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WITH

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

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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.

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.

[IN THE INDUSTRIAL TRIBUNAL, MADRAS.]

SOUNDARARAJA MILLS LIMITED

v.

THEIR WORKMEN.

Shri V. Pattabi Ramaiya.

May 7, 1957.

BONUS—AWARD OF—PRINCIPLES—LARGE SURPLUS OF PROFITS AVAILABLE—DETERMINATION OF QUANTUM OF BONUS.

The quantum of bonus to be awarded by a concern should mainly be decided on the basis of the available surplus of profits. Though the payment of bonus by similar concerns in the same region may be taken into consideration, it should not be the deciding factor.

In view of the large surplus of profits available, the Tribunal awarded six months' basic wages as bonus.

Industrial Dispute No. 89 of 1956.

N. R. Srinivasan for the management.

Ramanujam for the workmen.

AWARD.

This is an industrial dispute between the workers and the management of Soundararaja Mills Limited, Dindigul, and it was referred for adjudication by G.O. Ms. No. 4695, Industries, Labour and Co-operation, dated 5th November, 1956. The point referred for adjudication as stated in the annexure to the said Government Order is:

"Whether the workers are entitled to additional bonus in excess of 3½ months' basic wages for the year 1955, and if so, to fix the quantum."

2. The secretary of Soundararaja Mill Workers' Union, Dindigul, filed a claims statement, whose brief and relevant contents are as follows: Soundararaja Mills, Limited, Dindigul, is a spinning mill with 25,000 spindles employing roughly about 700 workers. Its paid-up capital is Rs. 6 lakhs. The Company has been making huge profits every year and now its reserves exceed the actual paid-up capital by Rs. 2,83,000. Though the profits earned by the mill before providing for depreciation is roughly 140 per cent. of its actual paid-up capital and it is 75 per cent. after providing for depreciation, the management is not willing to pay a decent bonus to its workers. It is an established fact that the labour has a fair and legitimate right to expect that its standard of living should be raised to a fair level and the gap between the actual wages and the living wages should be bridged, as far as possible, by payment of adequate bonus. It is an undisputed fact that the workers employed in this mill are getting far below the living wages. The workers demanded a payment of 5/6th of the earned wages including all allowances, except dearness allowance as bonus for the year 1955. During the conciliation proceedings they were prepared to accept six months' wages as bonus, without prejudice to their right to claim higher bonus in the event of the matter going for adjudication. But due to the adamant attitude of the management no settlement could be reached. Even according to the published balance sheet and applying the Full Bench formula, there is enough surplus to meet the workers' demand in full. The Tribunal may be pleased to award the demand of the Union in full together with the costs of these proceedings.

3. The management filed a counter-statement in which it is stated as follows: Without accepting the various claims and statements in respect of wages, living wages and actual wages made in the Union's statement, they admit that bonus has to be determined on the year's trading results and on the availability of surplus after applying the Full Bench formula. What amount of such surplus is to be distributed as bonus is in the discretion of the Tribunal. A claim of ten months' wages inclusive of all allowances excepting dearness allowance is exhorbitant.

Before the Conciliation Officer, the management in an attempt to settle the matter offered a bonus of 4½ months' basic wages. The Union wants to have this final offer of the management as a starting point in the present proceedings and attempts to get more. It will be seen from the Labour Officer's report that the Union was prepared to accept 5½ months' wages as bonus for 1955, while the claim now made is for ten months' wages including all allowances which is equal to 25 months' basic wages' The offer of 4½ months' basic wages made by the management is a fair one and will represent a good portion of the available surplus. The management have already paid bonus of 3½ months' basic wages. The management pray that the Tribunal may order the further payment of one months' basic wages as bonus for 1955. There is no justification to award costs of the proceedings to the Union.

4. On these contentions the following issues were settled for enquiry:

(1) Whether the workers are entitled to any additional bonus for the year 1955?

(2) If so, what is the quantum to which they are entitled?

5. *Issues 1 and 2.* It is now settled law that the workers of a concern are entitled to a payment of bonus if two conditions exist Those conditions are (1) the existence of a gap between the living wage and the actual wages paid to the workers, (2) the availability of a surplus in the profits for the year in question after meeting certain prior charges laid down by the Full Bench decision of the Labour Appellate Tribunal reported in *Millowners Association, Bombay v. Rashtriya Mill Mazdoor Sangh, Bombay*, [1950] 2 F.J.R. 107.

6. It is not the case of the management that the workers are getting living wages and that therefore they are not entitled to any bonus. The management admit that there is an available surplus for meeting the demand of workers for bonus. The dispute between the parties really centres round the question relating to the quantum of bonus to be awarded. Exhibit M-1 is the balance sheet and profit and loss account for the year 1955. From the figures in this document, the management prepared a statement showing available surplus for the year 1955 and it is marked as Ex. M-4. Though the correctness of the figures and the method of calculating certain items in Ex. M-4 were disputed by Mr. Ramanujam, who appeared for the workers at the time of the enquiry, he stated that he would rest his case on the figures mentioned in Ex. M-4 and that it was not necessary to go into their correctness. Exhibit M-4 shows that there is an available surplus of Rs. 3,46,969 after providing for the prior charges out of the gross profits of 1955. Though in the claims statement the Union put forward a demand for ten

months' total emoluments excluding dearness allowance, at the time of the enquiry Mr. Ramanujam confined his claim to six months' basic emoluments and did not press the claim in full. It was stated by the management at the time of the enquiry that the total wages excluding dearness allowance per mensem roughly come to about Rs. 19,700 and odd and it can be taken for easy calculation as Rs. 20,000. The argument of Mr. Ramanujam is that even if the workers are given six months' wages it would come to only about Rs. 1,20,000, that the management can very well afford to distribute this amount as bonus to the workers and that in spite of such distribution the concern will have a sum of Rs. 2,26,000 and odd out of the available surplus. It is, therefore, argued by him that the reduced demand of six months' wages should be granted in full. In support of his argument he relied upon the award by an arbitration board appointed by the Government to fix the bonus payable by the textile mills in Coimbatore district and three other mills two of which are at Salem and one at Palani. A copy of the award is marked as Ex. W-1. This award shows that 20 mills in Coimbatore district and a mill known as Rajendra Mills, Salem, were directed to pay the workers a bonus of 50 per cent. of the total basic earnings. It also shows that certain other less prosperous mills were directed to pay lesser percentages. He contends that as this concern has made a gross profit of Rs. 9,47,912 as mentioned in Ex. M-4 and as this profit is more than 150 per cent. of its paid-up capital it should be classified as one of the prosperous mills in this State. It is also stated by him that as there is an available surplus of nearly 3½ lakhs of rupees and as this amount is more than 50 per cent. of the paid-up capital, there is no justification to award anything less than what was demanded by him at the time of the enquiry, namely, six months' basic earnings.

7. Mr. N. R. Srinivasan who appeared for the management argued that the award, Ex. W-1, should not be followed as details of the financial position of the 21 mills which were directed to pay 50 per cent. basic wages to the workers are not available before this Tribunal and as it is not possible to judge on what basis that award was passed. It is his contention that it would be more reasonable and proper to consider and take into account the bonus paid by certain other big mills in Madurai district itself and in the adjoining district of Ramanathapuram. In support of his argument he filed the balance sheet of three other mills and also mentioned the quantum of bonus paid by each of these three mills. Ex. M-6 is the Directors' report with the balance sheet of Sree Meenakshi Mills, Limited, Madurai, which is a very big concern. The balance sheet shows that for the year ending 31st March, 1956, it made a net profit of nearly Rs. 14,75,000. It was admitted by Mr. Ramanujam

that this mill paid its workers 35 per cent. of the basic earnings as bonus for the year ending 31st March, 1956. Exhibit M-7 is the Directors' report and statement of account of a mill known as Rajapalayam Mills Limited, Rajapalayam, Ramanathapuram district. The profits of this mill were according to this document Rs. 8,84,631 and this is admitted by both sides. It was also mentioned to me by both sides that this mill paid its workers a bonus of 37½ per cent. for the year ending 31st March, 1956. Exhibit M-8 is the report of the directors of Madura Mills Company Limited, Madurai. This is also a very big concern, running four mills. For the year 1955, in spite of its huge net profit of Rs. 44,20,000 and odd they have paid only a bonus of only 33-1/3 per cent. to its workers. The quantum of bonus paid by this concern to its workers is not disputed by Mr. Ramanujam. It is the contention of Mr. N. R. Srinivasan that the Tribunal should take into account the bonus paid by other mills in the same district and which are equally prosperous. It is his argument that if bonus is paid at an excessive rate to the workers of one of the mills in the same region it is bound to cause a disturbance of industrial peace and harmony among the workers in the same industry. He, therefore, wants bonus in this case to be fixed at a rate paid by one of these three mills.

8. Though the bonus payment of the other mills in the same region can be taken into consideration by the Tribunal in fixing the bonus of a particular mill, it is not the deciding factor. Just as Mr. Srinivasan wants me to consider the case of Rajapalayam Mills in Ramanathapuram district, Mr. Ramanujam argues that I should take into account the award, Ex. W-1, which has given 50 per cent. basic wages to the workers of 21 mills most of which are in the adjoining district of Coimbatore. It is well settled law that the quantum of bonus should mainly be decided on the basis of the available surplus and this is conceded in the counter-statement. Admittedly, even according to the management's case the surplus for the year 1955 is Rs. 3,46,969. The total basic earnings of the workers for six months admittedly come to Rs. 1,20,000. It is not the case of the management that a payment of six months' basic earnings is not necessary to fill up the gap between the living wages and the actual wages. They do not contend that the award of a lesser quantum of bonus would completely fill up the gap. It cannot be denied that the large profits earned by this concern during 1955, was due to the efforts of the workers to a large extent. It must also be remembered that the management will be entitled to a rebate in the income-tax payable by them to the extent of 7/12th of the total amount paid as bonus. It is not in every year that such huge profits are earned enabling the workers to get a decent bonus. I am unable to find any valid reasons to reduce

the claim of the workers. Considering all the circumstances I think it would be reasonable to fix the bonus payable to each of the workers of this concern who had worked throughout the year at six months' basic earnings, and I direct the management to pay the same after deducting the amount already paid by them as interim bonus. If a worker had worked only during a part of the year 1955, he should be paid a proportionate amount. The proportion will be what the period of his or her service in that year bears to the entire year. It is agreed by both sides that the term basic earnings shall include basic wages, night allowance, production allowance and maternity allowance. All other allowances including dearness allowance shall not be taken into account in arriving at basic earnings. Mr. Ramanujam did not press the caim for costs at the time of the enquiry, as it was admitted that the management had paid the expenses of the Union for going over to Madras for the enquiry of this dispute. I, therefore, pass an award on the above lines and it shall come into force after 30 days of its publication in the *Fort St. George Gazette*.

[IN THE INDUSTRIAL TRIBUNAL, RAJKOT.]

MAHENDRA GLASS WORKS LTD., MORVI

v.

THEIR WORKMEN.

Shri N. L. Vyas.

July 31, 1957.

RETRENCHMENT—TERMINATION OF SERVICE OF MEN EMPLOYED ON EXPERIMENTAL INCREASE OF PRODUCTION—MANAGEMENT DECIDING TO REVERT TO NORMAL PRODUCTION—RIGHT OF MANAGEMENT TO FIX ITS LABOUR STRENGTH.

INDUSTRIAL DISPUTES ACT, 1947, SECTION 25F—RETRENCHMENT COMPENSATION—QUALIFICATION FOR—WORKMAN COMPLETING 240 DAYS' SERVICE—WHETHER ENTITLED TO COMPENSATION—'ONE YEAR OF CONTINUOUS SERVICE' MEANING OF.

Where the management of a concern which had been incurring losses tried, as an experiment, to increase its production and for this purpose engaged some extra workmen whose services were terminated when the management decided to discontinue the increase of production, Held, *that the management is the best judge regarding the number of workmen required in the factory and if*

the labour force is adjusted according to its requirements and if in making such adjustments there is no want of bona fides, *the Industrial Tribunal would not be justified in interfering.*

In order to claim retrenchment compensation under section 25F of the Industrial Disputes Act, 1947, a workman should have worked for 240 days during a period of 12 calendar months. Two conditions must be fulfilled by a workman before he can claim retrenchment relief, one being that he must have put in service for 12 calendar months and the second being that he must have worked for not less than 240 days during those 12 months

Adjudication No. 12 of 1956.

K. L. Joshi for the management.

Rasiklal Mehta for the workmen.

AWARD.

1. The following dispute is referred for adjudication to this Tribunal :

The workmen who have been retrenched by the notice dated 24th September, 1955, of Mahendra Glass Works Limited, Morvi, should be re-instated with full compensation for their lost days and their services should be treated as continuous.

2. The workmen who are affected by the notice dated 24th September, 1955, were 38 in number. Their list is given by the Company. It is Ex. 11. All these workmen were discharged with effect from 10th October, 1955, by the notice dated 24th September, 1955. In the notice Ex. 26 it is mentioned that the glass melting tank furnace installed in October, 1954, had become old and required to be replaced by a new furnace, and therefore the 38 workmen who were employed on a temporary basis when that old furance had come into operation in October, 1954, had become surplus. On this ground they were informed that their services would be terminated with effect from 10th October, 1955. According to the Company, the furnace which was installed in October, 1954, was a little bigger with larger output, and therefore additional men had to be employed for temporary increase in production. The Union has contended in its statement of claim that all these 38 workmen were employed for doing work of a permanent nature, and therefore they should have been made permanent after they had put in 240 days' work. It was denied that they were employed temporarily or that they were employed for doing work of a temporary nature. It was also contended that during the pendency of Adjudication No. 5/55 these workmen were discharged without the previous permission of this

Tribunal. The Union, therefore ,prayed for the re-instatement of these workmen with full compensation for their lost days.

3. In the written statement the company has contended that as it was continuously working in loss it was decided to install as an experimental measure a bigger furnace to increase the production in order to cut down the cost of production, and, therefore, a bigger furnace was installed in October, 1954. As this furnace had larger output it became necessary to employ additional workmen on a temporary basis. It was therefore that these 38 workmen were employed in November and December, 1954, on a temporary basis on account of temporary increase in production. The Company further urged that after seeing the working of this bigger furnace it found that the loss had increased rather than decreased, and, therefore, it was decided to switch over to a smaller furnace, and therefore a small furnace was installed in November, 1955. The Company, therefore, contended that these workmen were always considered as temporary, and were never made permanent, and therefore they were liable to be retrenched without notice. It was also contended that as they had not put in one year's continuous service, they were not entitled to retrenchment relief under section 25F.

4. In support of their respective contentions, both the parties have produced oral and documentary evidence. Two of the 38 workmen gave evidence before me, but both admitted in their evidence that they were employed as temporary workmen, and were given temporary tickets right up to the date they were retrenched. They also admitted that at no time two furnaces were operating at a time. Both further stated that only two months before they were employed, the new furnace was installed. They also admitted that on the date they were discharged, a new furnace was being constructed and that new furnace is now in operation. It, therefore, appears even from the evidence produced by the Union that these 38 workmen were employed in November and December, 1954, on a temporary basis because a new furnace was installed at about the time they were appointed. One of the workmen who was working in the Packing Department has admitted that he was employed because there was increase in production. It cannot, therefore, be doubted that a new furnace was installed shortly before these 38 workmen were employed, and their appointment became necessary as there was some increase in production. That there was increase in production is clear also from the balance-sheet for the year 1955-56, which is produced by the Company. Both the workmen who gave evidence before me no doubt stated that the furnace which was installed about the time they were employed, was smaller than the furnace now in operation. But the company has submitted the statement Ex. 12 showing the specifications

of both, the old and the new furnace, and as against this statement the union was not able to produce any evidence showing that this statement is incorrect. I have therefore no doubt in holding that the company had installed as an experimental measure a bigger furnace to increase the production, and it was therefore that it became necessary to employ these 38 workmen in November and December, 1954. It can therefore be held that these 38 workmen were employed temporarily because there was temporary increase in production. The Company was therefore not wrong in classifying them as temporary workmen.

5. Similarly, there is no doubt that after these 38 workmen were retrenched, no new workmen have been employed in any of the departments. The acting manager of the factory has stated this in his evidence, and the union has also not been able to show by any evidence that new hands were employed after these 38 workmen were discharged. It is true that 5 workmen were made permanent after these 38 workmen were discharged. It is further true that these 5 workmen were junior to the retrenched 38 workmen. But it was explained by the acting manager of the factory that these 5 workmen were employed as apprentices to learn the work of a blower, whereas none of the 38 retrenched workmen were either working as blowers, or were learning the work of a blower. It cannot therefore be said that the company had adopted any unfair labour practice by continuing in employment these 5 apprentices, and in making them permanent later on. It also appears that 8 of the 38 workmen have been re-employed by the company and some of them have been made permanent. There are, therefore, no materials for holding that these 38 workmen were either victimised for their trade union activities, or were retrenched from some ulterior motive. At the most one can have a suspicion that they were retrenched a little earlier in order that they may not complete one year of continuous service. But if the company can legitimately do it, there would be no justification for directing it to reinstate them.

6. It also appears from the evidence of the acting manager that the company is working continuously in loss from 1949 onwards. The loss during the year in which the bigger furnace was operating had increased, and therefore it became necessary for the company to install smaller furnace. In view of this circumstance also I would not be justified in directing the company to reinstate these 38 workmen.

7. As regards the contention of the union that these workmen were retrenched during the pendency of Adjudication No. 5/55, it is enough to say that this is not an application under section 33A, and that none of these workmen were concerned in the dispute in that adjudication, because the only dispute referred to the Tribunal was about bonus

for the years 1950-51, 1951-52 and 1952-53. None of these 38 workmen were concerned in this dispute. Similarly, there is no substance in the company's allegation that the bigger furnace had to be scrapped because the glass produced from this furnace was blackish in colour. The acting manager of the company has stated in his evidence that a furnace of this type lasts for about 10 to 11 months, and a new furnace has to be erected thereafter. He has also stated that during the last two or three months of the old furnace the quality of the glass produced therefrom deteriorates. He also admitted that except for the last two or three months the quality of the glass produced from this furnace was not inferior to that produced from a smaller furnace. Therefore this ground urged in the written statement for the scrapping of the bigger furnace is wholly untenable. However, the other ground, namely, the loss due to over-production is substantiated by the evidence produced before me. The company was, therefore, justified in retrenching the additional labour recruited for increasing the production. After all, the management should be considered to be the best judge regarding the number of workmen required in the factory, and if the labour force is adjusted according to its requirements, and if in making such adjustment there is no want of *bona fides*, the Tribunal would not be justified in interfering. The demand of the workmen, therefore, for reinstatement is rejected.

8. In the alternative it was urged on behalf of the union that the workmen should be paid retrenchment relief under section 25F. The company has submitted the statement about the attendance of the workmen during the period they were in employment. This statement is Ex. 24. It is clear from this statement that except 3 workmen, all had worked for more than 240 days. But it is equally clear that none of these 38 workmen were in the employment of the Company for 12 calendar months. From the statement Ex. 11 it appears that no one was employed before 1st November, 1954, and all were discharged on 10th October, 1955. It is therefore clear that no one had put in service for 12 calendar months. But it was urged on behalf of the union that even when a workman has not put in service for 12 calendar months, if he has worked actually for 240 days during any period which may be short of 12 months, he would be entitled to retrenchment relief under section 25F. But section 25B, which defines "one year of continuous service" for the purpose of sections 25C and 25F, clearly lays down that during a period of 12 calendar months a workman should have actually worked for not less than 240 days. Similarly, section 25F also lays down that no workman who has been in continuous service for not less than one year shall be retrenched by the employer until certain conditions are complied with. If both these sections are therefore read together, the intention

of the legislature clearly appears to be that a workman must have put in service for 12 calendar months before he can become entitled to retrenchment relief under section 25F. It would appear from section 25B that two conditions must be satisfied by a workman before he can claim retrenchment relief under section 25F, one being that he must have put in service for 12 calendar months, and the second being that he must not have worked for less than 240 days during 12 calendar months. Only when both these conditions are satisfied, a workman would be entitled to retrenchment relief under section 25F. As one of these conditions has not been satisfied by any of these 38 workman, none of them were entitled to any retrenchment relief under section 25F. The company was therefore not bound to pay any retrenchment relief under section 25F before retrenching them. This view was also taken by the two learned Industrial Tribunals of Bombay in the two awards one published in the *Bombay Government Gazette*, Part I-L, dated 7th October, 1954, at page 2734, and the other published in 1956-I L.L.J. at page 634. In this view I am unable to direct the company to pay any retrenchment relief or compensation to any of these 38 workmen. The demand is therefore rejected. No order as to costs.

[IN THE INDUSTRIAL TRIBUNAL, RAJKOT.]

MORVI ELECTRIC WORKS LTD., MORVI

v.

THEIR WORKMEN.

Shri N. L. Vyas.

July 30, 1957.

BONUS—AWARD OF—PRINCIPLES—DEMAND FOR BONUS MADE AFTER WAITING FOR ADJUDICATION OF PREVIOUS DEMAND—WHETHER BELATED—COMPUTATION OF SURPLUS PROFITS—ALLOWANCES—ELECTRIC SUPPLY UNDERTAKING—DEPRECIATION—LOSS ON SALE OF MACHINERY—RETURN ON SHARE CAPITAL—REHABILITATION ALLOWANCE—INCOME TAX—RETURN ON DEPRECIATION RESERVES USED AS WORKING CAPITAL—WHETHER ALLOWABLE.

