Hindustan Antibiotics Ltd vs The Workmen & Ors on 3 October, 1966

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Author: K. Subba Rao

Bench: K. Subba Rao, M. Hidayatullah, S.M. Sikri, R.S. Bachawat

PETITIONER:
HINDUSTAN ANTIBIOTICS LTD.

Vs.

RESPONDENT:
THE WORKMEN & ORS.

DATE OF JUDGMENT:
03/10/1966

BENCH:
RAO, K. SUBBA (CJ)
BENCH:
RAO, K. SUBBA (CJ)
HIDAYATULLAH, M.
SIKRI, S.M.
BACHAWAT, R.S.
DAYAL, RAGHUBAR

CITATION:
1967 AIR 948 1967 SCR (1) 652
CITATOR INFO :

APL	1969 SC 513	(16)
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RF	1970 SC 390	(7)
R	1970 SC 426	(11)
E	1970 SC 919	(27)
R	1972 SC 343	(21,24,28)
RF	1972 SC1210	(11,19)
R	1972 SC1552	(9)
R	1972 SC2332	(91)
F	1973 SC2119	(4)
MV	1975 SC1331	(124)
E&R	1977 SC 941	(20)
R	1980 SC 31	(19)
RF	1986 SC1830	(19)
RF	1990 SC1080	(11)

RF 1991 SC 101 (44)

ACT:
Industrial Disputes Act, 1947 (14 of 1947), s. 10-Award by Tribunal-Fixation of Wage Scales-Public Sector undertakings whether can claim Special treatment-Dearness allowance, considerations in fixing Gratuity scheme-Age of retirement of workers-Retrospective operation of award, discretion of Tribunal in fixing date.

HEADNOTE:
The appellant was a Government undertaking incorporated under the Indian Companies Act. Its registered office was in Maharashtra and its` main business the manufacture of antibiotics. The entire equity capital of the company was held by the President of India and his nominees and the entire Board of Directors was nominated by him. Service conditions of the workmen and other matters were subject to the approval of the President of India. Though the company was a limited one and therefore had a distinct corporate existence, it was in effect financed and controlled by the Central Government. On dispute arising between the workmen of the company and the management thereof the Government of Maharashtra made a reference under s. 10(1)(d) of the Industrial Disputes Act, 1947 for its adjudication. The Industrial Tribunal gave its award in two parts and gave, inter alia, the following findings
Rejecting the contention of the company that in fixing the wage scale,-, different considerations and standards should apply to public sector undertakings as distinct from private sector undertakings, the Tribunal fixed the wage scale on region-cum-industry basis. It found that the company was a very large and prosperous concern and its wage scales were on the low side particularly in regard to the lower categories of workers, taking into consideration the duties and qualification prescribed for them. The Tribunal fixed the wage scales having regard to the company's financial position, its productive capacity, a comparative study of its wage structure with that of its neighbouring industries and similar other relevant factors. It retained the existing dearness allowance scheme except for a small alteration in the slab of dearness allowance for the pay group Rs. 301-500; it merged a proportion of what would normally be paid in the shape of dearness allowance in the basic pay in the case of lower categories of workmen by giving increases wherever necessary for the basic pay only. It linked the dearness allowance with the cost of living index for Poona. It evolved a gratuity scheme far the workmen. It gave retrospective operation to the award. There were other findings on the various demands of the

workmen. The company appealed to this Court under Art. 136.
HELD : (i) In dealing with appeals brought to this Court under Art. 136 of the Constitution against awards which construct wage structures, this Court would, not interfere with the actual provisions of the wage structure unless some general principles were involved. 'Mere was no justification for the argument that this Court had by convention and practice adopted a more liberal attitude in the case of appeals against awards than in other appeals. [658 C-D]
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Observations in Bengal Chemical and Pharmaceutical Works Ltd., Calcutta v. Workmen. [1959] Supp. 2. S.C.R. 136, reaffirmed.
(ii) lf be object of Industrial law is two-fold namely, (i) to improve the service conditions of industrial labour so as to provide for them the ordinary amenities of life, and (ii) by that process to bring about industrial peace which would in its turn accelerate productive activity of the country resulting in its prosperity. The prosperity of the country in its condition of labour. By this process it is of labour can be proiressiviily raised from the stage of minimim wage, passing through need found wage, fair wage, to living wage. The principle of region-cum-industry,the rule of relevancy of comparable concerns, and the recognition of the totality of the basic wage and dearness allowance that should be borne in mind in the fixation of wage structure, are all well settled.[659 F-H]
M/s. Crown Aluminium Works v. Their Workmen, [1958] S.C.R. 651, Express Newspapers (Private) Ltd. v. Union of India [1959] S.C.R. 12, French Motor Car Co. Ltd. v. Workmen, [1963] Supp. 2 S.C.R. 16 @d The Hindustan Times Ltd., New Delhi v. Their Workmen, [1964] 1 S.C.R. 234, referred to.
(iii)All the principles referred to above though accidentally evolved in industrial adjudication relating to industries born in the private sector apply equally well to industries in the public sector. There is no justification from the standpoint of the employee that different wage structure shall be adopted having regard to the fact that in one case the shares of the company are held wholly or partly by the Central Government or the State Government and in other cases by members of the public. The worker is interested in his pay packet and if he is given reasonable it is expected that a satisfied worker will contribute to the growth of the industry@ and ultimately the prosperity of the country. From this stand consideration, so long as the capacity of the character of the employer is irrelevant. In the r of the employer or the destination of fixation of wages. Whoever may be the employer, he has to pay a reasonable wage to the employees.[660 F.662 B]
Constitutional, legislative, executive and opinion trends in that regard all go to,show that wages should normally be fixed on region-cum-industry basis. [662 C-668 F]

The material on record further showed that there was no complete uniformity in pay scales in all public sector undertakings. The service conditions of the employees in public sector undertakings were also not similar to those of Government employees; there was no security of service; the fundamental rules did not apply to them; there was no constitutional protection; there was no pension; they were covered by standing orders; their service conditions were more similar to those of employees in the private sector than those in Government departments. The Pay Commission recommendations were not applicable to the employees of the Government undertakings in the public sector; indeed the Pay Commission Report did not deal with them. [668 G-669 A-B]

There were no grounds for the fear that there would be any repercussions on other public sector undertakings situated in different parts of

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the country because of the said differences in the wage structure of the Government undertakings in the public sector. [669-D]

(iv)The doctrine of dearness allowance was only evolved in India. Instead of increasing wage as it is done in other countries, dearness allowance is paid to neutralist the rise in prices. This process was adopted in expectation that one day or other we would go back to the original price levels. But when it was found, that it was only a vain hope a part of the dearness allowance was added to the basic wages. While the Tribunal increased the wages in fixing the dearness allowance it looked into the overall picture namely, whether the total wage packet would approximate to the total packet wages in comparable industries. There was no question therefore of paying dearness allowance on dearness allowance, but it was only payment of dearness allowance in addition to the increased wages. Even on the basis of increased wages dearness allowance was necessary to neutratise the rise in prices. The Tribunal also introduced the slab system so that in the case of employees falling in the higher slabs the rise in prices was adequately neutralised. The Tribunal did not commit any error of principle. [671 - F; 672 D]

