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THE FACTORIES JOURNAL REPORTS

VOLUME XV

[IN THE SUPREME COURT OF INDIA]

STATE OF MYSORE

v.

WORKERS OF GOLD MINES.

P. B. Gajendragadkar, A. K. Sarkar, K. Subba Rao and Vivian Bose, JJ.

May 22, 1958.

BONUS—COMPUTATION OF AVAILABLE SURPLUS OF PROFITS—PRINCIPLES—FULL BENCH FORMULA—APPLICABILITY TO VARIOUS INDUSTRIES—GOLD MINING INDUSTRY—WHETHER ENTITLED TO SPECIAL TREATMENT—DEPRECIATION AND REHABILITATION—ALLOWANCES FOR.

BONUS—COMPUTATION OF AVAILABLE SURPLUS OF PROFITS—PRINCIPLES—BONUS OF ONE YEAR PAID IN SUBSEQUENT YEAR—WHETHER CAN BE CLAIMED AS A DEDUCTION IN YEAR OF PAYMENT.

In applying the Full Bench Formula for the determination of the surplus of profits available for distribution as bonus to the gold mining industry, Held :

(*i*) *that the Formula was elastic enough to meet the requirements of individual cases and that there was no necessity for any addition to the existing categories of prior charges;*

(*ii*) *that the special feature of the industry lay only in that the amount to be allowed as a prior charge on account of rehabilitation and depreciation had to be computed taking into account the special requirements of the industry;*

(*iii*) *that the fact that under the lease the management is entitled to set apart a certain percentage of its aggregate expenses for meeting depreciation and development expenditure did not mean that the amount so determined should be allowed as a prior charge instead of the depreciation and rehabilitation amount determined under the Full Bench Formula; and* *(iv) that bonus paid in respect of a certain year is out of the profits of that year and, unless there is satisfactory evidence, should not be brought into accounting in a subsequent year and claimed as a prior charge.*

The Court was of opinion that as a separate claim for rehabilitation was not made by the management in view of the previous awards of the Industrial Tribunal, the management should be given an opportunity to make a specific claim for rehabilitation.

Civil Appeal No. 648 of 1957.

H. N. Sanyal for the management.

Janardan Sharma, L. K. Jha, B. R. L. Iyengar and *C. V. Ramachar* for the respondents.

JUDGMENT.

The following Judgment of the Court was delivered by

GAJENDRAGADKAR, J.—This is an appeal with special leave by the State of Mysore against the award passed by the Central Government Industrial Tribunal, Madras, on 24th November, 1956, in Industrial Dispute No. 1 of 1956 between the employers in relation to the Gold Mines of the Kolar Gold Fields, Mysore, and their workmen. The employers were the Champion Reef Gold Mines of India (KGF) Ltd., Mysore State, the Mysore Gold Mining Company (KGF) Ltd., Mysore State and the Nundydroog Mines (KGF) Ltd., and their allied establishments, the Central Administration, the Kolar Gold Fields Electricity Department, the Kolar Gold Field Hospital and the Kolar Gold Field Watch and Ward establishment. The dispute between these employers and their workmen arose from the claim made by the workmen for bonus for the calendar years 1953 and 1954. The Unions representing the workmen alleged that the employers had sufficient available surplus in their hands from which they could and should be awarded bonus for the two years in question. The Union representing the workmen in Mysore Gold Mining Co. Ltd., demanded four months' wages and five months' wages as bonus for the years 1953 and 1954 respectively. The Union on behalf of the Nundydroog Mines demanded four months total wages as bonus for 1953 and 1954 whereas the workmen in Champion Reef Gold Mines demanded four months' wages as bonus for the said two years. The management opposed these demands on the ground that there was no available surplus for both the years in all the mines and so no bonus can be awarded. In substance, the Tribunal has rejected the case made out by the management and has passed an award in favour of the workmen. Taking into consideration all relevant factors the Tribunal has awarded as bonus wages at the rate of 1½ months in 1953 and three months in 1954 to the workers of Champion Reef Mines

Ltd.; 2½ months in 1953 and 3½ months in 1954 to the workers of the Nundydroog Mines Ltd.; and one month's in 1953 and three months' in 1954 to the workers of the Mysore Gold Mines Co. Ltd. In regard to the workmen employed in the allied establishments, the Tribunal has awarded as bonus one month's wages in the year 1953 and two month's basic wages in the year 1954.

It was urged before the Tribunal by the management that it would be inappropriate to apply the Full Bench Formula evolved by the Labour Appellate Tribunal in the *Mill Owners Association, Bombay* v. *The Rashtriya Mill Mazdoor Sangh, Bombay*, [1950] 2 F.J.R. 107, without suitable modifications to the case of the mines. The argument was, that, unlike the textile industry, gold mining is a wasting industry, and the adjustment of the rival claims of the employer and the employee, even on the basis of social justice, cannot be properly made by the rigid application of the said Formula. In the case of gold mines it is of considerable importance that the industry should invest a large amount in search of new ore and higher expenditure has to be incurred even for renewal and replacement of machinery. The Tribunal accepted the argument that the special requirements of the gold mining industry would have to be considered in dealing with the workmen's claim for bonus, but, nevertheless, it was inclined to take the view that the principles laid down by the Labour Appellate Tribunal in arriving at the Full Bench Formula should be adhered to.

The next argument which was raised before the Tribunal was based on sub-para (5) in the lease deed executed in favour of the management on 20th February, 1949. The case for the management was that the management was entitled to deduct 15% of the revenue expenditure as a prior charge in calculating the available surplus. It was urged that the relevant clause in the lease deed required the management to create a reserve fund to meet depreciation and development expenditure of a capital nature and to provide for the search of new ore and it was urged that the amount debited by the management in pursuance of this clause should be treated as a prior charge. The Tribunal was not impressed by this argument. It held that a separate fund for finding out new ore and keeping the longevity of the industry was absolutely necessary but it was not satisfied that the covenant in the lease on which reliance was placed by the management could bind the workmen and that the amount in question could be treated as a prior charge. The Tribunal also found that no evidence had been adduced before it that any part of the amount thus debited had been in fact used for any of the purposes mentioned in the covenant. According to the Tribunal there was also no evidence that, in addition to the statutory depreciation, any further allowance should be made for rehabilitation reserve and it held that it was not shown that any amount had in fact been spent for rehabilitation in the two relevant years. On these findings the amount of Rs. 20.26 lakhs on which the management relied was not allowed by the Tribunal because, in its opinion, the said amount was a mixture of very many items depending upon the options exercised by the management under the terms of the joint operation schemes.

Another point of dispute between the parties was in respect of the contribution made by the management to the Pension Fund Scheme. The management claimed credit both for the initial and the annual contribution made by it in the relevant years. The Tribunal held that, having regard to the circumstances under which the pension fund was introduced by the companies and having regard to the fact that it was intended only for the benefit of the covenanted staff of the companies, it would be inequitable to allow either the initial or the annual contributions to take precedence over the workmen's claim for bonus. Therefore, the claim by the management for deduction of both the initial and annual contributions was rejected. It was also urged by the management that the amount representing the bonus paid to the workmen for the year 1950 should be deducted in 1953, since it was actually debited to the workmen in that year. The Tribunal held that this claim was inadmissible. Lastly, the Tribunal disallowed the claim made by the management for interest at a higher rate than 2% on reserve employed as working capital during the relevant years. Having thus rejected most of the contentions raised by the management, the Tribunal applied the Full Bench Formula and came to the conclusion that there was enough available surplus in the hands of the management for the years 1953 and 1954 and so it made an award in favour of the workmen for payment of bonus as already indicated. It is this award which has given rise to the present appeal.

Before dealing with the merits of the appeal, it would be relevant to state the material facts in regard to the working of the Gold Mines which has ultimately brought the State of Mysore as the appellant in the present appeal before us. Four public joint stock companies incorporated in the United Kingdom were operating the gold mines of the Kolar Gold Fields by virtue of leases of mining rights obtained by them from the Government of Mysore. These companies were the Mysore Gold Mining Co. Ltd., the Champion Reef Gold Mines of India Ltd., the Oorgaum Gold Mining Co. Ltd., and the Nundydroog Mines Ltd. The terms and conditions of the leases obtained by these companies were the same. After the Second World War broke out, the value of gold increased and so the Mysore Legislature passed an Act called the Mysore Duty on

Gold Act, 1940 (Mys. XIX of 1940), imposing duty on gold produced in the mines. This duty was in addition to the royalty, rent, cesses and taxes payable under the lease deeds executed on 25th March, 1935. It appears that the gold mining companies represented that the imposition of gold duties meant hardship for them and that it did not leave sufficient funds from which provision could be made for depreciation and development so necessary for the longevity of the mines. As a result of the negotiations, the Act of 1940 was repealed in 1946 and a fresh agreement made under which contribution was levied by the State of Mysore against the companies. Under this agreement rupee companies had to be formed in India to take over the undertakings and assets in Mysore of the Sterling or U.K. companies and the seat of management had to be transferred from the United Kingdom to India. In pursuance of this agreement four rupee companies corresponding to the four Sterling or U.K. companies were formed in India. Their names were the Mysore Gold Mining Co. (KGF) Ltd., the Champion Reef Gold Mines of India (KGF) Ltd., the Oorgaum Gold Mines (KGF) Ltd., and the Nundydroog Mines (KGF) Ltd. All the shares in the rupee companies were held by the corresponding Sterling or U.K. companies. The assets in Mysore of the Sterling companies were transferred to the corresponding K.G.F. companies and the mining operations were carried on by these companies from 1st April, 1951, by conforming to the terms and conditions embodied in the agreements (copies of which are Exs. 1 and 2).

The four gold mining companies had, for the purposes of convenience and economy, common establishments called Central Administration, Medical Establishment and the Electricity Department. There was also a private limited company named Kolar Mines Power Station (K.G.F.) Private Ltd., all the shares of which were held by the said gold mining companies. This was only an ancillary company and its object was to maintain a stand-by emergency plant for generating electricity in case of emergency and to distribute electric power to the gold mining companies. The gold mining companies were managed by the same managing agents by name John Taylor & Sons (Private) Ltd.

The Oorgaum mine soon become an uneconomic unit because it had reached such depths that owing to technical difficulties ore could no longer be taken out of them. This company, therefore, ceased mining operations in 1953 and transferred its leases, with the concurrence of the Mysore Government, to the Champion Reef Gold Mines of India (K.G.F.) Ltd. Since then the Oorgaum company has gone into liquidation That is how in the year 1954 there were only three operating mining companies and their allied establishments.

In 1956 the Mysore State nationalised the gold mining industry by an Act called the Kolar Gold Mines Undertakings (Acquisition) Act, 1956 (Mys. XXII of 1956). According to the provisions of this Act and the notification issued thereunder, the undertakings of the gold mining companies vested in the State from 29th November, 1956. In consequence, the Government became liable to pay the bonus awarded by the Central Government Industrial Tribunal, Madras. That is how the the State of Mysore felt aggrieved by the said award and has preferred the present appeal by special leave to this Court.

The first point which calls for our decision is whether the Tribunal was justified in applying the principles underlying the Full Bench Formula in determining the existence or otherwise of the available surplus in the hands of the appellant during the relevant years. In *The Mill Owners Association, Bombay* v. *The Rashtriya Mill Mazdoor Sangh, Bombay*, [1950] 2 F.J.R. 107, the Labour Appellate Tribunal was called upon to consider the workmen's claim for bonus. The Appellate Tribunal held that bonus was not an *ex gratia* payment even where wages had been standardised nor was it a matter of deferred wages, The recognition of the workmen's claim for bonus rests on the view, which is now well established, that both labour and capital contribute to the earnings of the industrial concern and that social justice requires that workmen should be allowed a reasonable share in the profits made by the industry. In determining the quantum of the profit to which workmen as a whole can be held to be entitled, the Labour Appellate Tribunal evolved a formula under which the amount of the available surplus in the hands of the employer can be determined. This formula takes the figure of the gross profits made by the industry for the relevant year and makes provisions for depreciation for reserves, for rehabilitation, for return at 6% on the paid-up capital, for a return on the working capital at a lesser rate than the return on the paid-up capital and for the payment of income-tax. These items are treated as prior charges and the amount determined after deducting the aggregate total of these items from the gross profits is deemed to be the available surplus for the relevant year. It is in this available surplus thus deduced that labour is entitled to claim a reasonable share by way of bonus. It would thus be clear that under this Formula the existence of an available surplus is a condition precedent for the award of bonus to workmen. The Formula also postulates that the claim for bonus is made by workmen who are not paid what may properly be regarded as living wages. The payment of bonus is thus intended to attempt to fill up the gap, to the extent that is reasonably possible, between the wages actually paid to the workmen and the living wages

which they legitimately hope, in due course, to secure. This Formula has received the general approval of this Court in *Muir Mills Co. Ltd., Kanpur* v. *Suti Mills Mazdoor Union, Kanpur*, [1955] 7 F.J.R. 483. It is conceded before us that since 1950 the basis supplied by this formula has been adopted by industrial adjudication all over the country in dealing with the workmen's claim for bonus in different kinds of industries.