LEAVE—SEMI-GOVERNMENT ELECTRICITY UNDERTAKING—FOLLOWING RULES OF ELECTRICITY BOARD REGARDING WAGES—WHETHER BOUND TO FOLLOW RULES REGARDING LEAVE ALSO.

Where the question of bonus for a certain year was the subject of adjudication and the workmen kept their demand for bonus for the succeeding years in abeyance in order to await the result of the adjudication and this was done at the instance of the employer, the employer cannot, when the demands are actually made, raise the plea that the demands were belated.

In determining the surplus of profits available for distribution as bonus in an electric supply undertaking. Held :

(i) that the normal depreciation under the Income Tax Act, 1922, should be allowed though the Electricity Supply Act, 1948, has made different provision regarding depreciation ;

(ii) that annual provision for loss incurred in sale of discarded machinery should be allowed ;

(iii) that only the actual dividend payable on the share capital should be allowed, i.e., 4 per cent. cumulative preference shares should be allowed only 4 per cent. and the balance of paid up capital should be allowed only 5 per cent. as laid down in the Electricity Supply Act, 1948 ;

(iv) that no allowance can be made for rehabilitation or replacement of machinery where the details are not made available ;

(v) that income-tax at 7 annas in the rupee should be allowed even though the concern does not actually pay the tax ; and

(vi) that no allowance should be made for interest on amounts of depreciation alleged to have been used as working capital.

In the case of a semi-government electric supply undertaking which is following the rates of wages laid down by the Electricity Board, it is only reasonable that the leave rules as laid down by the Electricity Board should also be followed

Adjudication No. 83 of 1955.

K. L. Joshi for the management.

Rasiklal Mehta for the workmen.

AWARD.

1. The following dispute is referred for adjudication to this Tribunal :

(1) *Bonus.*—All the employees of the Company should be paid adequate bonus for each of the financial years 1951-52 and 1952-53, without attaching any conditions to it.

(2) *Leave.*—(a) *Sick Leave.* All the employees should be granted 15 days' sick leave with full wages or salaries (inclusive of dearness allowance) for every year. The sick leave should be allowed to be accumulated for 3 years.

(b) *Casual Leave.* All the employees of the Company should be granted 15 days' casual leave with full wages or salaries (inclusive of dearness allowance) for every year.

2. *Demand No. 1.*—The Morvi Electricity Works Ltd., Morvi, has electric power house at Morvi, and the Government holds 50 per cent. of the shares of the Company. It was stated at the hearing that after the Electricity Supply Act of 1948 has come into force depreciation is being debited according to the rules prescribed by that Act, and the dividend is also being paid to the share holders in accordance with the provisions of that Act. The workmen have claimed bonus for the years 1951-52 and 1952-53 on the ground that their wages are much below the living wage standard and have therefore urged that to fill up the gap they should be paid bonus out of the surplus on the trading results of these years. It may be mentioned that the workmen had claimed bonus for the year 1950-51, and as the Company had not complied with this demand the dispute was referred to this Tribunal for adjudication. This reference was numbered Adjudication No. 3/53 and award was made in that adjudication on 2nd November, 1953, which was published in the *Saurashtra Government Gazette*, dated 29th November, 1953. It may further be mentioned that for that year the Company had actually paid bonus equivalent to one month's basic wages. But in that adjudication the demand for additional bonus was rejected on the ground that there was no surplus after meeting the prior charges.

Against this award an appeal was made to the Labour Appellate

Tribunal which was numbered as 8/54. Decision in that appeal was given on 17th January, 1956, and it was published in the *Saurashtra Government Gazette*, dated 24th February, 1956, at page 220. In appeal also the claim of the workmen for bonus for 1950-51 was rejected on the ground that there was no surplus. During the pendency of this appeal before the Labour Appellate Tribunal written demand was made by the workmen on 25th December, 1954, for bonus for the years 1951-52 and 1952-53. This letter is Ex. 28. As the Company did not accept this demand, the dispute about bonus for these two years is referred to this Tribunal.

4. The Union in its statement of claim has urged that on the trading results of these two years bonus is payable to the workmen, as, after meeting all the prior charges, there was sufficient surplus in both the years. The Union has urged in the statement of claim that Rs. 15,047 should not be allowed as loss on sale of discarded engines and depreciation to the extent of Rs. 0·49 lacs should only be allowed. Similarly it is stated that Rs. 0·14 lacs as loss on sale of investment should not be allowed. Objection is also raised to the amounts debited in both the years as managing agents' commission and office allowance. According to the Union, commission and office allowance should be allowed in accordance with the provisions of Electricity Supply Act, 1948, and not in accordance with the agreement between the Company and the managing agents. Similarly for the year 1952-53, the union has urged that Rs. 15,000 as loss on sale of discarded engines and Rs. 6,000 as managing agents' commission and office allowance should not be allowed. For that year, according to the Union, only Rs. 0·55 lacs should be allowed as depreciation. The Union has also contended that no provision for income-tax should be made, as no income-tax had to be paid for both these years.

5. In the written statement the Company has raised the preliminary objection that the claim for bonus for 1951-52 and 1952-53 is not maintainable, as the demand was made after unusual delay. On merits of the claim, the Company has contended that there was no surplus in any of these two years, and consequently no bonus is payable. The Company has claimed Rs. 0·72 lacs as depreciation for both these years on the ground that in accordance with the Full Bench decision of the Labour Appellate Tribunal statutory depreciation, that is the normal depreciation according to income-tax rules, should be allowed. Similarly, Rs. 0·15 lacs are claimed for both the years as annual provision for loss on sale of discarded engines. Provision for income-tax at the rate of 7 annas in a rupee and dividend at the rate of 6 per cent. on the paid up capital of Rs. twelve lacs are also claimed for both these years. Over and above these prior charges the company has claimed Rs. 0·06 lacs for 1951-52 and Rs. 0·07 lacs for 1952-53 as contingent reserve according to the provisions

of the Electricity Supply Act, 1948. Rs. 0·35 lacs are claimed for both the years as provision for rehabilitation and replacement of the plant, and Rs. 0·12 lacs for 1951-52 and Rs. 0·13 lacs for 1952-53 as interest at 4 per cent. on the reserves employed as working capital. If all these prior charges claimed by the Company are allowed it is obvious that there would be no surplus in any of these years for payment of bonus.

6. After the written statements were filed by both the parties and necessary statements were submitted, they made a joint application for referring the disputes which are the subject matter of this reference to two arbitrators, one named by the Union and other named by the Company. They also agreed that in the event of the two arbitrators not coming to any agreement the final decision may be given by this Tribunal. In accordance with this settlement Shri Kantilal Shah and Shri Ganpule were named as arbitrators, and they proceeded to hear the parties on the disputes which are the subject matter of this reference. After two sittings the arbitrators failed to come to any agreed decision, and consequently they submitted their separate awards to this Tribunal on the demands which are the subject matter of this reference. Consequently I heard the representatives of both the parties and also took into consideration the separate awards submitted by the arbitrators.

7. The first point raised as a preliminary objection by the Company is that the demand is belated, and therefore should not be entertained by this Tribunal. It was stated by the Labour Officer of the Company that the demand for bonus for these two years was made for the first time by the letter Ex. 28, dated 25th December, 1954. He, therefore, urged that even the demand for bonus for 1952-53, was made 17 months after the close of that year. It may here be mentioned that the financial year of the Company closes on 31st July. It is therefore true that the letter Ex. 28 was written nearly 17 months after the close of the year 1952-53. But it was urged on behalf of the Union that the demand was made earlier but it was Shri Ganpule, who is one of the directors of the Company, who had requested the Union not to press the demand before the award was given by the Tribunal on the demand for bonus for 1950-51. Further, it was explained on behalf of the Union that the final decision in the dispute about bonus for 1950-51 was given by the Labour Appellate Tribunal on 17th January, 1956, and, therefore, it can hardly be said that the demand for bonus for the two subsequent years was belated. In my view there is considerable force in this argument advanced on behalf of the Union. It appears that the Union had written the letter Ex. 42, dated 24th November, 1953, to the manager of the Power House in which demand for bonus for 1951-52 was made. In reply to this letter the Electrical Engineer of the Company wrote the

letter Ex. 43 dated 30th November, 1953, in which he requested the Union to wait till the award on the demand for bonus for 1950-51 was made. This would clearly show that it was at the request of the company that the Union did not press their demand for bonus for 1951-52, and 1952-53. It is also clear that both the parties were waiting for the final decision on the demand for bonus for 1950-51. That final decision was given by the Labour Appellate Tribunal in 1956. Even before that final decision was given, the Union had written the letter Ex. 28 informing the Company that it had not abandoned its claim for bonus for the years 1951-52 and 1952-53. If, therefore, there was any delay in making the demand for bonus for these two years, it was because both the parties desired that the decision of the Tribunal on the demand for bonus for 1950-51 should first be known. In view of these peculiar facts, I cannot hold that the demand for bonus for these two years was belated. The same view was taken by the Labour Appellate Tribunal in the *Shaparia Dock and Steam Co. case* reported in [1954] II L. L. J. at page 208. In that case also the facts were that first the dispute regarding bonus for 1947-48 and 1948-49 was referred for adjudication and no award was given on that dispute till November, 1951. After the award was given in that dispute, demand was made in April, 1952, for bonus for 1949-50 and 1950-51. On these facts it was held that the delay could not be considered to be unreasonable, as the demand was made within reasonable time from the decision on the dispute regarding bonus for the previous years. I, therefore, hold that the demand for bonus for these two years was not belated, and, therefore, this Tribunal can consider the demand on merits.

8. Both the arbitrators after hearing the parties agreed that gross profit for the year 1951-52 should be taken at Rs. 1·56 lacs and for 1952-53 at Rs. 1·53 lacs. The gross profit for the year 1951-52 was arrived at by both the arbitrators by adding to the net profit of Rs. 70,921, the 4 items of Rs. 14,868 being loss on sale of investments, Rs. 6,421 being provision for contingent reserve, Rs. 15,047 being annual provision for loss on sale of discarded machinery, and Rs. 49,191, being provision for depreciation. Similarly, for the year 1952-53, the gross profit of Rs. 1·53 lacs was arrived at by adding to the net profit of Rs. 76,149 shown in the profit and loss account, the 3 items of Rs. 7,081 being provision for contingent reserve, Rs. 15,000 being annual provision for loss on the sale of discarded machinery, and Rs. 55,472 being provision for depreciation. I have, therefore, taken these figures of gross profit for these two years, and on that basis I would make my calculations.

9. The first disputed item is of depreciation for both these years. In the profit and loss account for 1951-52, Rs. 0·49 lacs are provided as

depreciation. For 1952-53 Rs. 0·55 lacs are provided as depreciation in the profit and loss account. It was stated at the hearing that these amounts were provided as depreciation for these two years in accordance with the provisions of the Electricity Supply Act of 1948. But the Company urged that in accordance with the Full Bench decision of the Labour Appellate Tribunal in the *U. P. Electricity Companies' case* which is reported in [1955] 9 F.J.R. 343 statutory depreciation, that is, normal depreciation in accordance with the income-tax rules is allowable. The Company has submitted statements for both these years showing the amount of depreciation allowed under the Income-tax Act. The Company has also produced the assessment orders for these two years. The company's statement about depreciation for 1951-52 is Ex. 9 and for 1952-53 is Ex. 10. According to these statements normal depreciation would come to Rs. 0·72 lacs. The assessment order for the year 1951-52 is Ex. 24. By this assessment order depreciation to the extent of Rs. 1·13 lacs is allowed, but this amount includes both initial as well as additional depreciation. This will be clear from the statement Ex. 9. The Company has, out of this total amount of depreciation allowable according to the Income-tax Act, claimed only Rs. ·72 lacs as normal depreciation. Similarly, for the year 1952-53, the assessment order Ex. 25 allows Rs. 1·84 lacs as depreciation. But in the statement Ex. 10 the Company has claimed only Rs. 0·72 lacs, that being the total amount of normal depreciation. As regards the correctness of these statements nothing was urged on behalf of the Union. The only question for consideration, therefore, is whether the normal depreciation under the Income-tax Act or the depreciation in accordance with the provisions of the Electricity Supply Act of 1948, should be allowed. This question was specifically considered by the Full Bench of the Labour Appellate Tribunal in the *U. P. Electricity Companies' case* above referred to, and it was held that normal depreciation under the Income-tax Act should be allowed for the purpose of the bonus formula. It was very strenuously urged on behalf of the Union that when there are specific provisions in the Electricity Supply Act, and when actually depreciation in accordance with the provisions of that Act is provided for in the balance sheet, the Company should not be allowed statutory depreciation, that is normal depreciation under the Income-tax Act. Ordinarily it is true that when there is a special Act in which there are specific provisions relating to any matter, those provisions must prevail over the provisions contained in a general Act. This is one of the accepted principles for interpretation of statutes. Consequently, it cannot be said that the contention urged on behalf of the Union that depreciation in accordance with the provisions of the Electricity Supply Act, 1948, should only be allowed, is wholly untenable. But this question was considered by the Full Bench of the Labour Appellate Tribunal, and a considered decision was given that normal depreciation under the Income-tax Act should be allowed for the purpose of the bonus formula. It is not only on this one particular matter that the Full Bench has disregarded the provisions of the Electricity Supply Act in holding that the bonus formula evolved in the dispute about bonus for the Textile Industry should be applied when considering the claim for bonus by the workmen of Electricity Works. This would be apparent from the perusal of the decision of the Full Bench in the case above referred to. I have considerable doubt as to whether in view of the specific provisions contained in the Electricity Supply Act of 1948, the course adopted by the Full Bench of the Labour Appellate Tribunal is legal or permissible. However, I would not be justified in taking a different course, particularly when none of the parties have submitted statements showing as to whether there would be any surplus for payment of bonus after making calculations in accordance with the provisions of the Electricity Supply Act, 1948. I have therefore, no other alternative but to give an award in accordance with the principles enunciated by the Full Bench of the Labour Appellate Tribunal in the above referred to *U. P. Electricity Companies' case.* It was also urged on behalf of the Union that in the dispute for bonus for 1950-51, this Tribunal had allowed Rs. 0·49 lacs as depreciation in accordance with the provisions of the Electricity Supply Act, 1948, and, therefore, for the subsequent years no larger amount should be allowed as depreciation. But, on perusal of the decision of the Labour Appellate Tribunal in appeal against that award, I find that Rs. 0·76 lacs were allowed as statutory depreciation in accordance with the Full Bench decision of the Labour Appellate Tribunal, as by the time the appeal was decided the Full Bench had given its decision in *U. P. Electricity Companies' case.* Consequently Rs. 0·72 lacs must be allowed as normal depreciation under the Income-tax Act, though Rs. 0·49 lacs for 1951-52, and Rs. 0·55 lacs for 1952-53, have been provided as depreciation in the balance sheets for these years in accordance with the provisions of the Electricity Supply Act, 1948.

10. The next disputed item is that of Rs. 0·06 lacs as contingent reserve for 1951-52, and Rs. 0·07 for 1952-53. As regards these amounts Shri Kantilal Shah, the arbitrator named by the Union, has stated in his award that they may be allowed to the Company. Similarly at the hearing no objection was raised to these amounts by the representative of the Union.

11. The next disputed item is of Rs. 0·15 lacs being the annual provision for loss incurred on sale of discarded engines. This amount was

claimed by the Company in the dispute for bonus for 1950-51 and it was allowed by this Tribunal in the award given in Adjudication No. 3/53. In appeal the Labour Appellate Tribunal also allowed this amount. I therefore, see no reason for disallowing this amount to the Company. Rs. 0·15 lacs would therefore be allowable for both the years as annual provision for loss on the sale of discarded engines.

12. The next disputed item is of dividend on the paid up capital. The Company has claimed Rs. 0·72 lacs as dividend at the rate of 6 per. cent. on the paid up capital of Rs. 12 lacs. But from the balance sheet it appears that shares of the value of Rs. 4 lacs are 4 per cent. cumulative preference shares, and the remaining shares are ordinary shares. Consequently the Company is entitled to only 4 per cent. on Rs. 4 lacs of the paid up capital. As regards ordinary shares it was urged on behalf of the Union that only 5 per cent. should be allowed as dividend and not 6 per cent. According to the provisions of the Electricity Supply Act, 1948, it is true that dividend at the rate of 5 per cent. on the paid up capital has to be given. But in the above referred to Full Bench decision of the Labour Appellate Tribunal it is held that dividend upto 6 per cent. on ordinary shares can be allowed for the purpose of bonus formula. In the circumstances of this case, I feel that not more than 5 per cent. should be allowed as dividend on ordinary shares of the value of Rs. 8 lacs. The total dividend allowable for both these years would therefore come to Rs. 0·56 lacs.

13. The other disputed items are, (1) provision for income-tax at 7 annas in a rupee though no income-tax is actually paid, (2) provision of Rs. 0·35 lacs for rehabilitation and replacement of machinery, and (3) interest at 4 per cent. on the reserves employed as capital. As regards the Company's claim for provision for rehabilitation and replacement of the machinery it is enough to say that the Company has not produced any satisfactory evidence in support of the claim. Only the statement Ex. 11 and copies of certain correspondence have been filed by the Company. No one was examined to prove as to what the value of the block was when acquired, what is its present value and what would be its normal life. In the calculations given in Ex. 11 a multiple of Rs. 1·25 lacs is taken not only for the machinery which is of no more value than Rs. 6 to Rs. 7 lacs but also for buildings and other articles. Even for buildings period for replacement is given as 20 years. The whole basis for the calculations given in Ex. 11 is therefore wrong, and no satisfactory evidence is produced in proof of the Company's claim. When that is so, no amount can be allowed for rehabilitation or replacement of the plant. That was held by the Labour Appellate Tribunal in the decision reported in *Bombay Gas Co. v. Their Workmen*, [1955] 9 F.J.R. 341.

14. As regards the claim for interest at 4 per cent. on the reserves employed as working capital, there is no dispute that the reserves alleged to have been employed as working capital are nothing but the total amount of depreciation provided up to 1951-52. It appears from the balance sheet for the year 1951-52 that depreciation figures on the right hand side of the balance sheet, and it is not shown on the left hand side as a fund. It was also not proved by the Company that actually the amounts shown in the statement Ex. 13 were actually used as working capital. But even assuming that they were so used, in view of the recent decision of Shri M. R. Meher, in the dispute between the Kirloskar Oil Engines Ltd., and the workmen under them reported in the *Bombay Government Gazette*, Part I-L, dated 17th January, 1957, at page 365, the Company is not entitled to any interest on such amounts. In that decision he has given the reasons for not allowing interest on depreciation used as working capital, and with respect I agree with the view expressed by him. The same view was taken by Shri Sawarkar in the award in the dispute between the Bombay Potteries and Tiles Ltd. and the workmen employed under it reported in *Bombay Government Gazette*, Part I-L, dated 18th July, 1947. In taking this view both the learned Industrial Tribunals of Bombay have not followed the decisions of the Labour Appellate Tribunal, but it appears to me, after perusal of these two awards that the view taken therein is reasonable, and in consonance with the principles of social justice. I am, therefore, of the opinion that the Company is not entitled to any interest on the amounts of depreciation alleged to have been used as working capital during these two years.

15. The last disputed item is one of provision for income-tax at 7 annas in a rupee though no income-tax or smaller amounts have been actually paid. It is undisputed that for the year 1951-52, the Company had to pay only Rs. 7,000 as income-tax. For 1952-53, the Company had not to pay any income-tax. Even so, according to the decisions of the Labour Appellate Tribunal, provision for income-tax has to be made at the rate of 7 annas in a rupee. The reason given for making such provision is that the Company is not allowed to carry forward the loss. The other reason given is that if no income-tax is payable because of loss in previous years, that advantage should not accrue to the workmen. On the basis of the decisions of the Labour Appellate Tribunal both Shri I. G. Thakore and Shri Sawarkar have taken the view that provisions for income-tax at 7 annas in a rupee must be made for the purpose of bonus formula even if income-tax is not actually paid in any year. These decisions are reported in *Bombay Government Gazette*, Part I-L, dated 30th May, 1957, at page 2582, [1956] 13 F.J.R. 30; and in the *Bombay Government Gazette*, Part I-L, dated 18th July, 1957, at page 3061. As against

this view Shri Meher has taken a different view in his award published in the *Bombay Government Gazette*, Part I-L, dated 17th January, 1957, at page 365. But it is not necessary for me to express any opinion one way or the other, as, even without making provision for income-tax at 7 annas in a rupee, there is no surplus on the trading results for any of these two years.

16. The calculations for the purpose of bonus for the years 1951-52 and 1952-53 would therefore be as follows:

	1951-52		1952-53
	Rs.		Rs.
	1.56 lacs gross profit.		1.53 lacs gross profit.
Deduct	0·72 lacs statutory depreciation.	*Deduct*	0·72 lacs statutory depreciation.
	0·84 lacs.		0·81 lacs.
Deduct	0·56 lacs dividend on paid up capital.	*Deduct*	0·56 lacs dividend on paid up capital.
	0·28 lacs.		0·25 lacs.
Deduct	0·07 lacs income-tax actually paid.	*Deduct*	0·15 lacs loss on discarded engines.
	0·21 lacs.		0·10 lacs.
Deduct	0·15 lacs loss on sale of discarded engines.	*Deduct*	0·07 lacs contingent reserve.
	0·07 lacs.		
Deduct	0·60 lacs contingent reserve.		
Surplus.	*Nil.*		Surplus. 0·03 lacs.

