the word "wages" has no fixed definite legal meaning, and that wages and loss of time are understood to be the same thing. As generally defined, however, the term means compensation for labour or services, which may be in the form of money paid or other value given, such as board, lodging or clothes; compensation or reward agreed upon by the master to be paid to a servant or to any other person [illegible] do business for him; compensation given to a hired person for his [illegible] services; compensation paid or to be paid for services by the day, week month or year, or other sub division of time, the amount to be ascertained by agreement or the proved going rate or market value of the same at the time and place rendered ; consideration which an employer bestows upon one who is serving him in consideration of his services, and usually a consideration in money, and never applied in describing the gain, profit or recompense which accrues to one who is conducting a business of his own and on his own account ; price paid for labour, reward of labour ; specified sum for a given time of service ; or a fixed sum for a specified piece of work; stipulated payment for services performed ; sum of money periodically paid for services rendered; that for which one labours; that which is paid for a service rendered ; what is paid for labour; what the labourer earns by his own labour. The fact that a portion of the compensation is to some extent uncertain does not make such portion, when actually earned, any the less " wages ". Also, the term may be employed as referring to a gage, a pledge, a stake. Sometimes the plural form of the word is used as singular."

9. Having discussed the terms "wages" and "bonus", we have to consider clause (h) of section 60, Civil Procedure Code, which states that the wages of labourers and domestic servants, whether payable in money or in kind, shall not be liable to attachment or sale in execution of a decree.

10. The case-law on the subject may now be briefly summarised. The wages of labourers and domestic servants are wholly exempt from attachment. A person is a " labourer " within the meaning of this clause who earns his daily bread by personal manual labour, or in occupations which require little or no art, skill or previous education. A person who spins cotton and receives wages according to the quantity spun is a " labourer. " Similarly, coolies employed on railway or other works and paid by the number of baskets of earth carried are " labourers." A clerk in one of the departments of a mill doing no manual labour cannot be regarded as a labourer or domestic servant. Where bonus is payable by agreement to an employee and depends on the kind of work which the employee is doing and on the number of days for which he has worked, such bonus is "wages": *Kulkarni* v. *Ganpat Teli*, A.I.R. 1942 Bom. 191 ; *Raghunandan* v. *Jaigobind* A.I.R. 1946 Pat. 194; *Manilal Bhaichand* v. *Mohanlal* A.I.R. 1946 Bom. 102 ; *Jivanlal* v. *Ramtji Bhaiji*, A.I.R. 1945 Bom. 119. (See *D. V. Chitaley* and *N. Ramaratnam's* the Fifty Years Digest, 1901-1950, Vol. III, note 27, pages 157-158 for a handy and accurate collection of case law on Wages, section 60(h) (C.P.C.).

In *N. M. Shanmughasundaram Mudaliar* v. *Chidambaram Pillai* [1952] 2 M.L.J. 891, this court held that bonus as such would mean ex-gratia payment.

In *Harji Malla* v. *Karsanji* A.I.R. 1954 Saurashtra 18, it has been held that bonus paid to the labourers employed in a mill from time to time is part of their wages within the meaning of section 60(h) C. P. Code and as the first Explanation to the section makes it clear that wages are exempt from attachment and sale whether before or after they are payable, the amounts of bonus cannot be attached as arrears in the hands of the

employer (*Jivanlal* v. *Ramtuji Bhaiji*, A.I.R. 1945 Bom. 119, relied on ; and *Union of India* v. *Smt. Hiradevi*, A.I.R. 1952 S. C. 227 distinguished).

In *Muir Mills Co. Ltd.* v. *Suti Mills Mazdoor Union, Kanpur*, [1954] 7 F.J.R. 483, it has been held :

" The term bonus is applied to a cash payment made in addition to wages. It generally represents the cash incentive given conditionally on certain standards of attendance and efficiency being attained.

There are two conditions, which have to be satisfied before a demand for bonus can be justified and they are (1) when wages fall short of the living standard and (2) the industry makes huge profits part of which are due to the contribution which the workmen make in increasing production. The demand for bonus becomes an industrial claim when either or both conditions are satisfied.

The formula for the grant of bonus is as follows : As both labour and capital contribute to the earnings of the industrial concern, it is fair that labour should derive some benefit, if there is surplus after meeting prior or necessary charges. The first charges on gross profits are (1) provision for depreciation, (2) reserves for rehabilitation, (3) a return at six per cent. on the paid up capital and (4) a return on the working capital at a lesser rate than the return on paid up Capital. The surplus that remained after meeting the aforesaid deductions would be available for distribution as bonus.

The claim for bonus can be made by the employees only if as a result of the joint contribution of capital and labour the industrial concern has earned profits. If in any particular year the working of the industrial concern has resulted in loss there is no basis nor justification for a demand for bonus. Bonus is not a deferred wage. If it were so, it would necessarily rank for precedence before dividends. The dividends can only be paid out of the profits and unless and until profits are made no occasion or question can arise for distribution of any sum as bonus amongst the employees."

11. The sum and substance of the entire discussion is that bonus is not a regular part of the wages, deferred or otherwise and in essence is an *ex-gratia* payment. But by statute or by agreement it can assume permanency and become part of the wages. Section 60, C. P. Code, covers only a limited class of wage-earners, *viz.*, labourers who earn their daily bread by personal manual labour or in occupations which require little or no art, skill or previous education. If these conditions are fulfilled, bonus will stand protected under section 60, C. P. Code.

12. Bearing these facts in mind if we examine the facts of this case, we find that the learned District Munsif came to the correct conclusion that section 60 C. P. Code is not applicable to arrears of bonus of Rs. 200 in deposit and attached it because bonus in this case was nothing more than an *ex-gratia* payment as neither by statute nor agreement had it assumed permanency and become part of the wages and the revision petition does

not fall within the definition of "labourer" contemplated under section 60, C. P. Code.

There are no grounds to grant the stay asked for. The interim stay already granted is dissolved and this application is dismissed with costs.

[IN THE PUNJAB HIGH COURT.]

TEXTILE WORKERS' UNION (REGISTERED), AMRITSAR

v.

STATE OF PUNJAB AND OTHERS.

Bishan Narain, J.

MAY 3, 1957.

INDUSTRIAL DISPUTES ACT, 1947, SECTION 10—REFERENCE OF INDUSTRIAL DISPUTE TO TRIBUNAL—RIGHT OF APPROPRIATE GOVERNMENT TO WITHDRAW DISPUTES REFERRED—APPLICABILITY OF SECTION 21, GENERAL CLAUSES ACT, 1897.

Section 21 of the General Clauses Act, 1897, is applicable to section 10 of the Industrial Disputes Act, 1947, and it is open to an appropriate Government, after it has made a reference to an Industrial Tribunal, to amend or vary or rescind the order of reference even if it has the effect of withdrawing particular disputes from the reference already made.

Civil Writ Application No. 196 of 1956.

Anand Swaroop for the appellants.

S. M. Sikri, Advocate-General and *Bhagirath Das* for the respondents.

JUDGMENT.

The Governor of the Punjab issued a notification on 9th January, 1956, and another one on 11th January, 1956, under section 10 of the Industrial Disputes Act, 1947, read with section 21 of the General Clauses Act, 1897, whereby the previous notifications under section 10 were amended so as to exclude the disputes between the Oriental Carpet Manufacturers (India) Limited, Amritsar, and its workmen and between the Amritsar Rayon and Silk Mills Limited, Amritsar, and its workmen from the purview of the Industrial Tribunal to which the disputes between all the textile and all other allied industries of Amritsar and their workmen has been previously referred for adjudication. The Textile Workers Union (Registered) Amritsar has filed these two separate writ petitions (Nos. 197 and 196 of 1956) to challenge the validity of these notifications on the ground that once the Government has referred a dispute for adjudication by the Industrial Tribunal under section 10(1)(c) of the Act it is not open to it to withdraw that dispute. These petitions are contested by the Punjab State and also by the industries concerned.