It is, however, urged by Mr. Sanyal, for the appellant, that the appellant's industry is a wasting industry and it needs special consideration. Search for new ore which is essential for the prosperity and and longevity of this industry is its special feature and the interests of the industry itself require that proper and adequate provision for prospecting new ore must be made before the workmen's claim for bonus can be awarded. Similarly, a larger provision may have to be made for depreciation or rehabilitation because of the special needs of this industry. It may be conceded that this industry has some special needs of its own; but it cannot be denied that the principles of social justice on which a claim for bonus is founded apply as much to this industry as to others. Social and economic justice have been given a place of pride in our Constitution and one of the directive principles of State policy enshrined in article 38 requires that the State shall strive to promote the welfare of the people by securing and protecting as effectively as it may a social order in which justice social, economic and political shall inform all the institutions of national life. Besides, article 43 enunciates another directive principle by providing that the State shall endeavour to secure, by suitable legislation or economic organization or in any other way, to all workers, agricultural, industrial or otherwise, work, a living wage, conditions of work ensuring a decent standard of life and full enjoyment of leisure and social and cultural opportunities. The concept of social and economic justice is a living concept of revolutionary import; it gives sustenance to the rule of law and meaning and significance to the ideal of a welfare state. It is on this concept of social justice that the Formula in question has been founded and experience in the matter of industrial adjudication shows that, on the whole, the Formula has attained a fair amount of success. It is true that in industrial adjudication purely technical and legalistic considerations which are apt to lead to rigidity or inflexibility would not always be appropriate; nor is it desirable to allow purely theoretical or academic considerations unrelated to facts to influence industrial adjudication. In its attempt to do social justice, industrial adjudication has to adjust rival claims of the employer and his workmen in a fair and just manner and this object can best be achieved by dealing with each problem as it arises on its own facts and circumstances. Experience has shown that the Formula in question is, in its application, elastic enough to meet the requirements of individual cases, and so we do not think that the appellant has made out a case for any addition to the existing categories of prior charges. It is clear that the amounts which can be admitted under the said existing categories would have to be determined in the light of the evidence adduced by the employer and having regard to the special requirements of the employer's industry. In the present case the special features of the appellant's industry, on which Mr. Sanyal relies, would have to be taken into account in determining the amounts which could be included either under depreciation or under rehabilitation. That is the approach adopted by the Tribunal in the present case and we do not think that any complaint can be validly made against it.

The next point which has been urged by Mr. Sanyal relates to the claim made by the appellant for the deduction of 15% of the revenue expenditure under a special covenant of the lease. Let us first refer to the relevant terms of the lease on which this argument is founded. The original lease which was executed in 1935 had, under para 3, imposed upon the lessees an obligation that they shall, during the term of the lease, in the best and the most effectual manner and without intermission, except when prevented by unavoidable accident, search for all gold metals, metallic ores, precious stones, coal and other substances of a saleable or mercantilable nature within or upon the mining block. The Second Schedule to the lease purported to define the expression "adjusted annual profits of the lessee" on which the lessor's claim for royalty was based. The adjusted annual profits of the lessee had to be ascertained under this Schedule by reference to the published annual accounts of the lessees and meant the difference in any year between the gross income of the lessees from all sources and the gross amount of the sums mentioned in paras 1 to 6 of the Schedule. Para 5 to the Schedule referred to a sum equal to 15% of the aggregate amount of the expenses mentioned in para 4 of this part of the Schedule. Thus it appears that amongst the items which the lessee was entitled to deduct from the gross revenue for the purpose of determining his adjusted annual profits was included the amount mentioned in para 5. Subsequently, by an agreement and deed of variation executed in 1949, the deductions which the lessee was entitled to make from the gross profits for the purpose of determining his adjusted surplus were stated in a modified form. The adjusted profit was now called the net surplus and the procedure to be adopted to determine this net surplus has been mentioned in para 5 of this document. Clause (v) of para 5 is the material clause with which we are concerned. Under this clause a sum up to 15% of the aggregate

amount of the expenses of the lessees shown as debit items in their published revenue account or income and expenditure account shall be reserved for depreciation and development expenditure of a capital nature such as search for new ore, purchase of machinery, etc., and for renewals and replacements and shall be credited to a separate fund, provided however that the accumulated balance in the said fund less commitments does not exceed 25% of the expenses of the lessee shown as debit items in their published revenue account or income and expenditure account as the case may be for the first year on which the 15% was calculated or of the last preceding year whichever shall be greater. It is on this clause that the appellant claims to treat the amount of 15% as a prior charge in the present proceedings. The argument is that this is a valid contract between the lessor and the lessee and the lessee is entitled to claim the benefit of the contract and to treat the amount as a prior charge.

In dealing with this point we do not think it is necessary to decide the larger academic question as to whether such a contract would bind the workmen. The Tribunal has held that since the relevant covenant has the effect of withdrawing from the gross profits a substantial amount, workmen are entitled to contend that the contract does not bind them and the amount should not be treated as a prior charge. In our opinion it would be possible to deal with this question in a different way. The appellant's argument assumes that the lessee is under an obligation to create a reserve fund and to contribute to it an amount equal to 15% as mentioned in the clause. This assumption is not justified by the clause itself. It is significant that the clause does not impose on the appellant an obligation to create a reserve fund at all. The only obligation which the lease has imposed on the appellant is that the appellant shall make a search for all gold and metallic ores during the continuance of the lease. If, for carrying out this search the appellant actually spends any amount he may be entitled to claim credit for that amount; but neither the lease nor its annexures impose any obligation on the appellant to spend a particular amount in that behalf or to create a special fund earmarked for that purpose. The lessor has merely allowed the appellant to create a specific fund as indicated in the relevant clause and the lessor has agreed to allow the appellant to deduct the amount thus put in the said reserve fund from year to year from the gross receipts for the purpose of determining the appellant's net surplus. In other words, for deciding the amount of net surplus on which the lessor's claims such as that for royalties or contributions may be based, the appellant is allowed to make certain specified deductions; amongst these is the 15% mentioned in para 5, clause (v). Besides, the 15% of the aggregate amount mentioned in the clause is the maximum limit which the contribution to the special fund in any year is allowed to reach under this clause. *Prima facie* it appears to be doubtful if the appellant's failure to create a reserve fund or to make a contribution to the said fund from year to year would necessarily incur forfeiture of his lease. However, apart from this consideration, there is no obligation imposed on the appellant under this clause and any argument based on the alleged obligation cannot, therefore, be accepted.

There is also another consideration which must be borne in mind. The fund contemplated by the relevant clause is intended to meet depreciation and development expenditure and it is clear that the depreciation and rehabilitation are included in the Full Bench Formula amongst the items of prior charge in dealing with workmen's claim for bonus. If the appellant wants to make a claim for depreciation and rehabilitation it would be open to him to make such a claim even under the Full Bench Formula. Indeed, its claim for depreciation has been upheld by the present award. The fact that items of depreciation and rehabilitation are included in this clause shows that even if the amounts claimed by the appellant solely on the strength of this clause are not allowed, it would nevertheless be open to the appellant to make a claim in respect of admissible items independently of the clause and if he succeeds in proving this claim there could be no injustice to the appellant. In our opinion it would not be reasonable or fair to allow the appellant's specific claim for 15% by way of rehabilitation solely on the ground that the clause allows it to debit up to 15% in a special fund without examining the question as to whether a claim for depreciation and rehabilitation is justified, and if yes, what should be the amount which should be treated as a prior charge in the present proceeding. Inclusion of these items in a separate fund allowed under the relevant clause cannot preclude an investigation by the Industrial Tribunal into the merits of the said items and that is what the appellant seeks to do by placing his claim in that behalf solely on the relevant clause. We are, therefore, satisfied that the Tribunal was not in error in disallowing the claim made by the appellant solely on the strength of this particular clause.

As we have already pointed out the Tribunal has in fact conceded that the appellant would be justified in making a claim for prospecting new ore and thereby helping the longevity of its industry; but since no material was placed before the Tribunal on which the Tribunal could determine the amount which the appellant can legitimately claim in that behalf, the Tribunal was unable to give the appellant any relief in this matter. In this connection Mr. Sanyal referred us to the entries in the extracts from the balance-sheets which referred to the capital expenditure during the relevant years on buildings, machinery and plant and sundries as well as on shaft sinking, etc. In regard to the Mysore Gold Mining Co., for instance, the capital expenditure in question during the year ending 31st December, 1953, was shown as Rs. 3,30,729 (Ex. VIII-A). But the difficulty in accepting this figure as a prior charge either under depreciation or under rehabilitation arises from the fact that Mr. Rajagopal Srinivasan who was examined on behalf of the appellant was unable to explain how this total amount was made up. The witness expressly admitted that the companies had no record to show separately the amounts under different heads. Mr. Sanyal fairly conceded that the companies might have led better evidence in support of their case. As the evidence stands, however, it is difficult to challenge the correctness of the view taken by the Tribunal that the amounts shown in the diffierent extracts from the balance-sheets are a mixture of very many items depending upon the options exercised by the management and that it would be impossible to say which part of the said amounts can be legitimately treated as prior charge under the heading of rehabilitation. That is why we do not think that Mr. Sanyal can succeed in his argument that, on the evidence as it stands, the appellant is entitled to any particular amount under the heading of rehabilitation.

That takes us to the appellant's case in regard to the annual contribution towards the pension fund which has been disallowed by the tribunal. It appears that the scheme of pension fund which was intended for the benefit of the covenanted servants of the sterling companies came into operation as from 1st January, 1951, soon after the rupee companies came into existence. Certain rules appear to have been framed in respect of this pension fund and a trust has apparently been created for the administration of the fund. Under these rules the companies made the contribution which is called the initial contribution to the fund as specified in para 1 (c) of the rules. In addition to this initial contribution, the companies had to pay to the fund by half-yearly instalments on June 30 and December 31 of each year an ordinary annual contribution at the rate specified in para 6. The appellant makes a claim for the deduction of this annual contribution as a prior charge and his grievance is that this claim has been unreasonably disallowed by the Tribunal. In regard to this fund the Tribunal has made certain findings of fact which cannot be challenged before us. The Tribunal has relied on the circumstances under which this fund came into existence. Mr. Jha, for the respondents, has characterised this fund as a parting gift of the sterling companies to their covenanted servants and it would appear as if the Tribunal was inclined to take a similar view about the genesis of this fund. The class of persons for whose benefit this fund has been created consists of a very small number of officers. It does not appear from the record that these persons claimed this benefit or that granting this benefit was otherwise necessary for the successful operation of the affairs of the companies. The officers who got the benefit of this fund were entitled to gratuity and during all the years of their existence the sterling companies had never thought before of creating such a fund. A claim for the initial contribution to this fund has not been made before us; but even in regard to the annual contribution the Tribunal was not satisfied that the amount was reasonable and that the payment of this amount was otherwise justified on the merits. As against these facts the Tribunal referred to the cases of a larger number of non-covenanted servants of the companies and other employees for whom no such fund exists. Having regard to all these circumstances the Tribunal held that it would not be fair or just to allow the appellant to claim that the annual contribution to the pension fund in question should be treated as a prior charge, and thereby reduce the gross profits which would adversely affect the respondents' claim for bonus. In our opinion, whether or not this particular amount should be allowad as claimed by the appellant does not raise any general question of law and the reasonableness of the claim has, therefore, to be judged in the light of all relevant facts and circumstances. As the Tribunal has found against the appellant on this point we do not think we would be justified in interfering with the decision of the Tribunal.

The next contention raised by Mr. Sanyal is in respect of the finding made by the Tribunal in regard to the amount of bonus paid by the companies to their workmen for the year 1950. The employer's case was that though this bonus had accrued for the year 1950, it was actually paid in 1953 and so the amount of the bonus should be deducted from the gross profits for 1953. This contention has been rejected by the Tribunal. The Tribunal has observed that though the disbursement of bonus for the year was actually made in the early part of 1953 the amount was provided and debited in 1952. This can be seen from the income-tax assessment order to which the Tribunal has referred. The employer had claimed as an expenditure the amount in respect of bonus relating to 1950 in the said income-tax proceeding and so it was held that the said amount cannot now be taken into consideration for the year 1953. We do not see any error of law committed by the Tribunal in recording this finding. It is clear that the respondents were found entitled to bonus for the year 1950, because the companies held in their hands sufficient available surplus from the trading profits of that year. In the absence of satisfactory evidence, normally, the bonus paid to the respondents for the year 1950 cannot be brought into accounting for a subsequent year. We are, therefore, satisfied that the appellant cannot successfully challenge the Tribunal's finding on this question.