(v)There was no double provision for house rent. 'Me fact that in the index for Poona one of the components was house rent only meant that the rise in the house rent was also taken into consideration in arriving. at the index. Unless it was established that the house rent was a major item which went in inflating the price index, it could not be said that the Tribunal by awarding house rent allowance had given a double advantage to the employees. [672 E]

(vi)Gratuity is an additional form of relief for the worker to fall 'back upon. If the industry can bear the burden,, there is no reason why he should not be entitled to both the benefits-provident fund and gratuity. The Tribunal considered all the -relevant circumstances : the stability

of the concern, the profits made by it in the past, its future prospects and its capacity and came to the conclusion that in the concern in question the labour should be provided with a gratuity scheme in addition to that of provident fund. There was no justification to disturb the conclusion. [674 D]

In the nature of things a particular ceiling for gratuity cannot be fixed. If depends on the facts of each case. The scheme as prepared by the Tribunal was fair and equitable. [674 F]

(vii)Only such of the item; which go directly to reduce the expenditure that would otherwise go into the family budget are relevant in fixing fair wages. The Tribunal had taken all the permissible fringe benefits in fixing the wage scales and dearness allowance. It could not therefore be said that the Tribunal went wrong in omitting any amenities in fixing the wages. [675 C]

(viii)Having taken into account the relevant factors the Tribunal in its discretion came to the conclusion that the revised scales should coma into effect from 1st January 1962. There was no reason to interfere with its discretion. [675 G]

(ix)It was common case that work in the 'closed area' involved greater physical strain on the workmen. Therefore when the Tribunal gave them a reasonable allowance it was not possible for this Court to take a different view. [675 H]

(x)The Tribunal accepted the principles generally applied in fixing wages. It had not been shown that any principles had been violated. it

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was true that in some cases the total emoluments of a particular category of employees of the company were higher than those of the other concerns, but the difference was not such as to be described as a flagrant violation of the :fixation of the wage structure. If no principle is violated this Court will not interfere on the ground that it would have fixed the wages at a lower level than the Tribunal did. [676 F-D]

(xi) The finding of the Tribunal that a foreman was not a workman was on a consideration of his duties which it found to be of a managerial or administrative nature. The finding was one of fact and therefore must be accepted. [676 F]

(xii) There was no error of principle in the rates fixed by the Tribunal in thecase of daily-rate workers. [677 A-B]

(xiii) The Tribunal was not right in giving a discretion to the employers to continue or not to continue employees beyond the age of 58 years. Following the trend of judicial opinion the retirement age of the employees of the company should be raised to 60 years. [677 H]

(xiv)The Tribunal had given linkage with effect from April 1, 1965. The employees had not made out any case for

giving a further retrospective effect to the linkage. [678 B-C]

JUDGMENT:

CIVIL APPELLATE JURISDICTION : Civil Appeals No. 406 and 407 of 1964.

Appeals by special leave from the award dated October 8, 1963 of the Industrial Tribunal, Maharashtra, in Reference (IT) No. 147 of 1962.

S.D. Vimadalal, B. Dutta, J. B. Dadachanji, 0. C. Mathur and Rajinder Narain, for the appellant (in C.A. No. 406 of 1964) and the respondent (in C.A. No. 407 of 1964). M.C. Setalvad, K. T. Sule, Madan G. Phadnis, Jatindra Sharma and Janardan Sharma, for the respondent (in C.A. No. 406 of 1964) and the appellant (in C. A. No. 407 of 1964). M. K. Ramamurthi, for intervener No. 1.

M. R. K. Pillai, and M. S. K. Iyengar, for intervener No.

2. The Judgment of the Court was delivered by Subba Rao, C. J. These two Cross Appeals raise the question, among others, whether the wage structure, including dearness allowance, of a Government undertaking in the public sector should be of a pattern different from that of an undertaking in the private sector.

The Hindustan Antibiotics Limited, hereinafter called "the Company", is a Government undertaking and is incorporated under the Indian Companies Act. Its registered office is at Pimpri Poona District, State of Maharashtra, and its main business is the manufacture and distribution in bulk of antibiotics like penicillin, streptomycin, etc. The entire equity capital of the Company is held by the President of India and his nominees,

-and the entire Board of Directors of the Company is nominated ,by him. The conduct of the business of the Company is subject to the directives issued from time to time by the President of India and its accounts are audited by the auditors appointed by the Central Government on the advice of the Comptroller and Auditor General of India. Service conditions of the workmen and other matters are subject to the approval of the President of India. The annual report of the working of the Company and its affairs along with the Audit Report has to be placed before the Parliament. There are no shareholders other than the Central Government ,or its nominees, with the result that the dividends declared by the Company entirely go to the coffers of the State, but the profits are ploughed back into the industry or kept as reserve for ,future requirements. In short, though the Company is a limited one and, therefore, has a distinct corporate existence, it is in effect financed entirely from the funds of the Central Government.

The Company employs about 2,000 workmen. A dispute -arose between the workmen of the Company and the management ,thereof and the workmen presented a charter of fifteen demands to the Company. The Government of Maharashtra referred the said dispute to the Industrial Tribunal,

Bombay, for adjudication under s. 10(1)(d) of the Industrial Disputes Act, 1947 (14 of 1947).

The Industrial Tribunal, after elaborately considering the conflicting contentions of the disputants, gave an award dated October 8, 1963. In making the said Award the Industrial Tribunal postponed its decision on the question of linking dearness allowance with the cost of living index which had not then been prepared for Poona. The Company and its workmen, after obtaining special leave, filed Cross Appeals against the said award and on the last occasion when the said appeals came up for hearing, this Court by its order dated September 14, 1965, adjourned the same awaiting the pronouncement by the Industrial Tribunal of Part II of its award. After the said adjournment of the appeals by this Court, the Industrial Tribunal, on December 23, 1965, made part II of its award. These appeals are now before us for disposal.

