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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.

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REPORTS

VOLUME XIII

[IN THE FIRST INDUSTRIAL TRIBUNAL, WEST BENGAL.]

SHALIMAR PAINT, COLOUR AND VARNISH CO., LTD.

v.

THEIR WORKMEN.

Shri M. C. Banerji.

April 30, 1957.

WAGES AND ALLOWANCES—REVISION OF—WAGES AND ALLOWANCE SATISFACTORY ON INDUSTRY-CUM-REGION BASIS—MERE LAPSE OF TIME SINCE LAST REVISION—WHETHER SUFFICIENT REASON FOR REVISING WAGE STRUCTURE—SUBORDINATE STAFF AT FACTORY—DEARNESS ALLOWANCE FOR—WHETHER ENTITLED TO SAME DEARNESS ALLOWANCE AS FACTORY WORKERS.

CONDITIONS OF SERVICE—WORKING HOURS—FIXATION OF—WHETHER MANAGEMENT FUNCTION—RIGHT OF WORKMEN TO INTERFERE.

BONUS—AWARD OF—SUFFICIENT BONUS VOLUNTARILY GIVEN BY MANAGEMENT—CLAIM FOR FURTHER BONUS—WHETHER JUSTIFIED.

STRIKE—STAY-IN-STRIKE—NATURE OF—WORKMEN, WHETHER ENTITLED TO WAGES FOR PERIOD OF STRIKE.

MISCONDUCT—MANAGER SEEING MISCONDUCT BEING COMMITTED—REFUSAL OF CHARGE-SHEET BY WORKMEN—NECESSITY FOR ENQUIRY BY MANAGER.

Where the minimum basic wages, the dearness allowance and the distribution of wage grades over groups of workmen are reasonable and the grade system has not been abused and there has been no discrimination in the matter of advance of wages and the existing system is satisfactory when compared with the wage structure prevailing in other principal industries in the region, there is no necessity to revise the basic wage grades simply because a period of 10 years has elapsed since the last revision.

The subordinate staff (peons, orderlys etc.,) at the factory cannot claim more dearness allowance than that granted to similar staff in the head office of the concern.

The right to fix the hours of work is essentially a management function and where a change has been effected in the hours of work without affecting the total earnings or dearness allowance of the workmen, the workmen cannot interfere and ask for a reversal of the change effected by the management.

Where the management has already given voluntarily a bonus of nearly 40 per cent. of the available surplus of profits, there is no justification for a demand for further bonus by the workmen.

A stay-in-strike is illegal in that, by remaining in the employer's premises despite his wishes and outside the hours of work, the striking workers constitute an unlawful assembly and are guilty of criminal trespass. Therefore, workmen who take part in such stay-in-strike are not entitled to any wages for the period of the strike.

Where the manager himself saw the workman committing a misconduct and the workman refused the charge sheet which was given to him, he cannot complain afterwards that he was dismissed without an enquiry.

P. P. Ginwalla, D.P. Ghosh and *P.K. Ghosh* for the management.

Ram Sen for the workmen.

AWARD.

The issues that were framed for the decision of this case are the same as those mentioned in the order of reference and are as follows:

(1) Revision of the present grade system and increment.

(2) Pay scales of daily-paid clerks.

(3) Annual bonus for the years 1953-54 and 1954-55.

(4) Whether peon, orderly and similar other staff are entitled to equal benefit of dearness allowance given to other employees of the Company?

(5) Leave and holidays.

(6) Revision of Provident Fund Scheme.

(7) Introduction of 48 hours in place of 44 hours per week.

(8) Pay for the strike period (17th August, 1955 and 22nd August, 1955).

(9) Whether discharge of (a) Shri Punit and (b) Shri Prabir Thappa is justified? To what relief are they entitled?

ISSUE NO. 1.—*Revision of the present grade system and increment.*

The Union states in its written statement as follows:—

Messrs. Shalimar Paint, Colour and Varnish Co., is one of the large-

scale units in the paint industry. It is a prosperous concern. The workmen have to work in contact with poisonous gas and chemicals. There is a grade system in this concern which is defective. The scale of basic pay in the grade system was fixed long ago at a low rate. There is no ladder of service increment and the gradation has not been made on the basis of job and nature of duties. The Union, therefore, prays for a revision of the grade system with yearly service increments. In the written statement, the Union also stated that a scheme of grade system would be submitted later on. Such a scheme was submitted on 30th January, 1957, on the date of hearing of the case. The Company could not file any statement on the scheme filed by the Union.

The Company, in its written statement, states that it is wholly incorrect to say that the workmen's health is adversely affected as they are to work in contact with poisonous gas and other chemicals. The said matter was considered on a previous occasion at the Works Committee's meeting when it was pointed out that there had not been any case of lead poisoning or any gas poisoning. The workmen are submitted to quarterly medical examinations by the Certifying Surgeon of Factories and there had never been any case of any workman having suffered or been affected by lead or other chemical poisoning or poisonous gas. In regard to the claim for a revision of the present grade system and increment in wages, the Company states that it has well-regulated grades which has been fixed in consideration of the skill and ability for the work. The service of all workers is reviewed annually and promotion is granted in suitable cases on consideration of individual skill, good attendance and the length of service with and loyalty to the Company and such promotions are always favourable to the workmen. The demands are vague and unjustified and should be rejected.

Evidence was adduced by both parties and P. W. 1 Shri Ajit Kumar Mondal, P. W. 2 Shri Chanalal Majumdar, P. W. 3 Shri Punit and P. W. 4 Shri Prabir Thappa were examined on behalf of the Union, and documents, Exs. 1 and 2, were marked for the Union. O.P.W. 1 Mr. W. R. Monk, Works Manager, O.P.W. 2 Mr. C. Evans, Accountant of the Managing Agents, O.P.W. 3 Shri Liquat Hossain Molla, Clerk of the Welfare Department and O.P.W. 4 Mr. P. J. Earle, Production Manager, were examined for the Company. Documents, Exs. A to Y(2) and AA to GG, were marked for the Company.

P. W. 2 Shri Chanalal Majumdar states in his evidence that he is a marksman. The present grade scale was introduced in 1946. The grade scale was last revised in 1949. The dearness allowance of Rs. 10 was merged with the basic pay in 1949. He also states that under the present grade system, different grades were given for similar jobs. No worker gets the rate of B grade on first entry. The promotion of a worker from C to B grade is not made automatically by efflux of time but is made by the Company according to its discretion. He further states that there are instances where the same work is done by a B grade worker as well as a C grade worker. In Shalimar Works under the same Managing Agency, there are yearly incremental scales for the workers. The witness also states that when the varnish is boiled with various chemicals, there are fumes that envelope the whole factory room and the workers have to inhale these fumes. In 1946 the weekly working hours were reduced from 48 to 44. O.P.W. 1 Mr. Monk, Works Manager, states that prior to 1946, when the present system of pay was introduced, the Company paid wages without regard to the work done. Everybody started with 8 annas 6 pies per day, whether he was unskilled labour or a skilled artisan. Every year the Company used to examine the pay scale of everybody and made the practice of increasing a few people's pay annually, but almost everybody biennially. The review was annual but in practice everybody got an increment after two years. The usual increment was half-an-anna per day but some more used to be given for special cases. The witness states that this practice led to the anomaly of an unskilled worker with long service receiving a wage which was more than the wage of a skilled worker with a shorter period of service. This led to anomaly. After discussion with the Union at the time the Company revised wages and prescribed three grades, C, B and A. To give an increment, the Company considers service, skill, loyalty and integrity of everybody once a year. In a number of sirdars' job, the Company introduced the leading hands grades. Promotion to leading hands are only made when there are vacancies. Ex. E is a copy of the letter, dated 19th June, 1946, to the President, Shalimar Paints Mazdoor Union, showing that the new grades were introduced by agreement with the Union. The witness was also present at the discussions between the manager and the Union officials because he was the assistant manager at the time. Ex. F is the graded salaries of labour of different categories as in force from 1st May, 1949. Ex. G is the monthly wages of workers as on 1st January, 1956, giving all designations and made up of basic pay, dearness allowance and total wages. The same information with regard to the subordinate staff is found in Ex. G(1). Ex. H is a statement of the pay scales prevailing in the members of the Paint Federation of Calcutta consisting of British Paints, MacFarlane and Co., Jenson & Nicholson, H. R. Burnet and East India Paints. These statements were made from the information obtained by correspondence from these companies as appearing in Exs. I to I(9). In cross-examination, the witness stated that the upgrading of an employee from C to B and B to A is made in consideration

of the employees' efficiency, loyalty, etc. The minimum wage for an unskilled worker is Re. 1-4 per day. The witness admits in cross-examination that the workmen of the C grade and of the B grade, so far as unskilled labour is concerned, do the same work. In respect of the unskilled worker, the leading hand also does the same work. In the other categories of workers, workers of all grades including the leading hand of the grade, do the same kind of work. Leading hand does the work of a skilled worker and a little supervision over the workers in his charge and is the person in that small group who receives instructions in regard to work in that group.

Exhibit F shows the grades of salaries in C, B and A grade and also the grade of the leading hands in some of the categories. The minimum wage is paid to the general labour that is the unskilled labour. His basic wage is Re. 1-4 per day in the C grade, Re. 1-6 in the B grade, Re. 1-8 per day in the A grade and Re. 1-12 in the leading hand grade. The Company now works for 44 hours in the week and 24 days in the month. Re. 1-4 per day is equivalent to Rs. 30 per month of 24 days. The women packers get the same pay as the unskilled labour in the C, B and A grades and Rs. 1-11 per day in the leading hand grade. The women workers get Re. 1-3 in the C grade, Re. 1-5 in the B grade, Re. 1-7 in the A grade and Re. 1-9 in the leading hand grade. We shall for the present consider the wages of the male workers only. It appears from Ex. G that there are only 3 women workers who get the basic pay of Rs. 28-8 per month and there is one woman worker who gets the basic pay of Rs. 30 per mensem. The other women workers get a higher basic wage. The women get the same dearness allowance as the men. It appears from Ex. G that only two general labour, i.e., unskilled labour, get the basic pay of Rs. 30 per month; 52 of them get a basic pay of Rs. 33 per month, 84 of them get a basic pay of Rs. 36 per month and there are 23 others who get higher basic salaries amongst whom 3 get a basic pay of Rs. 43-8 per month. The dearness allowance is according to the Bengal Chamber of Commerce Scheme based on the middle class cost of living index. It was Rs. 60 per month in January, 1956. Last month it was Rs. 63 per month for all categories of manual workers up to basic pay of Rs. 60 and higher for higher basic wage. It appears from Ex. G that 2 lorry drivers with a basic wage of Rs. 80 each got a dearness allowance of Rs. 82 each in January 1956, and 1 lorry driver with a basic wage of Rs. 100 got a dearness allowance of Rs. 105 at that time. This is according to the Bengal Chamber of Commerce Scheme based on the middle class cost of living index in January, 1956. The wage chart in January, 1956, Ex. G, shows that the total minimum wage for the unskilled worker is Rs. 90 per mensem and the total minimum wage for the women workers is Rs. 88-8 per mensem.