It will now be material to refer to the two previous awards between the companies and their workmen because Mr. Sanyal has based an argument on these awards and that argument yet remains to be examined. On 5th January, 1953, Mr. V. N. Dikshitulu, the sole member of the Industrial Tribunal made his award in an industrial dispute between the Champion Reef Gold Mines of India Ltd., and its workmen. By this award the Tribunal held that the claim made by the employer on the strength of the clause permitting the creation of a reserve fund and an annual contribution to it up to 15% "cannot but be allowed because mining operations can be performed only subject to the condition of making the said item of reserve as per the agreement and hence it stands to reason that the reserve should be deducted from the gross profits to ascertain the available surplus". It is clear from the award that the Tribunal did not consider the effect of the terms contained in the clause after construing the relevant clauses and we see no discussion about the merits of the rival contentions in respect of this claim. Apparently, the Tribunal accepted the employer's case at its face value and granted the relief to the employer without considering all the relevant clauses of the lease and its annexures and without examining the merits of the workmen's case on the point. The next award was passed by Mr. Dave on 31st December, 1954, in References Nos. 6 and 7 of 1954. These two references arose from disputes between the Oorgaum Gold Mines and the Champion Reef Gold Mines and their workmen. By this award Mr. Dave rejected the employer's claim for deducting 15% from the gross profits under the relevant clause because he was not satisfied that the maximum limit of 25% mentioned in the clause had not been exceeded during the year 1952. The employer did not produce relevant books of account and Mr. Dave took the view that the non-production of the books showed that the employer was afraid that the books would indicate that the maximum limit had already been exceeded. On that view Mr. Dave reached the conclusion that the employer was not entitled to make any contribution to the fund during the relevant year. In regard to the pension fund Mr. Dave disallowed the claim for initial contribution but allowed the claim for annual contribution. He was inclined to hold that the annual contribution was made for services rendered during that year and should certainly form part of the expenses of that year. This award was taken before the Labour Appellate Tribunal. The Labour Appellate Tribunal confirmed Mr. Dave's decision both in regard to the initial and the annual contribution towards the pension fund. The Appellate

Tribunal, however, differed from Mr. Dave in regard to the employer's claim for the deduction of 15% under the relevant clause. It accepted the finding of the Tribunal that the employer had failed to prove that in a particular year the maximum of 15% was in fact required to be contributed to the reserve fund. However, it held that the amount of Rs. 4·77 lakhs represented the actual expenditure incurred by the employer during the year and so this amount was allowed to be treated as a prior charge. It would no doubt appear as if the Appellate Tribunal took the relevant figure from the balance-sheet as showing the actual expenditure. It is unnecessary for us to consider whether this finding was justified or not. What is, however, relevant for the present purpose is the finding of the Tribunal that the company was not entitled to claim the full provision of the rate of 15% of the total revenue expenditure allowed under the clause in question.

Mr. Sanyal has referred to these two awards in support of his contention that the companies did not think it necessary to make a specific claim for rehabilitation, because, it was thought that following the previous awards the claim made for 15% would be allowed. His argument is that if the claim based on the convenant is disallowed it would be unfair to his client not to allow any claim for rehabilitation at all. It is clear that the claim for rehabilitation which could have been separately made by the company was not so made because it was included in the claim for the deduction of 15%. There is also some force in Mr. Sanyal's argument that, having regard to the previous awards, the companies may have thought that the said claim would be allowed. Since we have held against the appellant in respect of the major claim made on the said relevant clause of 15% it is necessary to consider whether the appellant should be allowed an opportunity to make out a specific claim for rehabilitation and lead evidence in support of the said claim.

Mr. Jha, for the respondents, has resisted the appellant's request for a remand to enable it to put forward this claim for rehabilitation. He argues that the companies deliberately did not make a specific claim for rehabilitation and chose to rest their case on the relevant terms of the contract because they knew that a claim for rehabilitation would not be sustained. In this connection Mr. Jha referred us to the principles adopted by Industrial Courts in determining the employer's claims for rehabilitation. We are not impressed by this argument. It seems to us that, if the employer was partly misled by the previous awards and did not in consequence put forward a specific claim for rehabilitation, it would not be fair or just that he should be precluded from making such a claim even after his general claim for the deduction of 15% is

disallowed. After all, the Full Bench Formula has recognised the existence of four items as constituting a prior charge on principles of social justice and if, in the present case, the employer failed to make out a claim for deduction of one of the items substantially as a result of the previous awards passed in its favour, he cannot be penalised as suggested by Mr. Jha. We would, accordingly, allow the appellant to put forward before the Tribunal a specific claim under the heading of rehabilitation and lead evidence in support of the said claim.

While we are sending this case back for the purpose of determining the appellant's claim for rehabilitation and for deciding two other points which we would presently indicate, it would be useful, if we briefly refer to the principles which are usually adopted by Industrial Courts in adjudicating upon the employer's claim for rehabilitation. It is not disputed before us that these principles would have to be borne in mind by the Tribunal in determining the validity of the appellant's claim for rehabilitation which we are now permitting it to make. It has been observed by the Labour Appellate Tribunal in *Ganesh Flour Mills Co. Ltd., Kanpur* v. *Ganesh Flour Mills Staff Union,* (1952) L.A.C. 172, that though the employer is entitled to claim deductions from the gross profits in respect of rehabilitation as a matter of right it is difficult to lay down any general rule applicable to each and every industry. The Full Bench Formula evolved in the case of the *Mill Owners Association, Bombay,* [1950] 2 F.J.R. 107, was not intended to lay down any hard and fast rule in that behalf. For the purpose of sustaining the claim for rehabilitation there must be evidence to show the age of the machinery, the period during which it requires the replacement, the cost of replacement, the amount standing in the depreciation and reserve fund and to what extent the funds at the disposal of the company would meet the cost of replacement. In *Trichinopoly Mills Ltd., Ramjeenagar* v. *National Cotton Mills Workers' Union, Ramjeenagar*, (1953) L.A.C. 672, the Appellate Tribunal has observed that for determining the total amount required for rehabilitation it is the original cost that has to be multiplied by an appropriate multiple, for instance 2·7, for the purpose of ascertaining the replacement value of the machinery, buildings and plant. From the amount thus obtained 5% of the original value is to be deducted as breakdown value. The balance is treated as sufficient to complete replacement of machinery and buildings. Then the amounts in hand under the head of depreciation, general reserve and rehabilitation have to be totalled and this total has to be deducted from the aforesaid balance which is required to complete replacement of machinery and buildings. It is the balance thus drawn that has to be spread over a number of years, as for instance

15, for the purpose of rehabilitation ; in other words, the balance has to be divided by 15 and the amount thus determined has to be treated as prior charge under the heading of rehabilitation for the relevant year. (Vide *The Meenakshi Mills Ltd., Madurai and Manapparai* v. *Their Workmen*, (1954) L.A.C. 131; *The Rohtas Sugar Ltd.* v. *Their Workmen*, [1954] 7 F.J.R. 307, and *The Mettur Industries Ltd., Mettur Dam* v. *The Workers*, (1957) L.A.C. 288). Thus the appellant's claim for rehabilitation would have to be tried by the Tribunal in the light of these decisions. In the application of the principles discussed in these decisions, industrial adjudication cannot adopt an inflexible or rigid approach ; these principles will have to be applied with such modifications and adjustments as may be found necessary, just and expedient having regard to the evidence led by the parties before the Tribunal and having regard to the special needs and requirements of the industry. This position appears to be fully recognised by the Labour Appellate Tribunal in these decisions themselves.

There is another point on which Mr. Sanyal has requested us to call for a finding from the Tribunal. His case is that the award of the Tribunal in one material particular suffers from an error apparent on the face of the record. In the award, the initial contribution to the pension fund and the annual contribution to the pension fund have been added back for both the years in respect of all the companies. Mr. Sanyal contends that the amount added back under the heading "annual contribution to the pension fund" really includes the initial contribution to the said fund also, and so it was erroneous to have added back a separate amount under the heading "the initial contribution to the pension fund". In other words, the grievance is that the amount of the initial contribution has been added back twice. Mr. Jha, for the respondents, does not accept Mr. Sanyal's contention that this is an error apparent on the face of the record. He disputes the assumption made by Mr. Sanyal that the annual contribution to the pension fund in each case includes the initial contribution as well. We do not propose to express any opinion on the merits of this dispute. We think it is desirable that the Tribunal should be requested to make its finding on the question as to whether the amount of initial contribution has been added back twice over as suggested by the appellant. This is the second point which we want to remit for the consideration of the Tribunal.

The third point which we propose to remit for the consideration of the Tribunal has been raised by Mr. Jha for the respondents. He argues that the Tribunal has committed an obvious error in allowing a deduction of statutory depreciation to each one of the companies for both the years in question and in support of his argument he relies on

the statements contained in the report of the directors in each case. As an illustration we should refer to the report and accounts of the Nundydroog Mines (KGF) Ltd., for the year ended 31st December, 1953. In this report, under the item "capital expenditure", it is stated that the sum of Rs. 13,50,000 being depreciation for the period 1st April, 1951 to 31st December, 1953 has now been written off. Mr. Jha contends that, since this amount has been written off as depreciation, in calculating the available surplus for the year no amount should be allowed by way of statutory depreciation. This argument has been considered by the Tribunal in para 20 of its award but Mr. Jha wants to challenge the correctness of the conclusion reached by the Tribunal. We would normally not have allowed Mr. Jha's request for a reconsideration of this matter ; but since on two points raised by the appellant we are remanding the case to the Tribunal and calling for its finding on the said points we think it right to allow the respondents an opportunity to re-agitate this point. In fairness to Mr. Sanyal we may add that he did not object to this matter being remitted to the Tribunal for reconsideration. We would, however, like to make it clear that in dealing with this point it would not be open to the respondents to contend that the appellant was not entitled to claim additional depreciation under the head of statutory depreciation. This Court has held in *Sree Meenakshi Mills Ltd.* v. *Their Workmen*, [1957] 13 F.J.R. 399, that additional depreciation which is admissible under section 10(vi) of the Income-tax Act need not necessarily be allowed by industrial courts in determining the available surplus under the Full Bench Formula. We wish to make it clear that it would not be open to the respondents to raise any contention on the strength of this decision under the issue which is being remitted to the Tribunal at their request.

It is somewhat unfortunate that, though we have held against the appellant on the main points urged by Mr. Sanyal before us, we cannot finally dispose of the appeal today. It is true that it is of the utmost importance that industrial adjudication should be dealt with speedily and without unnecessary delay ; but in the present case we have come to the conclusion that it would be fair and just to allow the appellant to raise the two points mentioned in the judgment. That is why we think it necessary that this case should be sent back to the Tribunal with the direction that the Tribunal should make its finding on the issues remitted to it by this judgment. The three issues on which we want a finding from the Tribunal are:

(1) In addition to the statutory depreciation allowed, is the appellant entitled to claim any deduction under the head of rehabilitation, and if yes, to what amount?

(2) Does the award in substance add back the initial contribution to the pension fund twice over in making calculations for ascertaining the available surplus?

(3) In allowing statutory depreciation of the appellant for the relevant years, has the award virtually allowed the said depreciation twice over having regard to the fact that a large amount has been written off by the appellant towards depreciation for the said period?

Parties will be at liberty to lead additional relevant evidence. The Tribunal should consider the evidence led by the parties, hear their learned advocates and make its finding on these issues. We would also direct the Tribunal to consider whether, as a result of its findings on any of the said issues, any adjustment will have to be made in its final award. If, as a result of its findings the amount of available surplus is likely to be materially affected then the Tribunal should indicate what the available surplus in that case would be in respect of each of the companies in regard to each of the two years in question. The Tribunal should also make a finding as to the amount of bonus to which the respondents would, in its opinion, be entitled on this altered finding as to available surplus.

We desire that this appeal should be finally disposed of as soon as possible; so we direct that the Tribunal should submit its findings along with the evidence to be recorded hereafter to this Court within three months from today. Both parties have stated to us that this matter has to be and would be dealt with by the Central Government Industrial Tribunal functioning at Bangalore. The proceedings will accordingly be remitted to the said Tribunal. The appellant will pay the cost of remand in any event. Costs of the present hearing of the appeal will be costs in the appeal.

We would like to add that Mr. Sanyal has agreed without prejudice that the appellant will pay to the respondents fifteen days basic wage towards their claim for bonus during the relevant years.

[IN THE INDUSTRIAL TRIBUNAL, BOMBAY.]

PEREIRA, FAZALBHOY & CO., BOMBAY

v.

THEIR EMPLOYEES.

Shri M. R. Meher.

June 30, 1958.

INDUSTRIAL DISPUTES ACT, 1947, SECTION 2(j)—'INDUSTRY'—MEANING OF—WHETHER INCLUDES LEARNED PROFESSION—PRACTISING SOLICITOR—WHETHER CARRIES ON 'INDUSTRY'.

