The Honorary Secretary, South India Millowners' Association and Others

Vs

The Secretary, Coimbatore District Textile Workers' Union. (And Connected Appeals)

Civil Appeals Nos. 419 of 1960, 302 of 1959 and 159 of 1961

(P. B. Gajendragadkar, K. N. Wanchoo JJ)

01.02.1962

JUDGMENT

GAJENDRAGADKAR, J. –

These three appeals arise out of an industrial dispute between the industrial employers who are the appellants and their respective workmen who are the respondents in respect of the letters' claim for bonus. They have been heard together because they raise some common questions of general importance. We would first set out briefly the material facts in the three respective appeal.

The Honorary Secretary, The South India Millowners' Association, and other mills are the appellants in Civil Appeal No. 419/60. A dispute arose between 44 mills and their respective employees in regard to the bonus for the year 1956. The said dispute was referred for industrial adjudication to the Industrial Tribunal, Madras, State Government on the 13th March 1958. To this reference, the different mills and three union which represented the employees were made parties. It appears that for the four years prior to 1956, the question of bonus had been disposed of by a tripartite Board of Arbitration appointed for each year by the Government. For the year 1956, negotiations were held at governmental level to evolve a satisfactory solution by consent but since the said negotiations failed, the parties agreed on some interim payment leaving the rest of the dispute to be adjudicated upon by the Industrial Tribunal. That is the genesis of the reference.

On the 5th of September, 1958, the Tribunal made its award. It considered the several rival contentions raised by the parties in support of their respective, claims and awarded bonus ranging from 7 month's basic wages to 1 month's basic wages according to its finding as to the available surplus in respect of each mill. It is against this award that the appellants have come to this Court by special leave.

At the time when the award was pronounced the decision of this Court in the Associated Cement Cos. Ltd., Dwarka Cement Works, Dwarka v. Its Workmen [[1959] S.C.R. 925] had not been pronounced. In that decision, this Court has considered all the relevant problems which arise in the working of the Full bench formula governing the award of bonus to industrial labour and some of the points which the appellants wanted to raise against the award in question are now concluded by that decision. That is how in the present appeal, the appellants have confined themselves to the points on which the Industrial Tribunal has decided contrary to the decision of this Court in the case of Associated Cement Companies Ltd. or which are not covered by that Judgment.

Civil Appeal No. 159/61 arises out of a reference made by the State Government of Madras on the 3rd October, 1959, in respect of an industrial dispute for bonus for the year 1958 between 51 mills

and their respective employees. The Industrial Tribunal which heard this dispute pronounced its award on the 11th of January, 1960. In dealing with this dispute it naturally followed the same line of approach which it had adopted in dealing with a similar dispute for the year 1956 from which Civil Appeal No. 419/60 arises. As a result of its finding, the Tribunal has directed 24 mills to pay bonus to their respective employees, the rate for the same ranging from 6 months' to half a month's basic wages according to the available surplus in each case. It is against this award that the 23 mills have come to this Court by special leave in this appeal.

Civil Appeal No. 3(2/59) arises from an industrial dispute for bonus between the appellant, the Management of the Express Newspapers (Private) Ltd. and its employees, the respondents. The claim for bonus which has been referred by the State Government for adjudication to the Industrial Tribunal at Madras on the 19th August 1957, relates to the years 1954-55 and 1956-57. The appellant in this case carries on the business of publishing certain newspapers and periodicals in English and the vernacular from four centres in India. viz., Madras, Madurai, Bombay and Delhi. After hearing the parties and considering the evidence adduced by them in support of their respective contentions, the Tribunal disallowed the respondents claim for bonus for the years 1954-55 but allowed it for the years 1956-57. It has found that for the year 1956-57, the appellant had in its hands Rs. 1,60,000 as available surplus and so, it has directed that not less than 80 per cent of the said surplus should be made available for bonus; that is to say, it has held that Rs. 1.25 lakhs should be distributed by way of bonus which worked roughly @ half a month's total wages including dearness allowance. It is against this award that the appellant has come to this Court by special leave.