Ex. H will show that this Company paid a higher salary to the workmen than the other companies, as mentioned in this statement. The dearness allowance paid by this Company according to the Bengal Chamber of Commerce Scheme based on the middle class cost of living index is a distinct advantage which is not enjoyed by the workers of any other paint factories as mentioned in Ex. H.

The learned spokesman for the Union drew my attention to the fact that the women workers got a slightly less pay than the men workers and this amounted to discrimination. It has been stated above that the women packers in the C, B and A grades get the same wages as the male general labour and only in the leading hands grade, the women packers get Rs. 1-11 per day as against Re. 1-12 for the male workers. Even in the case of the women packers, the minimum wage was Rs. 88-8 in January 1956 as against Rs. 90 the minimum for the male unskilled worker. I do not consider that this is a discrimination against the women workers. It has been recommended in the Report of the Committee on Fair Wages as follows :

> "When employment is on piece-rates or where the work done by men and women is demonstrably identical, no distinction should be made between the men and women workers regarding wages payable. Where, however, women are employed on work exclusively done by them or where they are admittedly less efficient than men, the fair wages of women workers should be calculated on the basis of a smaller standard family than in the case of a man. The exact size of the family should be decided by the Central Co-ordinating Authority" (Recommendation No. 15, page 33 of the Report).

The deficiency of the wage of the woman worker is only Re. 1-8 per month out of Rs. 90 which is the wage for the male worker. There is nothing to show that this deficiency in wages was caused in spite of the fact that the women were equally efficient as the men. If the women are less efficient than the male workers, this deficiency in wages will be justified and no complaint of discrimination should be made. The plea that workers of the C grade, B grade or the A grade of the unskilled category do the same kind of work has no bearing on the claim of an incremental wage scale. The unskilled worker is promoted to the B grade and then to the A grade on efficient service and in view of other considerations. The skilled workers of the B and C grades may do the same kind of work, but there is no doubt that the skilled worker of the B grade will execute the work in a better way than the skilled worker in the C grade, although both of them are doing the same kind of work. There can be no doubt that the skilled worker will increase his skill with

efflux of time and therefore the execution of the same job by junior and senior skilled workers will not result in an identical performance.

The learned spokesman for the Union pointed out that although the minimum wage was Rs. 93 consisting of the basic wage of Rs. 30 and the dearness allowance of Rs. 63 still this was much below the calculated minimum of the living wage as laid down in the case of Caltex, Ltd. (1952 L.A.C., 402 at 407), Buckingham and Carnatic Co.'s case [1951] 3 F.J.R. 265 and the case of Rashtriya Mill Mazdoor Sangh [1955] 8 F.J.R. 78. In none of these cases, however, a minimum basic wage of more than Rs. 30 per month has been allowed by the Tribunal. The dearness allowance according to the Bengal Chamber of Commerce Scheme based on the middle class cost of living index is the highest scale of dearness allowance paid in any concern in West Bengal and such scale of dearness allowance is not allowed in the major industries in this State, viz., the Jute Textile Industry, the Cotton Textile Industry or the Engineering Industry. The minimum wages allowed in these industries are as follows :---

	Basic pay.	Dearness allowance.	Total.
	Rs.	Rs.	Rs.
Jute Textile Industry ...	34.67	32.50	67.17
Cotton Textile Industry ...	20-2-5p.	30	50.15
Engineering Industry ...	30	31	61

The Jute Textile Industry in West Bengal does not grant any annual bonus to the workmen. There is some provision of bonus for the workers in the Cotton Textile and the Engineering Industry in West Bengal. Bonus at 1½ months' basic pay for 1953-54 and 2½ months' basic pay for 1954-55 were paid to the workmen of the Shalimar Paint, Colour and Varnish Co.

It would appear that a minimum basic wage at Rs. 30 per month with a dearness allowance according to the Bengal Chamber of Commerce Scheme based on the middle class cost of living index which allows at present the minimum dearness allowance of Rs. 63 per month should be taken to be a satisfactory scheme of wage for the workers of the present industry. Documents, Exs. Z to Z(2), being statistical reports of the average wage paid in this industry show that the daily average wage for the male worker and the woman worker works out at Rs. 5-14 and Rs. 4 respectively. Statements, Exs. G and G(1), also shows that only 3 women and 3 men out of a total of 515 workers were getting the minimum wage and most of the workers got higher wages. There are 57 men getting basic pay at Rs. 33 per month, 113 men getting a basic pay of Rs. 36 per month and 204 men getting a basic pay between Rs. 40-8 and Rs. 48 per month. In 1953 January, all got a dearness allowance of Rs. 60 per month. The distribution of wage grades for the entire complement of workers also appears to be quite satisfactory.

Exhibit W, the minutes of the Works Committee meeting on 3rd August 1953, shows that the allegations of the workers that they had occasionally diseases from working in the factory, notably lead poisoning and poisoning from varnish fumes, were refuted by the Company's representatives. It was decided that there was no case of lead poisoning or poisoning from varnish fumes. The workers could not cite a single instance of lead poisoning or poisoning from varnish fumes. The allegation of the Union that the work was dangerous to the health of the workers and therefore a higher wage should he paid does not appear to be justified in the circumstances.

It was also pressed by the Union that in places of the grades C, B and A also the leading hand grade where they exist, an incremental scale should be introduced. The Union filed on 30th January, 1957, a scheme suggesting an *ad hoc* increment of 25 per cent. of the existing wage along with automatic annual increments ranging from 2 annas to 5 annas per day in the case of named groups of workers.

The evidence of Mr. Monk is that the grade system of wages was formulated in consultation with the Union of the time and in order to prescribe a wage for the job and further to give a rise from one grade to another, the Company considers service, skill, loyalty and intergrity of every worker once every year. Promotions to the leading hands grade are made when there are vacancies. Ex. E, dated 19th June 1956, is the letter to the President of the Union at the time showing that the scheme as introduced in July 1946, had his agreement. It was argued that the grade system introduced in 1946 should have a revision with an wage advance at the present time after a lapse of 10 years. As has been discussed above, the minimum basic wage, the dearness allowance and the distribution of the wage grades over groups of workmen show a resonable incidence of the wage system. It does not appear that the grade system has been abused in any way. There is no instance of unfair discrimination in the matter of advance in grades. The present system appears to be satisfactory in the context of the prevailing wage system on the industry-*cum*-region basis, as also on the wage structure prevalent on other principal industries in the region. All were systems are meant to be long-term measures. A wage system cannot be altered only because a period of 10 years has elapsed after the last revision. There is, therefore, no merit in the suggestion that there should be revision of the basic wage grades only because they were prescribed more than 10 years ago.

On a consideration of all the circumstances and the evidence on record, I do not consider that the case for a revision of the grade system

of wages or for an automatic annual increment has been made out. This issue is accordingly answered.

ISSUE NO. 2.—*Pay scales of daily paid clerks.*

There is a category of workmen in the factory who do simple routine work on paper and are classified as clerical workers on daily basic wage as the factory manual workers and are styled as daily-paid clerical workers. The establishment clerks are paid monthly basic wages. The dearness allowance is according to the Bengal Chamber of Commerce Scheme based on the middle class cost of living index. At the present time the minimum dearness allowance according to this scheme is Rs. 63 and it was Rs. 60 in 1956, as shown in Ex. G. The grade scales of the daily-paid clerical workers as appearing in Ex. F are as follows :—

Grades.	C.	B.	A.	Leading hand.
Daily wages ...	Rs. 1-6	Rs. 1-8	Rs. 1-11	Rs. 1-15

Ex. G shows that in January, 1956, there were 30 daily-paid clerical workers (D.P.C. workers), of whom 3 got a basic wage of Rs. 36 per month (Re. 1-8 per day), 15 got Rs. 43-8 (Re. 1-13 per day) and 12 got a basic wage of Rs. 46-8 (Re. 1-15 per day). There was no one in the C grade.

P.W. 1 Shri Ajit Kumar Mondal is a daily-paid worker employed in the Standard Room Department. Such workers also work in the Time Office, Mill, Packing Department and the General Office. P.W. 1 states that he has to make entries of *challans,* and verify it with the sample in the Department and has to sign on the *challan* when receiving the goods. He has also to enter circulars of the Company issued and received by him. There are some D.P.C. workers who have to type on the typewriters. It is also stated that there are some D.P.C. workers at the present time in jobs where previously clerks of the establishment worked. P.W. 1 states that the minimum pay of clerks is Rs. 60 on probation and Rs. 70 on confirmation. The clerical grades are in Ex. FF. They follow the grades prescribed in the award of the Major Mercantile Tribunal for the clerical grades in the mercantile offices in Calcutta.

O.P.W. 1 Mr. Monk states that the majority of the D.P.C. workers have been promoted from the ordinary manual workers and only 4 amongst the present cadre of 30 workmen have been appointed to that grade. This statement appears in Ex. J. The witness also states that the D.P.C. workers are not required to take orders in English or discuss matters in English, which is the medium used amongst staff and workers and they are not required to do anything beyond routine work or anything requiring thought. He also states that the D.P.C. workers are only expected to understand Arabic numbers to post information which is given in number forms together with dates. They all do work of the type of tally work. Ex. J is the list of D.P.C. workers as on 1st January, 1956. It shows a list of 30 workers of whom 4 were appointed directly to this grade and the rest of 26 were up-graded from manual workers. There is no one in the C grade at the present moment as will appear in Ex. J and Ex. G. Ex. K is the list of 34 members of the clerical establishment (27.64 per cent. of the establishment), who rose from the rank of labourers. This list shows the name of the Head Clerk, Shri K. C. Banerji. Ex. L is the list of 6 members of the staff, *i.e.*, superior officials, who were up-graded from the clerical establishment. It, therefore, appears that the Company follows the principle of promotion from lower to higher ranks and this scheme is always favourable to the meritorious employees. The Union suggested a time-scale grade of Rs. 60—4—108 for the D.P.C. workers. I do not consider that a major change in the scheme of the grade of the D.P.C. workers should be made or that such a change would be ultimately more beneficial to the workers than the present scheme. If a time-scale grade were introduced for the D.P.C. workers, it would be difficult for the manual workers to get promotion to that grade. The nature of work done by these workers are such as can be done by a literate manual worker. Introduction of a time-scale grade with a view to make the D.P.C. workers' grade approach the clerical grade may put the scale beyond the reach of manual workers, in which case a valuable benefit within the reach of the general workers would disappear. In the circumstances, I consider that the existing scheme of daily wages in grades for the D.P.C. workers should continue. I would, however, consider that the wages should be improved a little to bring it in line with the wages of skilled labour. The daily wage of the D.P.C. workers is revised as follows :—

C.	B.	A.	Leading hand.
Rs. 1-10	Rs. 1-12	Rs. 1-15	Rs. 2-3

An increase of 4 annas per day is allowed. The existing workers of this grade shall get an increase of wage to the extent of 4 annas per day with effect from the date of commencement of the operation of this award. This issue is accordingly answered.