The word 'industry' as defined in section 2(j) of the Industrial Disputes Act, 1947, does not include the learned professions of medicine and law. Therefore, a person practising as a barrister or a solicitor or a doctor cannot be said to be carrying on an 'industry' so as to bring any disputes between such person and his employees within the definition of 'industrial dispute'.

Decision of the Bombay High Court in HOSPITAL MAZDOOR SABHA *v.* STATE OF BOMBAY [1957] 13 F.J.R. 473, *distinguished.*

Reference (IT) No. 81 of 1958.

P. P. Khambatta for the employers.

D. H. Buch for the employees.

AWARD.

This is a reference by the Government of Bomby under section 12(5) of the Industrial Disputes Act, 1947, for adjudication of a dispute between (i) Messrs. Pereira Fazalbhoy and Company, Bombay, (ii) Shri W. E. Pereira, (iii) Shri M. S. Desai and (iv) Shri M. H. A. Fazalbhoy (hereinafter referred to as the opponents), and the workmen employed under them over the following demand:

"An adequate and substantial bonus for the two years ending the 31st March, 1956 and the 31st March, 1957, equivalent to 33 1/3 per cent. of annual earnings of the employment for each year, shall be paid to all employees who have worked at any time during the above two years without any conditions attached."

Messrs. Pereira, Fazalbhoy and Company were a firm of solicitors which has been dissolved with effect from 15th November, 1957. Shri W. E. Pereira, Shri M. S. Desai and Shri M. H. A. Fazalbhoy were the partners in the firm. When the opponents were asked to file a written statement in answer to the statement of claim filed on behalf of the workmen by the National Union of Commercial Employees, Bombay, they raised a preliminary objection that the profession carried on by them, viz., that of solicitors, is not an industry within the meaning of section 2(j) of the Industrial Disputes Act, 1947, and so the present dispute is not an industrial dispute, that the reference made by the Government is therefore bad in law and does not confer any jurisdiction on this Tribunal to adjudicate on the issue referred to it. As this preliminary objection went to the root of the case it was heard as a preliminary issue.

The sub-section that has to be interpreted and applied in this case is section 2(j) of the Industrial Disputes Act, which defines 'industry' as follows:

"'industry' means any business, trade, undertaking, manufacture or calling of employers and includes any calling, service, employment, handicraft, or industrial occupation or avocation of workmen."

The word 'employer' is not defined except in relation to an industry carried on by or under the authority of a department of Government or a local authority. Shri Buch who appeared for the Union has argued that the word 'calling' is sufficiently wide to include the profession of solicitors. He has relied on a case decided by the Bombay High Court in the *Hospital Mazdoor Sabha* v. *State of Bombay*, [1957] 13 F.J.R. 473, in which the learned Chief Justice observed:

"Now when we look at the definition of 'industry' it is not confined to an activity of a commercial character. Nor does it import unnecessarily a profit motive or the employment of capital. Industry is not only any business or trade or manufacture, but it is also an undertaking or calling of employers, and no expression could have been used with a wider import and connotation than the expression 'undertaking'. Undertaking is nothing more than any work or project which a person might engage in. Work or project may have no commercial implications. It might not be engaged in with the object of making profit. It might be engaged in from the motives of philanthrophy, and even so it would be an undertaking in the wider sense in which that expression is used in the definition of 'industry'."

The question in that case was whether the activity of Government in connection with a hospital constitutes an undertaking within the meaning of the expression used in the Industrial Disputes Act. In my opinion these observations cannot be pressed into service for holding that the profession of a solicitor comes within the meaning of 'industry' in section 2(j) of the Act. In the case of *D. N. Banerji* v. *P. R. Mukherji and another*, [1952] 4 F.J.R. 443, Chandrasekhara Aiyar, J. observed:

"It is clear that every aspect of activity in which the relationship of employer and employee exists or arises does not thereby become an industry as commonly understood. We hardly think in terms of an industry where we have regard, for instance, to the rights and duties of master and servant, or of a Government and its Secretariat or the members of a medical profession working in a hospital. It would be regarded as absurd to think so."

That was a case of a municipality. The learned Judge pointed out that municipalities carry out many functions which partake of the nature of industry. It may and often does supply power and light to inhabitants of a municipality and if such public utility services, when carried on by private companies or corporation, be industries, there is no reason why, if a statutory corporation took it up, it would cease to be an industry. The learned Judge went on to observe that the definition in the Act included disputes that might arise between municipalities and their employees in branches of work that can be said to be analogous to the

carrying out of a trade or business, and left open the question whether disputes arising in relation to the purely administrative work fell within the ambit or not.

Now, let us consider whether, in the context, the word 'calling' is wide enough to include the solicitor's profession. The word 'calling' is defined in the *Concise Oxford Dictionary* to mean "Occupation, profession, trade; persons following a particular business". Now the question is which of these meanings is to be given. The word 'calling' is used in association with the words, "business, trade, undertaking, manufacture". It is a rule laid down by Lord Bacon "*copulatio verborum indicat acceptationem in eodum sensu*" (*Bacon's Works*, Vol. 4, p. 26; cited in *Jonmenjoy* v. *Watson*, 9 App. Cas. 561 at p. 569). The maxim when translated means "the coupling of words together shows that they are to be understood in the same sense". The rule is embodied also in the more familiar maxim "*noscitur a sociis*". As has been put in *Maxwell's Interpretation of Statutes* (10th Edition) at p. 332: "When two or more words which are susceptible of analogous meaning are coupled together *noscuntur a sociis*. They are understood to be used in their cognate sense. They take, as it were, their colour from each other, that is, the more general is restricted to a sense analogous to the less general." Though the Legislature, has in the definition of 'industry', used the words business, trade, undertaking, manufacture or calling, it has not included the word 'profession'. The word 'calling' takes colour from the other words mentioned in section 2(j) of the Act and cannot, in my opinion, include in this context the learned professions of law and medicine. When the Legislature wants to include profession also in such context, the word 'profession' is specifically mentioned and two such instances with which we are familiar can at once be recalled. In the Bombay Shops and Establishments Act, 1948, in the definition of commercial establishment the words used are "'commercial establishment' means an establishment which carries on any business, trade or profession....................". The other instance is of article 276 of the Constitution which restricts the powers of the Legislature of a State to impose taxes in respect of "professions, trades, callings or employments". If the word 'callings always includes 'professions' the word 'professions' would be a surplusage.

Some reliance was placed on the words in the definition of industry, "and includes any calling, service, employment, handicraft or industrial occupation or avocation of workmen". I do not think these words would extend the definition of industry to typists, clerks, etc., engaged by a solicitor. "Workman" is defined in section 2(s) to mean "any person employed in any industry......." If there is an industry all avocations of workmen employed in it would come within the definition.

For the foregoing reasons I am of the opinion that the word 'industry' does not include the learned professions of medicine and law, so if a person practices as a barrister or a solicitor or as a doctor he is not carrying on an industry. As has been observed by their Lordships of the Supreme Court in the case of the *Barsi Light Railway Company Ltd.* v. *Joglekar and Others*, [1957] 11 F.J.R. 317:

"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."

In the present case there are no such compelling words to show that the Legislature intended to include in the word 'industry' the learned professions. It would, of course, be a different matter if a feature of industry is added, *i.e.*, if a lawyer carries on business of publication of Law Reports or a doctor runs a hospital or nursing home.

At the first hearing of this case it was mentioned by Shri Khambatta on behalf of the opponents that the point at issue in this case has been decided by the Calcutta High Court but that copies of the judgment were not available. The parties then agreed that the matter might be fixed for further hearing after the copy of the decision was received. The opponents filed a copy of the judgment in *Brij Mohan Bagaria* v. *N. C. Chatterjee and Others*, [1958] 14 F.J.R. 475. The question in that case was whether the occupation of a solicitor was an 'industry' as defined in the Industrial Disputes Act and Sinha, J., decided that there was neither an industry, nor an industrial dispute, nor can the employees of the solicitor concerned be workmen as defined under the Act. At the further hearing of the case the opponents produced another (unreported) decision of the Calcutta High Court, that of Mukharji, J., in *D. P. Dunderdale and others* v. *G. P. Mukherjee and another*. ([1958] 14 F.J.R. 486). That was a case in which the question was whether the firm of Calcutta Solicitors called "Sandersons and Morgans" was an industry so as to be liable to have their disputes determined by the procedure laid down by the Industrial Disputes Act, and Mukharji, J., held that there was no industry and no industrial dispute within the meaning of the Act. In this case the learned Judge referred to the decision of Sinha, J., but gave his own reasons for holding that a solicitor's firm was not an industry. Shri Buch has argued that the decision of Sinha J. should not be relied on as the learned Judge has disagreed with certain observations

of the learned Chief Justice of the Bombay High Court in the *Hospital Mazdoor Sabha case* referred to above. Now, it is true that this Court is bound by a decision of the Bombay High Court, but, as I have pointed out above, the *Hospital Mazdoor Sabha case* cannot be considered as an authority for the proposition that a solicitor's profession or a solicitor's firm is an 'industry' within the meaning of the Act. Moreover, the line of reasoning by which I have arrived at the conclusion that the solicitor's profession or a solicitor's firm is not an 'industry' is different in the main, from the reasoning in the two Calcutta cases.

After the opponents had produced a copy of the judgment of Sinha, J., referred to above, an attempt was made to show that the firm of Messrs. Pereira, Fazalbhoy and Co. carried on some business other than that of solicitors and that even if the view is taken that the solicitor's firm is not engaged in an industry, in the particular circumstances of the case, it should be held that as the firm was doing other business it was engaged in an industry. An affidavit has been filed by one of the ex-employees of the firm, *viz.*, Shri K. R. Pillai. To this affidavit a reply has been given by Shri Pereira, one of the partners. Shri Pillai filed a rejoinder to this reply and to this rejoinder Shri Pereira has filed a sub-rejoinder. The affidavit filed by Shri Pillai is a very lengthy one in which quotations have been given from *Cordery's Law of Solicitors* to support the argument that the profession of a solicitor is a "business". I have already dealt at some length with the question whether the profession of a solicitor is an 'industry' or not and it is not necessary to refer to the quotations from Cordery. That book is not available in this Court nor was it produced. It is sufficient to say that the fact that the solicitors in the course of their work may have to administer estates for their clients does not mean that their work is not that of a solicitor. Some specific facts connected with the firm are stated in the affidavit of Sri Pillai. Four instances of purchases and sales of property from 1933 to 1957 are given. Shri Pereira has in his affidavit in reply to the affidavit stated that the old partnership of Messrs. Pereira, Amin and Fazalbhoy was dissolved on 30th November, 1935. After that he and Shri Fazalbhoy carried on practice as solicitors under the firm name of Messrs. Pereira, Fazalbhoy and Co. until this partnership was dissolved on 31st March, 1946. Form 1st April, 1946, Shri Pereira, Shri Fazalbhoy and Shri Desai (opponents in this reference) carried on partnership as solicitors under the firm name and style of Messrs. Pereira, Fazalbhoy and Co. until 15th November, 1957, when the said firm was dissolved. So, of the four transactions relied on by Shri Pillai, only one, *viz.*, purchase of property at Khar belonging to one Abdul Majid, was made since the present firm came into existence. On this point Shri Pereira has in his affidavit stated that this property was purchased by the firm at an auction sale held by the Sheriff of Bombay in execution of an order for costs obtained by the firm against one Abdul Majid Haji Nizamuddin. This solitary transaction, particularly having regard to the circumstances in which it took place, does not prove that the firm of Pereira, Fazalbhoy and Co. was engaged in the business of buying and selling property. It is stated also in the affidavit of Shri Pillai that the partnership carried on business in forward transactions in shares and in silver. This has been denied by Shri Pereira, who has stated that there is no entry of any such transactions in the books of accounts of the firm. I believe the statement of Shri Pereira on this point. Reading the affidavits of both the parties I have no doubt that the firm of Pereira, Fazalbhoy and Co. were working as solicitors and not engaged in the business of purchase and sale of estates or forward transactions in silver. The partners of the firm have all along been members of the Incorporated Law Society, the membership of which is restricted to persons practising as attorneys of the Bombay High Court. Shri Pereira has, in his affidavit, further stated: "The said partners have always accepted and acted according to the professional rules of conduct of the said Society and of the Bombay High Court in relation to their practice and profession." The allegation that Messrs. Pereira, Fazalbhoy and Co. were carrying on the business referred to above was not made in the statement of claim and is an afterthought; it was only after the argument on the preliminary issue that an affidavit was filed by Shri Pillai to show that the firm was engaged in business other than the practice of solicitors.

For the foregoing reasons I have come to the conclusion that neither the profession of a solicitor nor a firm of solicitors is an industry within the meaning of the Industrial Disputes Act, that the opponents were not employers in any 'industry' within the meaning of section 2(j) of the Industrial Disputes Act; the reference made to this Tribunal is not an 'industrial dispute' within the meaning of the Act, and so could not be referred to this Tribunal for adjudication under section 12(5) of the Industrial Disputes Act. The reference, therefore, cannot be adjudicated upon and stands disposed of accordingly.