In Civil Appeal No. 419/60, the first point which has been raised by Mr. Sastri on behalf of the appellant relates to the question of rehabitation. In the working of the formula the multiplier has been duly determined by the Tribunal and there is no dispute about it before us. It is against the divisor adopted by the Tribunal that the appellant is aggrieved and so, the question to consider is whether the Tribunal was right in holding that the life of the textile machinery should be taken to be 25 years and not 15 as alleged by the appellants, Mr. Sastri contends that the appellants had examined two experts Mr. K. Srinivasan and Mr. Seetharaman and their evidence consistently was that the life of the machinery would be 15 years and no more. It is urged that this evidence should have been accepted by the Tribunal because it has not been shaken in cross-examination. We are not impressed by this argument. The Tribunal has carefully examined the evidence of the two experts and has given satisfactory reasons for holding that the estimate made by them in regard to the life of the machinery is too modest. In fact, as the Tribunal has pointed out, though the experts purported to say categorically that the life of the machinery could not be more than 15 years, they had to admit that in several cases machinery which was much older than 15 years was working not unsatisfactorily and so the statement about the estimated life of the machinery made be the witnesses could not be accepted at its face value. Indeed, as the Tribunal observes, experts while giving evidence about the estimated life of the machinery are apt to be too technical and sometimes dogmatic but their evidence has to be judged in the light of the probabilities, the admissions made by them in cross-examination and other evidence about older machinery which was found working in the different mills. Therefore, we do not think that on the question as to the estimated life of the textile machinery in question we would be justified in interfering with the conclusion of the Tribunal that the said life can be reasonably estimated at 25 years.

It is then contended that the estimate made by the experts about the life of the textile machinery was consistent with the period of 15 years allowed for the rehabilitation of textile machinery be the Labour Appellate Tribunal which evolved the formula in the case of the Mill Owners' Association,

Bombay v. The Rashtriya Mill Mazdoor Sangh, Bombay [[1950] L.L.J. 1247]. The argument is that since 15 years' period was allowed for rehabilitating the machinery, that should be taken to the normal estimate about the life of the machinery. On the other hand, it is urged by the respondents that 15 years' period was allowed by the Labour Appellate Tribunal in the case of The Mill Owners Association [[1950] L.L.J. 1247] even though the machinery was more than 25 years old and that would suggest that the life of the machinery is 40 years. We are not prepared to accept either argument because, in our opinion, the life of the machinery in every case has to be determined in the light of evidence adduced by the parties. What the Labour Appellate Tribunal did in the case of The Mill Owners' Association [[1950] L.L.J. 1247] was to adopt an ad hoc basis for allowing rehabilitation within 15 years because it was obvious, and indeed not disputed, that the textile machinery with which the Tribunal was dealing had become obsolescent and very badly needed rehabilitation. Indeed, it was because of this admitted position, that the problem of rehabilitation assumed an important place in the discussion before the Tribunal when it evolved the formula. Therefore, from the decision in the case of The Mill Owners' Association [[1950] L.L.J. 1247] no rule can be safely evolved as to the probable life of the textile machinery.

An attempt was then made to suggest that the rate of 15 per cent at which depreciation is allowed under s. 10(2)(vi) of the Income-tax Act for machinery which is used in multiple shift would approximate to the estimate of 15 years made by the experts in the present case. But when the actual calculations were made, it was conceded that the rate of 15% at which depreciation is allowed in respect of machinery used under multiple shifts works at 18 years and not 15 years. Therefore, even the argument based on the depreciation rate permitted by the Income-tax Act is of no avail. In conclusion, we confirm the finding of the Tribunal that the estimated life of the textile machinery in question should be taken to be 25 years.