ISSUE NO. 3.—*Annual Bonus for the years 1953-54 and 1954-55.*

The Union states that the workmen should be paid 3 months' wages as bonus for each of the years 1953-54 and 1954-55, over and above the customary bonus. It is stated that the Company's financial position justifies the payment of bonus as claimed by the workmen. The Union, therefore, claims 3 months' wages as bonus for 1953-54 and 3 months' wages as bonus for 1954-55, over and above the customary bonus. The Company, in

its written statement, states that the workmen were duly paid bonus as and when the management after consideration of the financial position of the Company thought fit to declare and there was no custom for payment of regular bonus, and there has not been any proper demand for the same and the demands are vague and no specific dispute has been raised. The Company denies any large sum of unusual nature is spent with a view to conceal the real profits as alleged by the Union or that the Company's financial position justifies payment of bonus as given by the Union. The Company further states that it has already paid 1½ months' basic wages as bonus for the year 1953-54 and 2½ months' basic wages as bonus for the year 1954-55. Any scheme in excess of what has been paid is unreasonable and unjustified. There was never any demand for bonus in respect of the year 1954-55. There was no proper demand for bonus and the same is vague and the Tribunal has no jurisdiction on the Union's claim for bonus and this claim should be rejected. The charter of demands, Ex. Y, dated 5th February, 1955, does not show any demand for bonus. Ex. DD, however, shows an application by 5 workmen, being members of the Works Committee, to the Works Manager for 45 days' pay as Puja bonus and 2 months' pay as annual bonus for the year 1953-54. There is nothing on record to show that there was any demand for the additional bonus for 1954-55. Exs. A, A(1), A(2) and A(3) are the copies of the balance-sheets and profit and loss account of the Company for the years ended 30th September, 1952, 30th September, 1953, 30th September, 1954 and 30th September, 1955. The balance-sheets for the years in question are Exs. A(2) and A(3). Affidavit, Ex. C, was sworn by O.P.W. 2 Mr. C. Evans, the accountant of the managing agents, and in this affidavit, calculations of the available surplus according to the Full Bench formula laid down by the Hon'ble Labour Appellate Tribunal in the case of Mill Owners Association, Bombay, reported in [1950] 2 F.J.R. 107, has been stated in annexure A. Other calculations have been made in annexures B and C according to the principles stated in the affidavit. On a careful consideration of the matter, I find that the calculations of the available surplus shown in annexure A to the Ex. C is quite correct and should be accepted. I do not consider that the alternative calculations in Exs. B and C should be accepted in the present circumstances. The learned spokesman for the Union stated that the Company should not deduct interest on investments and profit on sale of assets and cited the case reported in [1954] 6 F.J.R. 555 (Greaves, Cotton & Co.). In that case, investments were a part of the business of the Company. In the present case, it was not a part of the business of the Company, and the income from investments is unrelated to the employees' efforts and the workmen should not claim a share of this item. This principle has been enunciated in the case reported in [1953] 5 F.J.R. 548 (Minakshi Mill's case). The interest on investments and the profit on sale of fixed assets were unrelated to the employees' efforts and have been rightly deducted from the gross profits of the Company in the relevant years for the purpose of calculations of bonus. It was further argued by the learned spokesman for the Union that the 2.7 multiple for the purpose of finding out the rehabilitation charge should not have been applied. The Company was to show the machines and assets purchased after 1949 and before 1949 and additions of machines after 1949 did not require the use of the multiple. This objection is unworthy of acceptance. The original value of block has to be multiplied by 2.7 as decided in the case of Minakshi Mills Ltd. [1953] 5 F.J.R., 548 and in the case of Trichinopoly Mills reported in [1953] 5 F.J.R. 411. The value of the block at the time of the replacement cannot be ascertained with much accuracy. The proper allowance to be made on account of rehabilitation is always a matter of difficulty. No one can be certain what the price of the machinery will be when the replacements come to be made and the present provisions for this purpose is frankly based on intelligent anticipation. The system of multipliers is a device adopted by the Industrial Courts for equating the purchase value of the machinery to the present value of machinery which must be purchased to replace it (*vide* Ruston & Hornsby Ltd., reported in [1954] 7 F.J.R. 610). It has been observed in the case of the Model Mills reported in [1955] 8 F.J.R., 356 at page 362 as follows:

"There is no hard and fast rule for the ascertainment of the amount required for rehabilitation, but the method followed in our Full Bench decision and in the subsequent decisions ought to be adopted unless there is any more positive guide. Shortly stated, the first requisite is to ascertain when a particular machine was installed and when it requires rehabilitation or renewal or modernisation, and then to ascertain the cost involved. In one case the block value of machinery in 1947 multiplied by 2.7 and spread over 15 years was considered to yield a fair figure for rehabilitation reserve; it may be that it is a little higher at present."

There was objection in regard to the return on the paid up capital and on reserves and working capital. Six per cent. return on paid up capital has been shown, and 4 per cent. on reserves and working capital has been shown in the calculations of Mr. Evans. I do not find any objection to these amounts. Considering all these circumstances, I find that the calculations of available surplus made by Mr. Evans in annexure A to his affidavit, Ex. C, are correct in all material particulars and should be accepted. The available surplus appears to be Rs. 2,54,341 in 1953-54 and Rs. 3,26,464 in 1954-55. The Company has paid bonus equivalent to

1½ months' basic wage in 1953-54 and that equivalent to 2½ months' basic wage in 1954-55. The amount paid in 1953-54 appears to be Rs. 1,01,252 and in 1954-55, Rs. 1,56,719. The break-up of these figures in the various categories of employees is shown in Annexure E, affidavit, Ex. C. From the balance sheet, it appears that the wages and salaries paid to the factory staff and workers represents about 10 per cent. of the total factory cost on manufacture of the Company's products and that is also the statement made by Mr. Evans in Ex. C. It, however, appears that about 40 per cent. of the available surplus has been given to the labour by way of bonus in each of the years 1953-54 and 1954-55. In these circumstances, I do not consider that any further bonus should be paid to the workers in the relevant years. The claim for additional bonus over and above what has been paid by the Company for the years in question is, therefore, rejected.

ISSUE NO. 4.—*Whether peon, orderly and similar other staff are entitled to equal benefit of dearness allowance given to other employees of the Company.*

The Union pleads that the peon, orderly, mali and similar staff should be given similar benefit of dearness allowance as enjoyed by the other employees of the concern. The Company states that it pays the same rate of dearness allowance to the peon, orderly and other similar staff as are paid to the subordinate staff of the Head Office.

It appears that the sub-staff, i.e., peon, *mali*, etc., are paid dearness allowance according to the scheme of the Bengal Chamber of Commerce based on the working class cost of living index as are paid to the subordinate staff at the Head Office. The manual workers and the clerical staff are paid dearness allowance according to the Bengal Chamber of Commerce Scheme based on the middle class cost of living index. I am told that at the present time the dearness allowance for the sub-staff is Rs. 58 and that for the manual workers is Rs. 63. Exs. G and G(1) show that in January, 1956, the dearness allowance for the sub-staff was Rs. 52 as against the dearness allowance of the factory staff at Rs. 60. The sub-staff at the factory nowhere gets and cannot claim more dearness allowance than the sub-staff at the Head Office in Calcutta. The sub-staff of the office of the Bengal Chamber of Commerce in Calcutta are also paid dearness allowance on the same basis. The sub-staff cannot claim any more dearness allowance than that of the similar staff at the Head Office. Their claim for dearness allowance of the factory workers only because that is a little higher than the dearness allowance paid to them is not justified. The claim for higher dearness allowance for the sub-staff is rejected.

ISSUE NO. 5.—*Leave and holidays.*

The Union pleads that in view of the nature of duties, the workers should get better leave facilities and press that the manual workers should be allowed to enjoy, over and above the statutory leave, festival holidays of 10 days with pay and 15 days' privilege leave with pay along with 2 months' special leave without pay for up-country workers. The Union also pressed that leave facilities for the D.P.C. workers should be similar to that of the clerical employees. The Company opposed the claim for increased leave and holidays. It appears that the workers of this industry get 9 days' with basic pay and dearness allowance festival holidays in the year along with 2½ days' festival holidays with full dearness allowance but no basic pay. The workers are also allowed annual leave according to the Factories Act and for up-country workers, the Company allows leave up to one month in the year without pay cumulative for two years. Sick leave is under the State Insurance Act. The manual workers get no casual leave. The clerical staff gets 28 days' privilege leave and 10 days' casual leave with pay. At the time of the argument, the learned spokesman for the Union pressed that the workers should get 10 days' festival halidays with full pay and dearness allowance and statutory leave plus 5 or 6 other days as leave on full pay with the statutory leave. It is also claimed that the D.P.C. workers should get same leave and holidays as the clerical workers. The learned counsel for the Company argued that no ground has been given for better leave and holidays. It was also pressed by the learned counsel for the Company that the plea that the occupation of the workers in this Industry is unhealthy has not been proved and the claim for increase of weekly working hours from 44 to 48 is against the plea that the work in this industry is unhealthy. I have already discussed that the claim that the work in the industry is unhealthy has not been substantiated in the Works Committee meeting on 3rd August, 1953, (Ex. U). Nine days' festival holidays with dearness allowance only is more favourable than only 10 days' festival holidays with pay and dearness allowance, in view of the fact that the dearness allowance is higher than the basic pay. I consider that the workers get very generous festival holidays. I do not consider that there is any case for grant of any more leave and holidays to the workers. There is no ground for the D.P.C. workers getting the same leave as the clerical staff. This issue is accordingly answered.

Issue No. 6.—*Revision of Provident Fund Scheme.*

The Union in its written statement states that the Provident Fund scheme contains some objectionable provision and so should be revised. It is also stated that unlike other industrial concerns contribution to the Provident Fund is deducted from the basic pay and not on total wages. The Union thereafter pressed that there should be a revision of the rates of contribution on a scheme to be submitted and the contribution to the

Provident Fund should be deducted from the total wages including dearness allowance. No scheme for the revision of rates of contribution to the Provident Fund was, however, submitted by the Union at the time of the hearing. The Company stated that this industry is not one of those given in the schedule to the Provident Fund Act and as such the Company is not required to make any contribution on dearness allowance. The Company also states that the existing Provident Fund contribution is adequate and there is no justification for contribution on dearness allowance also and that this claim should be rejected.

The learned spokesman for the Union states that deduction for the Provident Fund should be also made from the dearness allowance and not from basic pay only, as is done now. It was also suggested that in the British Paints, the provident fund contribution is deducted from the dearness allowance also from March, 1956. It was also stated that the Provident Fund Act shows what should be the normal method of deduction of provident fund contribution. The Provident Fund Act does not apply to this industry. The learned Counsel for the Company pressed that it would be wrong for the Tribunal to say that it should put the industry in the Act. This demand cannot be allowed.

It appears that there is a Pension Scheme for the workers in this industry, as shown in Exs. M and M(1). The suggestion that British Paints allows contribution from the dearness allowance also does not show that conditions there are better than in this industry until it is shown that they also pay pension benefits similar to those as are allowed in this industry. The claim for a revision of the Provident Fund Scheme is rejected.

Issue No. 7.—*Introduction of 48 hours in place of 44 hours per week.*

The Union, in its written statement, states that the request of the workmen to the management for running 48 hours per week with increased wages for the extra 4 hours' work has not received sympathetic consideration of the management, although by running the factory for 48 hours per week with 48 hours' wages, the Management is not required to suffer in any way. The Union claims that 48 hours per week be introduced with corresponding increase in wages for 4 hours per week. The Company states in reply that it does not require any increase in the working hours and that the Union's claim should be rejected.