[IN THE MADRAS HIGH COURT.]

WORKMEN OF MESSRS. LIPTON LTD., MADRAS

v.

MESSRS. LIPTON LTD., MADRAS.

Rajagopalan, J.

April 29, 1958.

CONSTITUTION OF INDIA, ARTICLE 227—JURISDICTION OF HIGH COURT—WHETHER APPELLATE OR REVISIONAL—WHETHER DECISION OF LOWER TRIBUNAL ON FACTS CAN BE INTERFERED WITH.

AWARD—AWARD OF INDUSTRIAL TRIBUNAL IN ONE STATE—DISPUTE BETWEEN WORKMEN AND MANAGEMENT OF SAME CONCERN IN ANOTHER STATE—PROBATIVE VALUE OF AWARD—WHETHER BINDING ON TRIBUNAL OF OTHER STATE.

The scope for interference by the High Court with findings of fact recorded by an Industrial Tribunal in proceedings under article 227 of the Constitution of India is very little different from that in deciding whether a writ of certiorari *should issue under article 226. Proceedings under article 227 should not be equated to an appeal (to the Supreme Court) permitted under article 136, as only a revisional jurisdiction can be exercised under article 227.*

The fact that the subject-matter of an industrial dispute has already been subjected to adjudication in one State between the workmen in that State and the management cannot conclude the matter at issue between the same management and their workers before an Industrial Tribunal in another State. The award already made can only be a piece of evidence or material which the Industrial Tribunal is entitled to consider in arriving at its own conclusion and is not binding on the Tribunal. What probative value should be given to such evidence is for the Tribunal to decide.

Civil Revision Petitions Nos. 229 and 230 of 1957 under article 227 of the Constitution of India.

A. Ramachandran for the workmen.

Advocate-General for the management.

JUDGMENT.

Three sets of disputes between the workmen and the management of the Madras establishment of Lipton (India) Ltd., were referred to the Special Industrial Tribunal, Madras, for adjudication under section 10 (1)(c) of the Industrial Disputes Act. They were registered as I. D. Nos. 8, 9 and 47 of 1956. They were consolidated for disposal and they were disposed of by the Tribunal by its award dated 15th October, 1956.

The workmen represented by their Union applied under article 227 of the Constitution to revise the awards in I. D. No. 8 of 1956 (C.R.P. No. 229 of 1957) and I. D. No. 9 of 1956 (C.R.P. No. 230 of 1957).

What was really challenged by the learned counsel for the petitioners was the correctness of the decision of the Tribunal on the following items of dispute between the workmen and the management:

(1) Items 1 and 2 in I.D. No. 9 of 1956—fixation of wages on time-scale for all categories of employees and fixation of dearness allowance. (2) Items 1 and 5 of I. D. No. 8 of 1956—whether the workers are entitled to any additional bonus for 1953 and if so to fix the amount; and whether the existing gratuity scheme requires improvement and if so to what extent.

The decision of the Tribunal was that the existing scales of wages and dearness allowance did not require any revision. The workmen had been given a month's wages as bonus for 1953. Their claim was for five months' wages as bonus for 1953. The Tribunal held that the trading profits of the company left no available surplus to justify the grant of any additional bonus for 1953. In paragraph 47 of its award the Tribunal recorded its conclusion that the existing scheme of gratuity should be continued, but that it should be extended to all the employees of the company.

Virtually the basis for all the conclusions mentioned above was the finding that the financial position of the management did not justify any increase in its financial commitments to its employees. In paragraph 37 of its award the Tribunal recorded:

"On a careful consideration of the contention of both the parties and the material placed before me I have no doubt in agreeing with the management's case that its present financial position does not warrant either the increase of scales or the dearness allowance. I should not be understood as saying that the present scales and dearness allowances are sufficient or satisfactory and do not require improvement. All that I mean to say is that the company cannot be burdened with an additional liability at present and that the employees wait for better days and then put forward their demands."

The petitioners challenged the correctness of that finding.

Paragraph 37 of the award dealt expressly with the claims of the workmen for an increase in wages and dearness allowance. One of the contentions of the workmen was that there were no regular time-scales for the wages of the employees. The Tribunal pointed out in paragraph 14 of its award:

"Though the company seems to be having regular scales of pay from 1st January, 1954, they do not seem to have published to their staff and they seem to have been kept in ignorance of this matter. The scales of pay and dearness allowance now in force are as mentioned in Ex. M. 17."

I shall deal later with one of the minor contentions of the learned counsel for the petitioners, that these scales of pay were not actually given effect to in the case of two persons employed as comptometer clerks. The effect of the finding in paragraph 37 of the award was that the wage structure in force was left unaltered.

To appreciate the contentions of the learned counsel for the petitioners I have to advert to another feature of the case. Similar disputes about wages and dearness allowance between the management of the same firm and their employees in another State were adjudicated upon by the Industrial Tribunal at Delhi, and that award Ex. W. 16, was confirmed on appeal by the Labour Appellate Tribunal. The workmen contended that the Delhi award should determine their rights as well. The Tribunal rejected that contention in paragraph 23 of its award. In the course of the proceedings before the Industrial Tribunal, Delhi, Mr. Samuel represented the management. In Ex. W. 16 it was recorded that Mr. Samuel (one of the Administrative Officers of the firm) had expressly admitted that the company was in a position to increase its wage bill by Rs. 5,00,000. In paragraph 22 of its award, the Industrial Tribunal (Special Industrial Tribunal, Madras) accepted the evidence offered by the management, that factually no such concession had been made by Mr. Samuel in the proceedings before the Industrial Tribunal, Delhi. Mr. Samuel himself was not examined before the Industrial Tribunal, Madras, on the plea that he was in Pakistan. After referring to the evidence the Tribunal recorded in paragraph 22 of its award:

"............I am not prepared to agree...........that this company is in a position to shoulder an additional burden of Rs. 5 lakhs............ based on the admission in Ex. W. 16."

In deciding that the existing scales of pay and dearness allowance called for no revision the Tribunal also took into account some comparable cases of firms in Madras. This was dealt with in paragraphs 31 to 33 of the award. The claim of the workmen, that Brooke Bond Ltd. should be taken as the standard for comparison, was rejected by the Tribunal in paragraph 27 of its award.

In support of his contention that the findings of the Tribunal should be revised, the learned counsel for the petitioners urged (1) the Tribunal was bound by the award of the Labour Appellate Tribunal in the Industrial Dispute adjudged by the Industrial Tribunal, Delhi; (2) the Tribunal was bound to have given effect to the admission of Mr. Samuel in the proceedings before the Industrial Tribunal at Delhi;

(3) only Brooke Bond Ltd. was a comparable concern, and that the other concerns referred to by the Tribunal did not really present comparable cases, and (4) in any event, the finding of the Tribunal that there was in existence a time-scale of pay, which covered all the employees of the industrial establishment at Madras, was erroneous.

The second and third of these contentions may be disposed of first. They raise no question or any error of jurisdiction or any error in the exercise of the jurisdiction. The Tribunal had to appreciate the evidence placed before it and to reach its own conclusions on disputed questions of fact, Whether Mr. Samuel did make an admission in the proceedings before the Industrial Tribunal at Delhi and whether Brooke Bond Ltd., was a comparable case were pure questions of fact. The findings of the Tribunal on these questions of fact are not open to review in proceedings under article 227 of the Constitution. I have no hesitation in rejecting what I must characterise as an extreme contention put forward by the learned counsel for the petitioners, that proceedings under article. 227 of the Constitution should really be equated to an appeal (to the Supreme Court) permitted under article 136 of the Constitution. It is well settled now that it is a revisional jurisdiction that can be exercised by this Court in proceedings under article 227 of the Constitution. In exercising that jurisdiction this Court does not convert itself into a Court of appeal.

In *D. N. Banerji* v. *P. R. Mukherjee*, [1952] 4 F. J. R. 443, their Lordships pointed out :

"Whether on the facts of a particular case the dismissal of an employee was wrongful or justified is a question primarily for the Tribunal to decide, and here the Tribunal held that the dismissals were clear cases of victimisation and hence wrongful, "

and observed :

"Unless there was any grave miscarriage of justice or flagrant violation of law calling for intervention, it is not for the High Court under articles 226 and 227 of the Constitution to interfere."

That despite the non-examination of Mr. Samuel the material on record justified the conclusion, that he did not admit before the Industrial Tribunal, Delhi, that the management was in a position to shoulder a further financial burden of Rs. 5 lakhs was the conclusion of the Tribunal. I am unable to see anything even erroneous in that conclusion. Certainly it does not come within the category of grave miscarriage of justice or flagrant violation of law. There was certainly sufficient material on which that finding of fact could be based, though even sufficiency of material or evidence to support the conclusion of fact may not be a matter for review in proceedings under article. 227 of the

Constitution. Similarly, that Brooke Bond Ltd., was not a comparable case was fully justified by the evidence which the Tribunal discussed-.

In *Waryam Singh and Another* v. *Amarnath and Another*, [1954] S.C.R. 565, their Lordships laid down at page 571 :

"This power of superintendence conferred by article. 227 is, as pointed out by Harries, C. J., in *Dalmia Jain Airways Ltd.* v. *Sukumar Mukherjee*, A. I. R. 1951 Cal. 193, to be exercised most sparingly and only in appropriate cases in order to keep the subordinate courts within the bounds of their authority and *not for correcting mere errors*." (I have underlined * the passage).

It may not be necessary to embark upon an examination of all the reported cases in which the scope of article 227 of the Constitution was discussed. Nor did the learned counsel undertake such a task. A fairly fulls list of all the cases is furnished in *In re Annamalai Mudaliar*, A.I.R. 1953 Mad. 362. I have myself held more than once that the scope for interference with findings of fact recorded by a Tribunal in proceedings under article 227 of the Constitution is very little different from that in deciding whether a writ of *certiorari* should issue under article 226 of the Constitution.

The second and the third of the contentions put forward by the learned counsel for the petitioners fail. There is no scope for interference with the findings recorded by the Tribunal.

It is true that an identical question of the financial capacity of the firm to pay higher wages to its employees was decided in Ex. W. 16, which was confirmed by the Labour Appellate Tribunal. But, as the learned counsel for the petitioners had to recognise, that was not a judgment or award *inter partes*. The learned counsel, however, urged that to deny the workmen in the dispute before the Industrial Tribunal, Madras, the benefit of the finding on an identical question by the Labour Appellate Tribunal constituted denial of justice, and that such an error could and should be corrected by me in proceedings under article 227 of the Constitution. The Delhi Award could not conclude the question at issue between the management and its workmen in the industrial establishment at Madras. The Delhi award was only one of the pieces of evidence or material which the Industrial Tribunal, Madras, was entitled to consider, and it did take that into consideration. What probative value should be given to that piece of evidence was for the Tribunal to decide. It decided in effect not to give it any value, because it felt convinced that the Delhi Award was influenced by an alleged admission of Mr. Samuel which in fact had not been made. I am unable to see any error in the conclusion reached by the Tribunal,

* Here printed in italics—Ed.

that it was not bound by the terms of the Delhi Award, in deciding whether the workmen in the industrial establishment at Madras should be awarded higher scales of wages and dearness allowance.

The last of the contention of the learned counsel for the petitioners was that the decision of the Tribunal, that the scales of pay shown in Ex. M-17 covered all the employees in Madras was erroneous. In paragraph 27 of the statement filed on behalf of the management before the Tribunal it was claimed that senior clerks and comptometer operators were on the time-scale Rs. 125-8-205. In Ex. M. 22, which showed the wages actually paid to the employees on 31st January, 1956, K. V. Subramaniam and Arulappa A. Das were shown as comptometer operators. The further details shown in Ex. M. 22 were that the starting basic salary of Subramaniam was Rs. 55 and that his dearness allowance was Rs. 40. The wages actually paid to Subramaniam on 31st January, 1956, were Rs. 85 as basic salary and Rs. 55-4-0 as dearness allowance. In the case of Das the starting basic salary was shown as Rs. 60 and the dearness allowance at Rs. 40. On 31st January, 1956, Das was in receipt of a basic salary of Rs. 80 and a dearness allowance of Rs. 52. Certainly these figures were inconsistant with those mentioned in the counter-statement filed by the management. What, however, was recorded in Ex. M. 17, which it should be remembered the Tribunal accepted represented the scales of pay in force, was:

"Clerks, Typists and Comptometer operators:

(i) Grade I	Rs. 70-5-130
(ii) Grade II	Rs. 125-8-205."