There is a fairly long history which has culminated in these notifications in dispute. By notification dated 6th June, 1952, six disputes between the Textile Workers' Union (Registered), Amritsar, and the Textile Manufacturers' Association (Registered), Amritsar, were referred under section 10 (1)(c) of the Act for adjudication by the Industrial Tribunal. By notification dated 21st June, 1952, the same six disputes between the same Union and the Textile Mills and Factories in Amritsar and Chheharta were referred for adjudication by the same Tribunal. By notification dated 9th September, 1952, the same disputes between the same Union and the Textile Mills and Factories, represented by the Textile Manufacturers Association, Amritsar, and other allied textile associations were referred for adjudication. The Governor then by notification dated 11th October, 1952, amended the notification of 21st June, 1952, by making the disputes to be between the industries and the workers Union as well as their respeotive workers. By notification dated 4th December, 1954, the Governor rescinded the notification dated 21st June, 1952, as amended by notifications dated 9th September, 1952, and 11th October, 1952. The result was that only the notification dated 6th June, 1952, remained operative which had referred these very disputes between the Textile Workers Union and the Textile Manufacturers Association. By another notification of the same date (4th December 1954) the same disputes were referred for adjudication between the textile mills and factories, represented by the Textile Manufacturers Association and all other allied textile factories etc. of Amritsar and Chheharta and the Textile Workers Union. By a subsequent notification of 18th March, 1955, the previous notification was amended and item No. 1 of the disputes which relates to reinstatement of retrenched workers was separated from the five items of dispute. I am informed that this was done to facilitate compromise and settlement between the parties concerned so far as it related to these five items and that in fact many such settlements were successfully made. There was then another notification by which the disputes relating to handloom industry, unregistered textile factories and other unregistered allied units were excluded from the purview of the Industrial Tribunal. This notification was issued on 30th June, 1955. The original notification of 7th December, 1954, was again amended on 9th January, 1956 by which the disputes between the Oriental Carpet Manufacturers (India) Limited and its workmen were excluded from the reference. Similarly by notification dated 11th January, 1956, the disputes between the Amritsar Rayon and Silk Mills and its workmen were excluded from the reference. The present petitions challenge the validity of the amendments dated 9th January, 1956, and 11th January, 1956, by which the disputes relating to these two industries and their workmen were withdrawn from adjudication by the Industrial Tribunal which was already seized of the same.

Before discussing the case I may state that by notification dated 5th May, 1956, a reference relating to all these textile industries etc., was withdrawn with the exception of the disputes relating to seven factories which are mentioned in that notification. I am informed that this was the consequence of the settlement and arrangements between the individual factories and their workmen.

It is argued on behalf of the petitioning workmen Union that once a dispute is referred to the Tribunal the Government has no power to withdraw it and the dispute must be adjudicated by the Tribunal. The learned counsel's argument is that if the dispute is settled before the award is made then the settlement may be incorporated in the Tribunal's award but the dispute cannot be withdrawn. The learned counsel has relied in support of his contention on *D. N. Ganguly and others* v. *State of Bihar and others*, A.I.R. 1956 Patna 449, which undoubtedly supports him.

Section 10(1)(c) of the Industrial Disputes Act, 1947, empowers an appropriate Government to refer by an order in writing any industrial dispute which in its opinion exists or is apprehended. Section 21 of the General Clauses Act, 1897, lays down that when a power to make orders or issue notifications is conferred then that power includes a power to add to, amend, vary, or rescind any notification or order passed subject to the like conditions. One of the objects of the General Clauses Act is to shorten the language of statutory enactments and this is achieved by specifically mentioning the power to make orders only as the power of addition etc., therein is automatically and by necessary implication conferred on the authority by virtue of this section. If section 10(1)(c) of the Industrial Disputes Act, 1947, is read with section 21 of the General Clauses Act, 1897, then there can be no doubt that the Government has the power to amend the previous notifications so as to exclude the disputes relating to the two respondent-industries, if in the opinion of the Government there is no existing dispute nor is one apprehended. It is for this reason that the power to amend is not specifically mentioned in the Industrial Disputes Act, 1947.

It is, however, urged that the provisions of the Industrial Disputes Act exclude the applicability of section 21 to section 10(1)(c) of the Act. There is no such express provision in the Act and the argument is that the exclusion should be inferred by necessary implication. It is urged that section 10 imposes a duty and obligation upon the State Government to refer an industrial dispute to the Tribunal if the prescribed conditions are satisfied and that sections 16 17, 17A, and 18 are also mandatory in character. These sections make it obligatory on the Tribunal to make an award after following certain procedure and it has been laid down that such an award shall be binding on the parties. In view of the fact that these provisions are mandatory it is argued that when a reference has been made it must culminate into an award and the reference cannot be cancelled or withdrawn before an award is made.

It is true that section 10 is mandatory and that the other sections mentioned above also use similar language. This, however, does not, to my mind, make any difference to the application of section 21 of the General Clauses Act, 1897, to the powers conferred under section 10. If the

Government after reference of the dispute and before the award is made comes to the conclusion that the nature of the dispute has changed or additional disputes have arisen then no violation of the provisions of the Act would be done if the order and notification is so amended or moulded as to bring it in consonance with the real dispute between the parties. Similarly if the Government comes to the conclusion that the industrial dispute has ceased to exist or is no longer apprehended then I see no reason why the Government should not have the right to rescind the notification. It has been repeatedly held by their Lordships of the Supreme Court that the object of all labour legislation is firstly to ensure fair terms to the workmen and secondly to prevent disputes between employers and employees so that production may not be adversely affected and the larger interests of the public may not suffer. In my opinion, this object can be better served by enabling the Government to vary, amend, or rescind the notifications under the Industrial Disputes Act rather than to allow those proceedings to continue even where such disputes had ceased to exist. It is well-known that conciliation between contending parties would be more easily achieved if there is a prospect of terminating arbitration proceedings before the Tribunal than where there is no such possibility. After all, the provisions of the Industrial Disputes Act indicate that compulsory adjudication by the Tribunal is to be resorted to when all efforts to bring about a settlement between the parties have failed. No purpose at all will be served by compelling the parties to continue proceedings before the Tribunal even after it is known that the nature of the disputes has changed or that additional disputes have arisen or that they or some of them have ceased to exist.

The learned counsel for the respondents has brought to my notice the decision of their Lordships of the Supreme Court in *Minerva Mills Ltd., Bangalore* v. *Workers of the Minerva Mills and another*, [1953] 5 F.J.R. 164. It has been held in this decision that it is open to the Central Government to withdraw a dispute from one Tribunal and refer it to another Tribunal. It has further been held that a Tribunal may be created for a limited time and if the dispute cannot be adjudicated upon by the Tribunal within its lifetime then it can be withdrawn from that Tribunal and sent to another Tribunal. It, therefore, follows that it is not necessary that a dispute once referred to a Tribunal must necessarily be decided by the same Tribunal. It appears to me that if it is open to the Government to withdraw adispute from a Tribunal for whatever reason, there is no corresponding obligation to refer the dispute to another Tribunal. In the circumstances of the case the Government may or may not do so. At least there is no express or implied provision in the Act to lead to that conclusion. This decision of their Lordships of the Supreme Court so far as it goes supports the view that the orders or notifications under the Industrial Disputes Act can be rescinded or amended before the Tribunal concerned has given its award. I am conscious of the fact that this conclusion may have the effect of weakening a trade union's power of negotiation and may encourage the individual firms to deal directly with its own workmen but it is a matter of policy with which I have nothing to do in these proceedings. My conclusion, therefore, is that the Government has full power to amend or vary or rescind an order passed and a notification issued under section 10 of the Industrial Disputes Act, 1947, even if it has the consequence of withdrawing particular disputes or disputes relating to particular industries from the reference already made to the Industrial Tribunal.