The next contention which has been seriously pressed before us is in regard to the finding of the Tribunal that some addition should be made to the estimated life of the machinery by reference to practical considerations as to when the employer would be able to make rehabilitation in fact. The Tribunal considered the financial position of the respective mills, the availability of the new textile machinery, the difficulty about the foreign exchange, and so it came to certain ad hoc conclusions while determining the divisor to be adopted. It held that in the case of machinery purchased before 1947 whose life expired by that year, the period for rehabilitation should be 15 year from 1947. In regard to machinery purchased prior to 1947 whose life does not terminate by that year, the period for carrying out terminate by that year, the period for carrying out modernisation would be fixed at 10 years after the expiration of the life and in the case of machinery purchased after 1947, that period will be 5 years after its normal life. In other words, the Tribunal decided that the rehabilitation requirement about the first category of machinery should be spread over 15 years, that for the second category should be spread over the remainder of its life plus 10 years and for the third category, the normal life of 25 years plus 5 years. Mr. Sastri contends that this ad hoc addition made to the life of the machinery determined by the Tribunal on hypothetical or practical considerations is justified. In our opinion, this contention is well-founded. It is now well settled that in determining the claim of the employer for rehabilitation, two factors essential to ascertain; first the multiplier and that has to be done by reference to the purchase price of the machinery, and the price which has to be paid for rehabilitation or replacement; the second problem is the determination of the divisor and that has to be done by deciding the probable life of the machinery. Once the probable or estimated life of the machinery is determined there is no scope for making any additions to the number of years thus determined on any extraneous considerations as to the financial position of the employer or the availability of the machinery. If the amount awarded for rehabilitation for any given year is not utilised for that purpose, the same may be taken into account the next year -

that is all. But when determining the divisor, it is not open to the Tribunal to add to the estimated life of the machinery on the ground that the employer may, in fact, not be able to rehabilitate or replace his machinery. Therefore, there is no doubt that the Tribunal was in error in making further additions to the estimated life of textile machinery. The divisor must be adopted on the basis of the finding that 25 years is the estimated life of the machinery and no more.

The next contention raised by Mr. Sastri is in regard to the rehabilitation allowed by the Tribunal in respect of the second hand machinery purchased by Lotus Mills Ltd., one of the appellants before us. The Tribunal thought that in the case of old machinery purchased, only half the claim for rehabilitation should normally be allowed and it added that whether more or less should be allowed would depend upon the age of the machinery at the time of the purchase. Then it considered the evidence in respect of items I to M as disclosed in the rehabilitation statement Exhibit M. 47(B) furnished by the Lotus Mills Ltd. It appears that the items of machinery in question had all been purchased prior to 1910 and so, the Tribunal fixed the rehabilitation at 30%. In dealing with this question, however, the Tribunal has observed that full rehabilitation requirement cannot be allowed in respect of second hand machinery without the depreciation being deducted from out of the total requirement. Acting on this basis, the amount has been fixed at 30%. Mr. Sastri contends that if the Tribunal proceeded on the basis that second hand machinery must be replaced only by second hand machinery. It was obviously wrong. We think this contention is well founded. It no doubt appears that in the case of Associated Industries Ltd., and Its Workmen [[1958] 2 L.L.J. 138, 142] the Industrial Tribunal has observed that in the case of second hand machinery it would be reasonable that the employer should meet half the cost of the rehabilitation of the plant from other sources, either by increasing its share capital, or from other reserves that may have accumulated in the course of years. Indeed, it is on this decision that the Tribunal has founded its decision in dealing with the question about the second hand machinery purchased by the Lotus Mills Ltd. in 1910.