The Union states that due to 44 hours of work per week, the workmen are deprived of many benefits, *viz.*, overtime benefit, and leave facilities. The Union prays that 48 hours of work per week should be introduced with a corresponding increase in wages for 4 hours per week. The Company, in its written statement, states that the management and the Company wishes to keep 4 hours in hand to cope with emergency situations that are commonplace and which the inflexible 48 hours' week would make difficult. The working of 44 hours per week is beneficial to the workmen and they are in no way deprived of any benefits. For any work in excess of 44 hours per week up to 48 hours, the workmen are paid 1½ times the basic wages for this 4 hours and base dearness allowance on a 48 hour week whether it is worked or not. The Company, therefore, prays that there is no necessity for increase in the working hours and the Union's claims in this respect should be rejected.

P. W. 2 Chanalal Majumdar stated in evidence that in 1946 the weekly working hours were reduced from 48 to 44. He says that the workers used to get 26 days' wages in the month when they worked for 48 hours in the week and they also got 26 days' wages as bonus at that time for a month's bonus and that now when the working hours are 44 in the week, they get 24 days' wage for a month's bonus. It is admitted that the dearness allowance is the same as for 48 hours. The witness also states that on the reduction of the weekly working hours, the daily rates of the workers were not increased. He further states that when the weekly working hours were reduced from 48 to 44, the workers were given one increment, but that increment did not fully compensate for the loss in wages for the reduction of the working hours. O.P.W. 1 Mr. Monk, the Works Manager, states in his evidence that the weekly working hours of 44 was introduced in place of 48 hours per week with effect from 1st July, 1956. The reason for the Company keeping 4 hours in reserve is that the production is made in batches and the Company is unable to complete a particular batch within a particular time with certainty and a certain flexibility is required. The Company was most careful to see that there was no reduction in the monthly earnings of the workmen on account of the reduction of the weekly working hours from 48 to 44. In the case of the daily-rated workers, the daily rates had to be raised to avoid a fall in the monthly earnings. The witness submitted a statement in regard to 5 daily-paid workers showing their monthly earnings before and after the change in Ex. O. Ex. P is a note issued by the Works Manager dated 15th August, 1946, which shows that the total earnings of the workers had been increased considerably. The witness states that there was no instance of reduction of monthly earnings brought to the notice of the management and he believed that there has been no reduction in the monthly wages in the case of any workmen. P.W. 2 Chanalal Majumdar in his cross-examination states that he was a daily-paid worker and his earnings over a month were not reduced on account of the reduction of the weekly working hours. He could not name any worker whose total monthly wages suffered from a reduction on account of the reduction of the weekly working hours. It is admitted that the monthly-rated workers had no reduction of their wages when the weekly working hours were reduced. The plea that the workers would get 26 days' basic wages for month's bonus if the working hours are 48 in the week as against 24 days' basic wages in the month with 44 hours in the week, has hardly any substance. When bonus is offered on a month's basis, it will be the same whether working days are 24 or 26 in the month. It, therefore, appears that when the weekly working hours were reduced from 48 to 44, the monthly earnings of the workers were not reduced in any way. It also appears that up to 48 hours, the workers are given 1½ times the basic wages, which is a distinct advantage. The dearness allowance for 44 hours is the same as that for 48 hours. Dearness allowance was not reduced when the working hours were reduced. The right to schedule hours of employment is always recognised as an essential management function in the category of methods of plant operation. The Union cannot interfere in the management function in fixing hours of work. The evidence of the Works Manager clearly shows that 44 hours of work per week is consistent with the needs of the business. The claim for increasing working hours is not justified and is rejected.

Issue No. 8.—*Pay for the strike period (17th August. 1955 and 22nd August, 1955).*

The issue is "Pay for the strike period (17th August, 1955 and 22nd August, 1955"). The strike in the factory commenced at 11 a.m. on 18th August, 1955 and continued till 4 p.m. on 23rd August, 1955. There was a dispute as to the wage for 5 hours out of 8 hours' work on 17th August, 1955, as the factory was closed on that date after 3 hours of work. The wage for the whole of 17th August, 1955, was, however, paid to the workers after the conclusion of the strike. The issue now reduces to the question of wage only for one day, *i.e.*, 22nd August, 1955.

The learned spokesman for the Union advanced that there was a clerical blunder in respect of the period of strike in the issue. In view of the fact that the order of reference is the foundation of the jurisdiction of the Tribunal for adjudication, it is not permissible for the Tribunal to travel beyond the limits of the order of reference. In view of the fact, however, that the claim for wages for the strike period is rejected herebelow, the question as to clerical error in dates in the order of reference becomes superfluous.

The Union pleads that the workmen are entitled to wages for the strike period for the 17th August, to 23rd August, 1955, and press that all workmen should be paid wages for the strike period. The Company states in its written statement that the workmen were solely responsible for the strike which was wholly unjustified and illegal. In any event, the Company has paid wages for the 17th August, and half day of the 18th of August. The Company is in no way responsible for the illegal and the unjustified strike and is not liable to pay wages for that period. The Company also states that the other employees who continued to do their normal work have been paid for the said period and those workers who reported for duty between the said period but could not work have already been paid half the wages and dearness allowance. The consideration of pay for the entire strike period has not been referred to the Tribunal for adjudication. The claim should be rejected.

P. W. 2 Chanalal Majumdar states that the workers launched this strike on the 17th of August, 1955. He states that on the 17th August, the workers requested the Labour Welfare Officer to grant a holiday on that day on the occasion of the 'Goa Day'. The Labour Welfare Officer did not agree. The workers then went to work. At about 9 o' clock the Foreman of the Department informed the workers that the factory would be closed forthwith and also informed them that they would be paid for he whole day. The workers then came away. On the following day when the workers joined their work, they learnt that they had been given pay for only 3 hours on the preceding day and not for the whole day. After the recess at 11 o'clock all the workers resolved to launch a strike from the afternoon and stayed on in the factory when they struck work. They all sat in front of the Time Office and continued to stay there from 11 a.m. on 18th August, 1955, to 4 p.m. on 23rd August, 1955. The witness also states that Mr. Earle, Foreman, told them on 17th August, 1955, that the factory was being closed and they might go home.

The evidence of Mr. Monk on this point is as follows: On the 17th August, the factory started as usual at 7 a.m. By about 9 a.m. a crowd was beginning to collect outside the Company's gate. By about 9-30 a.m., they started to batter the gate and to gain entry to the compound. They had not still entered the factory. They reached the canteen, which they proceeded to smash up. By that time the workers were aware of the damage that was being done to the canteen and could hear the shouts. Throughout the period, Mr. Monk remained at the factory gate and was in some danger from brick-bats. Two workers approached him at about 9-45 a.m. They were Badiujama and Jiten. They suggested that in view of the damage already done and the danger to the factory and everybody employed in it if the mob entered, the factory should be shut down. The manager said that in that case there would be no pay for the rest of the day. The two workers agreed to that and

went away to inform the other workers. A few minutes later, as the damage was still being done, they suggested that the siren was sounded in order to empty the factory as soon as possible. The manager reminded them of the agreement about there being no pay for the unworked hours, and on this understanding the manager agreed to blow the siren. The manager planned to blow the siren as soon as he knew that messengers had conveyed the news to all departments. The siren was blown and the factory was emptied at about 10 a.m. Nothing more happened on that day and work was resumed normally at 7 a.m. next day. Nothing happened until 11 a.m. when the siren was sounded for tiffin. The workers did not leave the factory when the siren was sounded at 11 a.m. At that time the manager had no idea why they had not gone out. He immediately went amongst them with the Welfare Officer and was told that they were staying, as they demanded full day's pay for the 17th, including the pay for the unworked hours. Neither the manager nor the Welfare Officer had had any requests on the matter and they informed the workers that if they went out for tiffin and resumed work at noon, the matter would be considered. The manager had started enquiries as to what other firms were doing about giving pay for the 17th, but no definite information had been received. At 12 o' clock the workers did not resume work but remained near the Time Office. The clerical workers did not associate themselves with the demands of the workers, but were prevented from going to tiffin by threats. When it was quite certain that the workers would not resume work, the management informed the Assistant Labour Commissioner, Howrah. He arrived at about 1-30 p.m. and immediately saw the strikers who told him of their demands. The Assistant Labour Commissioner informed the strikers that if they resumed their work, the management would consider their demands. This they agreed to do, but within a few minutes associated other demands. The Assistant Labour Commissioner told them that these other demands had already been considered by the Labour Department, who did not see fit to intervene. The Assistant Labour Commissioner stayed till about 3-30 p.m. and then departed. The workers continued to strike and remained in the factory until about 4 p.m. on the 23rd August, 1955. The clerical staff were kept in under duress for the first night excepting about six, who managed to get away. On the afternoon of the 23rd August, the Deputy Labour Commissioner and the Assistant Labour Commissioner of Howrah came to the factory. They saw the manager and asked the management whether they would give a full day's pay for the 17th of August. The management agreed to pay the full wage for the 17th August, provided the strike was called off and after work had been resumed. The Deputy Labour Commissioner saw the workers' representatives and then sent the document to the manager, being Ex. AA, being the "Proposals for calling off the strike from the afternoon of 23rd August, 1955." The conditions were that the management had agreed to pay full pay and dearness allowance for 17th August, 1955, to all workers who attended work on that day. The demand for pay for the strike period would be referred to the Government for adjudication by a Tribunal. The other demands of the workers would be discussed and deserving issues would be referred to Government for a Tribunal. The learned spokesman for the Union stated that the workmen had long pending grievances which were not settled, that a notice of strike was given on 7th April, 1955, that on 17th April, 1955, 'Goa Day', there was another provocation from the Company and the strike was for 'Goa Day' and other grievances. The learned spokesman stated that the strike was peaceful and there was no instance of violence on the part of the strikers. In justification of the strike, it was advanced that the claim for the wage for the unworked hours on 17th August, 1955, was justified, as the Company paid the money.. The strike was not illegal, as it was not in contravention of the Industrial Disputes Act and as there was a strike notice given on 7th April, 1955. The workers were, therefore, entitled to the wages for the strike period. The learned counsel for the Company stated that 17th of August was not a day of strike. The factory was closed on that date in the interest of the workers themselves and at their own request. The Company did not agree to pay for the unworked hours on the 17th, because, the workers agreed not to claim for the wages for that period. P.W. 2 Chanalal stated that it was Mr. Earle, Foreman, who told him and the other workers of his Department that they would be paid for the whole day on the 17th. Mr. Earle, however, denied the statement on oath. He was O.P.W. 4. The strike started at 11 a.m. on 18th August, 1955, Thursday. It continued on 19th August, 1955, Friday, on 20th August, 1955, Saturday, which was a half-day, 21st August, was Sunday, 22nd August, was a Monday and 23rd August, was a Tuesday. The strike, therefore, extended over 4 days of work.