At the end I may state that in the present cases the reference relating to the Oriental Carpet Manufacturers (India) Limited, Amritsar, was withdrawn because the Government was satisfied that in this particular industry there never was any dispute between the management and its workmen and in the case of the Amritsar Rayon and Silk Mills the Government was satisfied that after reference of the dispute to the Tribunal the management and its workmen had settled disputes in presence of the Conciliation Officer who had reported the matter to the Government under section 12(3) of the Industrial Disputes Act, 1947. In these circumstances I see no compelling reason to come to the conclusion that it was incumbent upon the Government to allow the proceedings before the Industrial Tribunal instead of amending the notifications which had already been issued. For all these reasons I see no force in these two petitions and I dismiss both of them. As the petitioning Union had filed the petitions on a question of principle, I leave the parties to bear their own costs.

[IN THE BOMBAY HIGH COURT.]

NEW GUJARAT COTTON MILLS LTD.

v.

LABOUR APPELLATE TRIBUNAL OF INDIA AND OTHERS.

Shah and Palnitkar, JJ.

December 11, 1956.

SUCCESSION—COMPANY GOING INTO LIQUIDATION—ASSETS AND GOODWILL PURCHASED BY NEW COMPANY—NEW COMPANY, WHETHER SUCCESSOR OF OLD COMPANY—LIABILITY OF NEW COMPANY TO EMPLOYEES OF OLD COMPANY—PRINCIPLES—ABSENCE OF CONTRACTUAL RELATIONSHIP—BOMBAY INDUSTRIAL RELATIONS ACT, 1946, SECTIONS 3 (13), 42(4).

WRIT—JURISDICTION OF HIGH COURT—WHEN HIGH COURT WILL INTERFERE WITH DECISION OF TRIBUNAL—ERROR APPARENT ON THE FACE OF THE RECORD—MEANING OF—CONSTITUTION OF INDIA, ARTICLES, 226, 227.

A mill company went into liquidation after its factory had stopped working and its assets and goodwill were purchased by another company which restarted the factory. The employees of the old company whose services had been terminated applied to the new company for re-instatement or re-employment. The Labour Court and the Industrial Court, on appeal, held that the new company was not a successor to the old company and, therefore, the workmen could not make any claims on the new company. The Labour Appellate Tribunal, on further appeal, held that the new company was a successor to the old company. On an application by the new company for a writ to quash the orders of the Labour Appellate Tribunal, Held,

(i) that where the goodwill of the old company has been specifically valued and all the advantages incidental to the old company's business have been acquired by the new company, the Labour Appellate Tribunal was justified in holding that the new company was a successor to the old company;

(ii) that the scheme of the Bombay Industrial Relations Act, 1946, renders a successor liable even in the absence of a contract between the employees of the old undertaking and the successor;

(iii) that in any case the High Court cannot interfere with the decision of a Tribunal simply because it is possible to come to a different conclusion from that of the Tribunal;

(iv) that the question whether the new company was a successor to the old company was not a matter collateral to the matter to be decided by the Tribunal but was a part of the issue which was to be inquired into and decided by the Tribunal and a writ cannot issue merely to correct an error committed by the Tribunal; and

(v) that though the High Court has the undisputed right to correct an error apparent on the face of the record, the error must be so patent, so obvious, so

manifest or so palpable that when attention is invited to it, no elaborate argument is needed to support the contention that the conclusion is erroneous.

Special Civil Applications Nos. 1679, 1680 and 1681 of 1956.

N. A. Phalkhivala with *V. B. Patel* for the petitioners.

H. R. Gokhale, *V. M. Tarkunde* and *M. C. Bhandare* for the respondents.

JUDGMENT.

SHAH, J.—This is an application for a writ under articles 226 and 227 of the Constitution quashing an order passed by the Labour Appellate Tribunal in five appeals Nos. 41 and 147 of 1954, 50, 51 and 148 of 1955. The orders passed by the Labour Court in appeals Nos. 50, 51 and 148 of 1955 were set aside by the Tribunal and the cases were remanded to the Labour Court at Ahmedabad and were directed to be tried on the merits in the light of the observations made in the judgment. Against the order of the Labour Appellate Tribunal this application has been filed. The facts which give rise to this application may be briefly stated :

Respondents Nos. 5 to 13 were employees of the Gujarat Cotton Mills Co. Ltd., which will hereafter be referred to as the old company. The old company had a factory at Ahmedabad for manufacture of cotton textiles. The old company closed its factory in October, 1952, after putting up a notice under standing order No. 9. In February, 1953, this Court on a creditor's application ordered that the old company be wound up and appointed the Official Liquidator to liquidate its affairs. The Liquidator obtained an order from this court for selling as a going concern the assets and the goodwill of the company including the lease-hold rights to the land on which the factory stood. The New Gujarat Cotton Mills Ltd., which will hereafter be referred to as the new company, through its agent agreed to purchase the assets, the goodwill and the leasehold rights of the old company together with the buildings, plant and machinery from the Liquidator. The new company commenced working the factory in November, 1953. The Liquidator executed a sale-deed in favour of the new company on March 4, 1954. By the sale-deed the new company acquired the business assets together with the goodwill, the lease-hold interest, building and the plant and machinery. The sale-deed recited that the old company continued to be responsible for all debts and liabilities, and bonus and other emoluments due and payable to its employees. The new company declined to continue in its employment certain employees of the old company. These employees then approached the new company for re-instatement or re-employment and the new company having refused to grant their request, applications were filed before the Labour Court at Ahmedabad for an order against the new company for re-instatement or re-employment. The Judge of the Labour Court held that the applicants were not employees and the applications filed by them were not

maintainable. He observed that the old company having been ordered to be wound up, by the operation of section 172 of the Indian Companies Act, 1913, the employees of the old company were in law discharged from employment. He also held that the old company had terminated the services of its employees before it was ordered to be wound up. In the view of the Judge, an industrial dispute could not arise between a workman and a prospective employer, and inasmuch as the new company had started substantially as a new undertaking, it could not be regarded as a successor of the old company and was under no obligation to employ the workmen of the old company. In coming to that conclusion the Judge held that there was no connecting link between the business carried on by the old company and the new company, and there was in substance no transfer of the business of a going concern. Against the order of the Labour Court rejecting the application the applicant, the preferred an appeal to the Industrial Court. In appeal, the Industrial Court agreed with the view of the Labour Court. The Industrial Court held that the services of the applicants stood determined by virtue of section 172 of the Companies Act, and as the Liquidator did not continue the business of the old Company, they ceased to be employees from the date of commencement of the winding up. The Industrial Court also observed that from the circumstance that the old company as well as the new company were carrying on the same business, the applicants could not be regarded as employees of the new company under the definition of "employee" in the Bombay Industrial Relations Act, and as the applicants had ceased to be employees of the old company, they were not employees within the meaning of the Bombay Industrial Relations Act. In the view of the Industrial Court sub-section 4 of section 42 of the Act contemplated "approach by an employee to his employer and not to any other employer". The Industrial Court negatived the contention of the applicants that the new company was a successor of the old company within the meaning of section 114(1) of the Act. The Court held that though the Liquidator obtained permission to sell the assets of the old company as a going concern, what was sold by him was "a Mill and all its property to the new Company not as a going concern because the old Company had closed down and stopped its business." Having regard to the fact that the sale-deed recited that the new company acquired the assets of the old company free from all debts and liabilities of the old company and the new company being registered as a separate undertaking under the Industrial Relations Act. the court held that there was a "complete hiatus" between the old undertaking and the new undertaking and the new company could not be regarded as a successor of the old company.