In our opinion, it would not be right to insist that an employer into purchases second hand machinery must rehabilitate it by purchasing second hand machinery in turn. That would be obviously unreasonable and unjust, for ought one knows second hand machinery may not be available. Besides, the employer is entitled to say that he wants to purchase new machinery by way of replacement. Therefore, if the Tribunal intended to lay down a general rule that in dealing with the question of the rehabilitation of a second hand machinery purchased by an employer only 50% of rehabilitation amount should be allowed, that would be erroneous. On the other hand, it is true that in determining the amount of rehabilitation and deciding the question of multiplier, the cost price of the machinery must be ascertained and this can be done only by enquiring for how much the machinery was originally purchased when new. Depreciation amount accruing due after the first purchase must also be ascertained. If the purchase money is determined but it is difficult to ascertain the depreciation amount thereafter, then at the highest the whole of the purchase money could be adopted as depreciation amount and then the amount of rehabilitation can be determined. Whatever relevant facts are required to be considered in dealing with this question must no doubt be ascertained. But if all relevant factors are ascertained, then it cannot be said that because rehabilitation is claimed in respect of second hand machinery, therefore only half or one-third of the amount should be allowed. In the present case, the relevant material about the original price and subsequent depreciation prior to the purchase by the appellant mills has not been adduced before the Tribunal and so, the Tribunal was justified in adopting some ad hoc basis. But grievance is made not so much against the particular ad hoc basis adopted by the Tribunal in the present case as against the general principle about which the Tribunal has made certain observations. As we have already made it clear, those observations do not correctly represent the true legal position in the matter.

That takes us to the last point raised in this appeal on behalf of Saroja Mills Ltd. which is one of the appellants. Saroja Mills Ltd. is a company which runs two mills, viz., Saroja Mills Ltd., Coimbatore, and Thiagaraja Mills at Madura. The latter has been started in 1956, while the former has been in existence for many years. It was urged of behalf of the appellant before the Tribunal that in dealing with the question of bonus payable to the employees in the two respective mills, the two mills should be treated as separate units and not as one. The Tribunal has rejected this contention and it has held that the two mills constitute one unit and the question of bonus payable to the employees working the two respective mills, must be considered on that basis. It is against this finding that Mr. Sastri has made a serious grievance before us. He contends that there are several factors which militate against the validity of the conclusion of the Industrial Tribunal that the two mills constitute one unit. The two mills are situated at two different places separated by a distance of nearly 150 to 200 miles; in starting the Thiagaraja Mills, the necessary cotton, stores and personnel were secured by the Company from Meenakshi Mills at Madura; the workers working in the two mills are different and they are not transferable from one mill to the other; the two mills manufacture different counts of yarn and different qualities and the raw material required by them is different; they maintain different accounts and their Tex-marks are different; when the Thiagaraja Mills was started in 1956, the Co., borrowed an amount of nearly Rs. 32.50 lakhs from the Indian Finance Corporation and Pudukottai Co. Ltd. and the same was debited to the Thiagaraja Mills. Therefore, all these factors indicate that the two mills are different units, they work as such and should not be taken to constitute one unit for the purpose of determining the question of bonus.

On the other hand, Mr. Ramamurthy contends that there are several other considerations which justify the conclusion of the Tribunal that the two mills constitute one unit. He argues that it is important to bear in mind that the two mills are owned and conducted by one Company, the Saroja Mills Ltd. in fact, the Thiagaraja Mills at Madura has no independent legal existence except as a concern run by the Company; ultimately, the profit and loss account for both the Companies is one consolidated account and dividend would be paid on the said account; separate accounts are no doubt kept for convenience because the two mills are situated in two different places; but the maintenance of separate cash book and ledger are not behalf as important as the maintenance of one profit and loss account which the Company has to keep as a whole; the borrowing on which the appellant relies is the borrowing of the Company and as such, the Company is the debtor and not the mills at Madura; the distance between the two mills can hardly be important because the features on which the appellant relies may well be present in the case of two mills owned and run by the same Co. though the mills may be situated side by side in the same locality; what is important in this connection is the fact that the business carried on by the two mills is of the same type and character though the quality of yarn produced may not be the same. Therefore, it is urged that the Tribunal was right in holding that the two mills constituted one unit.