The learned Advocate-General, who appeared for the management, explained that the scales of pay for comptometer clerks mentioned in the statement filed by the management referred to the senior comptometer clerks, apparently those in Grade II as that class of employees was shown in Ex. M. 17. The learned Advocate-General also pointed out that when M. W. 3 was examined, he categorically stated that there were no senior comptometer operators at Madras. As per Ex. M. 17, comptometer operators of Grade I were on the scale Rs. 70-5-130. Ex. M. 22 showed that the two comptometer operators, Subramaniam and Das, were in receipt of basic salaries of Rs. 85 and Rs. 80 respectively on 31st January, 1956. It was certainly well within the time-scale shown in Ex. M. 17. The starting salary shown in Ex. M. 22, which was less than the minimum in the time-scale shown in Ex. M. 17, was what was given to the two employees when they entered service in 1951 and 1952. respectively. The learned Advocate-General referred to the evidence of M.W. 3 which in effect was that the scales

of pay shown in Ex. M. 17 were given effect to in January 1954. That explained the pay actually disbursed to these two employees Subramaniam and Das on 31st January, 1956, as shown in Ex. M. 22.

It is true that the Tribunal did not specifically discuss the question whether the two comptometer clerks Subramaniam and Das were in receipt of salaries within the scope of the time-scale shown Ex. M. 17. But there is really nothing to show that the special features of these two employees were brought to the notice of the Industrial Tribunal. Nor is there anything to show that the Tribunal was invited to decide with reference to these two employees that the scales of pay shown in Ex. M. 17 had not been applied to them. But even independent of these factors, I have already referred to the evidence on record, which would show that even these two employees were not given anything less than what was due to them on the basis of Ex. M. 17.

None of the points taken by the learned counsel for the petitioners justifies any interference with the award of the Industrial Tribunal.

These petitions fail and are dismissed. No order as to costs.

[IN THE MADRAS HIGH COURT.]

S. S. NARAYANAN

v.

STATE BANK OF INDIA, MADRAS.

Rajagopalan, J.

March 27, 1958.

CONDITIONS OF SERVICE—AGREEMENT OF SERVICE AS HEAD CASHIER OF BANK—NOTICE OF TERMINATION OF SERVICE IN ACCORDANCE WITH AGREEMENT—EFFECT—NOTICE ISSUED BY AGENT OF BANK UNDER INSTRUCTIONS OF LOCAL BOARD—VALIDITY.

On promotion of the petitioner from the post of a cashier to that of Head Cashier, he signed an agreement of service with the respondent bank. The agreement was executed by the Secretary on behalf of the bank. The services of the petitioner were terminated by notice, in accordance with the terms of the agreement, signed by the agent of a branch of the bank. It was contended by the petitioner that as the notice was not signed by the Secretary of the bank who had executed the agreement of service, it was not a valid notice and that even if his services as a Head Cashier were terminated, he would only revert to his post as cashier: Held, *that the notice having been issued by the agent of the bank under instructions from the Local Board of* *the bank, the notice was valid, and that when his services were terminated as a Head Cashier, that terminated the only post he was entitled to hold under the agreement and the relations between the petitioner and the bank as employee and employer.*

Civil Revision petition No. 788 of 1957 under article 227 of the Constitution of India.

JUDGMENT.

This is an application under article 227 of the Constitution to revise the order of the Additional Commissioner for Workmen's Compensation, Madras, dated 18th May, 1957, passed in exercise of the appellate powers vested in him by section 41 of the Madras Shops and Establishments Act, XXXVI of 1947.

The petitioner was in the employ of the State Bank of India. He entered service when that bank carried on its operation under the name of the Imperial Bank of India. In 1953 he was promoted to hold the post of Head Cashier, and he then signed with his employer, the State Bank, an agreement of service. That was marked as Ex. A-1, in the proceedings before the Additional Commissioner. The petitioner was employed as Head Cashier at the branch of the State Bank at Mangalore between May, 1953, and November 1955, when he was transferred to Pollachi. After his departure from Mangalore certain irregularities during his tenure of office at Mangalore were noticed, and eventually charges were framed against him, to which he submitted his explanation.

On the 2nd of April, 1956, the petitioner was served with a notice signed by the agent of the bank at Pollachi, informing him that his services would be terminated with effect from the 2nd of June, 1956. That power to terminate the petitioner's service was claimed under article 1 of the agreement, which provided for the termination of the services of the employee by two months' notice by either of the contracting parties. The petitioner appealed to the Additional Commissioner for Workmen's Compensation, Madras, under section 41 of the Act. The Additional Commissioner dismissed the appeal. It was the validity of that that the petitioner challenged by his application under article 227 of the Constitution.

Though it was the agent of the bank at Pollachi that signed the letter dated 2nd April, 1956, giving two months' notice of the termination of the service to the petitioner, on the materials placed before him, the Commissioner found that the decision to terminate the service of the petitioner was taken by the local board of the bank and was communicated to the agent by letter dated the 29th of March, 1956, signed

by the Deputy Secretary of the bank. The Additional Commissioner negatived the contention of the petitioner, that the bank had no right to have recourse to clause 1 after disciplinary proceedings had been taken against the petitioner. If the charges had been established the bank would have had a right to terminate the services of the petitioner without notice under clause 9 of the agreement. The Additional Commissioner further found that under section 41 he had to satisfy himself that the termination of services was for a reasonable cause. The Additional Commissioner said that with reference to some of the charges, on the admissions made by the petitioner himself, there was reasonable cause for the termination of the service.

In challenging the validity of the order of the Additional Commissioner, the learned counsel for the petitioner urged: (1) that there was no valid notice terminating the services of the petitioner, and (2) that clause 1 of the agreement did not authorise the employer, the bank, to terminate anything other than the service of the petitioner as Head Cashier; before he was promoted as Head Cashier he had held the post of cashier, and even if he was liable to be removed from the post of Head Cashier, he was entitled to go back as cashier on the expiry of the period of two months, mentioned in the notice dated 2nd April, 1956.

No doubt the agreement, Ex. A, 1, was signed by the petitioner and by the secretary and treasurer on behalf of the employer, the Bank. The secretary signed that agreement on behalf of the bank as one authorised to do so by the bank, one of the contracting parties. The employer, the other contracting party, had a right to terminate the services of the petitioner under clause 1 of the agreement by giving two months notice. Clause 1 does not further specify that the notice must be signed only by the very person who had signed the agreement on behalf of the bank, the person who then held the post of secretary and treasurer. There was certainly nothing placed before me to indicate that the local board was not entitled to decide to terminate the services, that is to act in that respect on behalf of the employer, the bank. The decision of the board was communicated to the agent. If the decision of the board had been communicated to the Secretary, the Secretary had communicated it to the Deputy Secretary and the Deputy Secretary eventually communicated it to the Agent, still the notice would have been in accordance with the directions of the employer represented by the local board. I am really unable to see any substance in the contention reiterated by the counsel for the petitioner, that the notice signed by the Agent was not a valid notice and did not represent what the other contracting party was really entitled to do, that is to issue a notice giving two months' time, after which the services of the petitioner would stand terminated. The Additional Commissioner was certainly not in error when he viewed the notice as a valid notice.

The second of the contentions put forward by the learned counsel for the petitioner had even less substance. Nothing was placed before the Additional Commissioner, nor was anything placed before me, to sustain any possible claim, that the petitioner was entitled either under any subsisting contract between him and his employer, or by any of the Standing Orders of the employer to revert to the post of cashier either on being dismissed under clause 9 of the agreement or on his services being terminated with notice under clause 1 of the agreement. Clause 1 of the agreement provided for the termination of the services of the employee. The only post he was entitled to hold under the terms of the agreement was that of Head Cashier, and when his services were terminated that meant termination of the relations between the petitioner and the bank as employee and the employer. There was no other post which the petitioner could claim as of right after termination of his services under the notice dated 2nd April, 1956.

There was no error in the jurisdiction assumed by the Additional Commissioner. It was one invoked by the petitioner himself. There was no error either in the exercise of that jurisdiction.

The petition is dismissed. There will be no order as to costs.

[IN THE PATNA HIGH COURT.]

PATNA ELECTRIC SUPPLY WORKERS' UNION

v.

A. HASSAN AND ANOTHER.

Ramaswami C.J. and Raj Kishore Prasad J.

August 22, 1957.

INDUSTRIAL EMPLOYMENT (STANDING ORDERS) ACT, 1946, SECTIONS 6 AND 10—APPELLATE AUTHORITY—POWERS OF—WHETHER HAS POWER TO RECTIFY MISTAKE IN CERTIFIED STANDING ORDER—POWERS OF STATUTORY AUTHORITIES.

There is no provision in the Industrial Employment (Standing Orders) Act, 1946, empowering an Appellate Authority to rectify mistakes in standing orders which have been certified by it under section 6(1) of the Act before the expiry of six months from the date on which the standing orders or the last modification thereof came into force, except as provided in section 10 of the Act.

The powers of a tribunal of special jurisdiction like the Appellate Authority under the Act are circumscribed by the provisions of the statute under which it is constituted and it must act within its powers. Even if such authority is given some of the powers of a civil court, unless there is specific provision in the statute creating it, the authority cannot be deemed to possess the inherent powers of rectification which civil courts have.

Miscellaneous Judicial Case No. 366 of 1956.

Ranen Roy and *T. Das* for the petitioners.

Government Pleader, K. D. Chatterji and *Chunni Lall* for the respondents.

JUDGMENT.

RAJ KISHORE PRASAD, J.—This application, under articles 226 and 227 of the Constitution, has been presented by the petitioner Patna Electric Supply Workers Union for an appropriate writ to call up and quash the order dated the 20th March, 1956, which is annexure 'C' to its affidavit, of the opposite party 1, who is the Appellate Authority under the Industrial Employment (Standing Orders) Act, 1946 (Act XX 1946), which will hereafter be referred to as "the Act".

On the above application, a rule was issued by this Court against the opposite party to show cause why the just mentioned order of opposite party 1, purported to have been passed obviously in exercise of his inherent powers, as no section of the Act is mentioned therein, should not be quashed. Cause has been shown against this rule by Mr. Ray Paras Nath, Government Pleader, on behalf of opposite party 1, and by Mr. K. D. Chatterji, on behalf of opposite party 2. The Patna Electric Supply Company Ltd., opposite party 2, has also filed a counter affidavit in reply to the affidavit of the petitioner, and, along with it, has filed also a copy of the order, dated the 23rd February, 1956, passed by opposite party 1 under section 6(1) of the Act, which is annexure 'B' to its counter affidavit.

The petitioners' case is that opposite party 2 submitted to the Certifying Officer under the Act, a draft of the existing Standing Orders for modification under section 10(2) of the Act. The Certifying Officer, acting under section 5 of the Act, certified the aforesaid draft on the 24th January, 1955, and as required by section 5(3) of the Act, the Certifying Officer sent copies of the Certified Standing Orders to the parties concerned.

Against the above order of the Certifying Officer, the petitioners as well as opposite party 2 appealed to the Appellate Authority under section 6(1) of the Act. The Appellate Authority opposite party 1, decided the appeal on the 23rd February, 1956, and as required by secntio

6(2) sent copies of the Standing Orders as certified by him and authenticated in the prescribed manner to the parties concerned. On the 28th February, 1956, opposite party 2 made an application to opposite party 1 to modify the Certified Standing Order No 8 and Standing Order No. 17(b)(i) on the ground of mistakes. In the present case, we are concerned with the Certified Standing Order No. 17(b)(i) which was sought to be modified on the ground that the word "along" appearing therein was a mistake for the word "alone" and, therefore, the mistake should be rectified. Opposite party 1 after hearing the parties on 20th March, 1956, allowed the application of opposite party 2. He held that the word "along" was obviously a mistake for the word "alone" and, therefore, the word "along" should be substituted by the word "alone" and, accordingly, corrected the above error. Against this order, the petitioner has moved this Court.

Mr. Ranen Roy, in support of the rule, attacked the validity of the order of opposite party 1, which is annexure 'C' to the petitioner's affidavit, on the ground that, apart from section 10, there is no provision in the Act empowering the Appellate Authority after it has certified the Standing Orders under section 6(1) of the Act to correct even such a mistake.

In order to determine the question, presented by the petitioner for determination by this Court, it is necessary to know the circumstances in which the application on 28th February, 1956, was made by opposite party 2, and the impugned order was passed by opposite party 1 on 20th March, 1956.

In Appendix A to the Bihar Industrial Employment (Standing Orders) Rules, 1947, Model Standing Orders are given as required by rule 5 of the Rules. Model Standing Order No. 14 deals with disciplinary action for misconduct. Model Standing Order No. 14(3)(a) is as below:

"(3) The following acts and omissions shall be treated as misconduct:

(a) Wilful insubordination or disobedience, whether "alone" or in combination with others, to any lawful and reasonable order of a superior,"

Standing Orders certified by the Certifying Officer under section 5(2) contained, *inter alia* Standing Orders Nos. 16(1) and 17(b)(i). Standing Order No. 16(1) of the Certified Standing Orders reads thus:

"Wilful insubordination or disobedience whether 'alone' or in combination with another or others of any lawful and reasonable order of a superior."

Standing Order No. 17(i), of the Certified Standing Orders reads as below:

"Wilful insubordination or disobedience whether 'along' or in combination with others, to any lawful and reasonable order of a superior."