Against the order passed by the Industrial Court, appeals were filed to the Labour Appellate Tribunal. The Labour Appellate Tribunal disagreed with the view of the Labour Court and the Industrial Court on the interpretation of the sale-deed. The Appellate Tribunal held that the sale-deed conveyed not only tangible assets of the old company but also the goodwill which was expressly separately valued at a large sum and the business of the company was purchased as a running concern, and the new company must be regarded as a successor of the old company. The Labour Appellate Tribunal observed: "Where a person...merely buys the whole or any part of the tangible assets of any person who has been using the same in his business, the purchaser cannot be said to acquire any interest of any sort in the old business of the vendor and if the purchaser starts a similar business of his own with the help of such assets, he cannot be regarded in any sense as a successor of the old business nor is he entitled to any of the intangible privileges belonging to the old business like the right to use the same or a similar name for his business or to canvass the old custom as against the vendor." But, the Tribunal observed the new company having purchased for a very large amount "the goodwill of the old business it was futile to suggest that the right to run the business of the old Company has lost all significance by the mere lapse of time." The Tribunal then observed:

"Ordinarily, under the Civil Law, a person who is a successor to a business is not bound merely because of such succession by the debts or liabilities of the old business and even if he has agreed with his transferor to be so liable, third parties, in the absence of a tripartite arrangement cannot enforce such debt or liability against the transferor who alone continues to remain liable for such debts and liabilities to third parties... Unlike the Civil Law, under the Industrial law, the duties of a successor in business who has decided to run the same and in the case of employees of the old concern *qua* the employees of the new concern are different. Under the Industrial Law the rights and obligations of the old concern are regarded as continuing and enforceable against the new management and not to be affected by the substitution of the new management for the old, whenever justice of the cause would require such enforcement."

In support of that view, the Tribunal referred to the provisions of section 18(c) of the Industrial Disputes Act and sections 114(1)(a) and 115 of the Bombay Industrial Relations Act. Holding, that a new company was the successor of the old company, the Appellate Tribunal remanded the case to the Labour Court for a decision on the question whether the applicants were entitled to claim relief from the successor in business. The Tribunal observed that in such a case the Court must carefully consider whether the refusal to give re-employment is capricious and industrially unjustified on the part of the successor in business, or whether the successor can show cause for such refusal founded on reasonable and *bona fide* grounds such as want of work, inability of the applicant to carry out the available work efficiently, late receipt of the application for re-employment in view of prior commitments or any other cause which in the opinion of the Court makes it unreasonable to force a successor in business to give re-employment to all or any of the employees of the old concern. Against that

order of remand this application has been filed under articles 226 and 227 of the Constitution.

Section 42 of the Bombay Industrial Relations Act, by sub-section (4) provides, in so far as it is material, as follows:

"Any employee or a representative union desiring a change in respect :

(i) ...

(ii) ... or

(iii) an industrial matter specified in Schedule III, shall make an application to the Labour Court:

Provided that no such application shall lie unless the employee...has in the prescribed manner approached the employer with a request for the change and no agreement has been arrived at in respect of the change within the prescribed period."

Schedule III to the Act sets out several industrial matters and item 6 thereof is: "employment" and includes "re-instatement", "recruitment" as also "unemployment of persons previously employed in the industrial concern."

The employees in this case applied to the new company for re-employment or re-instatement, but the new company declined to accede to that request. The requirements of the proviso to sub-section (4) are, therefore, fulfilled. A claim for re-instatement or re-employment must be deemed to fall within item (6) to Schedule III to the Act. The dispute raised by the employees expressly fell within item No. 6 in Schedule III and it was competent to the employees to make an application to the Labour Court desiring a change in respect thereof. An employee is defined in section 3(13) as meaning:

"any person employed to do any skilled or unskilled manual or clerical work for hire or reward in any industry, and includes—

(a) ...

(b) a person who has been dismissed or discharged from employment on account of any dispute relating to change in respect of which a notice is given or an application made under section 42 whether before or after his dismissal or discharge."

That definition is followed by a proviso which excludes certain categories of employees but it is conceded in this case that the applicants do not fall within the excepted classes. It is clear from the definition that a person who is dismissed or discharged from employment on account of any dispute relating to a change in respect of which an application under section 42 is made, whether before or after his dismissal or discharge, is regarded as an employee within the meaning of that expression. "An industrial matter" in clause (18) is defined as meaning:

"any matter relating to employment, work, wages, hours of work, privileges, rights or duties of employers or employees or the mode, terms and conditions of employment, and includes—" certain matters specified therein.

At first it may appear that there is no contract of employment between the applicants and the new company. The applicants were employees of the old company and it appears that there was termination of employment either by notice served upon them or by virtue of section 172, of the Indian Companies Act. The new company also appears to be a new undertaking: it has been so registered under the Bombay Industrial Relations Act and it has been registered as a new company under the Companies Act. The new company is admittedly a purchaser of the assets, goodwill and the immoveable property which belonged to the old company including the lease-hold rights. Under the ordinary law of contracts, the applicants may have no right to claim as against the purchaser of the assets of the old company, a right to continue in employment, but the questions arising out of industrial disputes cannot be decided merely on considerations of contractual obligations under the Civil Law. The object sought to be achieved by the Industrial Law is promotion of harmonious relations between labour and capital, between the employer and the employee, and substantially by what is called "Labour Legislation" it is intended to provide a machinery for settlement of disputes by adjudication or arbitration on considerations of justice, equity and good conscience. As has been observed by the Federal Court in the *Western India Automobile Association* v. *Industrial Tribunal, Bombay*, [1949] 1 F.J.R. 97:

"..............when a dispute arises about the employment of a person at the instance of a Trade Union, or a trade union objects to the employment of a certain person, the definition of industrial dispute would cover both those cases. In each of those cases, although the employer may be unwilling to do so, there will be jurisdiction in the Tribunal to direct the employment or non-employment of the person by the employer. This is the same thing as making a contract of employment when the employer is unwilling to enter into such a contract with a particular person. Conversely, if a workman is unwilling to work under a particular employer, a trade union may insist on his doing so, and the dispute will be about the employment of the workman by the employer and thus become an industrial dispute subject to the award of the Tribunal."