The Industrial Tribunal made the following findings among ,others : Rejecting the contention of the Company that in fixing the wage scales different considerations and standards should apply to public sector undertakings as distinct from private sector undertakings, the Tribunal fixed the wage scales on region-cum-industry basis. On a scrutiny of the comparative study ,of the wage structures of companies in the region, it found that the Company was a very large and prosperous concern and its wage scales were on the low side, particularly in regard to the lower categories of workers, taking into consideration the duties and qualifications prescribed for them. The Tribunal fixed the wage scales, having regard to the Company's financial position, its productive capacity, a comparative study of its wage structure with that in the neighbouring industries, and similar other relevant factors. It retained the existing dearness allowance scheme except for a small alteration in the slab of dearness allowance for the pay group Rs. 301-500; it merged a proportion of what would normally be paid in the shape of dearness allowance in the basic pay in the case of lower categories of workmen by giving increases wherever necessary in the basic pay only. It linked the dearness allowance with the cost of living index for Poona. It evolved a gratuity scheme for the work- men. It gave retrospective operation to the -award. The findings of the Tribunal on other points need not be mentioned here they will be dealt with in appropriate places. In the result, pursuant to the said directions, the Tribunal had worked out the figures in detail and given its findings on the various demands made by the workmen. At the outset it may usefully be reiterated that this Court is not a regular court of appeal against orders of tribunals. The scope of its power under Art. 136 of the Constitution vis-a-vis awards of tribunals is stated in Bengal Chemical and Pharmaceutical Works Ltd., Calcutta v. Their Workmen(). Therein this Court observed:

> "Article 136 of the Constitution does not confer a right of appeal to any party from the decision of any tribunal, but it confers a discretionary power on the Supreme Court to grant special leave to appeal from the order of any tribunal in the territory of India. It is implicit in the discretionary reserve power that it cannot be exhaustively defined. It cannot obviously be so construed as to confer a right to a party where he has none under the law. The Industrial Disputes Act is intended to be a self-contained one and it seeks to achieve social justice on the basis of collective bargaining, conciliation and arbitration. Awards are given on circumstances peculiar to each dispute and the tribunals are, to a large extent, free from the restrictions of technical considerations imposed on courts. A free and liberal exercise of the power under Art. 136 may

> materially affect the fundamental basis of such decisions, namely, quick solution to such disputes to achieve (1) [1959] Supp. 2 S.C.R. 136,140.

industrial peace. Though Art. 136 is couched in widest terms, it is necessary for this Court to exercise its discretionary jurisdiction only in cases where awards are made in violation of the principles of natural justice, causing substantial and grave injustice to parties or raising an important principle of industrial law requiring elucidation and final decision by this Court or disclosing such other exceptional or special circumstances which merit the consideration of this Court."

We have cited the passage in extenso, as during the course of arguments, stress was laid on the fact that this Court has, by convention and practice adopted a more liberal attitude in the case of appeals against awards than in other appeals. We do not find any justification for this argument. Indeed, in this very case, this Court, on the last occasion adjourning the same, made the following observations:

> "Normally, in dealing with appeals brought to this Court under Article 136 of the Constitution against Awards which construct wage structures, 'this Court does not interfere with the actual provisions of the wage structure unless some general principles are involved. This position is not disputed by the learned Attorney General."

No case has been cited before us where a conscious departure has been made, from the said observations in Bengal Chemical and Pharmaceutical Works Ltd., Calcutta v. Their Workmen(). It may be that if the facts of some of the appeals decided by this Court were analysed, a liberal attitude may be discovered but the judgments therein would be found to have turned upon the peculiar facts of those appeals. In the absence of any definite pronouncements accepting a deviation from the said principle, we cannot adopt a principle different from that recorded in the aforesaid decision. We, therefore, re-affirm the observations made in the said judgment as laying down the correct approach to appeals under Art. 136 of the Constitution against awards of tribunals.

The main contention of Mr. S. D. Vimadalal, learned counsel for the Company, may be put thus : The pattern of wage fixa- tion in the case of Government companies born in the public sector should necessarily be different from that of companies born in the private sector. Elaborating the argument, he relied upon the following circumstances to sustain the said distinction : (i) nexus with the Central Government; (ii) need to keep parity or at least no disparity between different public sector industries in different parts of the country; (iii) the concepts of capacity (1) [1959] Supp. 2 S.C.R. 136,140.

profits and surplus have a new connotation which is different from that they bear in their application to industries in the private sector; (iv) pay scales are the same in all the industries throughout India born in the public sector; (v) amenities and fringe benefits in public sector industries are incomparably greater than in the private sector industries; (vi) the employees of the public sector industries have greater security than those of the private sector industries; (vii) the fact

that the Government, instead of running the business departmentally formed a company for the same purpose cannot possibly make any difference in the wage structures; and (viii) the undertaking in question is entirely financed by the Government. He would also say that the appropriate pattern to a Government company was that laid down by the Second Pay Commission as applicable to departmentally run industrial units of the Central Government.

Mr. M. C. Setalvad, appearing for the workmen of the Com- pany, countered this argument by stating that in fixing the wage structure, including dearness allowance, the question who is the employer is irrelevant and the needs of the employee are only paramount and that from the perspective of an employee there cannot possibly be any difference between companies born in the public sector and those born in the private sector. The apprehension, the argument proceeded, that there may be discrimination if this distinction is adopted between different industries has no real bearing, as it is impossible to eliminate completely all traces of discrimination between employees of different industries whatever principle is adopted.

At the outset, it will in convenient to consider the question of principle. The object of the industrial law is two-fold, namely, (i) to improve the service conditions of industrial labour so as to provide for them the ordinary amenities of life, and (ii) by that process, to bring about industrial peace which would in its turn accelerate productive activity of the country resulting in its prosperity. The prosperity of the country, in its turn, helps to improve the conditions of labour. By this process, it is hoped that the standard of life of the labour can be progressively raised from the stage of minimum wage, passing through need found wage, fair wage, to living wage. Industrial adjudication reflected in the judgments of tribunals and the courts have evolved some principles governing wage fixation though accidentally they related only to industries born in the private sector. The principle of region-cum-industry, the doctrine that the minimum wage is to be assured to the labour irrespective of the capacity of the industry to bear the expenditure in that regard, the concept that fair wage is linked with the capacity of the industry, the rule of relevancy of comparable concerns, and the recognition of the totality of the basic wage and dearness allowance that should be borne in mind in the fixation of wage structure, are all so well settled and recognised by industrial adjudication that further elaboration is unnecessary. In this context, a reference to the decisions in Messrs. Crown Aluminium Works, v. Their Workmen(), Express Newspapers (Private) Ltd., v. The Union of India(2), French Motor Car Co. Ltd. v. Workmen () and The Hindustan Times Ltd., New Delhi v. Their Workmen(4) will be useful. There is no, and there cannot be any, dispute on the laudable aims of industrial policy of our country in the matter of wage fixation. Das Gupta, J., in The Hindustan Times Ltd., New Delhi. v. Their Work-, men(4) said at page 240 :

> "In trying to keep true to the two points of social philosophy and economic necessities which vie for con- sideration, industrial adjudication has set for itself certain standards in the matter of wage fixation. At the bottom of the ladder, there is the minimum basic wage which the employer of any industrial labour must pay in order to be allowed to continue an industry. Above this is the fair wage, which may roughly be said to approximate to the need based minimum, in the sense of a wage which is "adequate to cover the normal needs of the average employee regarded as a human being in a civilised society". Above the fair wage is the "living wage"-a wage "which

> will maintain the workman in the highest state of industrial efficiency, which will enable him to provide his family with all the material things which are needed for their health and physical well- being, enough to enable him to qualify to discharge his duties as a citizen"."