Opposite party 2 has stated in its counter affidavit that as Standing Orders Nos. 16(1) and 17(b)(i) above mentioned, were identical and appeal was filed by the petitioner under section 6(1) of the Act against the order of the Certifying Officer certifying the Standing Orders under section 5(2) on the ground that as Standing Orders Nos. 16(1) and 17(b)(i) were identical, both should not be retained, and, therefore, suggested that Standing Order No. 17(b)(i) should be deleted. The Appellate Authority, opposite party 1, acting under section 6(1) of the Act, agreed with the contention of the petitioner and deleted Standing Order No. 16(1) by its order dated 23rd February, 1956.

The above order of the Appellate Authority under section 6(1) of the Act regarding Standing Orders Nos. 16(1) and 17(b)(i) as mentioned in annexure 'B' of the counter affidavit, is to the following effect:

"It was pointed out on behalf of the Union that Standing Order No. 17(b)(i) was redundant as it was a repetition of Standing Order No. 16(1). It was said that it may lead to ambiguity and confusion. It is true that both are identical and it was unnecessary to mention it both under Standing Order No. 16 as well as 17. I would, therefore, delete Standing Order No. 16(1) and allow the same to remain under Standing Order No. 17(b)(i)........... ...."

On the application of opposite party 2 made on 28th February, 1956, to the Appellate Authority, opposite party 1, he, on 20th March, 1956, passed the following order:

"..

(2) As regards clause 17(b)(i) the word "along" was said to be a mistake for "alone" on behalf of the management. Sri Singh appearing for the opposite party objected to it and contended that the word 'alone' was to be found there in the Certified Standing Orders of 1949 of which a printed copy was produced by him. He argued that in any case it was not a clerical mistake and the correction could not be done at this stage. The Model Standing Order on the point has the word 'alone' there and not 'along' as mentioned in the Standing Order in question. It has also to be noted that sub-clause (1) under clause 16 of this Standing Order was deleted on the contention of the Union that it was identical to the Standing Order No. 17(b)(1). Clause 16(1) also recites the word 'alone' and not 'along', there. The construction itself becomes clumsy if the word 'along' is allowed to stand there. Further, wilful insubordination or disobedience by individual worker would go without any penalty if the word 'alone' is not inserted in

17(b)(i). Considering all these it is clear that as in the Model Standing Orders what was intended was the word 'alone' and it was by mistake that it went unnoticed. In the interest of both it is necessary that this error should be rectified and I would accordingly order that the word 'along' be substituted by the word 'alone'. Thus the petition is disposed of.

A. Hassan

Appellate Authority, Bihar,"

This is the order which is challenged and impugned as invalid and without jurisdiction by the petitioner.

The sole, and the crucial question, therefore, for our determination is: Has an Appellate Authority under section 6 of the Act any power to entertain an application for correction of mistakes in Certified Standing Orders after they had been certified by it on appeal under section 6(1) of the Act, and, consequently to order correction of such mistakes, even if they were in the nature of clerical mistakes, apart from section 10 of the Act? For a proper and correct determination of this question, it is necessary at first to know the scheme of the Act and the ambit of the jurisdiction of the Appellate Authority under the Act. This Act was enacted to require the employers in industrial establishments to define with sufficient precision the conditions of employment under them and to make the said conditions known to workmen employed by them. As Standing Orders defining the conditions of recruitments, discharge, disciplinary action, holidays, leave, etc., went a long way to minimise friction between the management and workers in industrial undertakings, the Act was, with this end in view, enacted in 1946. This Act came into effect on 23rd April, 1946. Section 3(1) requires the employer to submit to the Certifying Officer, within six months from the date on which this Act became applicable to an industrial establishment, Draft Standing Orders proposed by him for adoption in his industrial establishment. Section 3(2) provides that provision shall be made in such draft for every matter set out in the Schedule attached to the Act which may be applicable to the industrial establishment, and where Model Standing Orders have been prescribed shall be so far as practicable in conformity with such model. Section 4 lays down the conditions for certification of Standing Orders. Section 5 gives power to the Certifying Officer to decide whether or not any modification of or addition to the draft submitted by the employer is necessary to render the Draft Standing Orders certifiable under this Act, and section 5(2) further requires the Certifying Officer to make an order in writing accordingly after hearing the parties concerned. After certification of Standing Orders under section 5 by the Certifying

Officer, any person aggrieved by such an order has been given a right of appeal to the Appellate Authority under section 6(1). Section 6(1) provides that the decision of the Appellate Authority shall be final, and the Appellate Authority shall, by order in writing, confirm the Standing Orders either in the form certified by the Certifying Officer or after amending the said Standing Orders by making such modifications thereof or additions thereto as it thinks necessary to render the Standing Orders certifiable in accordance with the provisions contained in section 4 of the Act. Section 7 deals with the date of operation of Standing Orders. Section 11 vests certifying Officers and Appellate Authorities with powers of Civil Court for certain purposes. Section 10 deals with duration and modification of Standing Orders.

Sections 10 and 11 are important, and very material for the purpose, and therefore, they are reproduced below, *in extenso*. Section 10, before its amendment in 1956, stood as under:

"10. Duration and modification of Standing Orders:

(1) Standing Orders finally certified under this Act shall not, except on agreement between the employer and the workmen, be liable to modification until the expiry of six months from the date on which the Standing Orders or the last modifications thereof came into operation.

(2) An employer desiring to modify his standing orders shall apply to the Certifying Officer in that behalf, submitting five copies of the standing orders in which shall be indicated the modifications he proposes, and where such modifications are made in agreement with the workmen, a certified copy of the agreement shall accompany the application.

(3) The foregoing provisions of this Act shall apply in respect of an application under sub-section (2) as they apply to the certification of the first Standing Orders."

Section 11 has not been amended. It reads thus:

"11. Certifying Officers and Appellate Authorities to have powers of Civil Court. Every Certifying Officer and Appellate Authority shall have all the powers of a Civil Court for the purposes of receiving evidence, administering oaths, enforcing the attendance of witnesses, and compelling the discovery and production of documents, and shall be deemed to be a Civil Court within the meaning of sections 480 and 482 of the Code of Criminal Procedure, 1898 (V of 1898)."

The other sections are not relevant for the purpose of determination of the question in issue. I may here state that section 13 A, which deals with interpretation, etc. of Standing Orders, was introduced by the Industrial Disputes (Amendment and Miscellaneous Provisions) Act, 1956 (Act XXXVI of 1956), which came into effect on the 28th August, 1956. Section 13A provides that if any question arises as to the application or interpretation of a Standing Order certified under this Act, any employer or workman may refer the dispute in question to any of the Labour Courts constituted under the Industrial Disputes Act, 1947 (XIV of 1947) and, the Labour Court, after hearing the parties, shall decide the question and such decision shall be final and binding on the parties. The new section 13A would have been material for our purpose, if it had been introduced earlier than the 20th March, 1956, when the impugned order was passed. But as section 13A came into effect on the 28th August, 1956, long after the impugned order was passed earlier on the 20th March, 1956, it is not necessary to determine the scope of the new section 13A.

We, therefore, find that the Act which consists of 15 sections only does not specifically provide any provision like sections 151, 152 and 153 of the Code of Civil Procedure. Even section 11 of the Act vests Certifying Officers and Appellate Authorities with only certain powers of Civil Courts for the purposes mentioned therein. There is, therefore, no manner of doubt on reading the Act as a whole that within the four corners of the Act, no specific provision is to be found empowering an Appellate Authority, after it has Certified Standing Orders under section 6 (1) of the Act, to correct the mistakes in the Certified Standing Orders finally certified under section 6 (1) of the Act, before the expiry of six months from the date on which the Standing Orders or the last modifications thereof came into operation, except in the manner provided in section 10 of the Act. The legal position, therefore, is that if the Appellate Authority certifies the Standing Orders under section 6 (1), such Standing Orders under section 7 came into operation on the expiry of seven days from the date on which copies of the order of the Appellate Authority are sent under sub-section (2) of section 6. Such Standing Orders, finally certified thus by the Appellate Aurhority under section 6 (1), shall not, as provided by section 10, except on agreement between the employer and the workmen, be liable to modification until the expiry of six months from the date on which the Standing Orders or the last modifications thereof came into operation.

In the instant case, the Appellate Authority certified the Standing Orders under section 6 (1) on the 23rd February, 1956, and sent copies of such Standing Orders as certified by it as required by section 6(2) to the parties concerned on the 27th February, 1956. The Appellate Authority, therefore, in view of the provisions of section 10 of the Act, had no power to modify the Certified Standing Orders within six months from the 6th March, 1956, that is, on the expiry of seven days from the 27th February, 1956, when copies of the order of the Appellate Authority were sent as required by section 6 (2), except, of course, on agreement between the employer and the workmen, which here was not the case.

On the true construction of the Act, particularly sections 6 and 10 of the Act, therefore, it is plain that the Appellate Authority, opposite party 1, had no power to pass the order which he did on the 20th March, 1956, or even to entertain the application of opposite party 2, which was made by it on the 28th February, 1956, and, accordingly, the impugned order, *prima facie*, unless otherwise justified, was obviously without jurisdiction.

The next question is that, apart from the Act, even when there is no specific provision in the Act itself vesting the Appellate Authority with inherent powers or like powers envisaged by sections 151, 152 and 153 of the Code of Civil Procedure, which have not been made applicable to the Act, or to the Appellate Authority by the Act itself, can it be said that, even in the absence of such express provisions, the Appellate Authority must be deemed to have inherent powers to correct the so called mistakes in the Standing Orders finally certified by it under section 6(1) of the Act, when its order confirming the Standing Orders after making modifications has become final under section 6 (1) of the Act?

I want to make it clear that the Appellate Authority may be right or may be wrong in the view it has taken of the so called mistake, and, on that view in rectifying that error ; but it seems to me that this is not a question of that vital character which would justify this Court in issuing a writ under article 226, or article 227 if it had held that the Appellate Authority did possess such a power of correcting mistakes in the finally certified Standing Orders which became final under section 6 (1) of the Act. If, therefore, we had held that the Appellate Authority was clothed with such a power and that it acted within the ambit of its powers in ordering rectification of the mistake, we would have declined to interfere with the order which, to us, seems to be quite proper on the facts stated earlier, but if the Appellate Authority had no power, the correction of the mistake, even if its order correcting this mistake be proper, it must be quashed as without jurisdiction.

None of the parties have, beyond referring to the sections in the Act itself, cited any authority in support of their respective contentions.

" Appellate Authority " has been defined in section 2(a) of the Act thus:

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

(a) 'appellate authority' means an Industrial Court, wherever it exists or in its absence an authority appointed by the appropriate Government by notification in the official Gazette to exercise in such area as may be specified in the notification, the functions of an appellate authority under this Act."

Here the opposite party 1 appears to have been appointed an Appellate Authority by the State Government for the purposes of the Act to exercise the functions of the appellate authority under the Act.

It is well settled law that the powers of a Tribunal of special jurisdiction are circumscribed by the statute under which it is constituted. Such tribunal must act withinits powers conferred on it by the statute which creates it. Such Tribunal must act within its powers and so long as it does, its orders whether right or wrong, cannot be challenged. But where, and in so far as, its actions are in excess or in contravention of the power conferred on it, they are *ultra vires* and of no legal effect.

Here the Act under consideration is self contained, and has created a special Tribunal for deciding the questions arising between the parties under the Act. The scope and ambit of the jurisdiction conferred on the Appellate Authotity under the Act can be determined and found only by reference to sections 6, 10 and 11 of the Act. The Appellate Authority being an authority of limited jurisdiction and a creation of the Act must be confined to the exercise of such functions and powers as are actually conferred on it: *The Automobile Products of India* v. *Rukmaji Bala*, [1955] 1 S.C.R. 1241; [1955] 7 F.J.R. 716, which was affirmed in *Rohtas Industries Ltd.* v. *Brijnandan Pandy* [1956] S.C.R. 800; [1957] 11 F.J.R. 209.

Reading sections 6 and 10 together, therefore, to me it appears that section 10 expressly excludes the power of the appellate authority from making any modification in the Standing Orders as certified by it under section 6(1) except in the manner provided in section 10. The substitution of the word "alone" for "along" even on the ground of mistake does in my opinion, amount to modification of the standing orders finally certified under section 6(1) of the Act in contravention of section 10.

In this context, reference may be made to the case decided by the Supreme Court recently in *J. K. Iron and Steel Co. Ltd., Kanpur* v. *Iron and Steel Mazdoor Union, Kanpur* [1955] 2 S.C.R. 1315; [1956] 9 F.J.R. 419. In this case, their Lordships were considering the scope and authority of an adjudicator under the Industrial Disputes Act, 1947, read with U.P. State Industrial Tribunal Standing Orders, 1951. Bose, J. who delivered the judgment of the Court observed:

"All the same, wide as their powers are, these Tribunals are not absolute, and there are limitations to the ambit of their authority......... Their powers are derived from the statute that creates them and they have to function within the limits imposed there and to act according to its provisions. Those provisions invest them with many of the 'trappings' of a Court and deprive them of arbitrary or absolute discretion and power."