In our view, in industrial matters, the Court is entitled and is indeed bound to modify contractual rights and obligations on considerations of equity and in the larger interests of the community, such as promotion of industrial peace and security of employment of workmen. Merely because under the law of contracts, a claim may not lie at the instance of the applicants to be re-employed or re-instated by the new company, the claim made by the applicants cannot be regarded as in-admissible. It appears to have been settled by a large number of decisions of the Industrial and Labour Courts that the Industrial Law takes a different view about the duties and obligations of a successor in business, and if a successor decides to run the same business which was carried on by his predecessor, the employees of the old concern are entitled to submit a dispute before the Industrial Tribunal regarding their rights and obligations in the business of the old concern, and those rights and obligations must be regarded as continuing and enforceable against the new management and not affected by the substitution of the new management for the old. In *Odeon Cinema* v. *Workers of Sagar Talkies*, [1954] 6 F.J.R. 543, it was observed by the Madras High Court "...where there is a transfer of a business of one management to another, the rights and obligations which existed as between the old management and their workers continue to exist, *vis-a-vis* the new management, after the date of the transfer." It is also implicit in sections 114 and 115 of the Bombay Industrial Relations Act that the rights and obligations of a management of an industrial undertaking are enforceable in proper cases against its successor. It appears from the terms of section 18(c) of the Industrial Disputes Act that a successor to an old undertaking is liable to meet certain obligations of its predecessors. In our view, therefore, the absence of a direct contractual relation between the applicants and the new company is by itself not a ground for rejecting the claim made by the applicants.

The Labour Appellate Tribunal has held on the interpretation of the sale-deed that the new company are the successors of the business of the old company. In coming to that conclusion they have relied upon the recitals relating to the order made by this Court on May 16, 1953, sanctioning the the sale of the mill as a going concern and the invitation of tenders by the Liquidator and the sale thereof as a going concern together with the goodwill thereof, the leasehold interest of the company in the said lands, hereditaments and premises and all the plant and machinery and fixtures lying in or about the said mill premises. They have also relied upon the fact that the tender was submitted on behalf of the new company and ultimately it was accepted by the Liquidator. They have also observed that a sum of Rs. 3,00,000 (three lacs) out of the total consideration of Rs. 22,51,000 represented the price of the goodwill and the leasehold interest of the company in lands and buildings and the fixtures in the nature of immoveable property agreed to be sold to the purchaser, and that the old company having conveyed to the new company in consideration of Rs. 3,00,000, the goodwill together with the leasehold interest, it must be held that the new company were the successors of the business of the old company.

Mr. Palkhivala who appears on behalf of the new company had contended that this finding of the Labour Appellate Tribunal was incorrect. Counsel contended that there was in substance no sale of a going concern and he has invited our attention to the fact that there is no reference in the *habendum* clause to the transfer of either a continuing business or of a going concern. Counsel says that in reciting the history of the transaction the sale-deed refers to the order passed by the Court and also to an invitation for tenders for sale of a going concern, but the clause which conveys the property to the purchaser has reference only to the sale of the plant and machinery, the leasehold interest and the goodwill, and does not purport to convey the business or the goodwill of a going concern. Counsel urged that if there was any obscurity in what was conveyed by the sale-deed, permission to produce a copy of the tender submitted on behalf of the new company to the Liquidator may be granted in this application. Counsel also urged that the work of the factory of the company had stopped for more that one year prior to the date on which the sale-deed was executed and it was almost a legal impossibility that there could be anything in the nature of a succession to a business which was compeletely stopped. We are unable to accept these submissions. It is true that there is no express reference in the *habendum* clause to a sale of the business of a going concern, but on a reasonable reading of the sale-deed, we have no doubt that there was a conveyance of the property ordered to be sold by the court and in respect of which tenders were invited. All the three items of property which were recited as properties in respect of which tenders were invited are the properties which ultimately have been sold and conveyed. We do not think that in this application we will be justified in allowing fresh evidence to be produced at this late stage. Even if the factories of the company had stopped working it is difficult from that circumstance to arrive at a conclusion that the business of the old company has ceased. There is necessarily no direct connection between the stoppage of the factory and the stoppage of a business of the concern. For diverse reasons the factory may have been closed but that does not lead to the conclusion that the business comes to an end. Again the goodwill of a business is inclusive of positive advantages such as carrying on the commercial undertaking at a particular place and in a particular name, and also its business connections, its business prestige, and several other intangible advantages which a business may have acquired. Unless there is clear evidence to show that this goodwill which was intended to be sold and in fact sold by the Liquidator to the new company, was nothing but a name, we will not be justified in holding that no real and substantial goodwill of the old company was conveyed. In coming to that conclusion we are impressed by the circumstance that the goodwill has been separately mentioned and has been valued in the sale-deed.

Even if it be possible to take a view different from the one which has appealed to the Labour Appellate Tribunal on the interpretation of the sale-deed, we do not think that in exercising jurisdiction under articles 226 and 227 of the Constitution we have any powers to interfere with the conclusions of that Tribunal. Their Lordships of the Supreme Court in *Waryam Singh and Another* v. *Amarnath and Another*, [1954] S.C.R. 565, have observed:

"This power of superintendence conferred by article 227 of the Constitution should be exercised most sparingly and only in appropriate cases in order to keep the subordinate Courts within the bounds of their authority and not for correcting mere errors."

Therefore, assuming that there is some error committed by the Tribunal, we do not think that the Tribunal has gone outside the bounds of its authority

in interpreting the sale-deed and in coming to a conclusion that what was conveyed was the business of a going concern and not merely the assets of a business which had closed altogether.

Mr. Palkhivala urged that even if we have no jurisdiction under article 227 of the Constitution to interfere with the conclusion arrived at by the Labour Appellate Tribunal, by this application our jurisdiction under article 226 of the Constitution is also invoked, and we may be justified in issuing a writ of *certiorari* against that Tribunal. But, in our judgment, having regard to the findings of the Tribunal, we are unable to issue a writ of *certiorari*. The limitations which inhere the exercise of jurisdiction under article 227 apply with greater force when this Court's powers under article 226 of the Constitution are invoked. If the Tribunal acts within the limits of its authority, this Court will have no power to interfere with the conclusions recorded by it. Counsel urged that the question whether the new company was a successor of the old company must be regarded as a jurisdictional question, and being a jurisdictional question, if by a wrong decision the Tribunal has wrongly assumed authority to decide that which it has no power to decide, this court is competent to rectify the error and set aside the order. But we do not think that the question whether the new company is a successor of the old company is a jurisdictional question. The distinction between a collateral fact upon the proof of which the jurisdiction of a Tribunal depends and upon a fact which forms part of the issue to be decided by the Tribunal may be stated as follows: If the fact be collateral to the actual matter which the lower Court has to try, that Court cannot, by a wrong decision with regard to it, give itself jurisdiction which it would not otherwise possess. The lower Court must, indeed, decide as to the collateral fact, in the first instance, but the superior Court may upon *certiorari* inquire into the correctness of the decision, and may quash the proceedings in the lower Court if such decision is erroneous or at any rate if there is no evidence to support it. On the other hand, if the fact in question be not collateral but a part of the very issue which the lower Court has to inquire into, *certiorari* will not be granted, although the lower Court may have arrived at an erroneous conclusion with regard to it. (Vide Halsbury's Laws of England, Vol. XI, article 270, p. 142).

We have no doubt that the question whether the new company are successors of the old company is a part of the issue which the Industrial Tribunal had to inquire into and decide, and *certiorari* cannot be granted merely to correct an error committed by that Tribunal.

It was also urged that there is an error apparent on the face of the record and this Court in exercise of its jurisdiction to issue a writ of *certiorari* is entitled to correct an error apparent on the face of the record. That this Court has power to issue a *certiorari* against a Tribunal to correct an error apparent on the face of the record is undisputed, but, in our view, the error must be so blatant, so obvious, so manifest or so palpable that when attention is invited to it, no elaborate argument is needed to support the contention that the conclusion is erroneous. Where, however, by elaborate argument and detailed reference to evidence a particular conclusion may be demonstrated to be erroneous, we do not think that the conclusion can be regarded as disclosing an error apparent on the face of the record.