It is an accepted principle that where the strike had been occasioned by the employment of an unfair labour practice by the management or where the employees have been willing to submit to arbitration, to which the management did not agree, it will be open to the Industrial Court to award pay for the strike period, provided, however, the strike had been lawful at its inception and continuance. There can be no doubt that a stay-in-strike was illegal in the manner of its continuance. By remaining on the employer's premises, despite his wishes and outside the hours of work, the striking workers constitute an unlawful

assembly and are guilty of criminal trespass. It is, therefore, clear that the strike was unlawful on account of its being a sit-down strike on the employer's premises. It has also been held in advanced industrial countries that the sit-down strike is an illegal seizure of the employer's properties and resort to force and violence in defiance of the law of the land. (Labour Disputes and Collective Bargaining by Ludwig Teller, Volume 1, page 313). It is, therefore, clear that the strike launched by the workers from 18th August, 1955, to 23rd August, 1955, was illegal in view of the fact that it was associated with a criminal offence, being the offence of criminal trespass. It has been decided by the Hon'ble Labour Appellate Tribunal in a number of cases that when the strike was illegal in the sense that it was forbidden by the Industrial Disputes Act, the workmen who had gone on strike were not entitled to payment of any wages for the period of strike. It has also been decided by the Hon'ble Labour Appellate Tribunal that even if a strike is not illegal, it may be unjustified and disentitle the workmen to any pay for the strike period (*vide* the case of United Commercial Bank, reported in 1954 L.A.C., 498, the case of Punjab National Bank, reported in 1953 L.A.C., page 1, and the case of Mahaluxmi Cotton Mills, reported in 1952 L.A.C., 370). In the present case, the evidence on record shows that the workers agreed not to press for the wage for the unworked hours on the 17th August, in view of the circumstances that a mob had attacked the factory and the factory was closed at the request of the workers themselves. Secondly, on the following day when the workers had launched this strike, the management promised to consider the claim for the wages for the unworked hours on the previous day and asked them to join their work. They refused to resume work. At about 1-30 p.m., the Assistant Labour Commissioner of Howrah came and asked them to resume work and assured the strikers that if they resumed work, the management would consider their demands. The workers agreed to join their duties, but within a short time associated other demands, being same demands which were refused to be considered by the Labour Department a few months ago. This fact will be found from the annexure A to the Company's written statement. This shows a letter, dated 15th June, 1955, from the Assistant Secretary of the Government of West Bengal, Labour Department, that the dispute of the workers had been enquired into and the Government did not intend to intervene at that stage. The learned spokesman for the Union referred to Ex. 1, a letter, dated 7th April, 1955, in which some demands had been made with a warning that if immediate steps were not taken, the Union would not be responsible for labour trouble including strike. It does not appear that the strike was justified in the circumstances of the case and it was also carried on with violence, intimidation and acts subversive of discipline. There is no justification for allowing the wages for the period of strike in these circumstances. The claim for the wages for the period of strike is, therefore, rejected.

ISSUE No. 9.—*Whether discharge of (a) Shri Punit and (b) Shri Prabir Thappa is justified? To what relief are they entitled?*

The Union states, in its written statement, that Punit was arbitrarily discharged without any enquiry. It is further stated that he was a victim of harassment. The Union prays that Punit should be re-instated with wages for the period of unemployment. The Company in its written statement states that Punit was on 9th March, 1953, found sleeping while on duty in charge of an important machine. He was apprised of the charge and was asked to offer his explanation, if any, but he refused to accept the charge-sheet and did not offer any explanation. He has since been employed in a neighbouring industry. The Company, therefore, states that Punit was responsible for the offence complained of and that for the second time, he committed a similar offence and the management after due and proper enquiry into the matter and affording him an opportunity to explain the situation, dismissed him. He is not entitled to re-instatement.

Punit was examined by the Union and he was P.W. 3. He states that it is not a fact that he was in the habit of sleeping and that on account of the dust emanating from the factory, he had to close his eyes to protect the same against possible injuries. He admits that the Company offered him a charge-sheet, but he refused to accept it. He says that there was no enquiry against him. In cross-examination, he admits that it was his duty to watch the conveyor machine. He says that he kept his eyes closed for 5 to 10 minutes. He could not remember if on any previous occasion, he fell asleep or if he was suspended for two days. He did not also remember if he was fined for sleeping during duty hours. O.P.W. 1 Mr. Monk stated in his evidence that he personally found Punit asleep during duty hours. His duty was to remain at the discharge point of a conveyor bringing powdered material from a very large and costly mill and his sole duty was to see that the flow continued. If the flow stopped, he was to report instantly, so that steps could be taken to stop the mill. There was nothing arduous about his job. He was sound asleep and the manager stood alongside him for about 5 minutes and finally wakened him. His record had always been bad and he had been guilty of precisely the same offence. There have been many instances of fine and suspension in his case. Ex. Q is the charge-sheet against Punit. On the evidence on record, the statement of Punit that he was not asleep, but closed his eyes for 5 to 10 minutes, is unworthy of credit. If he had kept his eyes closed for 10 minutes and the flow

from the machine stopped in the meantime, his appointment at the job would be useless. I do not believe that he did not sleep but merely kept his eyes closed. Punit refused the charge-sheet and he cannot complain that he was dismissed without any enquiry. In this present case the manager himself saw that Punit was asleep. No further enquiry was needed and Punit refused the charge-sheet given to him. It is decided that Punit was asleep while on duty on an important machine and that his dismissal on account of this misconduct was proper.

Prabir Thapa: The Union states that Prabir Thapa is a permanent worker and has put in service for more than 17 years, that he fell ill and for a moment was compelled to take rest during the night duty. It is further stated that the manager found him in that condition and the worker tried to explain the actual fact. The management then assured him of no punishment and one Babu of the Labour Office of the Company wrote the explanation. Subsequently, in disregard of the assurances of the management and the Babu of the Labour Office, he was driven out of employment. The management subsequently gave proposals to the Labour Commissioner for payment of Company's contribution to the provident fund. The Union does not make any prayer in regard to Prabir Thapa. The Company, in its written statement, states that Prabir Thapa was a second *jamadar* and was found fast asleep at 9 p.m. on 2nd February, 1955 when he was on duty and in charge of the other *durwans* A charge-sheet was issued and in his explanation he admitted that he was asleep. He made the same admission during the enquiry into the charge. There has never been any demand for his re-instatement and no industrial dispute over the matter has ever been raised.

Prabir Thapa was P.W. 4. He denies that he fell asleep during duty hours. He says that he had a headache and sat down and took some rest, but did not sleep. The acting manager found him at that stage and charged him with having been asleep. Mr. Liaquat, the Welfare Babu, wrote the reply to his charge-sheet. Exhibit D is the charge-sheet on Prabir Thapa and Ex. D(1) is his explanation, which was written by O.P.W. 2, Liaquat Hossain Mollah. Liaquat Hossain states that the body of Ex. D was in his handwriting, that Prabir Thapa on being detected by the assistant manager, Mr. Dodwin, came to him and requested him to write out an explanation in reply to the charge-sheet. Prabir Thapa told him the facts incorporated in the statement. He told O.P.W. 3 Liaquat Hossain Mollah that he was feeling unwell, as he had a cold and sat on a box for some time to take rest and fell asleep, and he wrote the statement, Ex. D, accordingly. Prabir Thapa signed on the statement. The witness states that Prabir Thapa read the statement himself and had the statement read by others. He signed in English, The witness denied the suggestion that he called Prabir Thapa and induced him to believe that if he wrote the statement, Ex. D(1), he would be excused and then the witness wrote it and had it signed by Prabir Thapa. P.W. 4 Prabir Thapa admitted in his cross-examination that Liaquat Babu explained to him his reply in Ex. D(1). Exhibit D shows that an enquiry was held on 4th February, 1955, in the presence of Mr. Lloyds, the Labour Welfare Officer. The manager writes that the accused admitted that he was asleep and stated that his illness mentioned in the statement was a cold. It is noted that Prabir Thapa did not report to the dispensary during the day. The manager considered the offence to be extremely serious, as he was in charge of the *durwans* shift at the time of the offence and ordered that he should be dismissed with immediate effect. The Union did not make any claim for re-instatement of Prabir Thapa in its written statement. The evidence on record shows that Prabir Thapa was rightly dismissed after a due enquiry. Exhibit 2, letter from the Assistant Labour Commissioner. Howrah, to the secretary of the Union, was proved to show that although Prabir Thapa was dismissed for a misconduct, if he left his quarters at the factory at an early date the management might be requested to see that he is given the employer's share of the provident fund as a special case. The Assistant Labour Commissioner desired the Union to report to him if Prabir Thapa had left the quarters allotted by the Company. The learned spokesman for the Union pressed that even if Prabir Thapa is not re-instated he should be paid the Company's contibution to the provident fund, as promised in Ex. 2. The learned counsel for the Company informed me that Prabir Thapa was still occupying the quarters of the factory, although the letter, Ex. 2, was written by the Assistant Labour Commissioner in June, 1955. In the circumstances, it is decided that Prabir Thapa is not entitled to any relief in this case.

[IN THE INDUSTRIAL TRIBUNAL, HYDERABAD.]

HYDERABAD STATE CO-OPERATIVE BANK LTD.

v.

THEIR WORKMEN.

Shri B. A. Patel.

October 27, 1956.

RETRENCHMENT—PRINCIPLE OF LAST COME FIRST GO—APPLICATION OF—CONFIRMED WORKMAN, WHETHER ACQUIRES SENIORITY OVER UN-CONFIRMED WORKMAN—SUPERANNUATED PERSONS EMPLOYED AS CHOWKI-DARS—WHETHER GOVERNED BY PRINCIPLE OF LAST COME FIRST GO—INDUSTRIAL DISPUTES ACT, 1947, SECTION 25-G.

In applying the principle of last come first go to retrenchment as laid down in section 25-G of the Industrial Disputes Act, 1947, a workman who has been confirmed first must be treated as senior to one who has been confirmed in his appointment later, even though the latter may have joined service earlier.

The principle of last come first go is not applicable to chowkidars who have been appointed after retirement and who are only temporary servants.

Case No. 24 of 1956.

V. Deshpande for the management.

G. P. Joshi for the workmen.

AWARD.

Government by Notification No. I/127/54/195 dated [illegible] March [illegible] referred to this Tribunal the industrial dispute existing between the workmen and employers of the Hyderabad State Co-operative Bank Ltd., Hyderabad, under clause (*c*) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947 (XIV of 1947). The issues referred are as follows:

"(1) Whether the retrenchment of the workmen 1. Ishwarayya, 2. Mohd. Bin Ahmed and 3. Shaikh Balay is justifiable?

(2) To what relief are the said workmen entitled?"

Notices were issued to the parties and were duly served upon them.