This passage briefly and neatly defines the three concepts of minimum wage, fair wage and living wage. In the application of the said principles doubtless evolved in the industrial disputes in the private sector, what is the difference between industries in the two sectors to justify a different treatment of the industries in the public sector ? There is socioeconomic justification for the said prin- ciples. The social and economic upliftment of the labour is important for securing industrial peace which is essential to increase the national productivity. It is an accident that industrial adjudication in the private sector has thrown out the said principles. All the said considerations equally apply to industries in the public sector. We are excluding, for the present, industries run by the Government departmentally, for, in one sense they are also industries in the public sector. We are referring only to industries run by limited companies wherein the Government owns the entire share capital or a part of it. Now, take a particular region, say (1) [1958] S.C.R. 651. (2) [1959] S.C.R. 12.

(3) [1963] Supp. 2 S.C.R. 16. (4) [1964] 1 S.C.R. 234.

Bombay. In that region-We are only taking a hypothetical." case-there may be four companies owning factories manufac- turing antibiotics, namely, a limited company in which the Government does not own any shares and all the shares are owned by the members of the public, a company in which all the shares are held by the Central Government, a company whose share capital is owned by the Government as well as by the public and a company which is a proprietary undertaking owned by a single individual or a number of individuals. All the factories are making appreciable profits and have capacity to pay the employees. What is the justification from the standpoint of the employees that different wage structure shall be adopted having regard to the fact that in one case the shares are held wholly or partly by the Central Government or the State Government and in other cases by the members of the public ? The worker is interested in his pay packet and if he is given reasonable wages, it is expected that a satisfied worker will contribute to the growth of the industry and ultimately the prosperity of the country. From his standpoint, which is a paramount consideration, so long as the capacity of the industry is assured, the character of the employer is irrelevant. Now, I let us look at the. problem from the standpoint of the employer. It is said that a company born in the private sector works with a profit motive and exploits the workmen for its private ends, whereas a company born in the public sector, though it is expected to make profits, really contributes to the wealth of the whole country. This argument poses the question of the comparative merits of different ideologies, such as price economy, mixed economy, socialism etc. We do not propose to go into these complicated economic problems; but it cannot be posited that necessarily and inevitably companies born in the private sector only care for profits by exploiting workers and those born in the public sector always work for public good. Different countries following different ideologies have reached prosperity or are on the way of prosperity. It cannot be said that a particular ideology only will lead to that result : it depends upon many other factors. That apart, whatever may be said about proprietary firms, it cannot be asserted that every company born

in the private sector only functions on private motives; it may earn profits, pay reasonable dividends and plough back the balance of the profits into the industry for its further growth. So too, it cannot be asserted that always a State will utilise the profits earned for the good of the country. There are many instances in the world where the national resources were frittered away. In the ultimate analysis, the character of the employer or the destination of profits has no relevance in the fixation of wages. Whoever may be the employer, he has to pay a reasonable wage to the employees. The incongruity of the alleged distinction in the matter of wages is further exemplified if we compare similar industries in the same region owned by the State and by the Union. Now, if the argument be accepted, the pattern of wage structure between these also must differ, for, the pay scales now obtaining in the State Governments and the Central Government radically differ. On the other hand, if the doctrine of region-cum-industry is accepted, all the employees of industries of similar nature, irrespective of the character of the employers, win get a fair deal without any discrimination which will certainly be conducive to the industrial development of our country. Let us now consider the constitutional, legislative, executive and opinion trends in that regard. Art. 39 of the Directive Principles of State Policy says that the State shall direct its policy towards securing equal pay for equal work for the both men and women and Art. 43 thereof enjoins on the State to endeavour to secure, by suitable legislation or economic organisation 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. This constitutional directive will certainly be disobeyed if the State attempts to make a distinction between the same class of labourers on the ground that some of them are employed by a company financed by it and the others by companies floated by private enterprise. These Articles do not countenance the invidious distinction which is now sought to be made on the basis of the character of the employer. The Legislatures in India even before the coming into force of the Constitution passed Acts regulating industries such as the Industrial Disputes Act, 1938, Industrial Employment (Standing Orders) Act, 1946 and Industrial Disputes Act, 1947. In these Acts no distinction is made between industries in public and private sectors vis-a-vis the service conditions of the labour. Under s. 2(g) of the Industrial Disputes Act, 'employer' means in relation to an industry carried on by or under the authority of any department of the Central Government or a State Government the authority prescribed in this behalf, the head of the department, and under cl. (j) 'industry' means any business, trade, undertaking, manufacture or calling of employers and includes any calling, service, employment, handicrafts etc. S. 2cl. (s) defines workman to mean any person employed in any industry to do..... work for hire or reward.

A combined reading of these provisions indicates-indeed it is not disputed-that the Act regulates the relationship of employer and employee irrespective of the fact that the employer is the State Government or not. But what is stated is that though the said Act governs the relationship between the employers and workmen irrespective of the fact whether the employer is Government or Government-aided corporation, the pattern of wage structure, need not necessarily be the same; but the fact that the disputes between the employers and employees, irrespective of the character of the em-

ployer are made the subject of industrial adjudication is indicative, though not decisive of the legislative intention to treat workmen similarly situated alike in the matter of wage structure and

other conditions of service. S. 20 of the Payment of Bonus Act of 1965 directs the application of the Act to establishments in public sector in certain cases. Industrial adjudication also adopted the same pattern for both the categories of industries. Awards given by tribunals in industrial disputes raised by the workmen of Air India, State Bank of India, municipal undertakings, collieries, Bombay Electricity Supply and Transport Undertaking, and Life Insurance Corporation of India, show that the tribunals applied the principles evolved by industrial adjudication in regard to industries in the private sector to the said public undertakings. The comment that some of them had a private sector background and, therefore, the tribunals treated them on par with the industries in the private sector has no force, and indeed the fact that the same principles were applied notwithstanding the conversion of the private sector industries into public sector industries shows that a different treatment was not thought necessary. So too, the wage boards constituted by the Government of India for different industries, such as steel, engineering, cement, hotel etc. made enquiries into their service conditions without making any distinction between the industries in the two sectors.

The pronouncements made by the Government or its official agencies do not also support any such distinction. In the 15th session of the Indian Labour Conference held in New Delhi on July I I and July 12, 1957, the labour, the employees, the employers, the State Governments and the Central Government were represented. One of the recommendations made by that Conference in regard to fair wages is found in para 5 of its report. It reads As regards fair wages, it was agreed that the Wage Boards should go into the details in respect of each industry on the basis of the recommendations contained in the report of the Committee on Fair Wages. These recommendations of the Fair Wages Committee should also be made applicable to employees in the public sector."

Another recommendation was that the study groups may assemble materials for rationalisation of the management in industries, including those in the public sector. Pointing out the difference between the two sectors, the Planning Commission observed :

> "Public undertakings differ in an important respect from private undertakings. The 'profit' motive and the exploitation of workers for private gain have no significance in the State owned enterprises. The undertakings have no doubt to show the same, if not greater efficiency of working 16Sup.CI/66-14 as private owned undertakings. They have also to show profits. But the nature of these profits is different. The profits which these undertakings make are not profits in- tended for any individual or group of individuals but are extra wealth for the whole country."