These calculations would clearly show that there was no surplus in the year 1951-52, and there was a surplus of Rs. 0·03 lacs in 1952-53 without making provision for the income-tax. But even if no provision for income-tax be allowed, the surplus of Rs. 0·03 lacs is so small that nothing can be directed to be paid as bonus out of that amount. In the result the claim for bonus for both these years is rejected.

17. *Demand No. 2.*—The workmen have demanded 15 days' sick leave and 15 days' casual leave in a year with the right to accumulate the sick leave for 2 years. At the hearing it was stated that the employees are being given 30 days' leave every year with a right to accumulate it for 2 years. They are not being given any separate sick leave or casual leave. At the hearing the representative of the Union urged that the different kinds of leave allowed to the employees of the Saurashtra Electricity Board should be allowed to the employees of this Company. In support of this contention reference was made on behalf of the Union to an award given on the basis of a settlement by this Tribunal. But that award was given in a dispute about the wages and dearness allowance, and there was no dispute about leave referred to

made by the workmen of any one of these 4 factories, the over-all financial position of the Company as revealed by the consolidated balance-sheet would have to be considered.

2. There is no dispute that the workmen of the Wankaner factory had for the first time presented a written demand to the Company for bonus on 4th June, 1956. Similarly, there is no dispute that the workmen of the Morvi factory had for the first time presented the demand for bonus to the Company on 5th June 1956. There is also no dispute that the Company had of its own accord and without there being a demand by the workmen, passed an office order on 5th April, 1954, directing the payment of bonus to all the workmen of the Morvi and Wankaner factories at the rate of 30 days' basic earnings. In accordance with this office order which is Ex. 15 in Adjudication No. 101/56, all the workmen of Morvi factory and of Wankaner foctory were paid bonus at this rate. There is also no dispute that the workmen had accepted bonus at this rate without any protest. But the workmen of the Thangadh factory, it is alleged, refused to accept the payment of bonus at this rate, and therefore the dispute was referred to the Conciliation Officer, and in the course of conciliation proceedings the Union of the workmen of Thangadh factory and the Company came to a settlement and by this settlement dated 16th September, 1954, in the presence of the Conciliation Officer, the Company agreed to pay bonus at the same rate to the workmen of the Thangadh factory, and the workmen agreed to accept bonus at this rate. After accepting bonus at this rate for 1952-53, the workmen of all these 3 factories have accepted bonus at the same rate for the years 1953-54 and 1954-55. This was not disputed on behalf of the Union. There is also no dispute that the workmen of the Thangadh factory have not made any demand on the Company for payment of additional bonus either for 1952-53 or for the two subsequent years.

3. But it appears that the Company was not willing to pay bonus at this rate to the workmen of Dhrangadhra factory, and consequently the dispute about bonus for this year was referred to this Tribunal by order of reference dated 20th October, 1954. That reference is numbered Adjudication No. 44/54. In that adjudication the award was given by this Tribunal on 25th November, 1955, and that award was published in the *Saurashtra Government Gazette* on 16th December, 1955. By that award the workmen of Dhrangadhra factory were granted bonus equivalent to two months' basic wages. Against that award appeal was made to the Labour Appellate Tribunal which was numbered 17/56. Decision was given in that appeal on 14th May, 1956. That decision is published in the *Saurashtra Government Gazette*, dated 6th July, 1950. It appears from this decision that in the course of arguments before the Labour Appellate Tribunal it was stated on behalf of the Company that it would not press its appeal provided the calculations in the statement prepared by this Tribunal for the purpose of bonus were not considered as binding on it. It was also stated that for industrial peace and as the amount payable was not more than Rs. 3,000, the Company had no objection to pay bonus to the workmen of Dhrangadhra factory at the rate of two months' basic wages. The Labour Appellate Tribunal has observed in their decision clearly that the award regarding bonus of the lower Tribunal was up-held not on merits, but because the Company had agreed to pay bonus at the rate allowed by the lower Tribunal. But it appears that when on 14th May, 1956, the Company did not press its appeal regarding bonus before the Labour Appellate Tribunal, the Unions of the workmen of the Morvi and Wankaner factories decided to claim additional bonus, and with this end in view they wrote letters dated 4th June, 1956 and 5th June, 1956, to the Company demanding bonus for 1952-53, at the rate of two months' basic earnings. It would, therefore, appear clearly that the demand was made for additional bonus by the workmen of the factories at Morvi and Wankaner only after the Company had declared before the Labour Appellate Tribunal that for certain reasons it did not propose to press its appeal regarding bonus. Meanwhile, as I have already stated, the workmen of both these factories and also of the factory at Thangadh had accepted without protest bonus at the rate of one month's basic earnings not only for the year 1952-53, but also for two subsequent years. Bearing in mind these undisputed facts, the preliminary objection urged on behalf of the Company that the claim is belated, has to be considered.

4. As it appeared to me on the preliminary objection urged by the Company in its written statement that the claim was made after considerable delay, I decided to hear the parties on this preliminary objection. I have now heard the Labour Officer of the Company and also Shri Rasiklal Mehta for both the Unions. No oral evidence was produced by either party. As already stated, the written demand for bonus at the rate of two months' basic earnings was made for the first time by the workmen of these two factories in June, 1956. The Financial year of the Company is from 1st August to 31st July. The year 1952-53, therefore, closed on 31st July, 1953. It appears that the accounts for that year were audited by the chartered accountants on 10th December, 1953. It further appears from the balance sheet for this year that the accounts were passed by the share-holders in the meeting on 22nd February, 1954. It is, therefore, clear that the accounts were finally closed on 22nd February, 1954. The claim for additional bonus for this year was, therefore, made 2 years and 4 months after the accounts were finally closed. This delay, on the face of it, is considerable and if no satisfactory

this Tribunal. But it appears from the terms of settlement that both the parties had agreed to give the same wages to the employees of this Company as might be determined by a committee appointed for the purpose by the Saurashtra Electricity Board. It would, therefore, appear that the Company has agreed to pay the same wages as would be payable to the employees of the Saurashtra Electricity Board in accordance with the recommendations made by the committee appointed for the purpose. If, therefore, in the matter of wages the Company is willing to adopt the wage structure determined for the employees of the Saurashtra Electricity Board, there is no reason why the Company should not give the same kinds of leave to its employees as are being allowed to the employees of the Saurashtra Electricity Board. At the hearing of this dispute the leave regulations adopted by the Saurashtra Electricity Board were placed before me. On behalf of the Union it was urged that the same leave regulations may be adopted by the Company for its employees.

18. On behalf of the Company it was only urged that such leave regulations have not been adopted by any non-government power house, and therefore it should not be directed to adopt them for its employees. But it is undisputed that the Government holds 50 per cent. of the shares of this Company, and the Company has also been served with notice that its business would be taken over by the Bombay Electricity Board after 2 years. It is, therefore, a semi-government concern, or at any rate the Government has a substantial interest in it. Moreover, the Company is not working in loss. It is making reasonable profits from year to year. It has been able to make adequate provisions for depreciation etc. The whole plant has been replaced and renovated only a few years before. It cannot therefore be said that the finances of this Company are not sound. It is also clear that in future the Company can expect to make reasonable profits. If, therefore, any additional burden is likely to be imposed by the grant of leave in accordance with the leave regulations adopted by the Saurashtra Electricity Board, that burden would not be so heavy as to cripple the resources of the Company. In the *Zalawad Electricity Supply Works case* I did not direct the Company to adopt the leave regulations of the Saurashtra Electricity Board, as I had found that the Company was working in loss and its financial position was not sound. This cannot be said of the Morvi Electricity Works Ltd. I am therefore of the opinion that the Company should adopt the leave regulations framed by the Saurashtra Electricity Board. I therefore direct that the leave regulations relating to the sick leave and casual leave made by the Saurashtra Electricity Board shall be adopted by the Company for its employees from 1st August 1957.

[IN THE INDUSTRIAL TRIBUNAL, RAJKOT.]

PARSHURAM POTTERY WORKS LTD.

v.

THEIR WORKMEN.

Shri N. L. Vyas.

July 31, 1957.

BONUS—AWARD OF—PRINCIPLES—WORKMEN SATISFIED WITH BONUS VOLUNTARILY GIVEN BY EMPLOYER—DEMAND FOR FURTHER BONUS AFTER 2 YEARS—DEMAND RAISED SUBSEQUENT TO AWARD OF BETTER BONUS IN ANOTHER CONCERN—DEMAND, WHETHER JUSTIFIED.

Where the workmen of a concern were satisfied with the bonus voluntarily given by the management, but two years and four months after the closing of the accounts of the year, the workmen raised a demand for further bonus when they came to know that as a result of adjudication the workmen in some other concern belonging to the same employer had obtained better bonus, Held, *that the workmen were not justified in raising the belated demand for bonus and that the Industrial Tribunal would not entertain such a claim.*

Adjudications Nos. 100 and 101 of 1956.

K. L. Joshi for the management.

Rasiklal Mehta for the workmen.

AWARD.

1. Reference in Adjudication No. 100/56 was made to this Tribunal at the instance of Wankaner Pottery Kamdar Mandal, Wankaner, which is the Union of the workmen employed in the factory at Wankaner of the Parshuram Pottery Works Ltd. The dispute referred for adjudication is about bonus for the year 1952-53. Reference in Adjudication No. 101/56 was made at the instance of Pottery Kamdar Sangh, Morvi, which is the Union of workmen employed in the factory of the Parshuram Pottery Works Ltd., at Morvi. By that reference also the dispute for bonus for the year 1952-53 is referred for adjudication to this Tribunal. As both these factories at Morvi and Wankaner are owned by the same Company, and as the dispute is for bonus for the same year, I am disposing of both these references by a common award. I have adopted this course, because there is no dispute that one single balance sheet is being issued every year for all the factories of the Company including the factories at Morvi and Wankaner. There are two other factories of the Company, one at Thangadh and one at Dhrangadhra. It is, therefore, obvious that for granting or refusing the claim for bonus

made by the workmen of any one of these 4 factories, the over-all financial position of the Company as revealed by the consolidated balance-sheet would have to be considered.

2. There is no dispute that the workmen of the Wankaner factory had for the first time presented a written demand to the Company for bonus on 4th June, 1956. Similarly, there is no dispute that the workmen of the Morvi factory had for the first time presented the demand for bonus to the Company on 5th June 1956. There is also no dispute that the Company had of its own accord and without there being a demand by the workmen, passed an office order on 5th April, 1954, directing the payment of bonus to all the workmen of the Morvi and Wankaner factories at the rate of 30 days' basic earnings. In accordance with this office order which is Ex. 15 in Adjudication No. 101/56, all the workmen of Morvi factory and of Wankaner foctory were paid bonus at this rate. There is also no dispute that the workmen had accepted bonus at this rate without any protest. But the workmen of the Thangadh factory, it is alleged, refused to accept the payment of bonus at this rate, and therefore the dispute was referred to the Conciliation Officer, and in the course of conciliation proceedings the Union of the workmen of Thangadh factory and the Company came to a settlement and by this settlement dated 16th September, 1954, in the presence of the Conciliation Officer, the Company agreed to pay bonus at the same rate to the workmen of the Thangadh factory, and the workmen agreed to accept bonus at this rate. After accepting bonus at this rate for 1952-53, the workmen of all these 3 factories have accepted bonus at the same rate for the years 1953-54 and 1954-55. This was not disputed on behalf of the Union. There is also no dispute that the workmen of the Thangadh factory have not made any demand on the Company for payment of additional bonus either for 1952-53 or for the two subsequent years.

3. But it appears that the Company was not willing to pay bonus at this rate to the workmen of Dhrangadhra factory, and consequently the dispute about bonus for this year was referred to this Tribunal by order of reference dated 20th October, 1954. That reference is numbered Adjudication No. 44/54. In that adjudication the award was given by this Tribunal on 25th November, 1955, and that award was published in the *Saurashtra Government Gazette* on 16th December, 1955. By that award the workmen of Dhrangadhra factory were granted bonus equivalent to two months' basic wages. Against that award appeal was made to the Labour Appellate Tribunal which was numbered 17/56. Decision was given in that appeal on 14th May, 1956. That decision is published in the *Saurashtra Government Gazette*, dated 6th July, 1950. It appears from this decision that in the course of arguments before the

Labour Appellate Tribunal it was stated on behalf of the Company that it would not press its appeal provided the calculations in the statement prepared by this Tribunal for the purpose of bonus were not considered as binding on it. It was also stated that for industrial peace and as the amount payable was not more than Rs. 3,000, the Company had no objection to pay bonus to the workmen of Dhrangadhra factory at the rate of two months' basic wages. The Labour Appellate Tribunal has observed in their decision clearly that the award regarding bonus of the lower Tribunal was up-held not on merits, but because the Company had agreed to pay bonus at the rate allowed by the lower Tribunal. But it appears that when on 14th May, 1956, the Company did not press its appeal regarding bonus before the Labour Appellate Tribunal, the Unions of the workmen of the Morvi and Wankaner factories decided to claim additional bonus, and with this end in view they wrote letters dated 4th June, 1956 and 5th June, 1956, to the Company demanding bonus for 1952-53, at the rate of two months' basic earnings. It would, therefore, appear clearly that the demand was made for additional bonus by the workmen of the factories at Morvi and Wankaner only after the Company had declared before the Labour Appellate Tribunal that for certain reasons it did not propose to press its appeal regarding bonus. Meanwhile, as I have already stated, the workmen of both these factories and also of the factory at Thangadh had accepted without protest bonus at the rate of one month's basic earnings not only for the year 1952-53, but also for two subsequent years. Bearing in mind these undisputed facts, the preliminary objection urged on behalf of the Company that the claim is belated, has to be considered.

4. As it appeared to me on the preliminary objection urged by the Company in its written statement that the claim was made after considerable delay, I decided to hear the parties on this preliminary objection. I have now heard the Labour Officer of the Company and also Shri Rasiklal Mehta for both the Unions. No oral evidence was produced by either party. As already stated, the written demand for bonus at the rate of two months' basic earnings was made for the first time by the workmen of these two factories in June, 1956. The Financial year of the Company is from 1st August to 31st July. The year 1952-53, therefore, closed on 31st July, 1953. It appears that the accounts for that year were audited by the chartered accountants on 10th December, 1953. It further appears from the balance sheet for this year that the accounts were passed by the share-holders in the meeting on 22nd February, 1954. It is, therefore, clear that the accounts were finally closed on 22nd February, 1954. The claim for additional bonus for this year was, therefore, made 2 years and 4 months after the accounts were finally closed. This delay, on the face of it, is considerable and if no satisfactory

explanation can be given for making the demand so late, this Tribunal would not be justified in entertaining it in view of the numerous decisions of the different Tribunals as well as of the Labour Appellate Tribunal.

As already stated, there is no dispute that bonus at the rate of one month's basic earnings was accepted by the workmen of these two factories without protest not only for 1952-53, but also for two subsequent years. The matter does not rest here, but, when there was a dispute between the workmen of the Thangadh factory and the Company about bonus for this year, the matter was settled in the presence of the Conciliation Officer, and the Union had agreed to accept bonus at this rate for this year. It may be mentioned that the Union of the workmen of the Thangadh factory is also affiliated to I. N. T. U. C. The Unions of the workmen at Morvi and Wankaner are also affiliated to I. N. T. U. C. It cannot be believed that these Unions were unaware of the real financial position of the Company till June, 1956. They must have seen the balance sheet of the Company, at any rate it must be presumed that they must have seen the balance sheet of the Company and if they did not choose to claim bonus at a higher rate, it was because they were satisfied that bonus at a higher rate was not claimable by them. I am justified in taking this view because even when dispute was raised by the workmen of the Thangadh factory, that dispute was settled and the workmen were content to accept one month's basic earnings as bonus. I must, therefore, hold that the workmen had voluntarily accepted whatever amount was paid as bonus to them, and the Company had paid this amount as bonus under a belief that this was in final settlement of the workmen's claim for bonus for this year. When, therefore, the claim is made very late, and when accounts have been closed for a long period, this Tribunal would not be justified in re-opening the accounts and in awarding additional bonus to the workmen.

6. But it was urged on behalf of the Union that when the workmen of the Dhrangadhra factory have been paid bonus at the rate of two months' basic earnings for this year, and when in allowing bonus at this rate the over all financial position of the Company was considered, the same benefit should be extended to the workmen of the Company's other factories. But in support of this contention no decision was cited on behalf of the Union. Moreover, as I have already said the final decision given by the Labour Appellate Tribunal in the dispute about bonus between the workmen of the Dhrangadhra factory and the Company was not on merits, and was simply pronounced on the Company not pressing its appeal for certain reasons. The Labour Appellate Tribunal has also observed in the last paragraph of the decision that

"the appeal is ordered to be dismissed without prejudice to and leaving open all the other contentions of the Company as well as of labour as to the figures taken into account by the Lower Tribunal in applying the Full Bench formula in the present case." In view of this decision it would not be open for me to allow the workmen of these two factories bonus at the rate of two months' basic earnings merely because the workmen of the Dhrangadhra factory have been allowed bonus at the rate. But I would have to go into the accounts for that year fully to satisfy myself that there was surplus in that year after meeting the prior charges which would justify the payment of bonus at a higher rate. That would mean that the accounts which have been closed for more than 2 years would have to be re-opened and examined and the decision would have to be given anew. Again, there is always the possibility that I may take a different view on examination of the accounts from the one taken by Shri D. L. Master, and, in that event, I would not be justified in awarding bonus to the workmen of these two factories at the rate of two months' basic earnings merely on the ground that the workmen of the Dhrangadhra factory have been allowed bonus at that rate. I, therefore, do not consider this circumstance as a sufficient reason for making the claim late.

7. I am fortified in the view I have taken by the two decisions of the Labour Appellate Tribunal reported in 1952-II L.L.J. at page 183 and 1954-I L.L.J. at page 21. In the first case the bonus was paid to the Calcutta employees of Caltex India Ltd. for the years 1946 to 1949 at the rate of one month's basic wages. That bonus was accepted without protest. Subsequently, after the Bombay employees of the Company were awarded bonus at higher rate, claim for additional bonus for these years was made by the Calcutta employees of the Company. On these facts it was held that the demand was made very late, as it was made for the first time on 5th November, 1949, and therefore the Tribunal refused to entertain it. In the second case the employees of Burmah-Shell Co. in the Madras State had claimed bonus for the years 1947, 1948 and 1949 at the same rate as it was directed to be paid by the award of a Tribunal to the employees of the Madras branch. This demand was made for the first time on 21st September, 1951, that is after the decision of the Labour Appellate Tribunal in the dispute for bonus for the years 1947 to 1949, between the Company and the employees of the Madras branch. On these facts it was observed as follows at page 26 of the report:

"In the present case the claim was preferred as already stated on 21st September, 1951, after the workers in the branch office had been awarded bonus for the relevant years and the same was confirmed by this Tribunal on 27th July, 1951, (*vide* 1951-II L.L.J. 350). In our opinion no valid ground has been made out on behalf of the employees for reopening the accounts closed long before the present dispute was raised. We accordingly reject the claim for bonus for the years 1947, 1948 and 1949."

8. The facts of the cases cited in the foregoing paragraph are almost identical with the facts of the dispute which is the subject matter of these two references, and the view expressed in these decisions appears to be reasonable. I am, therefore, of the opinion that the demand for additional bonus for 1952-53, made by the workmen of the Company's factories at Morvi and Wankaner is belated and it cannot therefore be considered by this Tribunal.

On this preliminary ground the demand in both the references is rejected.

[IN THE MADRAS HIGH COURT.]

THE HINDU, MADRAS AND ANOTHER
v.
THEIR WORKMEN AND OTHERS.

Rajagopala Ayyangar, J.

May 7, 1957.

"WORKING JOURNALIST"—MEANING OF—WHETHER INCLUDES PROOF READER—DEFINITION OF "WORKING JOURNALIST" INCLUDING PROOF READER—DEFINITION, WHETHER BINDING ON COURT—WHETHER COURT CAN QUESTION BASIS OF DEFINITION—WORKING JOURNALISTS (CONDITIONS OF SERVICE) AND MISCELLANEOUS PROVISIONS ACT, 1955, SECTION 2(f).

INDUSTRIAL TRIBUNAL—JURISDICTION—EMPLOYEES MADE TO WORK OVERTIME IN CONTRAVENTION OF LAW—NO STATUTORY PROVISION AS TO PAYMENT FOR OVERTIME—RIGHT OF INDUSTRIAL TRIBUNAL TO AWARD MONETARY COMPENSATION.

Section 2(f) of the Working Journalists (Conditions of Service) and Miscellaneous Provisions Act, 1955, expressly names a class of employees well known in the newspaper business as "proof readers" and includes them within the definition of "working journalist." In the face of this definition a Court is precluded from further enquiry whether these persons should be classified as "working journalists" or not, and the Court is bound to give effect to the definition. Therefore, it cannot be contended that "proof readers" in a newspaper establishment fall outside the definition of "working journalist."