The workmen in their written statement have alleged that on 11th June, 1954, the employers served notice on the three workmen involved in the present dispute, *viz.*, B. Eshwariah, Shaikh Balay and Mohammad Bin Ahmed stating that their services were not required with effect from 11th July, 1954. Thereafter, there were conciliation proceedings and [illegible] a result of it the execution of the said notices was stayed. Upon the conclusion of the conciliation proceedings the workmen were served with discharge notices again on 20th August, 1954 and the said notices were to be effective from the same day. In the said notices no reasons were stated for the termination of services of these three workmen. The Industrial Disputes Act, 1947, has no application to the employees of the Co-operative Society like the presently concerned employers. The basic principles of 'last come, first go' were not followed in effecting the termination of services which was in the nature of retrenchment. Persons recruited to services earlier than the present workmen were allowed to continue together with many others who were recruited later than the present workmen. The establishment of the employers at Pathergatty was only an annexe of their head office at Troop Bazaar. The manager, sub-office, Pathergatty, did not enjoy all the powers that used to be had by agents at other branches. The sub-office at Pathergatty was not a full-fledged branch like those at Tungabhadra or Osmania University. The closure of the sub-office at Pathergatty was not justified. The entire staff of the employers is recruited at the head office and after necessary training thereat, the training ranging from a few days to a few weeks as may be necessary, they are sent over to the branches or to the sub-offices. The whole establishment is a common pool. The staff is transferable from one category to another and one place to another. The seniority or otherwise has to be considered in the cadre of the whole clerical and cashiers staff together and not establishment or branch-wise. If the sub-office at Pathergatty was closed for any reason and as a result of it any retrenchment was necessary then the junior-most of the whole lot of inter-changeable categories had to be determined and retrenched. Similarly the junior-most of the category of the *chowkidars* in the whole pool of the bank should have been retrenched and not the presently involved, Mohammad Bin Ahmed and Shaik Balay. The employers have not followed section 25 F (*a*) of the Industrial Disputes Act, 1947, as amended by Act 43 of 1953. The workmen have prayed that all the three workmen be reinstated with back wages from August, 1954 up to the date of re-instatement.

The employers in their counter have stated that the workmen concerned were clearly informed the reasons of their discharge, *viz.*, that the discharge was necessitated by the closure of the Pathergatty branch and the impossibility of their being absorbed at the head office. The staff at the head office was already overmanned according to the findings of the Sub-Committee, appointed by the Executive Committee of the Bank for examining the position by the Resolution No. 150, dated 1st February, 1954. These findings were accepted by the Executive Committee at their meeting dated 23rd March, 1954. The discharge of services of the above workmen was not in the nature of retrenchment as such, but it was in effect a result of the total closure of a branch office, and portion of the business. The *chowkidars* and peons in the bank have been ordinarily recruited for the purposes of the branch at which their appointment were made. Thus Mohd. Bin Ahmed was employed for and at Pathergatty branch and his discharge was a natural corollary of the closure of the bank. Shaik Balay was no doubt originally appointed for the Jadcharla branch, and after its closure in June, 1952, was transferred to the head office to ascertain if he could be absorbed at any branch and he was absorbed at Pathergatty branch in the then circumstances where he remained till the end. No other *chowkidars* were recruited at Pathergatty after these employees. In regard to the clerks and cashiers, appointments were made at the head office and they were transferred to the branches as per administrative exigencies. Among the 10 cashiers working in the bank at the time of the discharge in dispute, Eashwariah was found to be junior-most and hence he was discharged. It is true that he came to the bank earlier than Shankaran, but was confirmed later and the confirmations of Shankaran and Eashwarayya on 1st May, 1952, and on 1st June, 1952, respectively were beyond any dispute as the same remained unagitated and unappealed for months and years together. H.C.S.R.'s were ordinarily followed by the bank as far as possible in the matter of leave, seniority, etc. Other rules covering the Government employees were never followed by the bank nor are these capable of being followed. Both the *chowkidars* were temporary employees and were never confirmed in their posts and as such they cannot claim any rights of the permanent employees nor the amended provisions of section 25 of the Industrial Disputes Act applied to them. As a result of the stoppage of the commercial business and advancing loans to the individuals. Pathergatty branch had become unremunerative and was being run at a loss. Its closure by the Executive Committee of the Bank was a *bona fide* business decision and was certainly not taken up to injure any of the workmen in dispute or otherwise victimise any of them. Bank employees have been divided in the categories of officers, clerks, typists, cashiers, peons and *chowkidars*. This categorisation has been in existence from the existence of the bank in 1915. The *chowkidars* and peons of any branch themselves constitute categories and these cannot be brought in the pool of their category in the head office to determine their seniority. Immediately after the decision to discharge the employees was made known, every attempt was made to get the same employees absorbed somewhere else. The Prudential Co-operative Bank was going to open their branch at the same premises where Pathergatty branch of this bank was located and employees were offered services by the said bank and the employees had even submitted petitions to that effect to the bank manager.

The workers in reply to the counter filed by the management have denied that chowkidars and peons in the employers' concern are employed for a specific branch only. The categories of clerks and cashiers are inter-changeable. The said categories are not in the nature of water tight divisions but are inter-changeable. The seniority in the case of each class—clerk-*cum*-cashier and *chowkidar* class has to be taken up in a pool of the entire strength of clerks and cashiers on one hand and of chowkidars on the other. The seniority has to be determined with respect to the entire number of clerks and cashiers together in one case and the total strength of chowkidars on the other. There is no bar to the present reference being taken up as a new case and there is no *resjudicata* as alleged by the employers. As regards the jurisdiction of this Tribunal they have alleged that this Tribunal has jurisdiction as it is vested with jurisdiction under the Industrial Disputes Act notwithstanding any other law for the time being.

I heard the arguments of the learned advocates for the parties at length. The learned advocate for the employers did not advance any arguments regarding the jurisdiction of this Tribunal for entertaining the reference. In the same way the point of *resjudicata* raised by the employers was not stressed. The employers' case is that the 3 workmen under dispute were retrenched due to the closure of the Pathergatty sub-office. Exhibit M-12 covers the Resolution of the Executive Committee of the Bank. The Resolution No. 225 reads as follows:

" The City branch may be closed from the 1st of June, 1954, and the cashier, peon and chowkidar be retrenched. The Tungabhadra branch may be allowed to continue to function till June, 1954, when its further continuance may be considered".

Exhibit M-35 is the report of the Sub-Committee constituted as per Resolution No. 150, dated 1st February, 1954, of the Executive Committee in which it has been stated that the Sub-Committee considered the working of the branches. It is observed that the city branch is not remunerative and its closure is therefore recommended. This decision taken by the sub-committee and later confirmed by the Executive Committee regarding the closure of the City branch is justified and there is no ground for its being challenged.

W. W. 5 T. Dwaipayana Chari, Cashier, Hyderabad State Co-operative Bank has stated that:

"There were different categories in Hyderabad State Co-operative Bank like cashiers, clerks and typists. There are such different categories in all other banks. These categories are in practice in our bank before I joined the bank. There is difference in the work of cash section and clerical section."

Eashwarayya was a cashier. Exhibit M-2 is a list of assistant cashiers, *chowkidars*, with their dates of appointments. Eashwarayya was appointed on 1st July, 1950 and L. K. Shankaran was appointed on 24th September, 1951. It is an admitted fact that L. K. Shankaran was confirmed on 1st May, 1952, and Eashwarayya was confirmed later, on 1st June, 1952. Exhibit W-27, dated 6th May, 1954, is a letter addressed to A. L. Venkata Rao, Supervising Director, Hyderabad Co-operative Dominion Bank, Ltd., by Shri T. Seshachary, a responsible authority of the Finance Department. He has observed in the said letter that—

"——It is an accepted axiom that the rights of an employee who has been confirmed are always superior to those who have not been confirmed.........Mr. Shankaran being the senior of the two will be retained and Mr. Iswaraiah retrenched."

Eashwarayya has not led any evidence to show that he challenged this order of seniority. The confirmation of Shankaran remained unagitated and unappealed. It was argued before me that the posts of clerks and cashiers are inter-changeable. But B. Eashwarayya himself in his statement has said that—

"............A clerk of one section may do the work of another section, but not the work of a cashier".

There are instances in the evidence to show that a Cashier was asked to do the work of a clerk but there is no instance of a clerk being deputed to work as a cashier. According to the evidence led by the workers it cannot be denied that there are different categories in bank like cashiers, clerks and typists. W.W. 5, Dwypayanachari has also said that—

".........No one was appointed in the cash section after the appointments of Shankaran and Eashwarayya."

Now there is only tie between these two persons Eashwarayya and Shankaran. As I have said above though Eashwarayya was appointed first he was confirmed later than Shankaran and this confirmation order was not challenged or appealed by Eashwarayya. In view of this evidence Eashwarayya is the last person to go and it cannot be denied that the employers have followed the principle of 'last come, first go'.

Shaik Balay and Mohd. Bin Ahmed are the chowkidars who are retrenched for the same reason of the closure of the City branch. Both these *chowkidars* were at the City branch at the time of its closure. W.W. 11, K. Sundara Vardachari, retired General Manager, Hyderabad State Co-operative Bank, Ltd., has said—

".........In the case of peons there is a question of seniority; but in the case of chowkidars there is no question of seniority. They are appointed after retirement. They are only temporary people."

There is no evidence on record to show that these *chowkidars* were permanent servants and they were confirmed in their posts. On the other hand the witnesses have said that the *chowkidar* are appointed after retirement and they are only temporary servants. In view of this evidence the question of the principle 'last come, first go' does not arise. Admittedly all these three workmen are retrenched. Under section 25 F (*a*) they are entitled to have compensation. I therefore hold that the retrenchment of these three workmen is justified and order that the management should pay to all the workmen in question fifteen days average pay for every completed year of their service.

[In the Industrial Court, Bombay.]

B. E. S. T. WORKERS' UNION, BOMBAY
v.
BOMBAY SUBURBAN ELECTRIC SUPPLY LTD.

Shri I. G. Thakore.

April 30, 1957.

Bonus—Computation of surplus profits—Allowances—Depreciation—Initial and additional depreciation not taken into account—Benefit to undertaking by way of income-tax—Whether also to be excluded.

In the computation of the surplus profits available for distribution as bonus to the workmen, as the benefit of initial and additional depreciation (which are allowable under the Income Tax Act, 1922) have to be ignored, the benefit which would accrue to the company on account of such initial and additional depreciation must also be ignored and the profits should be computed after allowing for the income-tax which would be payable if no such initial or additional depreciation were available.

Reference (IC) No. 22 of 1956.

S. D. Vimadalal with *J. P. Thacker* for the management.

H. R. Gokhale with *A. M. Mathew* for the workmen.

AWARD.

This is a reference under section 73A of the Bombay Industrial Relations Act, 1946, made by the B. E. S. T. Workers' Union, which is registered and a representative union of the employees employed in the electricity industry for the local area. The union made the following demand for bonus for the years 1953-54 and 1954-55 and as conciliation failed the union has made the present reference:

"All the employees of the Bombay Suburban Electric Supply Ltd. should be given bonus on the following scale:

For the year 1953-54	...	Four months' wages.
For the year 1954-55	...	Five months' wages less amount already paid."