In the First Five Year Plan the Planning Commission laid down the policy in respect of different undertakings thus :

> "The aim should be to have a co-operative and contented labour force. The ways by which this can be achieved while maintaining peace in the undertakings and increasing production are :
>
> (a) Wages in public undertakings should not be less favourable than those prevailing in the neighbouring private enterprises. In so far as working conditions and welfare

amenities are concerned, undertakings in the public sector should set the pace and serve as models.

(b)

(c) The benefits of all labour laws which are applicable to similar private undertakings should also be made available to the workers of these undertakings

(d) The atmosphere should be such that the workers be made to feel that in practice, as well as in theory, they are partners in the undertaking.

(e)

(f) Collective bargaining between workers and management should be encouraged. Such collective bargaining should embrace both economic and non-economic demands.

Government conciliation and arbitration machinery should be made available to the workers of these undertakings. The existing right of Government to accept, reject or modify an award should be restricted to period of emergency." It is true that the said extracts have no statutory force but only represent the opinion of the Planning Commission. But both the parties only relied upon it to show the thinking of the policy-making bodies and the trends in the matter of industrial adjudication. While recognising the differences that existed between industries in the two sectors, the Planning Commission expressed the view that the object was to have a co-operative and contented labour and that therefore, the employees of -the public sector should also have the benefit of industrial adjudication. Both the sides relied upon the passage which said that wages in public undertakings should not be less favourable than those prevailing in the neighbouring private enterprises. We do not see how this passage helps the Company. Indeed, in a way, it supports the respondents for it seeks to put the wages in both the sectors on the same level.

The Planning Commission in its report on the Second Five Year Plan not only reiterated but also emphasised its earlier view. Therein it observed.

> "Any attempt, therefore, on the part of public employer to avoid the responsibility of an employer on the ground that he is not working for profit has to be discouraged. ..... In the last analysis employees in the public sector should, on the whole, be at least on par with their counterparts in private employment and should feel a legitimate pride in what they produce and in their position as employees in the public sector."

So too, the report on the Third Five Year Plan, though it brought the distinction between the two sectors, it again stated that similar scales of pay should be given to employees in both the sectors. The relevant passage thereof runs thus "Increased profits, which in the private sector would create inequalities, (and possible conspicuous and wasteful consumption), in the public sector can be

directly used for capital accumulation. By efficient conduct of enterprises and following a rational and economically sound price policy for its products and services, the public sector under- takings ought to secure adequate return on capital employed and contribute their full share to the increase in the portion of national resources devoted to investment." This passage only says that the public sector should function efficiently so that there may be capital accumulation. But, at the same time, the Planning Commission proceeded to observe :

> "However, to avoid the risk of migration of personnel from one public sector undertaking to another if different scales of pay are adopted by them for posts of similar nature, it may be necessary to indicate to the Board broadly the basic scales of pay for different categories of posts. It should, however, be open to the Board to fix specific pays for specific jobs."

The Planning Commission's report on the Third Five Year Plan also did not make any departure from its earlier policy and did not suggest that the two sectors vis-a-vis the labour should be put in different compartments.

Estimate Committees which are constituted by Parliament had also to make certain observations in regard to the subject. During 1960-61 the Estimates Committee in its 120th Report suggested that the Government might review the scales of pay obtaining in all its undertakings and revise them with the object of introducing uniformity wherever possible. The Government turned down the suggestion on the ground that it was not possible to suggest concrete scales of pay which can be applicable to all industries, because conditions differ from region to region and from industry to industry. For 1963-64 the Estimates Committee expressed the view that all wholly Government-owned public undertakings should generally be in the form of statutory corporations and the company- form should be an exception to be resorted to only for an organisation of a specific nature. To that, the Government replied that the company-form had the advantage of allowing the necessary flexibility and autonomy needed for the successful operation of commercial enterprises,. The Com- mittee also suggested that there should be some uniformity in the classification of staff in all public undertakings. The Estimates Committee also in para 142 of the Report made the following observations :

> "The Committee feel that varying practices in these matters are likely to lead to repercussions in other public under- takings and it may be difficult to resist a similar demand made by their employees. It is therefore desirable that public undertakings follow a common pattern in this regard as far as possible."

The Government rejected it on the ground that the nature and responsibilities of staffs differ from undertaking to undertaking depending upon the size, line of production etc. and the pay scales of posts also varied from undertaking to undertaking. It also pointed out that while uniformity might be desirable, a measure. of flexibility and autonomy was necessarily to be allowed for varying nature and activities of the undertakings and, therefore, uniform classification of staff whose nature and responsibility varied from undertaking to undertaking was not possible. It will be seen that though the Estimates Committee suggested a common pattern of wage structure for all public undertakings,

the Government, for the reasons given, rejected the said proposals.

The opinions of the experts on the subject who had made a special study thereof were relied upon. We are not in a position to evaluate the said opinions cited at the Bar, for the learned counsel on both sides did not agree on the credentials of the experts. In the book on "Cross Purposes in Wage Policy" by R. G. Hawtrey, the following passage appears in Chapter VII :

> "When an industry producing a freely marketable produce, like coal, is nationalised, it can proceed like a private enterprise, paying wages at rates prevailing in the labour market for similar grades, and fixing prices to cover costs."

It is said that this passage is based upon the exploded doctrine of laissez-faire. But, in our view, the learned author was not referring to any such theory, but was only expressing his opinion that in a nationalised industry the rates of wages prevailing in the private sector could profitably be adopted.

In his book on "Public Enterprise and Economic Development"

> though the author expressed the view that the duties and attitudes of the personnel of a public corporation must differ from those of civil servants, he pointed out that in many countries there was a strong resistance against this policy either because they knew no better or because powerful pressures virtually compel them to do so. Dealing with India, he observed :
>
> "The issue of 'Parity' with the civil services becomes most acute when Government decides to convert a departmental enterprise into a public company or corporation."

William A. Robson in his book "Nationalised Industry and Public Ownership' brought out the differences between nationalised industry and a private enterprise. Incidentally he cited a passage from a White Paper on broadcasting policy in respect of the level of remuneration for the employees of the B.B.C. wherein it was stated:

> relate the salaries and conditions of employment of its permanent staff to those ruling in the Civil Service, it should in fixing such salaries and conditions, pay proper regard to those of the Civil Service and to the greater security offered by employment in a public corporation, as compared with employment in most business concerns." This does not mean that the wage structure of the public corporation should be of the same pattern obtaining in departments of Government. It was only an advice to the effect that in fixing the pay structure, due regard should be had to that in the civil service. We do not know the comparative merits of the pay structure obtaining in the two sectors in England.
>
> "In Collective Bargaining" by International Labour Office, Geneva, the following article appears: "One main difference from private industry is that in a nationalised industry no profits go to private shareholders. Any surplus, after setting aside funds

> needed for the de- velopment of the industry, is used for the benefit of the whole community. Surpluses are not used to give special advantages to the workers in nationalised industries. There is no reason why such workers should be better off in some industries than in others merely because their industries have been nationalised. On the other hand,they should not be worse off either. Their wages and conditions should be determined as in other industries by the nature of the work they do, and should be related to the training and skill required. Thus there should be similarity between the wages and conditions of. employment of workers in nationalised and private industries. Labour can move freely from one to the other, and workers in nationalised in- dustries have no justification for claiming preferential treatment. The State as the employer of workers in nationalised industries should be a good employer, but its labour conditions will be very much like those established by good employers in private industry."