Very broadly, no doubt, the appellate authority, under the Act, follows the pattern of the Civil Courts, but it is not a Court, much less a Civil Court, to which, unless expressly applied, the provisions of the Code of Civil Procedure can as a rule apply. From the scheme of the Act, we find that, no doubt, the provisions therein invest the appellate authority with many of the "trappings" of the Court, but they do not invest the appellate authority in express terms with inherent powers so as to enable it to amend mistakes in the standing orders which have been finally certified and which have become final undersection 6(1) of the Act, apart from the procedure indicated in and provided by section 10 of the Act.

In this view of the matter, the appellate authority, as it derived its powers from the Act which created it, must function within the limits imposed thereunder. In my opinion, therefore, the rule, that every Court, in the absence of express provision to the contrary, must be deemed to possess the inherent power in its very constitution; all such powers, as are necessary to do the right and to undo wrong in the case of administration of justice, which applies to all Courts, cannot apply to an appellate authority under the Act.

In my judgment, therefore, in any view of the matter, the impugned order is without jurisdiction, and, as such, it must be quashed.

In the result, the rule is made absolute, and a writ in the nature of *certiorari* must go quashing the order dated the 20th March, 1956, Annexure "C" of opposite party 1 on the ground that it had no power to pass the impugned order, apart from the provisions of section 10 of the Act. The application is accordingly allowed with costs, hearing fee Rs. 100.

V. RAMASWAMI C.J.—I agree.

[IN THE MADRAS HIGH COURT.]

SALEM DHARMAPURI UNION MOTOR SERVICE PRIVATE LTD.

v.

LABOUR COURT, COIMBATORE AND ANOTHER.

Balakrishna Ayyar, J.

April 8, 1958.

MISCONDUCT—WORKMAN DISOBEYING ORDER OF MANAGEMENT—PLEA THAT ORDER WAS MORE HONOURED BY BREACH—WHETHER GOOD DEFENCE—FINDINGS OF MANAGEMENT AT ENQUIRY QUITE REASONABLE—WHETHER LABOUR COURT CAN INTERFERE WITH FINDINGS OR PUNISHMENT.

On a surprise check by an officer of a transport company, it was found that the conductor of a bus had not issued tickets to five passengers contrary to the rule laid down by the management that tickets should be issued before the bus left a stopping place. The conductor was dismissed from service after an inquiry. Before the Labour Court, to which the question of reinstatement of the conductor had been referred, it was contended for the conductor that the rule relied on by the management was being honoured more in breach than in its observance. The Labour Court found that the tickets had not in fact been issued but found that the management had no justification to come to the conclusion that the conductor did not issue the tickets with a view to misappropriate and cause wrongful loss to the management. On a petition for a writ to quash the award of the Labour Court, Held:

(i) that there is no prescriptive right to violate a rule and the fact that the rule laid down by the management was not being honoured could not be a defence to the charge against the conductor;

(ii) that the conclusion arrived at by the management that the conductor had not issued the tickets in order to misappropriate the price of the tickets was a reasonable conclusion on the facts of the case;

(iii) that where the guilt of the workman is established, the discretion as to what punishment should be imposed upon him is with the management and such punishment should not be interfered with by the Labour Court unless there is want of bona fides, *victimisation or unfair labour practice, or any violation of principles of natural justice or the finding of the management is perverse or baseless.*

The award of the Labour Court was, therefore, quashed.

Writ Petition No. 990 of 1957.

V. P. Raman for the management.

G. Ramanujam and *A. Ramachandran* for the respondents.

ORDER

The petitioner is the management of the Salem-Dharmapuri Union Motor Service (Private) Ltd, Salem. The second respondent was a conductor in the employ of the petitioner. On 31st January, 1953, the management issued a circular to all their conductors directing that, when a bus stopped at a point and fresh passengers got in, tickets should be issued then and there and that it was only after tickets had been issued to all, the conductor should instruct the driver to proceed further. The second respondent was aware of this circular. On 17th October, 1956, the Managing Director of the petitioner company made a surprise check of the bus of which the second respondent was a conductor at a point 1½ or 2 furlongs away from a place called Uthanampalli, which was the previous stop of the bus. He then found that there were five passengers in the bus to whom tickets had not been issued. The management apparently took the view that tickets had not been issued in order that the price of the tickets might be misappropriated. The management held an inquiry and dismissed the second respondent from the service of the company. On this a labour dispute was raised and on 14th June 1957, the Government of Madras referred the following question to the Labour Court at Coimbatore for decision:

"Whether the dismissal of the worker, M. P. Arumugham from 15th November, 1956, is justified and to what relief he is entitled?"

The Labour Court found that tickets had not been issued to five passengers. It also found that the place, where the bus was stopped by the managing director, was not more than 1½ or 2 furlongs away from the previous stop. It further found: "there was absolutely no justification for the management to imagine that the conductor had an idea to misappropriate and cause wrongful loss to the management." It went on to observe "Now, with regard to the other point that he has violated the rule by moving the bus before the issue of tickets, there is no doubt that the conductor is in the wrong." The Labour Court also observed "that the bus had to be moved to allow other traffic." It also took into account the fact that the conductor started to issue tickets when the bus was stopped by the managing director. Taking all these circumstances into account the Labour Court passed the following order:

"The management under such circumstances is not justified in dismissing him from the service. The conductor should not go without any punishment for the violation of the rule which seems to be more observed in the breach as I already pointed out. The conductor also has admitted that he is in the wrong. Under such circumstances, the fact that he has been out of work for all this period and without wages is sufficient punishment. He should be re-instated but without back wages."

Before the Labour Court the second respondent attempted to justify his conduct by pointing out that the order, which the management had issued, was being honoured more in the breach than in its observance. No argument is required to show that this is not a valid line of defence at all. There is no prescriptive right to violate a rule. If arguments of this kind are countenanced, it will be possible for a person belonging to a class which used to be described as a criminal tribe, to say that cattle lifting had been the occupation of his ancestors, that he had been merely following the same avocation and that, therefore, he cannot be punished. I am giving this extreme illustration to show that arguments of this kind can be pressed too far.

The Labour Court was apparently inclined to accept the explanation that the bus had to be moved away in order not to incommode other traffic on the road. I am unable to see any justification for this observation. If the point in Uthanampalli at which this bus had stopped was such as to cause inconvenience or obstruction to the other traffic, it would have been sufficient to move the bus a few yards away. There would have been no necessity to take the bus more than a furlong off. I would next observe that, if the management took the view that the second respondent had not issued tickets for five passengers in order to misappropriate the price of the tickets, it would not be an unreasonable conclusion. Mr. Raman, the learned counsel for the petitioner, said that once it is established that an employee has been guilty of misconduct, the discretion as to what punishment should be imposed upon him is with the management, and that the Labour Court has no power to interfere with that discretion. In support of that contention he referred to the decision in *Messrs. Indian Iron and Steel Co.* v. *Their Workmen*, [1958] 13 F.J.R. 377. On page 391 their Lordships observed :

"Undoubtedly, the management of a concern has power to direct its own internal administration and discipline; but the power is not unlimited and when a dispute arises, Industrial Tribunals have been given the power to see whether the termination of service of a workman is justified and to give appropriate relief. In cases of dismissal on misconduct, the Tribunal does not however act as a court of appeal and substitute its own judgment for that of the management. It will interfere (i) when there is a want of good faith, (ii) when there is victimisation or unfair labour practice, (iii) when the management has been guilty of a basic error or violation of a principle of natural justice, and (iv) when, on the materials, the finding is completely baseless or perverse."

It is impossible to say in the present case that there was want of good faith on the part of the management, or that there had been victimisation or unfair labour practice. It has not been alleged that there has been a violation of any principle of natural justice; nor can it be said that on the materials the finding of the management is baseless or perverse. This decision of the Supreme Court occupies the field and I must follow it.

Mr. Ramachandran, the learned counsel for the second respondent, contended that merely because an employee violated a rule framed by the management he cannot be dismissed. Before the management can do that, said Mr. Ramachandran, the rule itself must specify and give warning that such a penalty was liable to be inflicted. In other words Mr. Ramachandran would have it whenever a management frames a rule it must specify in it what the penalty attached for the violation of the rule would be, and that unless the rule specifically states that its contravention would entail dismissal a worker cannot be dismissed. No authority for such a view has been shown to me, and I do not think any exists in this country.

Mr. Raman, the learned counsel for the petitioner, next stated that there is absolutely no evidence to justify the statement, which the Labour Court made in its order, that the second respondent had been out of work for all this period. It is unnecessary for me to go into this matter, because I am clear in my mind that the Labour Court has no jurisdiction to substitute its own judgment of what was the proper punishment for the judgment of the management. The Labour Court is not a court of appeal.

In the result this petition is allowed and the order of the Labour Court quashed. No orders as to costs.

[IN THE ALLAHABAD HIGH COURT.]

JWALI AND OTHERS

v.

BABU LAL AND ANOTHER.

Mootham, C.J., and Srivastava J.

January 31, 1958.

WORKMEN'S COMPENSATION ACT, 1923, SECTION 30(1)—APPEAL TO HIGH COURT—ESSENTIALS—"SUBSTANTIAL QUESTION OF LAW"—MEANING OF—WHETHER INCLUDES MISDIRECTION ON QUESTION OF LAW.

The phrase "substantial question of law" used in the proviso to section 30(1) of the Workmen's Compensation Act, 1923, must be given a wider interpretation than is attributed to it in section 110 of the Code of Civil

Procedure, 1908, so as to include cases where the Commissioner has misdirected himself on a question of law.

Special Appeal No. 260 of 1957.

P. C. Chaturvedi for the appellants.

JUDGMENT

MOOTHAM, C. J.—This is an appeal from an order of Mr. Justice S. N. Sahai, dated 19th September, 1957.

On 9th January, 1954, the appellants were awarded Rs. 3,500 compensation under the Workmen's Compensation Act as compensation for the death of one Chotey who was the son of the first and third appellants and the husband of the second appellant. The compensation awarded was directed to be paid by the respondents who were the employers of Chotey at the time of his death. From that order the respondents filed an appeal to this Court under section 30 of the Act. The learned Judge held that the respondents had not been served with notice of the proceedings before the Commissioner for Workmen's Compensation and that the award of compensation was accordingly made without the respondents being afforded an opportunity of contesting the application. The learned Judge accordingly set aside the order of the Commissioner and remanded the case for further hearing.

The appellants appeal against the order on the ground that no appeal lay to this Court from the order of the Commissioner as such appeal did not involve a substantial question of law within the meaning of the first proviso to section 30 of the Act. Now, sub-section (1) of the section specifies the orders of a Commissioner from which an appeal shall lie to the High Court, and it is not in dispute that such orders include an order awarding as compensation a lump sum. The sub-section is however subject to three provisos, the first of which is that "no appeal shall lie against any order unless a substantial question of law is involved in the appeal". Mr. Justice Sahai was of opinion—with which we agree—that the Commissioner had committed a serious error of law, but learned counsel for the appellants argues that the phrase "substantial question of law" as used in the first proviso to section 30 (1) of the Act has the same meaning as the similar phrase used in section 110 of the Civil Procedure Code and that in consequence of the application of well settled principles of law to a particular set of facts it is not a question which can be described as substantial.

We are unable to accept the submission that the words "substantial question of law" in section 30 (1) of the Workmen's Compensation Act must be given the same meaning as in the Civil Procedure Code. Section 110 of that Code makes provision for appeal from decrees and final

(To be re-printed)

orders of a Court which, unless leave to appeal to the Supreme Court is granted, is a final appellate court. Section 30 of the Workmen's Compensation Act on the other hand makes provision for an appeal to this Court from a Tribunal of first instance and if learned counsel's submission be accepted it follows that this Court will have no jurisdiction in a case in which the Commissioner had arrived at an obviously wrong conclusion on a question of law. We do not think that that was the intention of the Legislature. In our opinion, the phrase "substantial question of law" as used in the proviso to section 30 (1) of the Act must be given a wider construction than is to be attributed to it in section 110 of the Civil Procedure Code, and that the phrase should be construed to cover a case such as the present in which the Commissioner has clearly misdirected himself on a question of law. This view is in accordance with the opinion of this Court in *Upper Ganges Electric Employees' Union* v. *Upper Ganges Valley Electricity Supply Co. Ltd.*, [A. I. R. 1956 All, 491], in which the Court had to consider the meaning of the same phrase as used in section 7(1) of the Industrial Disputes (Appellate Tribunal) Act, 1950.

In our opinion this appeal fails and it is accordingly dismissed.

It is clearly very desirable that the appellant's claim for compensation should be reheard by the Commissioner at as early a date as possible.

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