Mr. Palkhivala urged that the error apparent on the face of the record is an error which can be demonstrated without fresh evidence; but if that be the test, it would in effect be converting this Court exercising jurisdiction to grant high prerogative writs into a Court exercising appellate jurisdiction against decisions of Tribunals from which no appeals lie thereto. The test suggested by counsel is in our judgment a fallacious test and we are unable to accept the same. Normally, this Court does not entertain applications for issue of high prerogative writs, when the decision depends upon proof of disputed questions of fact. In considering applications for a writ of *certiorari*, not only does the Court not allow fresh evidence to be led to challenge the conclusions of an inferior Tribunal but it normally accepts the conclusions of the Tribunal as binding. It is difficult then to appreciate how the test suggested by Mr. Palkhivala can be applied in ascertaining whether in the decision impugned there is an error apparent on the face of the record. In our view the conclusion of the Labour Appellate Tribunal on the question whether the new company may be regarded as a successor of the old company must be accepted in this application.

It was then urged by Mr. Palkhivala that assuming that the new company is the successor of the old company, an application under section 42(4) at the instance of the employees of the old company, cannot lie unless the successor has chosen to re-employ the employees of the original company. This argument we have incidentally referred to in considering the nature of the jurisdiction which the Industrial Court exercised. We have pointed out that the scheme of the Bombay Industrial Relations Act renders a successor liable even in the absence of a contract between the employees of the old under taking and its successor. We have also observed that the *raison d'etre* of a Labour Tribunal is to be found in the desire of the State to provide a forum which may, unhindered by legalistic considerations, attempt to secure harmonious relations between the employer and the employee, with the ultimate object of securing an efficient working of industry by resolving disputes through the medium of arbitration and adjudication. That being the real object of legislation like the Bombay Industrial Relations Act jurisdiction to adjudicate upon a claim made by an employee of a transferor undertaking as against the transferee undertaking must be implicit. We, therefore, think that the second contention raised by Mr. Palkhivala cannot be entertained. It was then urged by Mr. Palkhivala that in this case even if it be held that the employees of the old company can file an application under section 42(4), the services of the applicants having been determined before the date on which the sale-deed was executed by the Liquidator the applicants have no right to proceed against the new

company. It was urged that the right to file an application under section 42(4) against a successor postulates the existence of a subsisting contract between the old employer and the employee at the date of the transfer of the undertaking. But, if regard be had to the definition of the word "employee" as inclusive of an employee whose employment has been terminated we are unable to see why the subsistence of an effective contract between the transferor undertaking and the employees is a pre-requisite to a claim against the transferee undertaking under section 42(4).

It may be pointed out that this plea was not urged in any of the three Courts below and was sought to be raised before us for the first time. In our view there is no substance in this plea and it must be rejected.

Mr. Palkhivala also invited our attention to section 42(4) before it was amended by the Bombay Act XXXIII of 1948. Counsel pointed out that originally the Legislature had used the expression "his employer" in section 42(4): and relying upon that form of enactment, it was contended that the Legislature had intended that before an employee can make an application, he had to establish that he was an employee of the employer against whom the application was made or intended to be made. It was urged that the Legislature intended by the use of pronoun 'his' that if there was no contract between the employee and the employer, against whom an application was sought to be made under sub-section (4) of section 42, the Labour Court was incompetent to entertain the application.

It is unnecessary for us to consider whether section 42(4) before it was amended, by substitution of the definite article "the" for the pronoun "his" supports the contention of the new company. According to Mr. Palkhivala, this amendment was made with a view to bring into line the the provisions of the Act in view of another amendment made by incorporationg the word "representative union" and by harmonising the use of the word "employer" in the context in which it stood. It is true that by the same amendment the words "or representative union" were added so as to confer a right to make an application upon a representative union. But from that circumstance we are not justified in holding that the expression "the employer" has the same meaning and connotation as the expression "his employer" as originally used.

It was **finally** urged that an application for re-instatement cannot lie at the instance of employees whose employment has been terminated. It is now too late in the day to raise that contention. The question has been finally adjudicated upon by the Federal Court in *Western India Automobile Association* v. *Industrial Tribunal, Bombay* that the Labour Court or the Industrial Court is competent to reinstate dismissed or discharged employees; and that appears clear from the definition of the expression "employee" in section 3(13) of the Bombay Industrial Relations Act. It our view the order passed by the Labour Appellate Tribunal directing remand of the proceedings to the Labour Court on the finding recorded by it must be upheld. The rule is, therefore, discharged with costs. Costs quantified at Rs. 150.

Civil Applications 1680 and 1681 are also dismissed for the reasons mentioned in our judgment in the principal case, and the rule is discharged with costs in both the cases. Costs Rs. 150 in each of the applications.

[IN THE MADHYA BHARAT HIGH COURT.]

RAMJI RUPCHAND

v.

DISTRICT SUPERINTENDENT, WESTERN RAILWAY.

Chaturvedi, J.

August 6, 1956.

PAYMENT OF WAGES ACT, 1936, SECTIONS 15 AND 17—AUTHORITY ACTING UNDER SECTION 15—JURISDICTION OF—RIGHT TO INTERPRET CONTRACT BETWEEN EMPLOYER AND EMPLOYEE—DETERMINATION OF ACTUAL WAGES—ORDER OF DISTRICT COURT ON APPEAL UNDER SECTION 17—WHETHER REVISION LIES TO HIGH COURT—CIVIL PROCEDURE CODE, 1908, SECTION 115.

WAGES—GOVERNMENT SERVANTS—GOVERNMENT ORDERS PRESCRIBING WAGES—INTERPRETATION OF—PRINCIPLES.

Where there is no question of potential wages and the question is only as to what the wages of an employee actually are, the Payment of Wages Authority has jurisdiction in dealing with an application under section 15 of the Payment of Wages Act, 1936, to construe the terms of the contract between the employer and the employee and determine the amount payable to the employee as wages.

The High Court can, under section 115 of the Civil Procedure Code, 1908, entertain a revision against the orders of a District Court passed in appeal under section 17 of the Payment of Wages Act, 1936.

Where there are numerous Government orders governing the fixation of wages of a certain category of Government servants they should all be read as a whole and the latest order should be accepted as giving the final intention and purpose. The Court must suppose that the Government has a consistent design and policy and intends nothing that is inconsistent or discriminatory.

Civil Revision No. 212 of 1955.

Patel for the petitioner.

Mazumdar for the respondent.

JUDGMENT.

This is a revision filed by the petitioner Ramji who is a Goods Guard at Ratlam against an order of the Court of the District Judge, Indore, dated 26th July, 1955, in appeal No. 117 of 1954 setting aside the order passed by the Authority under the Payment of Wages Act.

There is no dispute so far as the scale of the pay of the petitioner is concerned. It will be clear from the following narration that the dispute in this case is confined to arrears of salary which the petitioner is entitled to under orders of the President. The petitioner was in the service of B.B.C.I. Railway before 1931. In the next scale of 1931, all 'C' Guards were given a fixed salary of Rs. 100/- p.m. But when the petitioner was promoted to Guard grade 'C' he was given the pre-1931 scale of pay which was Rs. 50-5-85-10-105. Subsequently, all the railways in the country were integrated and the Pay Commission's recommendations were accepted by the Government of India which fixed a new scale of pay, hereinafter referred to as the 'Prescribed Scale'.