This passage gives the modern trend of opinion in respect of wage structure in a succinct form. It shows that the labour of a nationalised industry should get a fair deal in the same manner as their counter-part get in private industries. In a paper submitted by Dr. H. K. Paranjape of the Institute of Public Administration, New Delhi to Seminar on Management of Public Industrial Enterprises sponsored by the Government of India and the United Nations, it is stated:

> "As regards the condition about wages and allowances, one cannot say that the situation of the employees in State enterprises is in a way specially different from that in private industry. Rates of wages and allowances have naturally to be related to the rates prevalent for the particular type of workers in a given area. Of course in some regions Government enterprises have created a demand for skilled labour which did not exist before and this had had an upward effect on the wage level in these regions."

We have referred to these books and papers not because they have any binding effect, but only to gauge the correct trend in regard to the wage structure. They show that the wages should normally be fixed on region-cum-industry basis. There is also some material to prove that there is a no uniformity of scale pattern in the public sector. In the 54th report of the Estimates Committee it is suggested that there should be some uniformity in the classification of staff in all public undertakings. But the Government replied that the nature and responsibility of staff differed from undertaking to undertaking depending upon the size and line of production etc., and that the pay scales also differed from undertaking to undertaking and that complete uniformity in pay scales was not practicable. The same variations in different public sector undertakings are pointed out in the 52nd and 135th reports of the Estimates Committee.

Nor the service conditions of the employees in public sector undertakings are analogous to those of the Government employees. There is no security of service; the fundamental rules do not apply to them; there is no constitutional protection; there is no pension; they are covered by service standing orders; their service conditions are more similar to those of employees in the private sector than those in Government departments.

In Ex. U-13, a letter dated May 31, 1961 from the Financial Advisor of the Company to Shri R. P. Sharma, the Financial Advisor, informed Shri Sharma, who was a U.D.C.' Internal Audit Section of the Company, that the Pay Commission recommendations were not applicable to the employees of the Company. Indeed, the Pay Commission Report does not deal at all with Government undertakings in the public sector. Nor can we appreciate how there would be any repercussions on other public sector undertakings situated in different parts of the country because of the said differential in the wage structure of the Government undertakings in the public sector. The labour who have by now accepted the region-cum- industry' principle, will not raise any dispute if their wages are similar to those obtaining in comparable concerns in the region. On the other hand, in a vast country like India, the labour cannot appreciate the uniform structure of wages on an All-India basis, if they find that in the region where they are working, employees similarly situated are getting higher wages than theirs. So too, in a particular region, the pay structure of a Government industry may happen to be better than that obtaining in comparable concerns in the same locality. This will lead to industrial unrest, for the labour force in the comparable concerns may demand that their wages should be equalised with those obtaining in Government concerns. By and large, therefore, the acceptance of the principle of region-cum-industry will be more conducive to industrial relations than that of the Governmental wage structure framed on an All India basis. Nor can we appreciate the argument that the principle of region-cum-industry will lead to discrimination. But, if the expression "labour force" is understood to mean the labour force employed in both the sectors, the alleged discrimination between different parts of the public sector will disappear, for, as far as possible, the labour to whichever sector it may belong in a particular region and in a particular industry, will be treated on equal basis. On a consideration of the relevant material placed before us, we have come to the conclusion that the same principles evolved by the industrial adjudication in regard to private sector undertakings will govern those in the public sector undertakings having a distinct corporate existence.

On the question of dearness allowance, the Tribunal in para 36 of its award said that dearness allowance should be altered as under

> Dearness allowance (including the present Basic Pay components of additional dearness, allowance and com-
>
> pensatory allowance)
>
Rs.	Rs.
51-75	65
76-100	67
101-112	77
113-150	80
151-200	85
201 and over	90
>
> In addition, the Tribunal gave house rent allowance where the workman is not given a house to continue on the same basis as existed earlier. In arriving at these figures, the Tribunal observed :

> "Having considered the viewpoints of both sides I have come to the conclusion that there should be some merger of part of the dearness allowance with the basic pay in the case of the lower categories. I have in revising the wage scales, kept this in view and whenever an increase in the totality of emoluments has been considered by me to be necessary I have given the additions in the basic pay. In respect of the higher categories, there is already some degree of merger, I would maintain the present scheme of dearness allowance with a slight modification."

But, as the Tribunal was of the opinion that dearness allowance had to be linked with the cost of living index for Poona and as the said index was not prepared by that time, it adjourned the consideration of that part of the award and it dealt with it in its subsequent award, Part 11 of the award. Having considered the arguments on both sides, it directed that with effect from April 1, 1965, the dearness allowance awarded under Part I of the Award be varied as follows:-

> "For a variation (rise or fall) of every 5 points in the Poona Index over the base 1961 there should be a variation of Rs. 3.50 per month in the dearness allowance for employees drawing basic wage/salary up to Rs. 75 .....
>
> For employees drawing basic wages/salary above Rs. 75 the variation will be, instead of Rs. 3.50, as follows:

Rs.	Rs.
76-112	4
113-150	5
151-200	6
201 and over	7

> The effect of this award was that dearness allowance was linked both with wages as well as with the cost of living index for Poona. To put it differently, the Tribunal gave dearness allowance varying with different slabs of wages and linked the same with the said Index.
>
> Learned counsel for the Company raised before us two points:
>
> (1) The Tribunal, having merged part of the dearness allowance with the basic wages and having linked dearness allowance both with wages and with the Index for Poona, in effect gave dearness allowance on dearness allowance. To put it in other words, it was argued: by the said merger the wages were raised with the result, that by the operation of the linking with the Index for Poona, the rate of dearness allowance was also raised. (2) One of the components of the Index for Poona was the house rent, and the Tribunal having linked dearness allowance with the said Index, erred in again giving house rent allowance.