The question thus raised for our decision is not always easy to decide. In dealing with the problem, several factors are relevant and it must be remembered that the significance of the several relevant factors would not be the same in each case nor their importance. Unity of ownership and management and control would be relevant factors. So would be general unity of the two concerns; the unity of finance may not be irrelevant and geographical location may also be of some relevance; functional integrality can also be a relevant and important factor in some cases. It is also possible that in some cases, the test would be whether one concerned forms an integral part of another so that the two together constitute one concern, and in dealing with this question the nexus of integration in the form of some essential dependence of the one on the other may assume relevance. Unity of purpose or design, or even parallel or co-ordinate activity intended to achieve a common object for the purpose of carrying out the business of the one or the other can also assume relevance and

importance, vide Ahmedabad Manufacturing & Calico Printing Co. Ltd. v. Their Workmen [[1951] 2 L.L.J. 657].

Mr. Sastri, however, contends that functional integrality is a very important test and he went so far as to suggest that if the said test is not satisfied, then the claim that two mills constitute one unit must break down. We are not prepared to accept this argument. In the complex and complicated forms which modern industrial enterprise assumes it would be unreasonable to suggest that any one of the relevant tests is decisive; the importance and significance of the tests would vary according to the facts in each case and so, the question must always be determined bearing in mind all the relevant tests and co-relating them to the nature of the enterprise with which the Court is concerned. It would be seen that the test of functional integrality would be relevant and very significant when the Court is dealing with different kinds of businesses run by the same industrial establishment or employer. Where an employer runs two different kinds of business which are allied to each other, it is pertinent to enquire whether the two lines of business are functionally integrated or are mutually inter-dependent. If they are, that would, no doubt, be a vary important factor in favour of the plea that the two lines of business constitute one unit. But the test of functional integrality would not be as important when we are dealing with the case of an employer who runs the same business in two different places. The fact that the test of functional integrality is not and generally cannot be satisfied by two such concerns run by the same employer in the same line, will not necessarily mean that the two concerns do not constitute one unit. Therefore, in our opinion, Mr. Sastri is not justified in elevating the test of functional integrality to the position of a decisive test in every case. If the said test is treated as decisive, an industrial establishment which runs different factories in the same line and in the same place may be able to claim that the different factories are different units for the purpose of bonus. Besides, the context in which the plea of the unity of two establishments is raised cannot be ignored. If the context is one of the claim for bonus, then it may be relevant to remember that generally a claim for bonus is allowed to be made by all the employees together when they happen to be the employees employed by the same employer. We have carefully considered the contentions raised by the parties before us and we are unable to come to the conclusion that the finding of the Tribunal that the two mills run by the Saroja Mills Ltd. constitute one unit, is erroneous in law.

In this connection, it would be necessary to refer to some of the decisions to which our attention was drawn. In the case of Associated Cement Companies Ltd. and their Workmen [[1960] 1 S.C.R. 703], this Court held that on the evidence on record, the limestone quarry run by the employer was another part of the establishment (factory) run by the same employer within the meaning of Section 25E(iii) of the Industrial Disputes Act. It would thus be seen that the question with which this court was concerned was one under s. 25E(iii) of the Act and it arose in reference to the limestone quarry run by the appellant Company and the cement factory owned and conducted by it which are normally two different businesses. It was in dealing with this problem that this Court referred to several tests which would be relevant, amongst them being the test of functional integrality. In dealing with the question, S. K. Das, J., who spoke for the Court, observed that it is perhaps impossible to lay down any one test as an absolute and invariable test for all cases. The real purpose of these tests is to find out the true relation between the parts, branches, units, etc. If the their true relation they constitute one integrated whole, we say that the establishment is one; if, on the contrary, they do not constitute one integrated whole, each unit is then a separate unit. It was also observed by the Court that in one case, the unity of ownership, management and control may be the important test; in another case, functional integrality or general unity may be an important test; and in still another case, the important test may be the unity of employment. Therefore, it is clear that in applying the test of functional integrality in dealing with the question about the interrelation

between in limestone quarry and the factory, this Court has been careful to point out that no test can be treated as decisive and the relivance and importance of all the test will have to be judged in the light of the facts in each case.