The pre-1931 Railway servants were given an option to remain in the old scale or to opt for the Prescribed Scale. It was mentioned that the last date of option was 1st May, 1948. The employees were asked to opt before that date and to mention whether they would like to come to the Prescribed Scale with retrospective effect from 1st January, 1947, or from 16th August, 1947. The post-1931 Railway servants had no option as the Prescribed Scale fully applied to them.

Petitioner Ramji did not opt on 1st May, 1948; but he, along with other Railway servants, held doubts about the application of the Prescribed Scale. This Scale, so far as the petitioner was concerned, was Rs. 60-4-120-EB-5-170; while the petitioner was already getting Rs. 70/-. Possibly, he thought he might have to begin from Rs. 60/- if he opted for the Prescribed Scale. It was represented to the Railway Board that the pre-1931 Railway servants should first be brought on the post-1931 scale and then should be asked to opt for the Prescribed Scale. The Railway Board accepted this representation and notified in the Railway Gazette (Ex. P/1) dated 11th November, 1950 on pages 25-26 the following:

"Extract Para 1 and 3 of Railway Board's letter No. E47CPC/10 dated 31st March, 49:

"1. The Railway Board have had under consideration the question of fixation of initial pay in the prescribed scales of railway servants on the pre-1931 scales of pay in cases where the pre-1931 scales of pay are inferior to the corresponding post-1931 scales of pay. It has now been decided that in such cases, the pay that the employee would have been entitled to, on the post-1931 scale of pay on the date of his coming on to the prescribed scale, should first be determined on the basis that the pay of such staff might be assumed to have been fixed on post-1931 scales under 2017-R-II (F.R. 22) with effect from the date of promulgation of said scales.

2. Those orders have the approval of the Governor-General."

A copy of Railway Board's above letter was sent to the District Traffic Superindent, Ratlam and others. It was mentioned in that letter dated 19th August, 1950 that the General Manager under his No. EPC120/50/616 of 8th August, 1950, accepted the following categories as categories in which the pre-1931 scales are inferior to the corresponding post-1931 scales. In the six categories mentioned in this letter, No. 5 is that of Goods and Local Section Guards in which the petitioner was at that time. It was mentioned in para 4 of this letter that "there may be a few cases where staff may wish to exercise a revised option in view of these orders. Their particulars should be forwarded to this office so that the General Manager may be approached for allowing them a chance for revised options."

Then the copy of letter No. EA 377/IV Goods, dated 18th September, 1950 from D.T.S., Ratlam to the Station Master, Ratlam says that "the pay of the staff mentioned under revised orders can be fixed provisionally subject to audit checking as shown below against each." The petitioner's name Mr. Ramji, Goods Guard Ratlam, is shown in this list and also it is mentioned that his pay can be fixed on 1st January, 1947 or on 16th August, 1947 at Rs. 108. Then the letter concluded in the following words:

"Please let me know if they wish to exercise revised option in view of the revised orders to enable me to forward their particulars to the Traffic Superintendent, General Local Office, so that the General Manager may be approached for allowing them a chance for revised option."

To this letter the petitioner replied on a Government form on 7th November, 1950:

"I want to elect prescribed scales under revised rules on and from 1st January, 1947."

This will clearly show that the petitioner exercised his option on 7th November, 1950.

In this connection it is useful to refer to Gazette No. 22 of 11th November, 1950, which notified the Railway Board's letter No. E47CPC/10 dated 22nd September, 1950, about the question whether the superiority or inferiority of pre-1931 scale over a post-1931 scale should be determined with reference to the post occupied by the employee on the relevant date or on the date of introduction of the post-1931 scales. It was laid down that the relative inferiority or superiority of the scales of pay should be determined with reference to the posts which the employees occupied in substantive or officiating capacity on 31st December, 1946 or 15th August, 1947 as the case may be, since the application of presumptive pay of pre-1931 employees in the post-1931 scale of pay had significance only on the date of option of the prescribed scales of pay.

Then, for the purpose of comparing a pre-1931 scale and post-1931 grades certain factors were laid down so that they could be taken into account to determine the superiority of one over the other. Then the order said that once it has been established that it would be more profitable for an employee to come on the post-1931 scales of pay before his pay is fixed in the prescribed scales, his presumptive pay in the post-1931 scales of pay should be worked out from the date of their introduction on the Railway to the date of his option to the prescribed scales. The Board then said that the staff should then be called upon to send their applications for receiving the benefit of those orders within a period of three months. The Board also

desired for early action for the implementation of this decision.

It will be obvious that the Railway Board wanted to give another chance to the employees for revised option and applications were invited from the employees within a period of three months, that is, by 11th February, 1951. It was in compliance with this order that the petitioner's presumptive pay in the post-1931 scales of pay was worked out and he was asked to send his application to receive the benefit of those orders.

It appears that after this, some controversy arose, the exact nature of which is not known, as the relevant papers are not on record, but a copy of letter No. E830/11/4 dated 27th September, 1952, from RTS (E) BCT to the District Traffic Superintendents marked as Ex. 27/3 states as follows:

"The question of allowing pre-1931 Guards, who had elected to remain in the existing scales of pay and who stand to benefit by application of Board's orders (published in the Gazette of 11th November, 1950) is still under correspondence with the Railway Board. To obviate any apprehension on the part of the Guards concerned, applications of those Guards who have applied for getting the benefit within the target date of 10th February, 1951 should be acknowledged individually stating that their applications are on record and will be dealt with on receipt of the Board's orders, in this connection."

Then, Ex. P/4 is a copy of Railway Boards letter No. E47CPS/10 dated 15th October, 1952, to the General Manager, CCC. The subject is the same, that is, "post for which pre-1931 scales are inferior to the corresponding post-1931 scales." It says:

"Reference correspondence resting with your letter No. E830/11 dated 11th July, 1952. The President is pleased to decide that the Guards on pre-31 scale of Rs. 50-105 on the Broad Gauge section of your Railway may be permitted to exercise an option for coming on to prescribed scales within two months from the date of issue of this letter. The fixation of pay should be done *pro forma* under RS(ROP) Rules, 1947, the actual payment under the revised rate should be made from the date of exercising the option."

This notification is important as much of the controversy in this case rests upon its interpretation. It is, however, significant to note that this notification does not say as to what would happen to those pre-1931 Guards who had already elected under notification No. 22 published in the Gazette of 11th November, 1950 and who had informed the authority about their option. It appears, however, that the petitioner Mr. Ramji was asked again to opt and he filled a form of election of the prescribed scales of pay on 10th November, 1952.

As regards the employees who had opted in terms of Board's letter No. E47CPS/10 dated 19th February, 1952, it was made clear in the Railway Board's letter No. E47CPC/10 dated 22nd December, 1952, that arrears were payable from 22nd September, 1950.

Last of all, there is in this connection an important letter from the Railway Board No. E47CPC/10 of 11th April, 1953. It bears the same subject, i.e., "post for which pre-31 scales are inferior to corresponding post-31 scales of pay." It is published in the Central Railway Weekly Gazette dated 1st May, 1953, and it runs as follows:

"In modification of decision contained in para. 2 of Railway Board's letter No. E47CPC/10 dated 22nd December, 1952, the President has been pleased to decide that the staff who have been benefited by the orders contained in the letters of even number dated 22nd September, 1950, and 19th February, 1952, should be paid arrears from 1st January, 1947, or 16th August, 1947."