Where certain employees are employed substantially in correcting proofs, the mere fact that they assist in proof correction by reading from the original at the stage of rough proof, or that they have lesser educational attainments, or that they are designated as "copyholders", will not take them out of the category of "proof readers."

In the absence of any statutory provision as to the relief to be granted to employees who have been made to work overtime in contravention of the provisions of law, the Industrial Tribunal is competent to award monetary compensation for the extra work done.

Writ Petitions Nos. 263 and 385 of 1957.

R. Ramamurthi Aiyar, K. Sundararajan and *V. P. Raman* for the petitioners.

M. K. Nambiar for *S. Mohan Kumaramangalam* and *Ismail* for *Special Government Pleader* for the respondents.

JUDGMENT.

These two petitions seek the issue of writs of *certiorari* to call for the records of the Industrial Tribunal, Madras, and set aside two awards passed by it in which each of these petitioners is interested. The management of the "Hindu" Madras are the petitioners in W.P. No. 263 of 1957 while W.P. No. 385 of 1957 has been preferred by the management of the Express Newspapers (Private) Ltd. The common question that arises in both these petitions is as to whether proof readers employed in their respective establishments are working journalists entitled to the benefits conferred on this class of employees by Chapter II and in particular by section 6 of the Working Journalists (Conditions of Service) and Miscellaneous Provisions Act (45 of 1955), to which I shall hereafter refer as the Act.

I shall set out a few facts to explain the dispute between the parties and the precise points arising for decision in these petitions.

Both the "Hindu" as well as the Express Newspapers Ltd. have on their permanent staff the necessary number of "proof readers." Under the conditions of service which prevailed before the disputes now referred to the Industrial Tribunal for adjudication arose, these employees were required normally to work for 8 hours every day and six days in every week. In other words, they were required to render 48 hours work in every week of seven days.

While things were in this state, the Working Journalists (Conditions of Service) and Miscellaneous Provisions Act (Act 45 of 1955), was passed which received the assent of the President on 20th December, 1955, when it came into force. Its preamble recited that it was enacted "to regulate certain conditions of service of working journalists and other persons employed in newspaper establishments." Chapter II of the Act laid down special provisions in relation to "working journalists". Section 3 (1) with which this chapter opens enacted :

"3(1) The provisions of the Industrial Disputes Act, 1947, as in force for the time being, shall, subject to the modification specified in sub-section (2), apply to, or in relation to, working journalists as they apply to, or in relation to, workmen within the meaning of that Act."

These petitions are concerned with the hours of work which may be required of "working journalists" and in relation to this section 6 of the Act is the relevant provision. This section runs :

"6(1) Subject to any rules that may be made under this Act, no working journalist shall be required or allowed to work in any newspaper establishment for more than one hundred and forty-four hours during any period of four consecutive weeks, exclusive of the time for meals.

(2) Every working journalist shall be allowed during any period of seven consecutive days rest for a period of not less than twenty-four consecutive hours, the period between 10 p.m. and 6 a.m. being included therein."

It would be seen that under section 6(1) no working journalist may be required to work for more than 144 hours during any period of four consecutive weeks. The conditions of service of proof readers in the two establishments with which these petitions are concerned required them to work for 192 hours during periods of four consecutive weeks. If proof readers were working journalists, there can be no controversy or dispute that the conditions of service which the statute prescribed had been violated by the two establishments who are petitioners here. Their case however was that proof readers were not working journalists within the meaning of the Act 45 of 1955.

The Madras Union of Journalists, a registered trade union sponsored the cause of the proof readers in the two establishments and claiming that proof readers were working journalists required the petitioner to conform to the terms of section 6(1). The managements however urged that proof readers could not be treated as journalists within the meaning of that Act and on this ground denied to the Union the relief which it claimed on behalf of these workers. This resulted in two industrial disputes concerning the two managements and the Government referred these two by G.O. Ms. No. 2951 dated 16th June, 1956, and G.O. Ms. 2952 dated 16th June, 1956, for adjudication by the Industrial Tribunal, Madras, under section 10(1)(c) of the Industrial Disputes Act, 1947, read with section 3(1) of the Working Journalists Act, 1955. The two disputes were numbered as I.D. 51 and 52 of 1956, I.D. 51 being the dispute between the workers of the Hindu and their proof readers and the other

relating to the Express Newspapers Ltd. The Tribunal heard the two disputes together and by a common order dated 21st January, 1957, upheld the case of the Union that proof readers were working journalists within Act 45 of 1955, and awarded to these proof readers compensation in the shape of five months' wages for the extra hours of work during which they had been compelled to work from 20th December, 1955, to the date of the award. It is the validity of this order of the Tribunal and the awards that followed that is challenged as illegal in these writ petitions.

Three points were raised by Mr. Ramamurthi learned counsel for the petitioners in W.P. 263 of 1957, (1) that the Tribunal erred in holding that proof readers were working journalists, (2) that assuming that proof readers were working journalists and entitled to claim the benefit of the statutory condition of service as to the hours of work fixed by section 6(1) still the Tribunal had no jurisdiction to award monetary compensation for the extra hours of work that had been rendered by these workmen, and (3) that the Hindu Newspaper employed in its proof-examining section two classes of workmen, one designated as copyholders and the other proof-examiners, that the reference by the Government to the Tribunal for adjudication was concerned only with proof examiners and the Industrial Tribunal exceeded its jurisdiction in treating the reference as extending to copyholders also and in awarding relief to them as well. The first two points are also raised by the Express Newspapers Limited, but, in their establishment there are no workers designated as copyholders and hence the third point does not arise in regard to W.P. No. 385 of 1957.

It will be seen that the principal point that arises for decision is as to whether proof readers are entitled to be classified as working journalists who could claim the benefits of Chapter II of the Working Journalists (Conditions of Service) and Miscellaneous Provisions Act.

The Act itself contains a definition clause and among the terms defined the following are relevant in this context. Section 2(b) defines a "newspaper" as meaning "any printed periodical work containing public news or comments on public news and includes such other class of printed periodical work as may, from time to time, be notified in this behalf by the Central Government in the official Gazette." It is not disputed that both the Hindu and the Indian Express and its allied newspapers—the Dinamani and the Andhra Prabha are "newspapers" within thisdefinition. "Newspaper establishment" is defined in section 2(d) as meaning :

"an establishment under the control of any person or body of persons, whether incorporated or not, for the production or publication of one or more newspapers or for conducting any news agency or syndicate."

It is also common ground that the petitioners in these two petitions are "newspaper establishments" as herein defined. A "newspaper employee" is defined to mean :

"any working journalist, and includes any other person employed to do any work in, or in relation to, any newspaper establishment."

The claim of the proof readers in the present case is that they are working journalists. The term working journalist has itself received statutory definition and it is the terms of the definition and their precise import that were the subject of debate and argument in these petitions. This definition is contained in section 2(f) and it will be convenient to set this out in full :

"2(f). 'working journalist' means a person whose principal avocation is that of a journalist and who is employed as such in, or in relation to, any newspaper establishment, and includes an editor, a leader-writer, news editor, sub-editor, feature-writer, copy-taster, reporter, correspondent, cartoonist, news-photographer and proof-reader, but does not include any such person who (i) is employed mainly in a managerial or administrative capacity, or (ii) being employed in a supervisory capacity, performs, either by the nature of the duties attached to his office or by reason of the powers vested in him, functions mainly of a managerial nature ;

It would be seen that proof readers are specifically enumerated as included in the expression "working journalist" so that in the absence of any compelling reason the only construction open of the provision would be that this class of newspaper employee was a 'working journalist'.

The attempt of Mr. Ramamurthi, therefore, was directed to pointing out the unnaturalness or inappropriateness involved in designating a "proof-reader" as a journalist, understanding the latter term in its etymological sense, with a view to establish a compelling reason for not reading the definition literally. The arguments on this head were in the main two and they ran on these lines :

(1) The definition of working journalist falls into three separate parts : (i) It means a person whose principal avocation being that of a journalist is employed in a newspaper establishment. (ii) It includes an editor etc. and other employees designated there. (iii) It excludes any such person whose functions are primarily managerial, administrative or supervisory, to adopt a rough summary. The first limb contains the primary definition of the term. In order to be a working journalist, that person's principal avocation must be that of a journalist besides, of course, being employed in a newspaper establishment. The word journalist when

used in the expression working journalist would imply that the person is a journalist and it is this that is emphasised by this primary definition. Journalist is not defined in the Act and the word has, therefore, to be understood in its normal etymological sense as explained in dictionaries. The dictionary meaning of the word journalist is "the conductor of a public journal or one whose business it is to write for a public journal ; an editorial or other professional writer for a periodical." (Webster's New International Dictionary). The Oxford Dictionary defines the expression in almost the same terms. In Funk and Wagnall the term is defined :

"One who manages, edits, or writes with some regularity especially, one engaged in the literary department of a journal, as an editor, reporter, etc."

If, therefore, the definition stopped with the first limb, a proof reader, whose duty is mechanical and whose job is just to detect errors in printing and to point them out for correction, would not be a journalist.

The argument then ran. The first limb is followed by the second where the workers who satisfy the definition of a journalist are enumerated and these comprise the classes of editor, a leader-writer, news-editor, sub-editor feature-writer, copy-taster, reporter, correspondent, cartoonist, news-photographer and, lastly, proof reader. Until we reach proof reader all the other types of employees have the common characteristic of being journalists as ordinarily understood--those who would fall within the first limb even without specific enumeration. If the second limb had not included proof readers the function of that part of the definition would have been to set out illustrations of who journalists are or preferably be an almost exhaustive enumeration of the several classes who were comprehended in the term journalist. But when this point is reached, the Legislature for no apparent or discoverable reason proceeds to include proof readers whose work is mechanical and who therefore cannot claim to be journalists. It cannot be that the Legislature intended a departure when it came to this last class of employees and brought within the definition those who were non-journalists. Counsel therefore urged that only those proof readers who were otherwise journalists, *i.e.*, who besides proof reading were also employed to do duties as journalists that could be treated as working journalists within section 2(f).

The second line of argument was practically the same as the first but was couched in slightly variant terms and presented from a different angle. Learned counsel urged that if the enumeration of employees in the second limb of the definition were read *in vacuo* as one divorced from the first limb so as not to be governed by the two conditions set out in it, namely, the principal avocation being that of a journalist and being employed in a newspaper establishment, a casual correspondent or a casual reporter would fall within the definition, that is, one whose principal avocation was not that of an editor, a leader-writer etc., to take the first condition, and it would also include those employed in establishments other than newspaper establishments, that is if divorced from the second condition in the first limb. If the two limbs had thus to be read together and the conditions of the first limb imported into the enumeration in the second limb, counsel urged that it followed that it was not proof readers as such but only those proof readers employed in a newspaper establishment whose principal avocation was that of a journalist that would fall within the definition in section 2(f).

I am unable to agree with the construction which learned counsel invites me to adopt of this definition of section 2(f). The only rule for the construction of statutes is that they should be construed according to the intent of the Legislature which passed it and that intention has to be gathered from the words which the statute employs. Where the words used in a statute are not defined, they have no doubt to be understood in their grammatical or popular sense unless the words are technical in which case the special meaning attached to them in their particular fields would be attracted. The subject matter of the statute, the object of the legislation, the mischief the enactment seeks to remedy or the declared intention of the Act, would be factors throwing light on the precise import of expressions used in the case of any ambiguity. Where, however, a word or an expression is the subject of statutory definition for the purpose of a particular enactment that that definition should be adopted for the construction of that word or expression in that enactment, whether the definition accords with its popular or etymological meaning or not, is too well settled to require authority. The Act defines a "working journalist" and that definition has, unless the context otherwise requires, to quote the opening words of section 2, to be applied to those words when they occur in section 3(1) and section 6(1) and there is nothing in the context in sections 3(1) and 6 requiring the words to be otherwise understood. The definition in section 2(f) specifically enumerates proof readers as working journalists. The question for consideration therefore is whether (a) by any process of construction proof readers could be held not to fall within the class of working journalists or (b) whether proof readers could be conceived of falling into various classes, some of which could be said to fall within the class of working journalists and some without that class, the employees concerned in the present petitions being treated as falling under the latter class. Almost the entire argument of Mr. Ramamurthi proceeded on the basis

that the classes of employees enumerated in the second limb of the definition in section 2(f) would not be working journalists unless the duties performed by them could be treated as those of a journalist and that proof readers, not being journalists as defined in dictionaries and in actual popular parlance, could not therefore be working journalists.

I shall assume that the learned counsel is right in his submission that proof readers are not journalists and examine how far they would be working journalists within the definition, on this assumption. If the definition clause stopped with the first limb, that is, if the words of the definition were, "means a person whose principal avocation is that of a journalist and who is employed as such in or in relation to any newspaper establishment", and nothing more, learned counsel would no doubt establish that proof readers were not working journalists. But the definition does not stop there. Unfortunately for this argument the first limb is succeeded by an enumerative definition preceded by the words "and includes." The words "and includes" are a common legislative device employed in definitions to indicate that the matter or enumeration which follows is really in addition to what might be termed the grammatical meaning of the word defined. In other words, the scope of the expression "and includes" is really to expand the definition beyond its popular sense. As Lord Watson stated in *Dilworth* v. *Commissioners of Stamps*, ([1899] A.C. 99 at p. 105):

"The word 'include' is very generally used in interpretation clauses in order to enlarge the meaning of words or phrases occurring in the body of the statute; and when it is so used these words or phrases must be construed as comprehending, not only such things as they signify according to their natural import, but also those things which the interpretation clause declares that they shall include."

So understood, "proof-readers" would appear to be comprehended within the definition of working journalists whether they conformed to the description of journalists or not. Learned counsel was no doubt right in his submission that the conditions laid down by the first limb were also attracted to the employees specifically enumerated in the second limb, but it is not possible by reason of this alone to hold that a specifically enumerated class of employees was taken out of the definition. Learned counsel could not indeed suggest any construction of this definition which gave some meaning to the word proof reader but still took the workmen concerned in the present petitions outside that class. His argument if accepted would only result in the omission of the word proof reader from the definition. The construction suggested that a person whose principal avocation was that of a proof reader would not be working journalist because he was not a journalist and that proof readers had been brought in, into the definition merely for the purpose of making it clear that if an employee who was a journalist falling within the other enumerated categories but rendered some service also as a proof reader, he did not cease to be a "working journalist" does not give any meaning to the word "proof-reader." The construction is obviously untenable and I have no hesitation in rejecting it.

In this connection learned counsel drew my attention to a passage in the report of the Press Enquiry Commission as the basis on which the statutory definition in section 2(f) was founded. In paragraph 505 of their report the Commission classified press employees into three categories. The report ran:

"...it has become necessary for us to have some clear idea as to what is exactly meant by the term 'working journalist.' A working journalist clearly does not mean any person who works in connection with the production of a journal be it a daily newspaper or a periodical. There are three types of workers in a newspaper office.

(1) The press workers, *i.e.*, those who are employed in connection with the composing and printing of a newspaper or a periodical;

(2) The managerial staff employed in the establishment sections, advertisement sections, and circulation sections,; and

(3) The editorial staff working on a newspaper, comprising such categories of workers as editors, leader-writers, sub-editors, reporters, correspondents etc."

It is the third category that forms the class of working journalists. Proof readers were dealt with in paragraph 506 in these terms:

"There has been some difference of opinion in the evidence given before us as to whether proof readers could be regarded as working journalists. Proof readers as a class cannot be regarded as working journalists, for there are proof readers even in presses doing job work. In several newspaper offices the proof reading department is attached to the managerial wing of the establishment instead of to the editorial side. The question therefore is whether the proof readers employed in connection with the printing of a newspaper or a periodical should be regarded as working journalists. The term proof reader is not understood in the same sense everywhere. It is true that proof reading is merely a mechanical process, depending for its efficiency on the proof reader's knowledge of spelling, syntax, punctuation and grammar. On this account it has been said that they should not be regarded as falling within the category of 'journalists.' On the other hand, it has been pointed out that an efficient sub-editor has to have a knowledge of proof reading, and that in some offices proof readers are attached to the editorial sections of the paper. It has been stated further that some capable proof readers eventually came to occupy the posts of sub-editors. It was also said that in some papers, apprentice journalists were first appointed as proof readers. Whether, in any particular case, a proof reader should be regarded as a working journalist must depend upon the duties assigned to him and the purpose for which he has been employed. If a person has been employed as a proof reader only for the purpose of making him a more efficient sub-editor, then it is obvious that even while he is a proof reader, he should be regarded as a working journalist. In all other instances, he would not be counted as a journalist but as a member of the press staff coming within the purview of the Factories Act."

Learned counsel urged that the proof readers who were included in the definition in section 2(f) were that class of proof readers whom the Press Enquiry Commission were inclined to treat as working journalists and that the other proof readers were "newspaper employees" other than "working journalists". Without examining the question as to whether this report could be availed of to consider the terms of a definition which raises little ambiguity I am not satisfied that paragraph 506 helps the petitioners. The Press Commission conceived of proof readers as falling within two classes. There is no such classification in the definition which the statute enacted and which I have now to construe. I cannot therefore assume that proof readers whom Parliament had in view when it used that term in section 2(f) were those who were under training for assuming editorial jobs in newspapers. But this apart, even proof readers whom the Press Commission had in view were those whose principal avocation during the relevant period was that of proof reading and if they were potential sub-editors the latter was a role which they would occupy only in the future, their employment for the time being was only that of proof readers. It is because of these circumstances that I feel that the passage is not helpful to the contention urged on behalf of the petitioners.

Learned counsel further urged that the Court is now concerned with the meaning of the words working journalist in section 6(1) and that no construction should be adopted which would destory the fundamental idea that before a person could be a working journalist he should be a "journalist". In this connection learned counsel referred me to the decision of the Supreme Court in *Hariprasad* v. *A. D. Divelkar*, [1957] 11 F.J.R. 317. and particularly to a passage at page 323 reading:

"There is no doubt that when the Act itself provides a dictionary for the words used, we must look into that dictionary first for an interpretation of the words used in the statute. We are not concerned with any presumed intention of the Legislature; our task is to get at the intention as expressed in the statute."

Their Lordships then proceeded to discuss the meaning of the expression "retrenchment" as defined in section 2(oo) of the Industrial Disputes Act, 1947, and wound it up with these words:

"What is being defined is retrenchment, and that is the context of the definition. It is true that an artificial definition may include a meaning different from or in excess of the ordinary acceptation of the word which is the subject of definition; but there must then be compelling words to show that such a meaning different from or in excess of the ordinary meaning is intended. Where, within the framework of the ordinary acceptation of the word, every single requirement of the definition clause is fulfilled, it would be wrong to take the definition as destroying the essential meaning of the word defined."

I am unable to agree that this passage helps the petitioners. The definition clause expressly names a class of employees well known in the newspaper business as "proof-readers." It includes them within the definition of working journalists. In my judgment, in the face of this definition, the Court is precluded from further enquiry as to whether these employees are journalists or not. The definition has stated that proof readers are working journalists; the Court is not concerned to find out why or on what basis it has included them in the definition but is bound to give effect to it.

Mr. Nambiar, learned counsel for the contesting respondents, urged that proof readers were journalists and relied on a finding by the Tribunal that taking into account the work done by proof readers they fell within the definition of journalists. Evidence was led before the Tribunal as to the precise functions of proof readers in these establishments. According to this evidence, it was part of their duty to detect mistakes grammatical and even factual in the proofs, take them to the notice of the departmental heads or the sub-editors and get them corrected so that the news as finally printed may not contain mistakes. On this evidence the Tribunal recorded:

"On the admissions of M.W. 1 with regard to Ex. W-1 (b) it follows that they have been correcting patent, grammatical and idiomatic mistakes. It cannot be denied that almost every employee in a newspaper establishment works under great pressure and practically runs a race with time. The sub-editors who usually prepare the copies are no exception to this practice and they are likely to make mistakes in the copies especially as they very often work during late hours in the nights. As nobody likes his paper to be published with mistakes, it is quite probable that instructions would have been given to these proof readers to detect mistakes in the copies and to correct them. After a careful consideration of the evidence and the probabilities, I am inclined to

accept the case of the Union that these proof readers are doing a part of the journalistic work in these newspaper establishments and, therefore, there is much force in the argument that they must be deemed to be journalists."

Mr. Nambiar, contended that this was a finding of fact that proof readers were journalists.

Mr. Ramamurthi, on the other hand, urged that the work which these proof readers performed was merely mechanical and that that type of work could not amount to work as journalist as commonly understood. Mr. Ramamurthi has certainly the high authority of the Press Commission in support of the view that proof readers as such were not thought of as journalists. In my judgment it is unnecessary for the purpose of this petition to decide whether the finding by the Tribunal that proof readers were journalists was correct or not, though I must say that I am not persuaded it is wrong, because I am clear in my mind that whether they are "journalists" or not they are "working journalists" within the definition of section 2 (f) and this is sufficient for these proceedings.