The first argument is based upon a fallacy. The doctrine of dearness allowance was only evolved in India. Instead of increasing wages as it is done in other countries, dearness allowance is paid to

neutralise the rise in prices. This process was adopted in expectation that one day or other we would go back to the original price levels. But, when it was found that it was only a vain hope or at any rate, it could not be expected to fall below a particular mark, a part of the dearness allowance was added to the basic wages, that is to say, the wages, to that extent, were increased. We the Tribunal increased the wages, in fixing the dearness allowance, it looked into the overall picture, namely, whether the total wage packet would approximate to the total packet wages in comparable industries. There is no question, therefore, of paying dearness allowance on dearness allowance, but it was only a payment of dearness allowance in addition to the increased wages. Even on the basis of the increased wages, dearness allowance was necessary to neutralise the rise in prices. That is exactly what the Tribunal has done. The Tribunal adverting to this argument stated:

> "I am, however, of opinion that in linking the dearness allowance, a portion of which has been merged in the basic wage, the totality of emoluments should not be ignored, otherwise in the case of a market increase in the cost of living, if the linkage is done without bearing in mind the total emoluments, the total emoluments would not be satisfactory and may even become out of line with those in other large concerns in the region. Again the linkage need not be done so as to provide increase in dearness allowance at a uniform rate. Otherwise increase in dearness allowance on account of rise in the cost of living for employees drawing wages and salaries above certain ranges of basic wage or pay as would vary inadequately neutralise the rise in cost of living-"

It is, therefore, clear that the Tribunal increased the wages of the lower category of employees by adding part of the dearness allowance to their original basic wages, at the same time bearing in mind that the total packet of wages and dearness allowance compared favourably with those in similar concerns. It has introduced the slab system so that in the case of employees falling in the higher slabs, the rise in prices is adequately neutralised. The Tribunal did not commit any error of principle.

Nor can we accede to the argument that there was a double provision for house rent. The fact that in the Index for Poona one of the components is house rent only means that the rise in the house rent was also taken into consideration in arriving at the Index. Unless it is established that the house rent was a major item which went in inflating the price index, it cannot be said that the Tribunal by awarding house rent allowance has given a double advantage to the employees in question. It has not been established before us that the Index for Poona was inflated because of its rent component. Indeed, this argument does not appear to have been raised before the Tribunal. We cannot, therefore, accept this argument.

In the result, the contentions raised in respect of dearness allowance are rejected.

The next question relates to demand 6-A i.e., demand for gratuity. The Tribunal directed the Company to give gratuity according to the following scheme:

"(a) On the death of an employee while in the service of the Company or his becoming physically or mentally incapable for further service-one half of a month's wages (including dearness allowance but excluding house rent allowance and all other allowances), for each completed year of service, subject to a maximum of 10 months' wages, payable to the workman or to his heirs or executors, as the case may be.

.lm15

(b)On voluntary retirement or resignation after 15 years' continuous service on the same basis as above.

(c)On termination of service by the Company after 10 years' continuous service but less than 15 years' service one half of a month's wages, as defined in clause (a) above, for each completed year.

Gratuity will not be payable to a workman discharged or dismissed for misconduct causing financial loss to the Company, to the extent of the loss so caused. Wages for the purpose of the scheme shall be computed at the average of the wages for the year preceding the event of death, retirement, resignation, or termination of I service, as the case may be.

The Scheme shall come into force from the date on which this Award becomes enforceable."

Learned counsel for the Company argued that it had been contributing to the employees' provident fund from 1st April 1960 at the rate of 8 1/8 per cent on the basic wage and dearness allowance though the rate laid down under the Employees' Provident Funds Act was only 61 per cent and that the Government of India came to a decision that gratuity scheme should not be introduced in an industry where the rate of employer's contribution for the contributory provident fund was 8 1/3 per cent. He further contended that no case had been made out on the facts of the present case for giving the worker both the pension as well as gratuity.

The law on the subject is fairly well settled. In B.T. Mills v. B. T. Mills Mazdoor Sangh(1) Hidayatullah, J. speaking for this Court brought out clearly the distinction between a scheme of gratuity and a scheme of pension. The learned Judge said:

"A scheme of gratuity and a scheme of pensions have much in common. Gratuity is, a lump sum payment while pension is a periodic payment of a stated sum. They are both "efficiency devices" and are considered necessary for an "orderly and humane elimination" from industry of superannuated or disabled employees who but for such retiring benefits would continue in employment even though they function inefficiently."

Gajendragadkar, J. in Indian Hume Pipe Co. v. Its Workmen(2) also gave a workable expression of gratuity. He stated:

> "Gratuity is a kind of retirement benefit like the provident fund or pension..... Gratuity paid to work-
>
> (1) A.I.R. 1965 S.C. 839. (2) [1965] 2 L.L.J. 830 men is intended to help them after retirement, whether the retirement is the result of the rules of superannuation or physical disability. The general principle underlying such gratuity schemes is that by their length of service workmen are entitled to claim a certain amount as a retrial benefit."

That apart, from the standpoint of the employee the said two schemes give him something to fall back upon after his retirement. It is commonplace that industrial adjudication under the present circumstances is not able to provide the labour a living wage. At the best, they get only a little more than the necessities of life. 'If the industry is a flourishing one, we do not see any reason why the labour shall not have the benefit of both the schemes. Doubtless, the provident fund gives him relief, but to earn it, he contributes a part of his wages. But that in itself may not be sufficient to meet the requirements of his old age or to provide for his dependents during his life-time or after his death. Gratuity ;is an additional form of relief for him to fall back upon. If the industry can bear the burden, there is no reason why he shall not be entitled to both the retirement benefits. The Tribunal considered all the relevant circumstances: the stability of the concern, the .profits made by it in the past, its future prospects and its capacity and came to the conclusion that in the concern in question, the labour should be provided with a gratuity scheme in addition to that of a provident fund scheme. We see no justification to ,disturb this conclusion.

Nor can we agree with the argument of Mr. Setalvad that the Tribunal should have given twenty months' basic salary as gratuity. 'In the nature of things, a particular ceiling for gratuity-cannot be fixed. It depends upon the facts of each case. The Tribunal has taken all the relevant circumstances including the fact that the Company was contributing to the employees' provident fund at the rate of 8 1/3 per cent instead of 6 1/4% and also the fact that part of the dearness allowance was included in the basic wage. We do not see any error of law or anything contrary to the practice obtaining in industrial adjudication to compel us to interfere with the details of the said scheme. They are quite fair and equitable in the circumstances of the case. We therefore reject the contention of ,the Company as well as the employees in this regard.

It was then contended for the Company that it has provided amenities to the employees which no other comparable concern has provided and therefore they should have been taken into consideration in fixing the wage structure. The Company has shown in -Ex.C-12 the various amenities it has provided for the labour. The relevant principle has been fairly stated by the Fair Wages Committee in para 28 of its report which reads:

> .lm15 "Where a benefit goes directly to reduce the expenses of a worker on items of expenditure which are taken into account for the calculation of the fair wage, it must necessarily be taken into account in fixing the actual fair wage payable. Where however the benefit has no connection with the items of expenditure on which the fair wage is calculated it cannot naturally be taken into account."

To state it differently, only such of the items which go directlyto reduce the expenditure that would otherwise go into the family budget are relevant in fixing fair wages. The Tribunal has taken all the permissible fringe benefits in fixing the wage scales and dearness allowances. It cannot therefore be said that the Tribunal went wrong in omitting any amenities in fixing the wages.