There is no dispute about the salary of the petitioner under the prescribed scale, that is, on 1st January, 1947, it ought to be Rs. 108, on 25th January, 1947, Rs. 112, on 25th January, 1948, Rs. 116, on 25th January, 1949, Rs. 120, on 25th January, 1950, Rs. 125, on 25th January, 1951, Rs. 130, and on 25th January, 1952, Rs. 135. The question is only whether he should get arrears of salary from 1st January, 1947, or from 7th October, 1950, when he made an application for option or from 10th November, 1952, when he filled in the "election form". The Authority under the Payment of Wages Act held that the applicant must be paid his arrears from 1st January, 1947, in accordance with the order of the President published in Central Railway Weekly Gazette on 1st May, 1953, mentioned above.

The Court of the District Judge did not agree, allowed the appeal against the judgment of the Authority under the Payment of Wages Act; and, on the basis of the Railway Board's letter No. E47CPC/10 dated 15th October, 1952, held that the actual payment of arrears is to be made from the date when the applicant exercised his option, that is, from 10th November, 1952, when he filled in the 'election form'. The learned Court in appeal also held that the Authority is incompetent to decide such questions as has been raised in this case under section 15 of the Payment of Wages Act. He, therefore, rejected the claim of the petitioner. The petitioner has come in revision against this order.

The question whether such a revision is competent or not within the meaning of section 115, Civil Procedure Code, has not been agitated before me. This Court has been hearing revisions against orders of the District Court passed in appeal under section 17 of the Payment of Wages Act as will be evident from cases reported in *Raj Kumar Mills Ltd.* v. *Inspector, Payment of Wages* M.B.L.R. 1955 Civ. 35; A.I.R. 1955 Madh. B. 60 and in *Payment of Wages, Inspector* v. *Bramhodutta* A.I.R. 1956 Madh. B. 152. The view held by this Court is that the "District Court" mentioned in section 17 of the Payment of Wages Act is not a *persona designata* but a Court and is also one subordinate to the High Court within the meaning of section 115 Civil Procedure Code.

Mr. Muzumdar, learned counsel for the opponent contended that such a question as has been raised in this revision petition cannot be investigated by the Authority under the Payment of Wages Act. In my opinion, there is no substance in this contention. In *A. V. D'Costa* v. *B. C. Patel* [1955] 8 F.J.R. 121 at p. 126 the Supreme Court observed:

"If the parties entered into the contract of service, say by correspondence and the contract is to be determined with reference to the letters that passed between them, it may be open to the authority to decide the controversy and find out what the terms of the contract with reference to those letters were. But if an employee were to say that his wages were Rs. 100 per month which he actually received as and when they fell due but that he would be entitled to higher wages if his claims to be placed on the higher wages scheme had been recognised and given effect to, that would not, in our opinion, be a matter within the ambit of his jurisdiction.

"The authority has the jurisdiction to decide what actually the terms of the contract between the parties were, that is to say, to determine the actual wages; but the authority has no jurisdiction to determine the question of potential wages."

In this particular case there is no question of potential wages. I have not to enter into an elaborate enquiry with the object of determining as to what the wages ought to be, but the question is to ascertain what the wages of the petitioner actually are; and, for determining the actual wages the authority has jurisdiction to construe the terms of the contract and to determine whether under the contract an amount X or an amount Y is payable to the employee as wages.

After the decisions of the Supreme Court, I do not think there can be any serious contention raised about this point. I would, therefore, repel the first contention of Mr. Muzumdar.

As regards merits of the case, Mr. Muzumdar relies upon Ex. P/4 which is a copy of Railway Board's letter No. E47CPC/10 dated 15th October, 1952, to the General Manager, and he thinks that the order related to pre-1931 Guards who had opted after 1st May, 1948, for the prescribed scales and it was clearly laid down that in such cases the fixation of pay should be done with effect from 1947, but that the actual payment under the revised scale should be made from the date of exercising the option.

The learned counsel urges that the Railway Board's letter No. E47CPC-10 of 11th April, 1953, which is published in Central Railway Weekly Gazette dated 1st May, 1953, refers to "the staff who have been benefited by the orders contained in the letters of even number dated 22nd September, 1950, and 19th February, 1952." It does not refer to the Guards for whom a special order had been made in the Railway Board's letter dated 15th October, 1952. In my opinion, this contention is devoid of force. Railway Board's letters of 22nd September, 1950 and 19th February, 1952, referred to all the staff including the pre-1931 Guards.

In those letters there is absolutely no reference to the fact that the 'staff' meant all the other Railway staff (excluding pre-1931 Guards). It is significant to note that the subject in every letter was "post for which pre-

1931 scales are inferior to the corresponding post-1931 scales." The orders of the Government modifying previous ones have been varied from time to time according to the contingencies which arose, or, according to the difficulty which was experienced.

In my opinion, all these various orders should be read as a whole and the latest declaration must be accepted as the final intention and purpose. If taken in this way, I have to come to the conclusion that the later order of the President has annulled all the inconsistent orders of former dates. In fact the order of the President mentioned in the Railway Board's letter of 11th April, 1953, must be construed as a repeal of the older and prior order by implication. Moreover, the Court has to suppose that the Government have a consistent design and policy and intend nothing that is inconsistent or incongruous.

A Government order cannot be expected to be discriminatory. Courts cannot suppose that the Government wanted that the pre-1931 Guards should be deprived of the advantages which they allowed to the other pre-1931 Railway staff.

Mr. Muzumdar vigorously argued that the general rule, that prior statutes are held to be repealed by implication by subsequent statutes if the two are repugnant, does not apply if the prior enactment is special and the subsequent one is general. This, no doubt, is true; but it has been observed at page 352 in Craies on Statute Law (5th Edition) that this rule must not be pressed too far.

If a special enactment and a subsequent general Act are absolutely repugnant and inconsistent with one another, the Courts have no alternative but to declare the prior special enactment as repealed by the subsequent general Act. In all such cases, the legislative intention, rather than grammar or letter of the enactment, is the determining factor. If the intention is found to be to sweep away all previous orders and to establish one rule for all Railway employees, that will be sufficient to get rid of any previous special order relating to pre-1931 Guards.

The Railway Board's letter No. E47CPC/10 of 22nd December, 1952, clearly begins with the following words:

"Reference your letter No. CPC/52/OPN/19/42 dated 11th October, 1952. The Board is considering the question of granting a general option to the Railway servants and the decision in the matter will be communicated to you as soon as arrived at."

It is, in this reference that the whole correspondence has to be looked at. This letter was issued clearly seven days after the Railway Board's letter of 15th October, 1952, and the intention was that all the previous orders including those of pre-1931 Guards would be reconsidered.

This leads me to the conclusion that the President's subsequent order of 11th April, 1953, was intended to establish one rule for all pre-1931 Railway employees (including Guards) whether they opted before 1st May 1948 or afterwards.

[To be reprinted]

I have already observed in para. 4 above that the petitioner had already exercised validly his option on 7th November, 1950. He had informed the relevant authority of his election and that was sufficient. To fill in an "election form" was not necessary as it had not been prescribed anywhere. It was in compliance with Railway Board's letter No. E47CPC/10 dated 22nd September, 1950, that the petitioner's presumptive pay in the post-1931 scales of pay was worked out and he was asked to send his application to receive the benefit of these orders. In fact, he is one of "the Railway staff who has been benefited by the orders contained in Railway Board's letter dated 22nd September, 1950" within the meaning of the President's orders contained in the Railway Board's letter No. E47CPC/10 of 11th April, 1953.

In this view of the matter, I would set aside the order of the District Court and restore that of the Authority under the Payment of Wages Act. No order as to costs.

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