Mr. Ramamurthi next urged that in the establishment of the Hindu the proof reading staff was comprised of two sets of employees designated respectively "copyholders" and "proof examiners", and that it was only the case of the proof examiners that was referred to the Tribunal for adjudication by the State Government and that the Tribunal exceeded its jurisdiction by considering the claims of the copyholders also in the order and award that it passed. As I have stated earlier, this point is confined to Writ Petition No. 263 of 1957 filed by the Hindu as in the establishment of the Express Newspapers Private Ltd., there are only one class of employees called "proof readers". A copyholder is defined in the dictionary as meaning "A proof reader's assistant, who aids, as by reading, in comparing copy with the proof for detection of errors." In the Hindu Newspaper from the stage when the matter is first composed to the stage of the final publication, proofs are read or corrected four times. The evidence before the Tribunal was that at the stage of the first or the "rough proof" the copyholders read from the manuscript or type-script while the proof examiner had in his hands the first proof to verify (1) whether the print correctly carried the matter in the copy which was read by the "copyholders" and (2) whether there were printer's devils in it. After the rough proof had been corrected with the help of the two sets of employees the matter went back to the press for the preparation of the next proof called author final. This second proof or the "author final" was distributed both to the copyholders as well as to proof-examiners for correction, and in doing this, the workers acted individually and not in pairs as they did at the stage of the "rough proof." After the "author final" was corrected, it was sent back to the press and a third proof called "final galley" was prepared. At this stage also both copyholders as well as proof-examiners did the proof reading which was done individually and not in pairs. The last or the final proof called page proof was also corrected individually by copyholders as well as by proof examiners.

The contention urged by Mr. Ramamurthi was that copyholders were not comprehended within the expression "proof readers" and that no dispute between the management and the class of proof readers called copyholders was referred to the Tribunal for its adjudication. The Tribunal has negatived this contention and in my judgment correctly. It is true that some evidence was adduced in this case to the effect that the "copyholders" had less educational attainments and were less competent than proof readers and that they were not required to be acquainted with the symbols usually employed in the printing business in proof correction. But I am unable to hold that because of this reason they formed a different class altogether from proof readers in the Hindu establishment. It would be seen that they corrected three out of four proofs from the "author final" stage along with the regular proof examiners. Whatever might be the position in those cases where their duties were as copyholders exclusively, *viz.*, reading from the original for comparison with the print in proof in the case on hand, they were in the Hindu employed substantially as proof examiners. The mere fact that at the stage of rough proof they assisted in proof correction by reading from the copy themselves not looking into the printed matter, is not a sufficient ground for treating them as other than "proof readers" within section 2(f) of the Act. If I am right so far, their case was also referred to the Tribunal when the State Government used the expression "proof readers" in the reference to the Industrial Tribunal and the attack on the jurisdiction of the Tribunal to deal with this class of employees as if they formed a category distinct and separate from "proof readers" is without substance.

The last of the contentions urged for the petitioners was that the Tribunal exceeded its jurisdiction in granting monetary compensation for the extra hours of work which the employees were called on to perform in excess of that provided by section 6(1) of the Act. Section 6(1) of the Act, whose terms I have extracted earlier, opens with the words 'subject to any rules that may be made under this Act'. It is common ground that no rules have so far been made under this Act. In the absence of any rules the Tribunal had to proceed to mould the relief for the transgression of the statute, according to the principles of general

law. In the case of manual labour where an employee is required to work overtime the usual rule applied by employers is the payment of double the usual wages for the overtime. That also is the basis upon which Industrial Tribunals award compensation for overtime in cases of disputes, notwithstanding the absence of a specific provision on these lines in the Industrial Disputes Act. In the absence of any statutory provision in the rules framed under section 6(1) determining the mode in which the relief ought to be granted to employees dealt with under section 6(1), the Tribunal was, I am satisfied, competent to award monetary compensation for having had to work overtime. It was not contended that the quantum of compensation awarded was excessive.

The result is that these writ petitions fail and are dismissed. The rules issued will be discharged. There will however be no order as to costs.

[IN THE MADRAS HIGH COURT.]

GNANAMBIKAI MILLS LTD., COIMBATORE

v.

M. R. RAMACHANDRAN.

Rajagopalan, J.

July 19, 1957.

CONDITIONS OF SERVICE—SUSPENSION OF WORKMAN—EFFECT—SUSPENSION PENDING APPLICATION UNDER SECTION 33, INDUSTRIAL DISPUTES ACT, 1947—WORKMAN, WHETHER ENTITLED TO WAGES FOR PERIOD OF SUSPENSION—WHETHER CAN CLAIM WAGES UNDER PAYMENT OF WAGES ACT, 1936.

As the management has the right to suspend a workman pending disposal of an application preferred by the management under section 33 of the Industrial Disputes Act, 1947, the liability of the employer to pay wages for the period of the suspension also remains suspended, and the workman who has been suspended is not entitled to any immediate payment of wages during the period of suspension though the period may be indefinite. The workman cannot, therefore, claim any amount as wages for the period of suspension under the Payment of Wages Act, 1936. Decision of the Supreme Court in LAKSHMI DEVI SUGAR MILLS LTD. *v.* RAM SARUP [1957] 11 F.J.R. 273, *followed.*

Civil Revision Petition No. 1218 of 1955.

M. R. Narayanaswami and *C. Ramanathan* for the Petitioner.

S. Viswanathan and *B. R. Dolia for the respondent.*

JUDGMENT.

The respondent, Ramachandran, was an employee of the petitioner. An industrial dispute between the management of the petitioner Company and its employees was referred to the Industrial Tribunal for adjudication under the Industrial Disputes Act. During the pendency of these proceedings the management took disciplinary action against the respondent. The management held an inquiry and came to the conclusion that the respondent should be dismissed for proved misconduct. On 16th June, 1954, the management directed suspension of the respondent pending the contemplated dismissal, for which the sanction of the Industrial Tribunal was necessary under section 33 of the Industrial Disputes Act. On 29th June, 1954, the petitioner applied to the Industrial Tribunal for the requisite sanction. It was represented that that application has not yet been disposed of despite the lapse of about three years.

On 21st October, 1954, the respondent preferred an application to the prescribed statutory authority under the Payment of Wages Act, for a direction under section 15 (3) of the Act, that the management should pay the respondent the wages due to him for the period 16th June, 1954, to 19th October, 1954. The Additional Commissioner for Workmen's Compensation, Madras, disposed of that application. He upheld the respondent's claim, that despite the suspension ordered by the management, the respondent was entitled to payment of wages during that period. The petitioner applied under article 227 of the Constitution to set aside the order of the Additional Commissioner.

Clause 20(1) of the Standing Orders, which admittedly regulated the conditions of service of the respondent, could not obviously apply to a suspension ordered by the management pending disposal of the application for the sanction prescribed by section 33 of the Industrial Disputes Act. It should be taken as well settled now that suspension pending an enquiry is not itself a punishment. Neither is suspension pending disposal of the application preferred by the management under section 33 of the Industrial Disputes Act a punishment. That has been laid down by the Supreme Court in *Lakshmi Devi Sugar Mills Ltd.* v. *Ram Sarup and others*, [1957] 11 F.J.R. 273.

The Additional Commissioner was right when he pointed out that, apart from clause 20(1), there was no specific provision in the Standing Orders for the suspension of an employee. The definition of "wages" in section 2(6) of the Payment of Wages Act makes it clear that the basis of the right of the employee to get his wages and the corresponding obligation of the employer to pay those wages is the contract, express or implied, between the parties. The learned counsel for the respondent urged that in the absence of any provision in the Standing Orders to confer a right on the petitioner to suspend its employee, the respondent, except in the contingency for which clause 20 (1) provided, the petitioner was not entitled to deprive the respondent of his right to wages; the suspension did not terminate the relationship of employer and employee as between the petitioner and the respondent. The learned counsel referred to the observations of Rajagopala Ayyangar, J., in *Bhavani Kudal Co-operative etc. Bank* v. *Venkatapathi*, [1954] 7 F.J.R. 567, at 297. The learned Judge observed:

"The authorities are clear on two points: (1) in the case of a private employment, the power of suspension must be specifically contracted for, and (2) even if the power exists, the employer cannot withhold salary for the duration of the suspension unless the misconduct to enquire into which suspension was ordered is proved to have been made out."

That contention was accepted by the Additional Commissioner. That case did not arise under the Payment of Wages Act. The principles referred to by the learned Judge are concepts of common law. To what extent they can apply in cases where suspension of an employee is ordered pending disposal of an application preferred under section 33 of the Industrial Disputes Act, would appear to be a different problem.

The learned counsel for the respondent also referred to a recent unreported judgment of the Labour Appellate Tribunal, Lucknow, in the *Management of Swiss Hotel, Delhi* v. *Hotel Workers Union, Katra,* where the Appellate Tribunal upheld the grant of an interim relief to the employees pending final disposal of the applications preferred by the employers under section 33 of the Industrial Disputes Act for their dismissal. That decision may not have a direct bearing on the question at issue in the proceedings before me, whether any amount can be claimed as wages under the Payment of Wages Act when the employee is kept under suspension pending disposal of the application preferred under section 33 of the Industrial Disputes Act for permission to dismiss that employee.

The learned counsel for the petitioner urged, in effect that in such a contingency, the right to receive wages and the liability to pay them also remain suspended. He relied on a passage in the judgment of Bhagwati, J., in *Lakshmidevi Sugar Mills Ltd.* v. *Ram Sarup and others*, [1957] 11 F.J.R. 273. At page 284 the learned Judge observed:

"It has been rightly held by the Labour Appellate Tribunal that suspension without pay pending enquiry as also pending permission of the Tribunal under the relevant section could not be considered as punishment as such suspension without payment would only be an interim measure and would last till the application for permission to punish the workman was made and the Tribunal had passed orders thereupon. If the permission was accorded, the workman would not be paid during the period of suspension but if the permission was refused he would have to be paid for the whole period of suspension. There is nothing like a contingent punishment of a workman and therefore such suspension could not be deemed to be a punishment of the workman at all. Such suspension could of necessity be of an indefinite duration because to get a written permission of the Tribunal would mean delay and no Tribunal would lightly issue any order without notice and without hearing all the parties concerned. Orders for suspension were meant only as security measures or precautionary ones taken in the interest of the industry itself or its employees in general. These measures were sometimes called for immediately after an incident and any delay, however small, might defeat the purpose for which such measures were intended."

I must record at this stage that it was not the case of any one, that there was any unreasonable delay on the part of the management either in conducting the enquiry against the respondent or in applying thereafter to the Industrial Tribunal to accord its sanction under section 33 of the Industrial Disputes Act.

It is no doubt true, as pointed out by the learned counsel for the respondent, that in *Lakshmidevi Sugar Mills Ltd.* v. *Ramsarup and others*, [1957] 11 F.J.R. 273, there was no occasion for the Supreme Court to refer expressly to the provisions of the Payment of Wages Act. None the less, I have to accept it as an authoritative pronouncement of the Supreme Court on the rights and liabilities of the employer and employee in the interval that elapses between the presentation of the application under section 33 of the Industrial Disputes Act and the orders of the Industrial Tribunal thereon.

Section 33 of the Industrial Disputes Act imposes a special statutory restriction on the exercise of the right of the employer to dismiss his employee. In the present case, it should be remembered, the petitioner decided to dismiss the respondent for misconduct. But for the statutory restriction imposed by section 33, the petitioner would have been in a position to dismiss the respondent on 16th June, 1954. Whether the correctness and the validity of that dismissal could have been made the subject matter of an industrial dispute does not arise for consideration at this stage. If the petitioner had dismissed the respondent on 16th June, 1954, there would have been no need for any suspension. The suspension was necessary because the petitioner had to obtain the sanction of the Industrial Tribunal under section 33 of the Industrial Disputes Act. I have already pointed out that there was no unreasonable delay on the part of the management in applying to the Industrial

Tribunal under section 33 of the Industrial Disputes Act for the required sanction. If the application presented on 29th June, 1954, could have been disposed of by the Tribunal the same day there would have been no occasion for any further suspension. If the Tribunal accorded permission to dismiss the respondent he could have been dismissed immediately, and the liability to pay wages thereafter would have come to an end. If the Tribunal had refused permission, the respondent would have continued in service and would have been entitled to his wages. The rights and liabilities of neither the petitioner nor the respondent could be enlarged or curtailed by the delay, inevitable in the circumstances of such cases, in the disposal of the application to the Tribunal. As I said, what are the rights and liabilities of the employer and the employee during the period of suspension pending the decision of the Tribunal in such cases has been clearly laid down by the Supreme Court in *Lakshmi Devi Sugar Mills Ltd.* v. *Ramsarup and others*, [1957] 11 F.J.R. 273. I must point out that the decision of the Supreme Court was long subsequent to the order of the Additional Commissioner in this case.

The learned counsel for the petitioner is, in my opinion, well founded in his contention, that the respondent is not entitled to any immediate payment of wages during the period of suspension, indefinite though it has turned out to be. The Additional Commissioner had therefore no jurisdiction to award any amount as constituting wages lawfully payable to the respondent.

The petition is allowed and the order of the Additional Commissioner is set aside. No order as to costs.

[IN THE INDUSTRIAL TRIBUNAL, TRIVANDRUM.]

KERALA KAUMUDI, TRIVANDRUM

v.

THEIR WORKING JOURNALISTS.

Shri K. Purushothaman Nair.

August 20, 1957.

INDUSTRIAL DISPUTES ACT, 1947, SECTION 10—REFERENCE OF DISPUTE TO TRIBUNAL—RIGHT OF PARTY TO IMPEACH ORDER OF REFERENCE.

WORKING JOURNALIST WHETHER 'WORKMAN'—DISPUTE RAISED BEFORE ENACTMENT OF WORKING JOURNALISTS (INDUSTRIAL DISPUTES) ACT, 1955, BY WORKING JOURNALIST—WHETHER 'INDUSTRIAL DISPUTE'—REFERENCE OF SUCH DISPUTE TO INDUSTRIAL TRIBUNAL—VALIDITY—INDUSTRIAL DISPUTES ACT, 1947, SECTIONS 2(k) 2(s), AND 10(1)(c).

WORKING JOURNALISTS (INDUSTRIAL DISPUTES) ACT, 1955—WHETHER RETROSPECTIVE IN OPERATION—EFFECT ON DISPUTES RAISED BEFORE ACT CAME INTO FORCE.

A party to an industrial dispute which has been referred to an Industrial Tribunal under section 10(1)(c) of the Industrial Disputes Act, 1947, is entitled to impeach the reference on the ground that the dispute referred is not an 'industrial dispute' within the meaning of the Act.

The Working Journalists (Industrial Disputes) Act, 1955, which placed working journalists on par with workmen under the Industrial Disputes Act, 1947, does not have any retrospective effect. Disputes which arose between working journalists and their employer before the Act of 1955 came into force were not 'industrial disputes' at the time they arose because the working journalists were not 'workmen' under the Industrial Disputes Act, 1947, at that time. Such disputes do not subsequently become 'industrial disputes' when the Act of 1955 came into force, or by the act of the Government making a reference of the dispute to an Industrial Tribunal after that Act came into force. Therefore, the reference of a dispute relating to the dismissal before the Working Journalists (Industrial Disputes) Act, 1955, came into force, of a working journalist by an employer, would not be a reference of an 'industrial dispute' and would be invalid and beyond the jurisdiction of the Tribunal.

But for the statutory provision placing a 'working journalist' on par with a 'workman' as defined in the Industrial Disputes Act, 1947, a working journalist is not a 'workman' for the purposes of the Act.

Industrial Dispute No. 192 of 1955.

R. Ramalingom Iyer for the management.

P. Balagangadhara Menon for the working journalists.

AWARD.

This dispute is between the management of Kerala Kaumudi, Trivandrum (hereinafter referred to as "the management") represented by the managing editor and the working journalists in the employ of the above firm represented by the Travancore-Cochin State Working Journalists' Association, Trichur (hereinafter called the "Association"). In exercise of the powers conferred by section 10 (i) (c) of the Industrial Disputes Act, 1947, Government of Travancore-Cochin referred this dispute for adjudication to this Tribunal by Order L. 2-21079/55, DD dated 4th November, 1955. The only matter referred for adjudication is as under:

"Whether the termination of service of Sri. Chandra Sekharan, Quilon Correspondent of the Kerala Kaumudi, Trivandrum is justifiable? If not to what relief is he entitled? If so to what relief is he entitled?"

2. The parties as usual entered appearance and on behalf of the Association, its secretary filed written statement setting forth the claim for re-instatement of the employee. This was followed by the reply statement of the management represented by Sri. K. Sukumaran, the managing editor. The Association in turn put in a replication in answer to the contentions raised in the reply statement.

3. Before I pass on to the contentions of the parties, it may be relevant to state the circumstances which led to this reference. Sri. Chandra Sekharan, the Quilon correspondent of the Malayalam daily "Kerala Kaumudi", was discharged from service by the Quilon agent of the newspaper under instructions from the managing editor by Ex. D, letter dated 24th September, 1954. His case was taken up by the Association and the latter, on 22nd December, 1954, wrote to the managing editor, Ex. G being the copy of the letter, requesting him to re-instate the correspondent forthwith, with copies to the Labour Commissioner, to the Minister for Information and Broadcasting, Government of India and to the President, Indian Federation of Working Journalists, New Delhi. Pursuant to the above communication to the Labour Commissioner, the Labour Department intervened and held two conferences for amicable settlement, the first on 17th July, 1955, and the other on 14th July, 1955, (Ex. B and C are the proceedings of the two conferences). Consequent on the failure of conciliation talks the matter was referred for adjudication as stated above on 4th November, 1955.

4. According to the Association Sri. Chandra Sekharan was appointed on the 18th April, 1949, as the Quilon Correspondent of the Kerala Kaumudi and his services were terminated arbitrarily and without any justifiable reason. It is further alleged that the termination of employment has been effected in utter disregard of the

provisions of law and in violation of all principles of natural justice; in short, it virtually amounts to an act of victimisation.

5. The main contentions of the management are two-fold :

(1) The termination of the services of Sri Chandra Sekharan as Quilon correspondent was long before the Act I of 1955 (the Working Journalists (Industrial Disputes) Act, 1955, which received assent of the President on 12th March, 1955.) was passed which extended the provisions of the Industrial Disputes Act, 1947, to working journalists and as such the dispute, if any, is beyond the purview of compulsory adjudication under the Industrial Disputes Act.

(2) His services were terminated for valid reasons. At about the time of the discharge, Sri. Chandra Sekharan, as correspondent, was on account of his political leanings, acting in a manner prejudicial to the interests of the paper and even working against it with the object of advancing the cause of the Communist paper 'Janayugam'. He also induced certain customers to switch over from 'Kerala Kaumudi' to 'Janayugam' and his conduct showed that he was disloyal to the management. By his disloyal conduct he forfeited the confidence of the management and the termination of his services was therefore just, legal and proper.

6. Now, the first contention challenges the jurisdiction of this Tribunal to adjudicate upon the dispute and if the management were to succeed on this point, that would virtually oust the jurisdiction of this Tribunal and thereby make the award that may be passed on the dispute nugatory.

7. According to the management Sri. Chandra Sekharan is not a 'workman' within the meaning of the Industrial Disputes Act, 1947, and hence the termination of his services could not constitute an industrial dispute and the fact that subsequent to discharge the provisions of this Act were made applicable to the working journalists by Act I of 1955, could not make it an industrial dispute in so far as there is nothing in Act I of 1955, to show that it has retrospective operation. It is, therefore, contended on behalf of the management that the reference itself falls outside the scope of the Act of 1947.

8. Sri. Balagangadhara Menon, the learned counsel appearing for the Association contended that the real issue is not whether Act I of 1955, has retrospective effect or not, but whether a reference made after the passing of the Working Journalists' Act could be challenged on the ground that it is not an industrial dispute. According to him the Industrial Disputes Act does not confer any vested right on the employee in the matter of reference of disputes which rests solely with the discretion of Government, to refer or not to refer a dispute and so, the material

date is not the date of the termination of services but the date when the Government makes the reference. It was urged further that since the reference in this case was made after the passing of the Working Journalists' Act, the reference could not be challenged on the ground that it is not an industrial dispute. He further elucidated his point by arguing that the jurisdiction of this Tribunal originates from the order of reference which evidently was after the passing of Act I of 1955, and the termination of the services of the employee ripened into a dispute only when Government took cognizance of the dispute and referred the same for adjudication. He also raised an alternative contention that independent of Act I of 1955, the dispute referred for adjudication is an industrial dispute, since the employee is a 'workman' as defined is section 2(s) of the Industrial Disputes Act, 1947.

9. Now, the contention of the management is based on the assumption that Sri. Chandra Sekharan who is a working journalist acquired the rights under the provisions of the Industrial Disputes Act only after the passing of Act I of 1955. This is further based on the assumption that working journalists do not come within the definition of 'workman' as it stood under the Industrial Disputes Act.