In the case of Pratap Press, etc. and Their Workmen [[1960] 1 L.L.J. 497], this Court had to deal with the question as to whether the Pratap Press started by the proprietor, Narendra, in 1951 and the newspaper 'Vir Arjun' started in him in 1954 constituted one unit. It appeared in evidence that the Press also printed and published Daily Pratap which was owned by Narendra and his partner. Thus, the problem raised before this Court was whether the business of running Vir Arjun which is distinct and different from the business of running a Press, constituted a part of the same unit as the Pratap Press itself and in dealing with this question, this Court reiterated the same principle that the applicability and the significance of the relevant tests would depend upon the facts in each case. Where the Court is dealing with two different kinds of business conducted by the same owner, the test of functional integrality naturally assumes importance and it was that the test which was emphasised by this Court in coming to the conclusion that the Press and the Paper did not conclusion that the Press and the Paper did not constitute one unit. Besides, the conduct of the proprietor in dealing with the two business and other relevant facts were taken into account in reaching that conclusion.

In Pakshiraja Studios v. Its Workmen [[1961] 2 L.L.J. 380], this Court was dealing with a case of the management of a cinema studio which also carried on the business activities of producing films and taking distribution rights of pictures, and in coming to the conclusion that the two lines of business were not distinct but together constituted one single industrial suit, this Court emphasised the importance of the test as to whether there is functional integrality and unity of finance and employment of labour.

Thus, it would be seen that the question as to whether two different concerns run by the same employer constitute one industrial unit for the purpose of bonus, has to be determined in the light of facts in each case. As we have already indicated, after carefully considering the relevant facts in the present case, we are unable to hold that the conclusion of the Tribunal is erroneous in law.

That takes us to Civil Appeal No. 159/61. The first point which has been raised in this appeal relates to the claim made by the Coimbatore Cotton Mills Ltd., one of the appellants, in respect of the development rebate allowed to it to the extent of Rs. 1,25,000. Before the Tribunal it was urged that this amount should be treated as a prior charge but the Tribunal rejected the contention and we think, rightly. In this Court, the argument has taken another form. It is urged that this rebate must be left out of account in determining the available surplus because there is a statutory bar which precludes the appellant from utilising this amount for the payment of bonus. This argument is based on the provisions contained in proviso (b) to explanation (2) of Section 10(2)(vi) as introduced by the Finance Act XI of 1958. The relevant portion of the statutory provision on which reliance has been placed reads thus :-

> "Provided that no allowance under this clause shall be made unless :-
>
> #(a).....##
>
> (b) except where the assessee is a company being a licensee within the meaning of the Electricity (Supply) Act, 1948 or where the ship has been acquired or the machinery or plant has been installed before the 1st day of January, 1958, an amount

equal to 75% of the development rebate to be actually allowed is debited to the profit and loss account of the relevant previous year and credited to a reserve account to be utilised by him during a period of ten years next following for the purpose of the business of the undertaking, except :

(i) for distribution by way of dividends or profits :....."

It is the last clause which is the basis of the present argument. Mr. Sastri contends that bonus is awarded out of profits available in the hands of the employer and the statutory provision just quoted prohibits the employer from distributing the development rebate amount allowed to him by way of profits. There is no substance in this argument. What the statute prohibits is the distribution of the amount in question by way of dividends to the share-holders or profits to the partners. In the context, the distribution by way of profits means nothing else than the distribution of profits to the partners. Besides, it is obvious that the amount of bonus paid by an employer to his employees is allowed to be treated as admissible expense under s. 10(2)(x) of the Income-tax Act. It is clear that the development rebate allowed is in part recognition of the claim for depreciation and the provision in question cannot, therefore, be treated as constituting a bar against taking the said amount into consideration in ascertaining the available surplus in the hands of the employer during the year in question. Therefore, the argument which has been urged before us in respect of the development rebate of Rs. 1,25,000 cannot be upheld.