The learned counsel took objection to the part of the award where the Tribunal gave retrospective operation to it from 1st January, 1962. The reference of the dispute to the Tribunal was made on 11-8-1962. The first- award was made on 8th October 1963. A Tribunal ordinarily makes its award operative from the date of reference; but, in exceptional circumstances it gives retroactive operation to some of its proposals. It will be seen from the record that the original demand emanated as early as 6-2-1957, but because of some technical difficulties, namely, whether the Central Government Authorities or the State Government Authorities were the appropriate authorities for entertaining the disputein conciliation proceedings, the said proceedings took a long time for reaching the stage of reference. Having regard to that factand also to the fact that the totality of the emoluments, particularly,in the case of lower categories of manual, technical and clericalstaff were on the lower side in the company, the Tribunal in its discretion came to the conclusion that the revised scales should, come into effect from 1 st January, 1962. We do not see any reason to interfere with its discretion. The next contention of the learned counsel for the Company relates to the workmen in the "closed area". The Tribunal gavethe workmen an allowance of Rs. 5 per month from the date the award became enforceable. While the workers say that to work in the sections of closed area is a health hazard and reduces the lifespan, the Company admits that the workers functioning therein are easily fatigued but states they are given the necessary safety equipment, food and rest. It is therefore common case that the work in the 'closed area' involves a great physical strain on the workmen.In the circumstances, when the Tribunal gave them a reasonableallowance, it is not possible for this court to take a different view..

The learned counsel for the Company then argued that there is a flagrant violation or departure from the accepted norms in fixing the wage structure and the dearness allowance and therefore, as an exceptional case, we should set aside the award of the Tribunal and direct it to re-fix the wages. He has also taken us through ,comparative tables to satisfy us that the wages and the dearness allowances fixed for the labour in the instant Company are abnormally high compared with the other companies like Ruston and Hornsby and Mahindra. The award discloses that the Tribunal accepted the principles generally applied in fixing wages. It has not been brought to our notice that any principle has been violated. We have also scrutinised, with some care, the tabular statements placed before us. It is true in some cases the total emoluments of a particular category of employees of the Company is higher than those of the other concerns, but the difference is not such as to be described as a flagrant violation of the fixation of the wage structure. Almost always no Tribunal fixes nor can fix the wage structure to reach the perfection point. If no principle is violated, this Court will

not interfere on the ground that it would have fixed the wages ,at a lower level than the Tribunal did. We do not find any such abnormal variation of wages from those obtaining in other companies. We do not, therefore, think that this is such an exceptional case as to call for a departure from our usual practice of not inter- fering with the award of the Tribunal in the fixation of wage structure.

Now, coming to the Cross Appeal, the first question is, what is the status of a foreman in the industry in question. The definition of 'workman' in s. 2(s) of the Industrial Disputes Act excludes therefrom any person who is employed mainly in a managerial or administrative capacity or who being employed in a supervisory capacity, draws wages exceeding Rs. 500 per mensem. It was contended that a foreman was a supervisor within the meaning of the said definition and as, in the instant case, he was drawing less than Rs. 500 per mensem, he would be a workman within the meaning of the definition. The Tribunal held that he was not a workman on the ground that his work was predominantly managerial and administrative in nature. It has come to that conclusion on a consideration of the various duties allotted to the foreman. The finding is one of fact and therefore must be accepted.

The next question raised on behalf of the workmen relates to the daily-rate workers. The Union demanded the following scales of pay for daily-rate workmen:

"Unskilled Rs. 3 .00--0 .75-4.50 Skilled Rs. 4.50-1.00- 6.50."

The Company claimed that the existing rates were adequate but the Tribunal having regard to the rates of wages for casual workmen in the concerns in the neighbourhood, increased the rates of male casual labour to Rs. 2 . 75 and the female casual labour to Rs. 2.25.

It also directed that if any semi-skilled or skilled person was employed as casual worker he should be paid at the rate of the monthly 'wage and dearness allowance fixed for the particular category divided by 26. The Tribunal having regard to the relevant circumstances, fixed the rates and we do not see any error or principle ,in arriving at that figure. We accept the findings.

The next question is the fixation of the age of retirement for the employees. The existing age of retirement is 55 extendible to 60 years at the discretion of the management if the workmen are considered suitable and if they are medically fit and mentally alert. The Tribunal raised the age of retirement from 55 years to 58 years but gave a discretion to the Company to continue an employee after that age. The learned counsel for the workmen contended that the superannuation age fixed by the Tribunal does not reflect the social changes that have taken place in the country and has also ignored the judicial trend in that regard. Reliance is placed upon the decision of this Court in G. M. Talang v. Shaw Wallace and Co.('). Therein this Court held that the opinion furnished by the several documents on record clearly showed a consistent trend in the Bombay region to fix the retirement age of clerical and subordinate staff at 60 years. In the course of the judgment, this Court noticed the Report of the Norms Committee in which the following opinion was expressed:

> "After taking into consideration the views of the earlier Committees and Commissions including those of the Second Pay Commission the report of which has been released recently we feel that the retirement age for workmen in all industries should be fixed at 60. Accordingly the norm for retirement age is fixed at 60."

But it is said that the scope of the judgment was confined only to the Bombay region and it should-not be extended to the Poona region. A perusal of the Tribunal's Award shows that it followed the decision given by it in the dispute of Shaw Wallace & Co. Ltd.(') which was reversed by this Court. That apart, the Tribunal also recognised that the retirement age should be raised from 55 years to 58 years and that even thereafter discretion should be given to the employers to continue the employees or not to do so. This indicates that in the view of the Tribunal, the retirement age in the case of the employees of the industry in question could reasonably be raised beyond 58 years. We do not think it is proper to give a discretion to the Company to raise the age of retirement or not to do so, for, the vesting of such uncontrolled discretion in the employer might lead to manipulation and victimisation. We would, therefore, following the trend of judicial opinion, hold that the retirement age of the employees of the Company should be raised to 60 years.

(1) [1964] 7 S C R. 424.

On behalf of the workmen it was contended that the linkage should be done with effect from January 1, 1962. The Tribunal pointed out that it had no intention of giving retrospective effect to the linkage for the following reasons: (1) it had substantially increased the wages; (2) a long retrospective effect would unduly increase the burden on the Company; and (3) the workmen had been getting handsome bonuses. But, having regard to the fact that the Poona index figures- had been published from April 1964, it held that the linkage should be from April 1, 1965 and not from the earlier date; that is to say, it had given, having regard to the aforesaid circumstances, a limited retrospective operation to the linkage. The employees have not made out any case for giving a further retrospective effect to the linkage.

In the result, Civil Appeal No. 406 of 1964 preferred by the Company is dismissed with costs; and Civil Appeal No. 407 of 1964 preferred by the Workmen is dismissed with costs, except that the Award is modified in regard to the age of retirement.

G.C. Appeals dismissed and award modified.