10. It is common ground that the employee in this case is a working journalist as defined in the Working Journalists (Industrial Disputes) Act, 1955. In this connection it may be relevant to trace the origin of Act I of 1955, which made applicable the provisions of the Industrial Disputes Act to working journalists. On 23rd September, 1952, the Government of India (Ministry of Information and Broadcasting) appointed a Press Commission consisting of eminent persons with Sri. Justice G. S. Rajadhyaksha as chairman to enquire into the state of the Press in India and one of the matters referred, related to the conditions of employment of working journalists and the Commission in their exhaustive enquiry had to consider the question of the applicability of the Industrial Disputes Act to working journalists. Since they found that the question whether the Industrial Disputes Act of 1947, applied to the working journalists or not has given rise to some controversy, they reviewed the decisions of judicial Tribunals till then and came to the conclusion that the definition of workman as it stood in the Act would not make working journalist eligible for the benefits accruing from the applicability of the Act. The Commission, therefore, proposed to bring working journalists within the purview of the Industrial Disputes Act by suitable legislation and on the basis of this recommendation the Working Journalists (Industrial Disputes) Act and the Working Journalists (Conditions of Service) and Miscellaneous Provisions Act, 1955, were enacted by Parliament.

11. Now section 2 (b) of Act I of 1955 defines a working journalist to include an editor, leader-writer, news-editor, sub-editor, reporter, correspondent, etc. and section 3 makes the provisions of the Industrial Disputes Act, 1947, applicable to working journalists as they apply to, or in relation to, workmen within the meaning of that Act.

12. It may now be relevant to point out that unlike the subsequent Act, *viz.*, the Working Journalists' (Conditions of Service) and Miscellaneous Provisions Act, which provides under section 4 a transitional clause giving retrospective operation of the Act to cases of retrenchment which had occurred after the Press Commission signed their report and before the application of the Industrial Disputes Act to Working Journalists Act I of 1955, does not provide any similar clause that it is to have retrospective operation. It has been laid down by the Supreme Court in *Garikapate* v. *Subbiah Choudry* (A. I. R. 1957 S. C. 540) that "the golden rule of construction is that in the absence of anything in the enactment to show that it is to have retrospective operation it cannot be so construed as to have the effect of altering the law applicable to a claim in litigation at the time when the Act was passed." Thus it is clear that Act I of 1955, made the provisions of the Industrial Disputes Act, 1947, applicable to working journalists only from the date of the Act. If so, transactions which took place before the passing of the Act must remain unaffected, or, in other words, should not be unsettled by the enactment.

13. Now I shall revert back to the contention raised by Sri Menon on the question of jurisdiction and see how far that is sustainable. According to him all differences or disputes between employers and workmen will not form the subject matter of a reference and no right is conferred by statute on the employee to get a reference of a dispute between him and his employer. So, it was argued that though the discharge in question took place long before Act I of 1955, was passed, an industrial dispute took shape only when Government in the exercise of their administrative functions, formed an opinion that an industrial dispute relating to the termination of the services of the employee existed. It was stressed further that it was entirely with the discretion of Government to refer or not to refer a dispute and in this case since the reference was made after the Act I of 1955, neither the character of the dispute nor the validity of the reference could be challenged.

14. I may state at the outset that as observed by his Lordship Bhagwati, J., in *Niemla Textile Finishing Mills Ltd., and others* v. *Second Punjab Tribunal and others*, [1951] 11 F. J. R. 481, that the discretion vested in the appropriate Government "is not an unfettered or an uncontrolled discretion nor an unguided one because the criteria for the exercise of such discretion are to be found within the terms of the Act itself",

So also, since the Industrial Disputes Act was passed, as the preamble shows, with the express purpose of making provision for the investigation and settlement of industrial disputes, the aggrieved employee has the right to move the appropriate authority set up under the Act. for the redressal of his grievances as expeditiously as possible.

15. I may point out that the arguments advanced do not also touch the issue in hand. We are not now at the question whether the reference is valid or not ; also we are not at the question whether Government in a given set of circumstances have the right to make a reference or not. But, we are concerned here with the question whether the dispute referred for adjudication is an industrial dispute.

16. Section 2 (k) of the Industrial Disputes Act, 1947, defines an industrial dispute to mean any dispute or difference between employers and employers or between employers and workmen or between workmen and workmen which is connected with the employment or non-employment or the terms of employment or non-employment or with the conditions of labour of any person, and section 2(s) defenes a 'workman' to mean any person employed in an industry to do any skilled or unskilled manual or clerical work for hire or reward etc. So, for a dispute to amount to an industrial dispute, for the purposes of this case two conditions must be satisfied (1) it must be a dispute between an employer and his workmen and (2) the workman must be a workman as defined in section 2(s). Though, as Sri Menon says, the right to make a reference is conferred on the appropriate Government, it is open to the employer to contend that what is referred for adjudication is not an industrial dispute within the meaning of the Act and thereby challenge the jurisdiction of this Tribunal to proceed with the adjudication or pass an award. It has been held by the Supreme Court in the *State of Madras* v. *C. P. Sarathy* [1952] 4 F.J.R. 431, that it will be open to a party seeking to impugne the resulting award to show that what was referred by the Government was not an industrial dispute within the meaning of the Act, and that, therefore, the Tribunal had no jurisdiction to make the award. So also in the dispute between Newspapers Ltd., and the State Industrial Tribunal, U.P., the Supreme Court relying on the ruling in *C. P. Sarathy case* has laid down that "in spite of the fact that the making of a reference by Government under the Industrial Disputes Act is the exercise of its administrative powers, that is not destructive of the rights of an aggrieved party to show that what was referred was not an industrial dispute at all and, therefore, the jurisdiction of the Industrial Tribunal to make theaward can be questioned, even though the factual existence of a dispute may not be subject to a party's challenge." Thus, it must be accepted as settled law that a

party to the dispute is entitled to impeach the reference on the ground that it is not an industrial dispute within the meaning of the Act.

17. As has already been pointed out, the discharge took place before the Working Journalists (Industrial Disputes) Act, was passed and I have found that that Act is an enactment having only prospective application. If the employee was not a workman as defined in the Industrial Disputes Act, 1947, at the time his services were terminated, the termination of the services as such could not form the subject matter of an industrial dispute. If so, a reference based on the termination of the services of the employee will fall outside the scope of the Act Then the question arises whether a dispute which was not at its genesis an industrial dispute could assume the character of an industrial dispute by an order of reference from Government after the passing of the Act I of 1955. The Government was doing only an administrative act in making a reference under section 10(1) and simply because the reference happened to be after the legislation which made applicable the provisions of the Industrial Disputes Act, it could not mean that the nature of the dispute is transformed thereby, for, to accept such a proposition would be tantamount to vesting in Government, or Government assuming, power which has the effect of nullifying a rule of law or an Act of Parliament. Hence the date of the reference could not be the criterion by which the question whether a dispute is an industrial dispute or not is to be decided. The cause of action arose with the termination of the services of the employee and in this reference we are confronted with the question whether the action of the management was justified in terminating his services on 23rd September, 1954. If the employee was not then a workman under the then existing Act no industrial dispute could originate from the action of the management; neither by a subsequent reference from Government could it become an industrial dispute. If it were not so, any number of disputes could be raised from like actions by managements previous to the passing of the Act, without limit of time. The management could not also have foreseen the contingency of a legislation to be passed subsequently and adjusted their actions in tune with the provisions of an unknown Act and it would be inequitable to impose a liability on the basis of the legislation which could not have been anticipated at all.

18. Incidentally, I may have to refer to another aspect of the matter. In this case not only the cause of action which gave rise to the dispute but the demand too for re-instatement was made before Act I of 1955, was passed. The Association took up the cause of the employee and demanded his re-instatement by letter dated 22nd December, 1954, addressed to the management, which was not acceptable to the latter.

Thus the demand of the workman was communicated to the management and the appropriate machinery set up by the Government for the redress of grievances was also set in motion by sending a copy of the demand to the Labour Commissioner who was the Conciliation Officer for the settlement of disputes. Thus the dispute itself was raised by the aggrieved party before Act I of 1955, came into operation. The Patna High Court has held in [1952] 4 F.J.R. 47, that an industrial dispute can come into existence as soon as a demand is communicated to the management. There have been several rulings of the Madras High Court also to the effect that demand and refusal must from the basis of an industrial dispute. In this case there has been a demand which was not acceptable to the management and non-acceptance of the demand is tantamount to refusal. So, viewed in any light, the dispute in this case arose long before Act I of 1955, and a dispute which was not an industrial dispute to start with, could not become an industrial dispute by the passing of an Act long after the action impugned; nor could the situation be changed by virtue of a reference from Government after the passing of the legislation enabling working journalists to get the benefits of the Industrial Disputes Act.

19. Now I shall take up for consideration the last contention raised by Sri Menon that the employee is a workman even under the Industrial Disputes Act, 1947. I may point out that this aspect does not arise out of the pleadings and it was put for the first time at the final hearing. The management specifically raised the contention in paragraph 2 of the reply statement that since the termination of services of the employee was long before Act I of 1955, the dispute is beyond the purview of adjudication under the Industrial Disputes Act. The Association has filed a replication to answer the contentions raised in the reply statement and in paragraph 1 of the same the Association has simply opposed the contention as without any substance. If as is now argued that the employee is a workman within the meaning of the Industrial Disputes Act, that fact could very well have been stated in the replication. It was even obligatory on the part of the Association to state this contention specifically in the replication to enable the opposite party to meet the same at the evidence stage. It was urged on behalf of the management that the failure on the part of the Association to mention a syllable about this contention naturally led the other side to believe that the claim is based on Act I of 1955, alone.

20. Be that as it may, I shall proceed to examine the merits of the contention. Sri Balagangadhara Menon argued that the conclusion reached by the Press Commission that the working journalists do not come within the definition of workman in the Industrial Disputes Act is

not the last word on the subject and that the question has to be dealt with independent of the conclusions reached by the Commission, in the light of the evidence adduced in this case. He pointed out that Sri Chandra Sekharan has deposed that he was a full time correspondent and that he himself used to gather news, write the news and send them every evening by train, and this version has not been challenged by the management in cross-examination. From this Sri Menon would urge that his duties as Correspondent were both clerical and manual.

21. Now it may be pointed out that this employee has no case that his duties as correspondent differed from those of any other correspondent or reporter of a newspaper. I shall quote the relevant passage in his deposition that is relied on by the Association: "I was a full-time representative. The gathering of news was also done by me. This had to be done on all days. Every day, in the evening, I used to send it by train. I have worked as a news representative of the 'Kerala Kaumudi', by way of interviewing eminent people, attending important conferences and doing similar jobs." (Translation of the original in Malayalam.—Ed.)

22. None of the items of duties spoken to by him could be said to involve any manual work as is commonly understood. A reading of his deposition would clearly show that he was simply discharging the duties of a correspondent or reporter of the newspaper which he represented. There have been two decisions one by the Industrial Tribunal, Bombay and the other by the Patna High Court in which the question whether a reporter and assistant editor of a newspaper respectively are workmen, came up for consideration and in both it was held that they are not workmen within the meaning of the Industrial Disputes Act. The dispute in the Bombay case was between Jam-E-Jamshed Press, Bombay and its workmen and the demand in that case was for conveyance charges for the members of the editorial department. The learned Tribunal held that the members of the editorial department including reporters are not covered by the definition of the word 'workman' under section 2(s) of the Act and that the Act does not apply to them. The learned Tribunal, therefore, came to the conclusion that that Tribunal will be going beyond its powers if it were to adjudicate upon the demand relating to members of the editorial department (1950 I.C.R. 1112). In the second case reported in [1953] 5 F.J.R. 507, the Patna High Court held that the duties of an assistant editor of a newspaper are not clerical in nature and in doing his duties he has to display qualities of initiative and independence and hence an assistant editor could not be said to be a workman as defined in the Act. That decision further throws light on the functions of a clerk: "In the

lexicographic sense a clerk generally denotes a person employed in a subordinate position in a public or private office to make fair copies of documents or to do mechanical work of correspondence." I have quoted above the testimony of the solitary witness, the employee himself, relating to this aspect of the matter. On his own showing it could not be said that his duties were to make fair copies of documents or to do mechanical work of correspondence of a routine nature. According to him he has to interview eminent persons and attend important conferences as a news representative and as a representative of the 'Kerala Kaumudi' and give reports of such interviews and conferences. These, it could not be doubted, call for the display of qualities of initiative and independence. I may point out that if Sri Chandra Sekharan was actually doing the duties he has described in his examination in chief, those are nothing short of journalistic work which is superior to and distinct from skilled clerical work.

23. Hence I may conclude that he could not be deemed to be a 'workman' as defined in section 2 (s) of the Industrial Disputes Act, 1947. I have already found that since the termination of his services, *i.e.*, the matter covered by the issue, took place before Act I of 1955, he is not also entitled to the benefits under the latter Act and the dispute referred is not an industrial dispute. It must therefore be held that this Tribunal has no jurisdiction to adjudicate upon the matter covered by the issue. In view of the above finding on the question of jurisdiction a finding on the merits of the case is uncalled for. As the question of jurisdiction raised by the management is found in their favour this reference fails. No order as to costs.

[IN THE THIRD INDUSTRIAL TRIBUNAL, WEST BENGAL.]

PANCHKARI BIDI FACTORY AND OTHERS
v.
THEIR EMPLOYEES.

Shri J. N. Maitra.

June 28, 1957.

'WORKMAN'—MEANING OF—TESTS—PERSON TAKING RAW MATERIALS HOME AND GIVING FINISHED PRODUCTS NEXT DAY—WHETHER WORKMAN—PERSONS ALLOWED TO WORK IN EMPLOYER'S PREMISES—NO CONTROL OVER WORK OR WORKING HOURS—WHETHER WORKMEN—INDUSTRIAL DISPUTES ACT, 1947, SECTION 2(s).

CONDITIONS OF SERVICE—RIGHT OF MANAGEMENT TO DECIDE MODE OF CONDUCT OF BUSINESS—WHETHER MANAGEMENT CAN BE COMPELLED TO RUN BUSINESS AS FACTORY.

Held, *applying the principles laid down by the Supreme Court in* DHRANGADHRA CHEMICAL WORKS LTD. *v.* STATE OF SAURASHTRA [1957] 11 F.J.R. 439, *that on the evidence, the employees took the raw materials for producing bidis to their homes every evening and brought the finished bidis the next day and were paid on piece rates and, even when some of them worked in the shop premises of the employer, there was no control exercised over them nor did they have any fixed hours of work or holidays. There was, therefore, no relationship of master and servant between the employer and the persons who prepared the bidis so as to make them 'workmen' under the Industrial Disputes Act, 1947, and such persons could not raise any 'industrial dispute' with the employer.*

It is purely the management's function to determine whether their business should be carried on on the contract system or otherwise. Social justice cannot be invoked in the aid of the workmen to compel the management to work on a factory system so that the workers may henceforth derive benefits under the Factories Act, 1948, when they had none previously.

P. K. Sanyal for the managements.

Patit Paban Pathak for the employees.

AWARD

1. By order No. 856Dis./D/11L-31/56, dated the 3rd March, 1956, the Government of West Bengal, in the Labour Department, referred under section 10 of the Industrial Disputes Act, 1947, the industrial dispute between Messrs. Panchkari Bidi Factory, Proprietor, Shri Panchkari Saha, Messrs. Moti Bidi Factory, Proprietor, Shri Motilal Das and Messrs. Bharat Mata Bidi Factory, Proprietor, Shri Nikunja Behari Sarkar, all of P.O. Hili, district West Dinajpur, on the one hand and their workers represented by Paschim Dinajpur Bidi Sramik Union, P.O. Hili, West Dinajpur, on the other, regarding the matters specified in the schedule, to the Third Industrial Tribunal constituted under section 7 of the Industrial Disputes Act, 1947, by notification No. 592/Dis./D/12L-552/ dated the 23rd February, 1953, for adjudication.

2. After usual summons the parties put in appearance and filed their written statements. The pleadings were completed on 29th May, 1956. The parties were thereafter directed to file list of documents. Then after adjournments at the instance of the parties, the dispute was heard at Balurghat and the three shop premises were inspected and local investigation held and award was reserved.

3. The matters of dispute as stated in the schedule to the order of reference are as follows :—

(i) Is the change from the factory work to the home work system, viz., manufacture of bidi in the worker' own houses, justified ?

(ii) Whether the workers of Messrs. Panchkari Bidi Factory, Messrs. Moti Biri Factory and Messrs. Bharat Mata Bidi Factory are entitled to any retrenchment compensation and/or any other relief ?

Shri Panchkari Saha, Proprietor of Panchkari Bidi Factory, Shri Moti Lal Das, Proprietor of Moti Bidi Factory and Shri Nikunja Behari Sarkar and three others, Proprietors of Bharat Mata Bidi Factory have respectively, shops styled as aforesaid at Hili in West Dinajur, selling tobacco, bidi leaves as also bidis of their own brands. At the relevant time some 100 workers used to prepare bidis for the concern of Shri Panchkari Saha, 287 workers for the concern of Shri Moti Lal Das and 100 workers for the concern Shri Nikunja Behari Sarkar and others. According to the proprietors the bidis used to be made by the workers in their respective houses on piece-rates, while according to Paschim Dinajpur Bidi Sramik Union (hereafter called the Union) bidis used to be made in the respective shop premises which, therefore, constituted the factories.

The case of the Union as made out in the written statement before this Tribunal briefly stated is as follows :

The aforesaid three concerns were factories which together employed about 550 workers in making bidis in the respective shop premises at Hili. Although the concerns were earning handsome profits, these did not improve the lot of the workers. For redress of the grievance the Union was formed on 27th August, 1955. At about that time the Area Inspector of Factories, Government of West Bengal, came to Hili in course of his routine inspection and detected that although Panchkari Bidi Factory and Moti Bidi Factory were working as factories, the owners thereof did not take license or register them as factories as required under the Factories Act. So at his instance Shri Panchkari Saha, owner of Panchkari Bidi Factory and Shri Motilal Das, owner of Moti Bidi Factory were prosecuted before the Subdivisional Officer, Balurghat, and eventually convicted. As soon as the judgment came out the owners of Panchkari Bidi Factory and Moti Bidi Factory suddenly stopped factory work, without notice and intimation, from the evening of 30th September, 1955, and 1st October, 1955, respectively. The workers of those factories duly presented themselves for work but they were refused work. The owners intimated them that if they were prepared to work at their respective homes (in place of shop premises) on contract basis on card system, they would be supplied with materials for making bidi. By such change the status of the workers was deliberately reduced from full-fledged factory workers to casual workers resulting in loss in income as well. The workers naturally could not agree to the change and demanded notice to the effect which the management of the two concerns refused. As a result the workers staged a stay-in-strike which continued for some days. The Union also took up the matter with the authorities as per annexures A, A1 and A2, B and C to their written statement.

The owners of Bharat Mata Bidi Factory also joined hands with the aforesaid two concerns and introduced card system of work soon after. As a result same type of dispute also cropped up there.

In pursuance of the directions of the Labour Directorate the Union called off the strike on 14th October, 1955, and informed the Labour Commissioner accordingly. Notwithstanding, the employers did not agree to continue the old system of factory work in the shop premises. The deadlock thus continued. By change in the system of work, all the workers employed in these three factories who had been working for years together, stood retrenched while their work was being carried on by contractors who in their turn were engaging new hands as also some old ones at a much reduced rate. The change in the system of work is illegal and *mala fide*, resorted to in order to terrorise the workers for forming the Union. So, the Union prayed for an award declaring the action of the owners of the three factories as illegal and unfair and directing them to restore the old system of work forthwith and take back the workmen as were on the roll on the day the change was made with full compensation for the period of unemployment. In case if it be found difficult to pass such orders, the workers might be awarded full retrenchment compensation as also compensation for illegal action.

The proprietors of the three concerns resisted the claims of the Union by separate written statements though virtually on same grounds. They denied relation of employer and employee and other material allegations of the Union and pleaded among others as follows:

Theirs were not factories but are exclusively shops selling bidi leaves as also bidis of their own brands. For the purpose of making bidis for them, they have all along been supplying bidi leaves and tobacco to independent petty traders and/or contractors who have all along been taking these materials to their respective houses and have been preparing bidis with the said materials there. At the end of a week the bidis prepared and delivered to the concerns during the week are duly paid for. In the middle of the week some advances are given to these petty traders and/or contractors towards the prices of the bidis.

These petty traders and/or contractors have no obligation as to the quantity of bidi leaves and tobacco they may take supply of from the concerns or as to the number of bidis they may deliver at the end of the week nor are they in any way controlled and/or directed in the matter of preparing the bidis by the concerns. The petty traders or contractors are wholly independent in the matter of execution of their work of preparing the bidis. In the circumstances, neither the owners of these concerns are employers nor are the petty traders and/or contractors "workmen" within the meaning of the Industrial Disputes Act.

For some time in 1955, some of the aforesaid petty traders and/or contractors for their own convenience began to prepare bidis and the respective shop premises of Panchkari Saha and Moti Lal Das on conditions as aforesaid instead of taking the materials to their home. They too had absolutely no fixed hours of work and no control or direction whatsoever in respect of the manner of execution of their work or obligation in respect of the quantity of materials they took supply of or of the number of bidis they delivered to the concerns. The number of those who thus worked for some time in 1955, in the shop premises, of Panchkaris Saha and Moti Lal Das, were very few while the majority of the traders and contractors of their concerns adhered to the system of taking materials home and preparing bidis there.