2. The Union has submitted that the wages paid are below the living wage standard and that the profits are sufficient to pay the demand and that, therefore, the demand should be granted. A number of contentions have been raised by the company in its written statement based on the fact that the company is a public utility electricity undertaking governed by the Electricity Supply Act, 1948 and it is submitted that entirely different considerations than those in the bonus formula of the Labour Appellate Tribunal should apply to these undertakings in view of certain mandatory provisions of that Act and the definition of a reasonable return under the said Act. In view of the decision of the Full Bench of the Labour Appellate Tribunal in *U. P. Electric Supply Ltd. etc. electricity supply undertakings and their workmen* [1955] 9 F.J.R. 343 and the *Surat Electricity Company's case* [1956] 11 F.J.R. 134, these were not argued before me though not given up. The company has produced at the hearing a statement showing the results according to the bonus formula of the Labour Appellate Tribunal without giving up any of the contentions raised. The Union has also produced Ex. U-1 and Ex. U-2 purporting to be prepared according to the bonus formula of the Labour Appellate Tribunal. According to the exhibit produced by the company no available surplus would be left whereas according to the exhibit of the union practically the whole of the bonus demanded would be available. It is not necessary for me in this matter to go into the various contentions raised by the parties for either of the years. The demand for bonus for both the years can be disposed of on my deciding a limited point one way or the other. It appears that during the year 1953-54, the statutory depreciation came to Rs. 19,66,473. Out of this the normal depreciation came only to Rs. 8,12,714 and the rest was initial and additional depreciation. Similarly, in the year 1954-55, the total statutory depreciation including develop-

ment rebate came to Rs. 22,35,599. Of this amount the normal depreciation was Rs. 9,06,376 and the balance either initial or additional depreciation or development rebate. The company has submitted that the total statutory depreciation should be allowed. This, however, cannot be allowed in view of the Full Bench decision of the Labour Appellate Tribunal in the *U.P. Electricity case* (*supra*). Without prejudice to its contentions the company has submitted that if initial and additional depreciation and development rebate are not allowed then these should be completely ignored for all purposes, and income tax liability on the company calculated on the basis of only the normal depreciation allowed. The Union has on the other hand submitted that in view of the decision of the *U.P. Electricity case* (*supra*) the company should only be allowed the normal depreciation. The Union however has submitted that since by virtue of the provisions of a statute the company will be getting relief in income-tax, the income-tax calculations should only be made on the basis of what it will actually have to pay *i.e.*, after taking into consideration initial and additional depreciation and development rebate allowed. Shri Gokhale who appeared for the Union however fairly conceded that there would be no available surplus unless this was done.

3. I do not think I can exclude the initial and additional depreciation and the development rebate for the purpose of bonus formula and yet permit labour to get the benefit for itself by refusing provision for taxation resting on these very items which are excluded. Either the statutory depreciation including initial and extra depreciation must be allowed in the bonus formula or if the initial and extra depreciation are excluded for the purposes of the bonus formula the relief also obtained by the Company in payment of taxation by reason of the initial and extra depreciation and the development rebate must be ignored. It would be extremely unfair to let the workers have the relief both ways, apart from defeating the very purpose for which initial and extra depreciation and development rebate are allowed.

4. In Reference (IT) No. 83 of 1954 between *Thacker and Co. Ltd., Bombay and the workmen (at the Press, Shop and Office) employed under it, (Bombay-Government Gazette,* Part I-L. dated December, 16, 1954, p. 3361), after differing from the decision of Shri S. H. Naik between the *National Electrical Industries Ltd., Bombay* v. *Workmen employed in the factory at Lalbaug* [1954 I.C.R. (Bom.) p. 141] *and the* President of the Industrial Court Shri M. R. Meher in *Scindia Steam Navigation Co. Ltd., Bombay and Another and the workmen (monthly rated staff) respectively employed under them in their establishments in Greater Bombay (Bombay Government Gazette,* Part I-L, dated June 17, 1954, p. 1468) I have observed:

"........Since we do not carry forward the previous years losses, in bonus calculations it would not be fair to take the resultant diminution in tax also into consideration on account of those losses. The year's result must be viewed in isolation and the formula applied. It is true that the taxation figure would be hypothetical but in a way the formula itself is hypothetical. It would be extremely unfair to the company not to allow it to carry forward losses which are a reality and yet allow the Union to take the benefit in bonus calculations of the diminished rate of taxation as a result thereof."

In two subsequent decisions also the Labour Appellate Tribunal has taken the same view: (1) In *Model Mills etc., Textile Mills, Nagpur and Rashtriya Mill Mazdoor Sangh and others* [1955] 8 F.J.R. 356 the Labour Appellate Tribunal has observed:

"There are two other points on which the adjudicator has not followed correct principles. According to our formula the employer is entitled to deduct as prior charge the income-tax which he would have to pay on the trading results of the year. The adjudicator has refused to allow income-tax in cases where the income-tax authorities have granted exemption on account of previous year's loss. In so doing the adjudicator was in error. According to our formula the income-tax is to be deducted as a prior charge on the trading results of the year, just as much as the bonus is to be ascertained upon the trading results of the year. The concession made by the income-tax authorities is intended to aid a concern on account of past losses, and has nothing to do with our formula."

(2) In *Bennett Coleman and Co., Ltd.,* v. *Their Workmen* [1955] 8 F.J.R. 555 they have also observed:

"The next objection of the company relates to two items. One of these items is unabsorbed depreciation and loss, which are allowed under section 24(2) of the Income-tax Act to be adjusted against the profits of a future year. In the year in question a substantial amount on this account has been allowed by the income-tax authorities. Labour objects to this sum being treated as a prior demand, on the ground that the Full Bench bonus formula is confined to the trading results of the particular year. The second item is income-tax. This is claimed by the company as an alternative to the first item. The Full Bench formula treats income-tax as a prior demand. Labour points out, however, that, under the statutory provisions relating to assessment of income-tax, the Company will not be liable for income-tax although the accounts of the year show a profit. This results from the adjustment of unabsorbed depreciation and loss against the year's profit. Labour is thus seeking on the one hand to refuse the Company relief resting on the unabsorbed loss and depreciation, and at the same time trying to get for itself another benefit resting on that very item. This it cannot be permitted to do. In a recently decided cese, adjustment on account of income-tax has been allowed in such circumstances [Appeals (Bom.) Nos. 385 of 1953 and 13 of 1954: *Model Mills, Nagpur, Ltd., Nagpur, and eight others* v. *Rashtriya Mill Mazdoor Sangh, Nagpur, and seven others* and *Rashtriya Mill Mazdoor Sangh, Nagpur, and six others* v. *Model Mills, Nagpur Ltd., Nagpur, and nine others* [1955] 8 F.J.R. 356]. We see no reason to differ from that decision. The question of the alternative claim relating to the unabsorbed loss and depreciation was not raised in that case and, on the gross profits found in this case, is not required to the considered here."

5. These decisions relate to past losses and unabsorbed depreciation of past years but the principle involved is the same. If for the purpose of the formula initial and extra depreciation and development rebate are to be ignored the benefit which the company gets as a result of this allowance in income-tax must also be ignored. I am therefore of the view that in making calculations the calculations should only be made on the basis that the depreciation for the year is the ordinary depreciation and income-tax liability calculated accordingly. It is admitted by Shri Gokhale that apart from all other considerations if this was done there would be no available surplus in either of these two years. The demand for bonus for the year 1953-54 and for bonus in addition to what has already been paid for the year 1954-55 is therefore rejected.

[IN THE PUNJAB HIGH COURT.]

BACHNI AND OTHERS

v.

MUNICIPAL COMMITTEE, AMBALA CITY.

Bhandari, C. J. and *Khosla J.*

September 11, 1956.

WORKMAN— DEFINITION OF—SWEEPER ENGAGED IN LOADING AND UNLOADING MUNICIPAL LORRY—WHETHER PERSON ENGAGED IN RUNNING OR MAINTENANCE OF LORRY—WHETHER FALLS WITHIN CLAUSE (i), SCHEDULE II, WORKMEN'S COMPENSATION ACT, 1923.

A sweeper who is solely engaged in loading and unloading a municipal lorry conveying refuse outside the town limits cannot be said to be engaged in the actual running or maintenance of the lorry and does not fall within clause (i) of Schedule II of the Workmen's Compensation Act, 1923, and his dependants cannot claim any compensation under the Act.

Letters Patent Appeal No. 86 of 1953.

H. L. Sarin for the appellants.

D. N. Aggarwal for the respondent.

JUDGMENT.

KHOSLA, J.—This Letters Patent Appeal arises out of a claim under the Workmen's Compensation Act. The appellants before us are the dependants of a deceased municipal sweeper who sustained fatal injuries as the result of a fall from a vehicle in which filth from the municipal limits was carried out to dumps.

The Commissioner appointed under the Workmen's Compensation Act held that the deceased sweeper did not fall within the definition of "workman" as contemplated by the Workmen's Compensation Act. An appeal was preferred to this Court and Harnam Singh, J., sitting singly took the view that the sweeper could not be called a workman and that his dependants therefore could not maintain a claim under the Workmen's Compensation Act.

The argument raised on behalf of the appellants is that the case of the sweeper fell under clause (i) of Schedule II to the Workmen's Compensation Act. The sweeper would undoubtedly be a workman if he was employed in connection with the operation of a vehicle propelled by mechanical power. The work entrusted to the sweeper was that of loading a lorry with filth which was collected from various places in the town and of unloading it at the filth dumps outside the town limits. He had nothing whatever to do with the actual running or maintenance of the lorry. Therefore, it cannot be said that his case falls under clause (i).

Mr. Sarin has cited two authorities, one of the Calcutta High Court (42 C.W.N. 123) and the other of the Madras High Court (A.I.R. 1938 Mad. 485) in support of his argument. Each of these cases related to the conductor of a bus and it was held that a conductor was connected with the operation of the bus. This cannot be said of a sweeper who is employed solely to load and unload filth on to a vehicle. In the circumstances, although the appellant's case is a hard one I am unable to hold that the deceased sweeper was a 'workman' within clause (i) of Schedule II. This appeal must therefore fail and I would dismiss it. In the circumstances I would make no order as to costs.

BHANDARI, C. J.—I agree.

[IN THE PUNJAB HIGH COURT.]

GOPAL SINGH

v.

STATE OF PUNJAB AND OTHERS.

Bhandari, C. J. and Khosla, J.

September 18, 1956.

APPEAL—LETTERS PATENT APPEAL—DECISION OF HIGH COURT ON APPEAL FROM AWARD OF COMMISSIONER UNDER WORKMEN'S COMPENSATION ACT, 1923—WHETHER JUDGMENT OR AWARD—WHETHER FURTHER APPEAL UNDER LETTERS PATENT LIES.

The decision of a single Judge of the High Court on an appeal under section 30 of the Workmen's Compensation Act, 1923, is not a judgment within the meaning of the Letters Patent and no further appeal under clause 10 of the Letters Patent will lie therefrom to a bench of two Judges.

Letters Patent Appeal No. 40 of 1954.

H. L. Sarin for the appellant.

Gujral and *M. C. Sud* for the respondents.

JUDGMENT.