It is true that in support of this argument Mr. Sastri has relied on the decision of this Court in The Central Bank of India v. Their Workmen [[1960] 1 S.C.R. 200]. In that case, section 10(i) of the Banking Companies Act prior to its amendment in 1956 fell to be construed. Section (I)(b)(ii) provides, inter alia that : "No banking company shall employ any person whose remuneration or part of whose remuneration takes the form of a share in the profits of the company". It was held that this provision prohibited the grant of industrial bonus to bank employees inasmuch as such bonus is remuneration which takes the form of a share in the profits of the banking company. We do not see how this decision can assist the appellant at all. What we are called upon to construe in the present case is the expression "for distribution by way of dividends or profits" and, as we have pointed out, the context makes it perfectly clear that the distribution by way of profits which is prohibited is the distribution by way of profits amongst the partners. Therefore, the decision in the case of Central Bank of India is of no assistance to the appellant in the present case.

There is one more point which needs to be considered in this appeal and that is in regard to the claim for interest made by one of the appellants, the Coimbatore Cotton Mills Ltd., in respect of the amount of depreciation used by it by way of working capital. The interest claimed amounts to Rs. 33.429. The Tribunal has held that the appellant is not entitled to claim any return on depreciation and in that connection, it has referred to its earlier decision in the case of Deccan Sugar Abkhari Co. Ltd. [[1958] 1 L.L.J. 653], and has observed that it had nothing to add to the reasoning adopted in that case. Mr. Sastri contends that this view is clearly inconsistent with the decisions of this Court and this contention is well founded.

In Petlad Turkey Red Dye Works Ltd. v. Dyes & Chemical Workers' Union, Petlad [[1960] 2 S.C.R. 906], this Court has held that if any portion of the reserve fund is found to have been actually utilised as working capital in the year under consideration, it should be treated as entitled to a reasonable rate of return and the amount thus ascertained deducted as a prior charge in ascertaining the available surplus. To the same effect is the decision of this Court in Mysore Kirloskar Ltd. v. Its Workmen [[1961] 2 L.L.J. 657]. In that case this Court has held that the amount in the depreciation

reserve proved to have been utilised as working capital during the year in question should be taken into consideration for the purpose of making provision for return on working capital. It is thus clear that if an employer shows that the amount of depreciation was actually available and has, in fact, been used as working capital during the relevant year, he would be entitled to claim a reasonable return on the said amount. The contrary view expressed by the tribunal in the present case must, therefore, be reversed.

In the two Civil Appeals No. 419/60 and 159/61, we have dealt with the general points raised before us not because the appellants wanted any relief in respect of their contentions which we have upheld but because they wanted that the points in question should be decided for the guidance of the Tribunal when it may have to deal with similar disputes between the parties in future. Therefore, these two appeals are, in substance dismissed. Parties will bear their own costs.

That leaves Civil Appeal No. 302/59. In this appeal, as we have already noticed, the Tribunal has found the available surplus to be Rs. 1,60,000 and it was directed that out of it Rs. 1.25 lakhs should be distributed as bonus for the relevant year. One of the points which the Tribunal had to consider in dealing with the respondents' claim for bonus in this case was in regard to the life of the machinery and it held that the normal economic life of the printing machinery can be easily fixed at 20 years. Then it proceeded to consider what should be the period of spread over after the total rehabilitation requirement is ascertained, and following its decision in the award from which Appeal No. 419/60 arises, it purported to divide the machinery into three categories and proceeded to make ad hoc additions to the normal life of 20 years already determined by it. We have already held that this ad hoc addition to the normal life of the machinery as determined by the Tribunal is not justified. It is conceded before us by the respondents that if the addition thus made by the Tribunal is set aside, then there would be no available surplus in the hands of the appellant for the relevant year. In that view of the matter, it is unnecessary to consider the other points which the appellant wanted to raise before us in the present appeal. On the basis that the normal life of the printing machinery is 20 years, a divisor will have to be adopted and by the adoption of the proper divisor it would follow that there is no available surplus for the relevant year. That is why the award passed by the Tribunal directing the appellant to distribute Rs. 1.25 lakhs by way of bonus amongst its employees for the year 1956-57 has to be set aside. The appeal is accordingly allowed; but there would be no order as to costs.

Appeal allowed.

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