While these few workers were thus making bidis in the shop premises of Panchkari Saha and Moti Lal Das, the Factory Inspector visited those concerns. Although it was explained to him how these few workers were allowed to make bidis in the shop premises, the Factory Inspector was of opinion that as nonetheless more than 20 were working in the shop this would constitute their shops into factories and accordingly he prosecuted the two proprietors under the Factories Act which ended in their conviction, as stated by the Union. After such conviction of Factories, Government of West Bengal, came to Hili in course of his routine inspection and detected that although Panchkari Bidi Factory and Moti Bidi Factory were working as factories, the owners thereof did not take license or register them as factories as required under the Factories Act. So at his instance Shri Panchkari Saha, owner of Panchkari Bidi Factory and Shri Motilal Das, owner of Moti Bidi Factory were prosecuted before the Subdivisional Officer, Balurghat, and eventually convicted. As soon as the judgment came out the owners of Panchkari Bidi Factory and Moti Bidi Factory suddenly stopped factory work, without notice and intimation, from the evening of 30th September, 1955, and 1st October, 1955, respectively. The workers of those factories duly presented themselves for work but they were refused work. The owners intimated them that if they were prepared to work at their respective homes (in place of shop premises) on contract basis on card system, they would be supplied with materials for making bidi. By such change the status of the workers was deliberately reduced from full-fledged factory workers to casual workers resulting in loss in income as well. The workers naturally could not agree to the change and demanded notice to the effect which the management of the two concerns refused. As a result the workers staged a stay-in-strike which continued for some days. The Union also took up the matter with the authorities as per annexures A, A1 and A2, B and C to their written statement.

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In pursuance of the directions of the Labour Directorate the Union called off the strike on 14th October, 1955, and informed the Labour Commissioner accordingly. Notwithstanding, the employers did not agree to continue the old system of factory work in the shop premises. The deadlock thus continued. By change in the system of work, all the workers employed in these three factories who had been working for years together, stood retrenched while their work was being carried on by contractors who in their turn were engaging new hands as also some old ones at a much reduced rate. The change in the system of work is illegal and *mala fide*, resorted to in order to terrorise the workers for forming the Union. So, the Union prayed for an award declaring the action of the owners of the three factories as illegal and unfair and directing them to restore the old system of work forthwith and take back the workmen as were on the roll on the day the change was made with full compensation for the period of unemployment. In case if it be found difficult to pass such orders, the workers might be awarded full retrenchment compensation as also compensation for illegal action.

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Theirs were not factories but are exclusively shops selling bidi leaves as also bidis of their own brands. For the purpose of making bidis for them, they have all along been supplying bidi leaves and tobacco to independent petty traders and/or contractors who have all along been taking these materials to their respective houses and have been preparing bidis with the said materials there. At the end of a week the bidis prepared and delivered to the concerns during the week are duly paid for. In the middle of the week some advances are given to these petty traders and/or contractors towards the prices of the bidis.

These petty traders and/or contractors have no obligation as to the quantity of bidi leaves and tobacco they may take supply of from the concerns or as to the number of bidis they may deliver at the end of the week nor are they in any way controlled and/or directed in the matter of preparing the bidis by the concerns. The petty traders or contractors are wholly independent in the matter of execution of their work of preparing the bidis. In the circumstances, neither the owners of these concerns are employers nor are the petty traders and/or contractors "workmen" within the meaning of the Industrial Disputes Act.

For some time in 1955, some of the aforesaid petty traders and/or contractors for their own convenience began to prepare bidis and the respective shop premises of Panchkari Saha and Moti Lal Das on conditions as aforesaid instead of taking the materials to their home. They too had absolutely no fixed hours of work and no control or direction whatsoever in respect of the manner of execution of their work or obligation in respect of the quantity of materials they took supply of or of the number of bidis they delivered to the concerns. The number of those who thus worked for some time in 1955, in the shop premises, of Panchkaris Saha and Moti Lal Das, were very few while the majority of the traders and contractors of their concerns adhered to the system of taking materials home and preparing bidis there.

While these few workers were thus making bidis in the shop premises of Panchkari Saha and Moti Lal Das, the Factory Inspector visited those concerns. Although it was explained to him how these few workers were allowed to make bidis in the shop premises, the Factory Inspector was of opinion that as nonetheless more than 20 were working in the shop this would constitute their shops into factories and accordingly he prosecuted the two proprietors under the Factories Act which ended in their conviction, as stated by the Union. After such conviction

Panchkari Saha and Moti Lal Das were compelled to disallow the said petty traders and/or contractors from working in the shop premises from 1st October, 1955 and 2nd October, 1955, respectively. In so doing, they did nothing wrong but were within their rights. Apart from working in the shop premises for some time past these workers had never enjoyed any benefit under the Factories Act. After their work in the shop premises was stopped, these persons declined to take supply of materials for making bidis and stopped work and prevented for some days the other petty traders and contractors from taking supply of their materials. Eventually all resumed work except those few who were, of late, making bidis in the shop premises. The proprietors did not retrench any one. All the petty traders and contractors who had been in contract with them prior to 1st October, 1955, have still been doing same work as before on same terms and conditions. Only the few who had been permitted to work in the shop premises and who were there-after asked to discontinue work there as aforesaid stopped work and did not rejoin. They were entitled to no relief.

The proprietors of Bharat Mata Bidi Factory alleged that so far as they were concerned, there had been no change in the system of work at any time. They had been carrying on business all along without break in the way already indicated as aforesaid. All the petty traders and/or contractors who had been in contract with them prior to 1st October, 1955, have still been carrying on the same work as before on the same terms and conditions and that there has not been a single case where a contract existing from before was terminated.

Besides, the proprietors of these three concerns took preliminary objection regarding competency of the reference.

In support of their case the Union examined workers P.W. 1 Shri Hare Krishna Mahanta, P.W. 2 Shri Biswanath Kundu, P.W. 3 Shri Phani Bhusan Debnath and secretary P.W. 4 Shri Manoj Goswami, besides proving documents Exs. 1 to 12(e). The proprietors, on the other hand, examined themselves—D.W. 1 Shri Nikunja Behari Sarkar, D.W. 2 Shri Moti Lal Das and D.W. 3 Shri Panchkari Saha, besides proving documents Exs. A to I.

Before entering into the dispute I may state certain facts as are either admitted or established in evidence, and mention about the correspondence as passed before the reference as these will be of help to appreciate the evidence. On 23rd May, 1955, Area Factory Inspector visited the shop premises of Shri Panchkari Saha and Shri Moti Lal Das at Hili when he found that although more than 20 workers were working in the manufacture of bidis, the owners did not take license therefor or notify their occupation as factories as required under the Factories Act.

So, at his instance the said Shri Panchkari Saha and Shri Moti Lal Das were prosecuted before Subdivisional Officer, Balurghat, under section 92 of the Factories Act and were eventually convicted on 26th September, 1955, (*vide* Ex. 2). After such conviction the owners of Panchkari Bidi Factory and Moti Bidi Factory prohibited those workers from preparing bidis in their shop premises and thereby stopped factory work from the evening of 30th September, 1955, and 1st October, 1955, respectively.

Following such disallowance of work in the shop premises, the workers of the said two concerns started stay-in-strike on 1st October, 1955. The Union sent letters and telegram to the Labour Commissioner and Factory Inspector seeking intervention [*vide* Ex. 7(a) and 7(b)]. On 5th October, 1955, Union again wrote to the Labour Commissioner complaining that Shri Panchkari Saha and Shri Moti Lal Das stopped factory work and thereby threw all the workers numbering about 400 of those two concerns into unemployment [*vide* Ex. 7(c)]. Then on 8th October, 1955, the workers headed by Shri Subodh Chandra Mondal wrote to the Assistant Labour Commissioner that all bidi factory owners closed their factories on 29th September, 1955, throwing about 1,000 workers out of employment as the workers objected to work on contract basis on card system. It was also alleged therein that Bharatmata Bidi Factory stopped factory work from 4th October, 1955, for which 50 workers resorted to strike [*vide* Ex. 7(d)]. On 11th October, 1955, the Assistant Labour Commissioner replied to Shri Subodh Chandra Mondal and others requesting them to withdraw the strike. He also wrote to the owners of Panchkari Bidi Factory and Moti Bidi Factory to maintain *status quo* [*vide* Ex. 7(e), 7(f) and 8 and 8(a)]. On 12th October, 1955, the Magistrate of West Dinajpur also informed the Union that he had forwarded their letter to the Labour Department and Factory Inspector for necessary action [*vide* Ex. 8(b)]. On 13th October, 1955, Shri Panchkari Saha replied to the Assistant Labour Commissioner saying that work of manufacture of bidis was not closed by him and that the workers were pursuing strike under the evil influence of the Communist Party (Ex. C). On 14th October, 1955, Union informed the Officer-in-charge, Hili police-station, that the strike in the Panchkari Bidi Factory and Mati Bidi Factory was withdrawn from that night [*vide* Ex. 7(g)]. On 15th October, 1955, Shri Subodh Chandra Mondal and others wrote to the Assistant Labour Commissioner that although thes trike was withdrawn in the above two factories the owners thereof were still insisting to have work of making bidis done on contract basis on card system [*vide* Ex. 7(h)]. On 20th October, 1955, communication in similar terms was made to Assistant Labour Commissioner. It was also alleged therein that owners of Bharatmata Bidi Factory with which same kind of dispute was going on took an uncompromising attitude [*vide* Ex. 7(i)]. Following these correspondences there was conciliation and as the matter could not be settled, the dispute was referred to this Tribunal for adjudication on 3rd March, 1956.

Let us turn to the dispute. Firstly, it is contended on behalf of the proprietors that the dispute referred is not an industrial dispute as the persons who worked in these concerns were not workmen within the meaning of section 2(s) of the Industrial Disputes Act, 1947, and the reference in consequence is bad in law. The point which so requires determination is, whether the persons engaged in making bidis in these concerns are really workmen within the meaning of Industrial Disputes Act, 1947, or independent contractors. It has been held by the Supreme Court in the case of *Dhrangadhra Chemical Works, Ltd.* v. *State of Saurashtra and others* reported in [1957] 11 F.J.R. 439.

"The essential condition of a person being a workman within the terms of this definition is that he should be *employed* to do the work in that industry, that there should be, in other words, an employment of him by the employer and that there should be relationship between the employer and him as between employer and employee or master and servant. Unless a person is thus *employed* there can be no question of his being a workman within the definition of the term as contained in the Act.

The principles according to which the relationship as between employer and employee or master and servant has got to be determined are well settled. The test which is uniformly applied in order to determine the relationship is the existence of a right of control in respect of the manner in which the work is to be done."

Regarding system of work, the evidence and circumstances are more in accord with the version of the proprietors of the three concerns. At the relevant time 100 workers were engaged in making bidis for the concern of Shri Panchkari Saha (*vide* D.W. 3), 237 for the concern of Shri Moti Lal Das (*vide* D.W. 2), and 100 workers for the concern of Shri Nikunja Behari Sarkar and three others (*vide* D. W. 1). It is admitted on all hands that these workers comprised males and females. In their evidence it was sought to be said on behalf of the workers that on the previous evening they used to get supply of bidi leaves which they used to take to their respective houses and there bidi leaves used to be cut and put into water and then on the next morning they all used to come to the shop premises and prepare bidis in the shop premises on taking tobacco and thread there. So according to the case of the Union in the written statement and the evidence, all workers used to make bidis in the shop premises after taking supply of tobacco and thread on the day,

P. W. 2 Shri Biswanath Kundu negatived the case when he admitted in cross-examination that female workers have all along been working in their respective houses for making bidis after taking supply of bidi leaves, tobacco and thread on the previous evening. Regarding the male workers, it is in evidence on the side of the proprietors that they too used to make bidis like the famale members in their own respective houses on getting supply of bidi leaves, tobacco and thread on the previous evening and that only of late some of these male workers were permitted to work in the shop premises of Shri Panchkari Saha and Shri Moti Lal Das in making bidis to suit their convenience. It was on the contrary sought to be said on behalf of the workers during argument that all the male workers were all along permitted to prepare bidis in the respective shop premises. I am unable to accept such case either. Had it been true, it would have been more natural for them not to take supply of tobacco and thread on the day previous. The workers also were conscious about it. So, in their deposition they said that they used to get supply only of bidi leaves in the evening and used to get tobacco and thread on the next day on coming to the shop premises with cut bidi leaves. The *khosra khatas* of Bharatmata Bidi Factory (Ex. B series) wherein admittedly supplies of bidi leaves and other materials are noted go to show that all the materials such as, bidi leaves, tobacco and thread were simultaneously supplied from day to day on the previous evening. This would support the case of the proprietors that the male members too like the female workers used to make bidis in their respective homes. Had it been the practice to make bidis in the shop premises they would not have taken supply of tobacco and threads in the previous evening only to carry them back to the shop premises on the next day. The evidence reveals that there had been no change in the system of work so far as Bharatmata Bidi Factory is concerned. P. W. 2 Biswanath Kundu who sought to say to the contrary was shown by unimpeachable document to have worked in the concern throughout even after 4th October, 1955, when it was alleged to have been closed. Had Bharatmata Bidi Factory stopped work from 4th October, 1955, as alleged, this would have found mention in the Union's letter, dated 5th October, 1955. Not only was it not so stated therein, there was also no mention about withdrawal of alleged strike of the workers of this concern in any of the subsequent letters of the Union or workers not even in the letter, dated 14th October, 1955, [Ex. 7(g)] whereby O/C was informed about withdrawal of the strike of the two other concerns. Had there been strike in this concern this would have naturally been withdrawn as was done in other two concerns. P.W. 2 admittedly bore No. 80 on 3rd October, 1955. The note book relating to his No. 80 which is, therefore, relevant has been suppressed on the convenient plea of its being missing. The positive evidence on the side of the proprietor on the contrary shows that he had worked even on 4th October, 1955, and on subsequent dates and received payment for those days by putting signatures (Exs. A, A1). It also appears that he has still been working in the said concern. The allegations in the previous correspondence against the concern of Bharatmata Bidi Factory, it appears, were made with ulterior motive just as these were made in respect of other concerns doing bidi business. It appears that the workers, following conviction of Shri Panchkari Saha and Shri Moti LalDas wanted, in particular, owners of Bharatmata Bidi Factory to fall in line and allow them to prepare bidis in their shop premises which they did not allow and thus the dispute cropped up. Having regard to the facts and circumstances it cannot be doubted that the system of work in the Bharatmata Bidi Factory has always been as deposed to by D.W. 1 Shri Nikunja Behari Sarkar and has not undergone any change. So, the Union's case that all workers used to work in the shop premises in preparing bidis is anything but true. I rather believe that the system was that the workers both males and females used to make bidis in their respective homes on taking supply of all the materials in this connection on the previous evening.

As to work by males in the shop premises of Shri Panchkari Saha and Shri Moti Lal Das, in making bidis there, the evidence shows that such system of work by males in those shop premises was not the general rule but an exception. According to Shri Panchkari Saha and Shri Moti Lal Das, permission was granted some years ago to these workers for making bidis in the shop premises to suit their convenience. This seems to me more probable and natural as in the concern of Bharatmata Bidi Factory it does not appear that any worker was ever allowed to make bidis in the shop permises. The evidence discloses that not all the male workers but some of them only were permitted to make bidis in the shop premises of Shri Moti Lal Das and Shri Panchkari Saha. Had it been otherwise the workers would have enjoyed the benefits admissible under the Factories Act. Admittedly they had none of them. Claim of the workers during evidence that they used to get eight festival holidays with pay and increments during busy season (from Agrahayam to Magh) from 2 annas to 4 annas in the piece-rate even if true has nothing to do with the Factories Act. The fact that the workers had none of the benefits under the Factories Act would show that the workers, as a general rule, were not making bidis in the shop premises but in their respective houses.

Regarding the concerns having been styled factories and calendars having been issued to that effect (Ex. 1 series), the evidence and circumstances show that this was so done not because the shop premises were

used by the workers in making bidis but rather to indicate that the concerns sell bidis of their own make. For so doing it appears that after delivery of prepared bidis in bundles of 25 by the workers, these are treated in the shop premises by paid employees. The prepared bidis after dilivery are put over on oven for drying and then these are turned into packets and labels of the concerns are attached to them by paid employees of the concerns. Thus having bidis of their own make it is no wonder that they described themselves as factories. In any case it does not indicate that the shop premises were used by the workers in making bidis and thus these were termed factories.

Now, as to terms of employment it is not disputed that all the workers are paid for making bidis on piece-rates at the rate of Rs. 1-6 per thousand prepared bidis, in the concerns of Shri Panchkari Saha and Shri Nikunja Behari Sarkar and others and at Rs. 1-10 per thousand prepared bidis, in the concern of Shri Moti Lal Das; and that advances are given in the middle of a week and payment for the prepared bidis delivered is made at the end of a week on tallying the out-turns noted in the note books (styled by workers as cards) with those noted in the books maintained in the concerns. It will not be out of place to mention here that piece-rate system by itself may not lead to an inference of the work being done under contract system as men engaged on such system may as well be employees (workmen). In the present case, however, this fact along with others points more in favour of the work being done on contract system.

As to the working it is sought to be said in evidence by the P.Ws. that the workers were required to attend and work in the shop premises from 8 a.m. to 5 p.m., that if they were late by few minutes they were not allowed to work, that the *karmacharies* of the employers and sometimes the employers themselves used to supervise their work of making bidis and that the proprietors had full control in the manner of execution of their work. The evidence is an after-thought and unreliable. The female workers, it has already been found, admittedly work in their respective houses on taking supplies of bidi leaves, tobacco and and thread on the previous evening. It has been admitted in cross-examination by P.W. 2, that they had or have no fixed hours of work, nor had or have obligation to take supply of any fixed quantity of materials for making bidis or deliver any fixed quantity of prepared bidis. It has been admitted that they have full liberty in respect of execution of the work and the proprietors and their *karmacharies* had or have no supervision or control. As to those of the male members who prepared bidis in their respective homes they had obviously same kind of work as those of the female workers. As to other male workers who worked in the shop premises of Shri Panchkari Saha and Shri Moti Lal Das in making bidis. I prefer to accept evidence on the side of the proprietors that they too had no fixed hours of work and had no obligation to take fixed quantity of materials for making bidis or deliver fixed quantity of prepared bidis as being more probable and natural in view of what admittedly prevailed for majority of the workers working in their respective homes as aforesaid. It appears to me from the evidence and circumstances that proprietors had very little control if not nothing in the manner of execution of the work to be done. All that they were seeing was if the work was being done according to specifications and within the given time. It has been held that "the greater the amount of direct control exercised over the person rendering the services by the person contracting for them, the stronger the grounds for holding it to be a contract of service, and similarly the greater the degree of independence of such control the greater the probability that the services rendered are of the nature of professional services and that the contract is not one of service". The test as aforesaid suggests more in favour of the workers employed in this industry being independent contractors than being workmen working within the meaning of section 2(s). The evidence that the workmen were getting eight festival holidays with pay is also an after-thought and unreliable. When they were working at home there was no question of grant of festival holidays. It was for the workers to abstain from taking supply of materials on festival occasions. The evidence of D. W. 3 reveals that some *karigars* of which Ashutosh is one, have been working in the matter of preparing bidis for two concerns (*vide* Exs. H3 and I). This would not have been possible, had not the workers been working on contract system. So, on a consideration of all the facts in the light of the principles enunciated by the Supreme Court in the case already referred to, I am of opinion that the workers are not workmen within the meaning of section 2(s) of the Industrial Disputes Act, but independent contractors. As the dispute referred is thus not about workmen within the meaning of the Industrial Disputes Act, it is obvious that there cannot be any industrial dispute within the meaning of section 2(k) and as such the reference is incompetent and bad.

Even assuming that they are workmen as defined in the Industrial Disputes Act it appears that no relief whatever can be granted. It cannot be disputed that it is the fundamental right of the owners to close down their factories. It will, therefore, be obvious that the proprietors of Shri Panchkari Bidi Factory and Shri Moti Bidi Factory were within their rights to stop factory system of work, more so, when the workers had previously none of the benefits admissible under the Factories Act,

The claim would have been intelligible had the workers enjoyed certain privileges under the Factories Act and were thereafter deprived of them. Social justice cannot be invoked in their aid in order to compel the owners to work on factory system so that the workers may henceforth derive benefits under the Factories Act when they had none previously. It is purely management's function whether they would carry on the work on contract system or otherwise.

Besides, the evidence shows that not all the workers were affected as alleged by stoppage of factory work after conviction of Shri Moti Lal Das and Shri Panchkari Saha but only few who had been working in the shop premises and were thereafter disallowed to continue making bidis in those shop premises. It further appears that after leaving work in these concerns they started to make bidis under the style "Sramik Bidi" (Ex. D) and when said venture was not successful, it appears, P.W. 1 who was worker in the Moti Bidi Factory, joined the concern of Shri Panchkari Saha, and has since been working on card system on contract basis in the concern of said Shri Panchkari Saha (Ex. H2). P.W. 1 in a way admitted this when he said that female members have been working at home on card system under Panchkari Saha. P.W. 3 who was a worker in the concern of Panchkari Saha, it appears from the evidence, has been working in the name of his Bhognipati Shri Ramjoy Debnath and receiving payments by putting signatures (Exs. F1, F2 and H1).

Be that as it may, when not all but only few ceased to work, it is obvious no relief could have been granted to them, had they been eligible as their names were not disclosed. So, to be precise, I find that the Tribunal has no jurisdiction to proceed with the reference or to adjudicate upon the issues.