KHOSLA, J.—In this case a preliminary objection regarding the competence of the appeal has been raised by Mr. Mehr Chand Sud on behalf of the respondent. He contends that no appeal under clause 10 of the Letters Patent is competent in this case. An award by a Commissioner appointed under the Workmen's Compensation Act was challenged in an appeal filed under section 30 of the Workmen's Compensation Act. Kapur J. sitting singly heard the appeal and the question is whether the decision of Kapur J. can be considered a judgment from which an appeal to two Judges lies under clause 10 of the Letters Patent. The argument of Mr. Sud is that the Commissioner appointed under the Workmen's Compensation Act is not a Court and is only a Tribunal. The order which he makes is an award. The order made by a Judge of this Court on an appeal preferred under section 30 is also an award and not a judgment and therefore no appeal lies under clause 10 of the Letters Patent.

Mr. Sud has brought to our notice a direct authority on this point given by the Nagpur High Court. This is *Secretary of State* v. *Mt. Geeta* [A.I.R 1939 Nag. 122]. In this case the learned Judges of the Nagpur High Court considered a number of rulings having a bearing on the matter and referring in particular to I.L.R. 40 Cal. 21, a Privy Council decision, came to the conclusion that an order passed by a Judge of the High Court on appeal against an award given by a Commissioner appointed under the Workmen's Compensation Act is not a judgment and so no appeal lies under the Letters Patent.

The question for our decision really is whether the order of Kapur J. can be considered to be a judgment or not. It has been held in more than one case that where proceedings are taken under the Land Acquisition Act and an award is made, and against this award an appeal is brought to the High Court, the order of the High Court is not a judgment. This was held as long ago as 1912 by the Privy Council in *Rangoon Botatoung Co. Ltd.* v. *Collector of Rangoon*, I.L.R. 40 Cal. 21. In that case the Privy Council noticed that the Land Acquisition Act provided for an appeal to the High Court (just as section 30 of the Compensation Act provides for an appeal to the High Court against the award of the Commissioner), but since there was no specific provision for a second appeal, no appeal to the Privy Council would lie. The *ratio decidendi* of that case was that the order passed by the High Court on appeal was not a judgment within the meaning of Letters Patent and was only an order or an award. There are several other cases on this point and many of them have been noticed in the Nagpur decision referred to above. A reference may be made in particular to A.I.R. 41 Mad. 943 which was also a case dealing with the provisions of the Land Acquisition Act. The Madras High Court held that the decision of the High Court upon an appeal against an award given under the Land Acquisition Act was not a judgment.

There is no decision to the contrary and Mr. Sarin has not been able effectively to challenge the preliminary objection raised by Mr. Sud. I am, therefore, clearly of the opinion that the order passed by Kapur J., cannot be deemed to be a judgment and therefore no appeal against it lies under clause 10 of the Letters Patent. This appeal must therefore fail and I would dismiss it with costs.

BHANDARI C.J.—I agree.

[IN THE INDUSTRIAL TRIBUNAL, PATNA.]

NRIPENDRA NARAIN SINHA
v.
BEHAR JOURNALS LTD., PATNA.

Shri A. Hasan.

July 5, 1957.

WORKING JOURNALIST—DEFINITION OF—WHETHER INCLUDES PROOF READER—WORKING JOURNALISTS (CONDITIONS OF SERVICE AND MISCELLANEOUS PROVISIONS) ACT, 1955, SECTION 2(f).

CONDITIONS OF SERVICE—WORKING JOURNALISTS—WHETHER SUBJECT TO ADMINISTRATIVE CONTROL OF EDITOR ONLY—RIGHT OF MANAGEMENT TO FIX ADMINISTRATIVE CONTROL OVER EMPLOYEES.

INDUSTRIAL DISPUTES ACT, 1947, SECTIONS 33, 33A—INDUSTRIAL TRIBUNAL—JURISDICTION OF, UNDER SECTION 33A—CONTRAVENTION OF SECTION 33—WHETHER TRIBUNAL CAN CONFIRM PUNISHMENT OF WORKMEN.

A proof reader is a 'working journalist' as defined in the Working Journalists (Conditions of Service and Miscellaneous Provisions) Act, 1955.

There is nothing in the above Act to indicate that a working journalist must be under the administrative control of the Editor. The matter of administration and control over the employees of a concern is purely a question within the discretion of the management and no outside agency can interfere in the matter. Where a proof reader is in fact under the administrative control of the manager, the manager is entitled to take disciplinary action against him.

Even if contravention of section 33 of the Industrial Disputes Act, 1947, is established in an application under section 33-A, the Industrial Tribunal has jurisdiction to confirm the dismissal of an employee on consideration of the merits of the case.

Miscellaneous Case No. 25 of 1957 under section 33-A, Industrial Disputes Act, 1947.

M. K. Verma for the workman.

A. K. Pande for the management.

AWARD.

This is a petition under section 33-A of the Industrial Disputes Act by Sri Nripendra Narain Sinha, Proof Reader, Behar Journals, Ltd., Patna, alleging that the management has contravened the provisions of section 33 of the Industrial Disputes Act by imposing a fine of 2 per cent of the salary of the applicant during the pendency of adjudication proceedings before the Tribunal without its permission as required under the law. The petitioner disputed his liability for the mistake, if any, in the proof reading and contended further that the punishment inflicted by the management was illegal and without jurisdiction.

2. The management in its written show cause contended that the petitioner being the senior-most proof reader in his shift by convention was in charge of his shift and is responsible to see that the working of his shift is proper and satisfactory. It is further said that he was also a reviser by appointment and as such it was his duty to revise all proofs of his shift. It is disputed that a proof reader is a working journalist and as such he is under the control of the Editor and the Manger is not competent to impose any punishment or fine on him. Thus the management resisted the complaint petition of the workman.

3. Two contentions were raised in this case on behalf of the complainant and I would deal with them separately. First it was contended that under the Working Journalists (Conditions of Service and Miscellaneous Provisions) Act, 1955, a proof reader also came within the definition of the Working Journalists and as such he was put under the management and control of the Editor and not the Manager of the Press. It was said that even if any mistake is committed by the petitioner the authority competent to inflict any punishment on him was the Editor and not the Manager. Thus the order passed by the Manager imposing a fine of 2 per cent of his pay on the petitioner was characterised as illegal and without jurisdiction. It is true that under clause (*f*) of section 2 of Act No. XLV of 1955, a proof reader, as the petitioner is, came within the definition of the 'working journalist' and there seems to be no room for any controversy about it. The question is whether the Editor or the Manager of the concern should exercise administrative control over him. One can understand that for the purpose of editorial work a journalist or even a working journalist may be responsible to the Editor but it is difficult to conceive that for other administrative purposes the Manager of the Press was debarred from exercising any control over him. In the present case it is admitted by the petitioner in his cross-examination that for some time the control of the proof readers was transferred to the Editor entirely but subsequently the Manager again took over the entire control over the proof reading section as well. The matter of administration and control over the employees of a concern is purely a question within the discretion of the management and there is nothing in law to entitle any outside agency to interfere in the matter. Here the fact is that the proof reader is admittedly under the control of the manager and the editor has nothing to do with it. There is nothing in law to empower this Tribunal to ignore that fact and to lay down that the control over the proof readers should

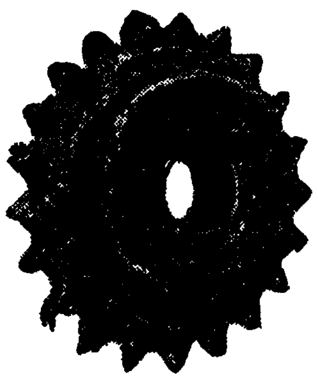
be exercised by the Editor of the newspaper and not the manager of the concern. On behalf of the workman reference was made to an award of the Madras Tribunal published in *Fort St. George Gazette* in the February issue of 1957 and the question in that was whether the proof readers are not working journalists within the meaning of the Act. As already observed, there is no room for any controversy on this point and it has to be held that the proof readers are working journalists as contemplated by the Act but that in itself does not help the case of the petitioner. I am, therefore, unable to question the authority of the manager to inflict any punishment on the proof readers unless there was any provision in the constitution or the articles of association of the concern itself to the contrary. No such thing was placed before this Tribunal during the hearing of this case and therefore I had to rule out this contention of the union.

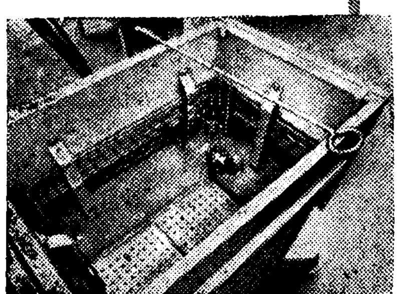
4. The next question to be considered is the justification for the fine imposed on the petitioner. From the materials in the record it is apparent that he being the seniormost proof reader in the shift had some additional responsibilities over and above those of the other proof readers who are junior to him. Admittedly the applications for leave, etc. of the other proof readers have to pass through him and he has to make recommendations on them. He is also described as the shift-incharge in some of the papers. It also could not be disputed that a mistake had occurred in the print of the advertisement in his shift in place of "Government auction at Patna", "Governor auction at Patna" was published. The question is on whom the responsibility for the mistake in the print could be fastened? It appears from Ex. B that the mistake went unnoticed by the proof reader who read the proof. Unfortunately there is no initial of the proof reader on Ex. B which could disclose the name of the person who did it. In such circumstances the ultimate responsibility had to go to the person who was ultimately responsible for the correct reading of the proof in that shift in that section. Undisputedly the petitioner was holding that position so far as the shift in question is concerned and either he should have found out the person who committed the mistake or he had to share the responsibility with him. He was unable to give any indication as to who committed that mistake in the proof reading and therefore he could not escape the responsibility for the mistake. The management had, therefore, justification for fixing the guilt on him.

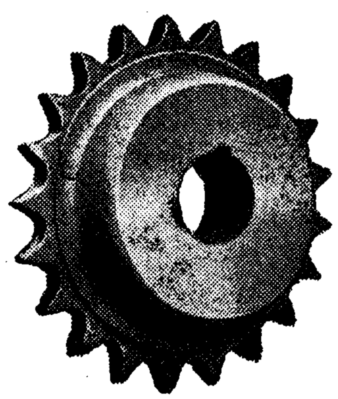
5. A controversy was raised with regard to the jurisdiction of this Tribunal to consider the case on its merit when once the contravention of the provisions of section 33 of the Industrial Disputes Act was established against the management. It was contended by the union that this Tribunal had no option but to set aside the punishment which was illegally inflicted upon the worker. This controversy was set at rest by the decision of the Bombay High Court in the case of *Batuk K. Vyas v. Salim M. Merchant and others*, [1952] 4 F.J.R. 471. In that decision it was laid down that a Tribunal would be acting within its jurisdiction if, acting under section 33-A of the Industrial Disputes Act, it confirms the order of dismissal of an employee though the dismissal may have been in contravention of section 33 of the Industrial Disputes Act.

[To be reprinted]

6. In this case the management inflicted the punishment on the petitioner in the shape of a fine to the extent of 2 per cent of his pay but it did it without the permission of the Tribunal though it was during the pendency of an adjudication proceeding before it. A breach of the provision of section 33 of the Industrial Disputes Act was committed by it no doubt but since on enquiry before this Tribunal the punishment inflicted appears to be justified I would ignore that technical breach. Thus the petition fails and the punishment inflicted by the management is left undisturbed. No question of any compensation does arise in this case.







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