[IN THE MADRAS HIGH COURT.]

INDIA TYRE & RUBBER CO. (INDIA) PRIVATE LTD.

v.

THEIR WORKMEN.

Rajagopalan, J.

July 29, 1957.

INDUSTRIAL DISPUTES ACT, 1947, SECTION 25-G—RETRENCHMENT —PRINCIPLE OF LAST COME FIRST GO—APPLICATION OF—CONCERN HAVING BRANCHES AND DEPOTS—DETERMINATION OF SENIORITY— 'INDUSTRIAL ESTABLISHMENT' MEANING OF.

RETRENCHMENT—JUSTIFICATION FOR—WORKMEN RENDERED SURPLUS BY REORGANISATION—RIGHT OF EMPLOYER TO RETRENCH SURPLUS WORKMEN—ESTABLISHMENT OF *bona fides*—WHETHER CONSIDERATIONS OF SOCIAL JUSTICE SHOULD PREVAIL.

Independent of section 25-G of the Industrial Disputes Act, 1947, there can be no scope for consideration of seniority in deciding whether the retrenchment ordered by an employer was illegal. Under section 25-G of the Act, the unit of the industry to which it applies is an 'industrial establishment'. An industrial concern may be made up of one or more 'industrial establishments' and the statutory principle of section 25-G must be applied to each industrial establishment separately.

Where an industrial concern had a Branch in Madras and sub-depots at Ernakulam, Bangalore and Vijayawada, Held *that each of the sub-depots and the Madras Branch were separate 'industrial establishments' of the concern and that section 25-G of the Act should be applied to each establishment separately and not by treating the Madras Branch and the sub-depots together as one unit.*

As a result of reorganisation, the workload in an industrial establishment was reduced and a certain number of clerks were rendered surplus and were retrenched by the employer. The Industrial Tribunal, to which a claim for reinstatement by the retrenched clerks was referred, decided that the retrenchment was unjustified on the principle of social justice that where an employer was getting a return of more than six per cent. on his capital, a retrenchment which may be justified by the quantum of work available would be vitiated by bad faith. On a petition to quash the award by a writ of certiorari, Held, *that it was not necessary in order to establish good faith for a retrenchment to prove that the employer would be losing or would not be making any profits and that the concept of social justice relied on by the Tribunal was not relevant. So long as the dead weight of an uneconomic surplus existed, there is nothing illegal in the employer desiring to make more profits by getting rid of the surplusage.*

Writ Petition No. 122 of 1957.

M. K. Nambiar and *K. K. Venugopal*, for the petitioner.

S. Viswanathan, B. R. Dolia and *G. Ramanujam*, for the respondents.

JUDGMENT.

The petitioner company manufactures and sells tyres, among other rubber goods, in India. It has its head office at Bombay. One of its branch offices is at Madras with jurisdiction over the territorial area known as Madras district. The District extends over areas which lie outside the State, in Kerala, Mysore and Andhra Pradesh. The sub-depots at Ernakulam, Bangalore and Vijayawada are within the District of Madras.

On the recommendation of the Tariff Commission in 1953 the Government of India ordered a reduction in the sale price of tyres by ten per cent. The Tariff Commission pointed out in its report that the proportion of administration, selling and distribution expenses of the petitioner company was high, when compared with such charges incurred by other companies manufacturing and selling tyres in India. The petitioner company reorganised its methods of business, which resulted in a reduction in the amount of office work to be done in the Madras office. The petitioner found that to deal with the work on the re-organised basis twelve out of the thirty three employees in the Madras office were in surplus of its requirements. On 22nd February, 1956, the petitioner company ordered a retrenchment of twelve of its employees and served each of the retrenched employees with a notice, paying each of them a month's wages in lieu of notice.

The Workers' Union challenged the right of the Management to terminate the services of these twelve employees. On 31st March, 1956, the dispute between the Management and the workers was referred by the Government of Madras, under section 10(1)(c) of the Industrial Disputes Act, for adjudication by the Industrial Tribunal, Madras. What was referred as an industrial dispute was: "Whether the retrenchment of the following twelve workers is justified and to what relief they are entitled?" The names of the twelve workers were then listed.

The Tribunal gave its award on 17th December, 1956, and it was duly published by the Government in the Gazette. In paragraph 9 of its award the Tribunal recorded :

"But the contention of the workers is that this retrenchment and reorganisation itself is not *bona fide*. Though the claim statement contains allegations of victimization and unfair labour practice Mr. Viswanathan at the time of his arguments definitely gave up those contentions. His main argument is that this reorganisation and retrenchment is an attempt to retain or restore the excessive profits which the company had been deriving prior to the fixation of reduced prices for the tyres and tubes by the Government of India."

Dealing with this contention the Tribunal observed in paragraph 14 of its award :

"I am inclined to agree with the view of Mr. Viswanathan. If the retrenchment had been effected to avoid losses or to secure reasonable profits then something can be said in favour of the company. But in this case it is otherwise and the retrenchment is clearly prompted by a desire to secure profits lost by the price fixation. It is only an attempt to set at naught the object of the Government, namely, that the company should get lesser profits."

After referring to a decision of the Labour Appellate Tribunal, that 6 per cent. on paid up capital and 4 per cent. on the working capital constituted reasonable returns to a company, the Tribunal recorded in paragraph 15 of its award :

"Under such circumstances on considerations of social justice it must be held that the retrenchment of these twelve workers was not justified."

Dealing next with the contention of the Union that, even if the retrenchment had been justified, the retrenchment of the twelve employees in question was not effected in accordance with law, and that it offended the statutory principle of last to come and first to go, the Tribunal recorded in paragraph 26 of its award :

"The evidence of M. W. 1 is in my opinion sufficient to prove the case of the workers that all these sub-depots which are controlled by the Madras office are really parts of the Madras branch and that all of them should be treated as one unit along with the Madras office. It therefore follows that the principle of pooled seniority should have been followed by the management in picking out the workers for retrenchment even if there was justification for retrenching men. As this principle was not adopted, the retrenchment of these men cannot be upheld."

The Tribunal however held that, even with reference to the Madras office alone, the retention of Thirumalai in preference to three of his seniors in the category of clerks vitiated the retrenchment of these three workers.

The Tribunal ordered the reinstatement of the twelve employees whom the petitioner had purported to retrench.

The petitioner applied under article 226 of the Constitution for the issue of a writ of *certiorari* to set aside the award of the Tribunal dated 17th December, 1956.

Before dealing with the question whether the award of the Industrial Tribunal based on the finding, that the retrenchment was unjustified, is liable to be set aside by the issue of a writ of *certiorari*, I shall dispose of the contention of the petitioner, that considerations of pooled seniority vitiated the finding of the Tribunal that the retrenchment ordered by the management was contrary to law. That question has to be considered on the basis, that what was ordered by the management was in fact a retrenchment and that it was otherwise lawful.

Mr. Nambiar, the learned counsel for the petitioner, was right when he pointed out, that even in the adjudication of an industrial dispute, the rights and liabilities of the employer and the employees (workmen) in so far as they relate to retrenchments, are governed by the statutory provisions in Chapter V-A of the Industrial Disputes Act. Section 25J(2) which makes it clear runs :

"For the removal of doubts, it is hereby declared that nothing contained in this Chapter shall be deemed to affect the provisions of any other law for the time being in force in any State in so far as that law provides for the settlement of industrial disputes, but the rights and liabilities of employers and workmen in so far as they relate to lay-off and retrenchment shall be determined in accordance with the provisions of this Chapter."

Section 25-G is the statutory provision, which embodies the principle of last to come and first to go as applicable to the employees to be retrenched. Section 25-G runs :

"*Procedure for retrenchment*: Where any workman in an industrial establishment, who is a citizen of India, is to be retrenched and he belongs to a particular category of workmen in that establishment, in the absence of any agreement between the employer and the workman in this behalf, the employer shall ordinarily retrench the workman who was the last person to be employed in that category, unless for reasons to be recorded the employer retrenches any other workman."

Section 25-G makes it specific that the unit of the industry to which that statutory principle governing retrenchment applies is the industrial establishment. The definition of an industrial establishment in the explanation to section 25-A(2) is limited in its scope and cannot apply to the interpretation of "industrial establishment" as it has been used in section 25-G. For the purposes of applying section 25-G, the position is that the term "industrial establishment" has not been defined by the Act itself.

Though not in relation to section 25-G, I had occasion in *Sri Rama Vilas Service Ltd.* v. *State of Madras*, [1956] 9 F.J.R. 160, to consider what constituted an "industrial establishment" within the scope of the Act, for purposes other than those specified in the explanation to section 25 A(2). The expression "industrial establishment" or "establishment" has been used in several other sections as well and, to the extent possible, the same meaning will have to be given to that expression in the absence of any statutory definition. Section 2(kk) refers to branches or other establishments of an insurance company in more than one State. Section 2(n)(ii) includes any section of an industrial establishment within the definition of public utility service. Section 3(1) provides for the constitution of works committees for industrial establishments. Section 9-B empowers the appropriate Government to exempt any class of industrial establishments from the provisions of the Act. Section 10(1-A) empowers the Central Government to refer for adjudication by a National Tribunal, if the industrial dispute is of such a nature that industrial establishments situated in more than one State are likely to be interested in or affected by such a dispute. Section 10(5) also refers to a dispute concerning any establishment or establishments. The prohibition imposed by section 23 is on the workman who is employed in any industrial establishment. The explanation to section 33(3), which like section 10(1-A) was enacted by the Amending Act 36 of 1956, defines the expression "protected workman" in relation to an establishment. Of course, it is not my endeavour to define what the expression "industrial establishment" means in each of these sections. I am concerned only with the scope of the expression "industrial establishment" as it occurs in section 25-G. I have enumerated the other sections only to understand the scheme of the Act. From the scheme of the Act it should be clear that it envisages, each as a distinct concept, (1) an industry, (2) an industrial concern, within an industry, (3) an industrial establishment, which may itself be the whole of the industrial concetn, or which may be part of a larger industrial concern, (4) a section of an industrial establishment, and (5) categories of workmen in an industrial establishment or in a section thereof. It should be noted that while section 25-F refers to a workman employed in an industry, section 25-G refers to workmen in an industrial establishment and further to workman in any specified category in that industrial establishment.

Before deciding whether the retrenchment ordered by the petitioner violated the terms of section 25-G, what the Tribunal had to consider was whether the Madras office, in which the retrenchment was effected,

was an industrial establishment within the meaning of section 25-G. The learned counsel for the petitioner was, I think, well founded in his contention, that virtually the Tribunal did not address itself to that question at all. It is true that the Tribunal specifically referred to the terms of section 25-G in paragraph 17 of its award. But that was only to determine whether the retention of Thirumalai and the retrenchment of three others were in contravention of section 25-G. Nowhere in paragraphs 24 to 26 of its award, where the Tribunal dealt with the question at issue, whether the retrenchment of the twelve employees offended the statutory principle of last come and first to go, did the Tribunal refer to section 25-G. Nor even does it appear to have kept in view what section 25-G emphasises, that it governs retrenchment in an industrial establishment.

It should be obvious that independent of section 25-G there can be no scope for consideration of seniority or "pooled seniority", as the Tribunal called it, in deciding whether the retrenchment ordered by the petitioner was illegal.

For purposes of convenience I shall set out again what the Tribunal recorded in paragraph 26 of its award:

"The evidence of M.W. 1 is, in my opinion, sufficient to prove the case of the workers that all these three sub-depots which are controlled by the Madras office are really parts of the Madras branch and that all of them should be treated as one unit along with the Madras office."

Even if the Tribunal is to be deemed to have meant by the expression "one unit" an industrial establishment within the meaning of section 25-G, and to have decided that the Madras office with its three sub-depots at Ernakulam, Bangalore and Vijayawada constituted a single industrial establishment, such a decision would have been vitiated by the wrong application of section 25-G and would have constituted an error apparent on the face of the award itself.

In *Pravat Kumar Kar* v. *W. T. C. Parker*, [1949] 1 F.J.R. 245, Harries C.J. observed:

"It seems to me quite clear that............the words 'industrial establishment' mean the place at which the workmen are employed and the words as used in section 2(n) (ii) must have the same meaning as when they are used in section 23. That being so, it is quite clear that section 23 could not cover a case of workmen in Bombay striking against an employer with whom employees in Calcutta have a dispute."

I respectfully agree with these observations. I had no occasion to refer to that decision when I decided *Sri Rama Vilas Service Ltd.* v. *State of*

Madras, ([1956] 9 F.J.R. 160). After pointing out in effect in that case that the Sri Rama Vilas Service Ltd. was an industrial concern with its head office at Madras, and that the branch at Kumbakonam was an industrial establishment by itself, I stated at page 173 of the report:

"The industrial establishment as such has not been defined by the Act. But there should be little difficulty in determining the scope of that expression. I need refer only to section 3 of the Act to negative the contention of the learned counsel for the Madras Union, that S.R.V.S. Ltd. with all its branches should be taken as one industrial establishment. The S.R.V.S. Ltd., is not a concern whose opeations are limited to the Madras State alone. It has a branch at Bangalore...... One of the allied concerns, Amalgamations Ltd. had its branch in Vijayawada in the Andhra State. If the contention of the learned counsel for the Madras Union has to be accepted, the works committee contemplated by section 3(1) of the Act should be a works committee for the industrial concern of S.R.V.S. Ltd. as a whole, wherever its branches may be situated, either within this State or without the State. Such a construction I am unable to place on section 3(1) of the Act. It certainly provides for a separate works committee for each industrial establishment, though that establishment might only be a branch of the industrial concern which has branches not only within this State but outside the State as well. Besides, there is another difficulty in accepting the contention of the learned counsel for the Madras Union. As I said, it is certainly clear that the S.R.V.S. Ltd. with its head office at Madras, had its operations extending outside the Madras State. If the whole of the S.R.V.S. Ltd. is to be treated as one industrial establishment, and the disputes between the workers of the industrial concern as a whole and the management of that concern has to be treated as an industrial dispute within the meaning of section 2(k), the Madras Government would not be the appropriate Government to refer such a dispute under section 10(1)(c) of the Act."

Similar considerations would apply if the sub-depots of the petitioner's industrial concern at Ernakulam, Bangalore and Vijayawada should be treated as part of the industrial establishment at Madras. It may be of interest to notice the provision made by the Amending Act of 1956, Act 36 of 1956, in section 10(1-A) to which I have already adverted, for the adjudication of disputes, if an industrial concern consists of industrial establishments lying in more than one State.

The petitioner company is an industrial concern, and the office at Madras is an industrial establishment of that industrial concern. Each of the sub-depots in the different States is a separate industrial establishment of that same industrial concern for purposes of Section 25 G.

I have so far proceeded on the basis that it was a retrenchment in fact that the petitioner company ordered. If that was so, the Tribunal was clearly in error when it held that the retrenchment was illegal. I have pointed out that the retrenchment did not contravene section 25-G and was not illegal.

I shall next deal with the question, whether what was ordered by the petitioner company was in fact a retrenchment and was a lawful retrenchment. The industrial dispute that was referred for adjudication was "whether the retrenchment of the twelve workmen was justified." What the Tribunal had to decide in the first instance was whether it was in fact a retrenchment, or whether it was a case of a colourable exercise of the power, based on the right of an employer to effect retrenchment, in which case it would not have been a retrenchment at all. If, for instance, under the guise of ordering retrenchment the employer in fact victimised selected employees, or, if what the employer did amounted to an unfair labour practice, it would not have been really a case of retrenchment. It should be remembered that such allegations were made by the Union, but they were abandoned. Similarly, if what was ordered by the petitioner was *mala fide*, it would again be a case of a colourable exercise of power, and it would be no retrenchment at all.

The Tribunal did not negative the claim of the petitioner, that after the reorganisation that had been effected resulting in a reduced workload in the Madras office, there was enough work only for twenty one out of thirty three that had hitherto been employed. That was certainly a very relevant factor in deciding whether the retrenchment was ordered in good faith. The Tribunal was right when it recorded in paragraph 13 of its award:

"........the important question that arises for consideration is whether this retrenchment was done in good faith."

The Tribunal did not, however, in express terms find that the retrenchment was not ordered in good faith. But apparently the Tribunal was of that view. The only ground on which the Tribunal rested its decision, that the retrenchment was unjustified, was its concept of social justice, by which it apparently meant, in this case, that if an employer wanted to get a return of more than six per cent on his paid up capital or more than 4 per cent on his working capital, a retrenchment justified, for example on the quantum of work available, would be one vitiated by bad faith. I have no hesitation in accepting the contention of Mr. Nambiar, that such a concept of social justice is an entirely irrelevant factor in deciding whether a retrenchment was ordered in good faith, or whether it only amounted to a colourable exercise of the power to retrench. Any retrenchment ordered would, of course, be subject to the statutory provisions in Chapter V-A of the Act.

Mr. Nambiar urged that any consideration of social justice would be irrelevant in deciding whether a given act amounted to a retrenchment or not as defined by Section 2(oo) of the Act. The portion of section 2(oo) which is relevant for the present purpose runs:

"Retrenchment means the termination by the employer of the service of a workman for any reason whatsoever otherwise than as punishment inflicted by way of disciplinary action........."

Apparently wide though the ambit is made by the use of the expression "any reason", that certainly does not rule out the investigation of an allegation, that the retrenchment in question was *mala fide*. What constitutes good faith or the absence thereof is, of ourse, a different problem.

In *J. K. Iron & Steel Co.* v. *Iron and Steel Mazdoor Union*, [1956] 9 F.J.R. 419, Bose J. observed at page 428:

"The only question referred was, was the retrenchment justified? and we find it impossible to see how that can be determined without considering the question of good faith which in turn would largely depend on the finances of the company, on the adverse effect that retention would have on the business and on whether retention would mean the deadweight of an uneconomic surplus and so forth."

That observation, in my opinion, does not justify the contention, that good faith attendant on a retrenchment could be established only if the employer was losing or was making no profits, or even a contention, that retrenchment would be at least *prima facie mala fide*, if it was ordered when the employer was already getting a return of more than six per cent on his paid up capital or of more than four per cent on his working capital. The deadweight of an uneconomic surplus, to which Bose J. referred can operate at any level of profits. There is nothing unlawful in an employer desiring to make even more profits by getting rid of the deadweight of an uneconomic surplusage.

The learned counsel for the respondent referred to *Thakur* v. *Ruston and Hornsby Ltd*, [1956] 1 L.L.J. 14. But the test posed there can have no application to the facts of this case.

Mr. Nambiar relied on the observations of Bhagwati, J., in *Muir Mills Co.* v. *Suti Mills Mazdoor Union*, [1955] 7 F.J.R. 483, at page 439:

"The considerations of social justice imported by the Labour Appellate Tribunal in arriving at the decision in favour of the respondent were not only irrelevant but untenable. Social justice is a very vague and indeterminate expression and not clear—no definition can be

[To be reprinted]

laid down which will cover all the situations. Mr. I. Isaacs, the learned counsel for the respondent attempted to give a definition in the following terms: 'social justice connotes the balance of adjustments of the various interests concerned in the social and economic structure of the State, in order to promote harmony upon an ethical and economic basis,' and he stated that there were three parties concerned here, *viz.*, the employers, the labour and the State itself and the conception of social justice had to be worked out in this context. Without embarking upon a discussion as to the exact connotation of the expression 'social justice' we may only observe that the concept of social justice does not emanate from the fanciful notions of any particular adjudicator but must be founded on more solid foundation."

The question at issue there was, whether the workmen were entitled to any bonus when the Company had no trading profits that year.

I am not called upon to decide whether considerations of social justice will be wholly irrelevant in the adjudication of an industrial dispute. It may be of interest to note that in section 17A(b) of the Act the appropriate Government is given the right to rest its decision, not to make an award enforceable on grounds of national economy or social justice. That, of course, does not apply to the adjudication of an industrial dispute by an Industrial Tribunal. The question before me is not whether considerations of social justice would be irrelevant even for deciding whether a retrenchment was ordered *mala fide* or in good faith. The limited question before me, which alone I need decide in this case, is whether the concept of social justice expounded by the Industrial Tribunal in its award was a relevant factor in deciding whether the petitioner acted *mala fide* in ordering the retrenchment of the twelve employees in the office at Madras. That question, as I have already pointed out, I have no hesitation in answering in the negative.

In my opinion, the Tribunal was in error when it imported an irrelevant consideration in deciding whether retrenchment was justified. It was in error again when it failed to keep the requirements of section 25G in view in deciding whether the retrenchment ordered by the petitioner company was lawful. These should suffice to set aside the award of the Tribunal, subject to what I have to record about the retention of Thirumalai.

The question that remains for consideration is whether, the decision of the Tribunal, that the retention of Thirumalai contravened the provisions of section 25G is vitiated by any error apparent on the face of the record. Whether Thirumalai was included in the category of clerks in the Madras office was a question of fact, which the Tribunal had jurisdiction to decide. I am unable to hold that there was no material on which the Tribunal could find that, though Thirumalai was designated a store assistant on the date of the retrenchment, he was really in the category of clerks. The quantum of evidence or its sufficiency on which that finding was rested may not be a matter for investigation at this stage. I see no justification for interfering with that part of the award of the Tribunal.

Subject to what I have stated above, the petition will stand allowed and the rule will be made absolute. No order as to costs.

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