All India Reserve Bank Employees Association

Vs

Reserve Bank of India

Civil Appeal No. 4 of 1965

(CJI P. B. Gajendragadkar, K. N. Wanchoo, M. Hidayatullah, V. Ramaswami – I JJ)

23.04.1965

JUDGEMENT

HIDAYATULLAH, J.

This is an appeal by special leave from the award of the National Industrial Tribunal (Bank Disputes), Bombay, in a dispute between the Reserve Bank of India and its workmen, delivered on 8 September, 1962, and published in the Gazette of India (Extraordinary) of 29 September, 1962. The appellants are the All India Reserve Bank Employees' Association, Bombay (shortly the association), representing Class II and Class III staff and the All India Reserve Bank D Class Employees' Union, Kanpur (shortly the union), representing class IV staff, of the Reserve Bank.

By notification No. S. O. 704, dated 21 March, 1960, the Central Government, in exercise of its powers under Section 7B of the Industrial Disputes Act, 1947, constituted a national industrial tribunal with Justice Sri K. T. Desai (later Chief Justice of the Gujarat High Court) as the presiding officer. By an order notified under No. S. O. 707 of the same date, Central Government, in exercise of the powers conferred by Sub-sec. (1A) of Section 10 of the Industrial Disputes Act, referred an industrial dispute, which, in its opinion, existed between the Reserve Bank and its workmen of the three classes abovementioned. The order of reference specified the heads of dispute in two schedules, the first in respect of class II and class III staff and the second in respect of class IV staff. The first Schedule I consisted of 22 items and Sch. II of 23 items. These items (a considerable number of which are common to the two schedules) bear upon the scales of pay and dearness and other allowances and sundry matters conn minimum of Rs. 25 and for 25 per cent of the basic pay to the employees of the two higher classes, with effect from July 1959, but this was refused by an interim award dated 29 December 1960. The final award was delivered on 8 September 1962 because in the meantime the tribunal dealt with another reference registered as Reference No. 1 of 1960 in a dispute involving 84 banking companies and corporations and their workmen in respect of creation of categories of banks and areas and areas for purposes of adjudication and of scales of pay, diverse allowances and other conditions of service. The award in that reference was delivered on 7th June 1962. The tribunal was next occupied with the resolution of yet another dispute over bonus between 73 banking companies and their workmen which was registered as Reference No. 3 of 1960 and which was concluded by an award on 21 July 1962. We shall have occasion to refer to these awards later. We may now give the facts of the dispute in the reference from which this appeal

The Reserve Bank was established on 1 April 1935 as a shareholders' bank with a capital of Rs. 5 crores which was mainly subscribed by the public. It was taken over in 1948 by the Government of

India, when under the Reserve Bank (Transfer to public Ownership) Act, 1948, the shares were compulsorily acquired by Government at a premium of Rs. 18.62 over and above the face value of the share of Rs. 100. Thereafter the Reserve Bank is administered by a Central Board of Directors nominated by the Central Government from the civil services and public men. There are four local boards to advise the Central Board and to function as its delegates. The head office of the Reserve Bank is situated at Bombay with branches at Calcutta, New Delhi, Kanpur, Madras, Bangalore, Nagpur, Lucknow, Hyderabad, Gauhati, Trivandrum, Patna, Ahmedabad, Ludhiana, Jaipur and Indore. The Reserve Bank acts as bank to the Central and State Governments and commercial banks and controls the issue and circulation of currency. It has special dut

The Reserve Bank employs four classes of employees of which the three lower classes are before this Court, the first class being of officers. At the material time the total number of employees of all description was about 9,500 of which 3,300 were in the head office, 1,800, 1,100 and 1,100 respectively at Calcutta, New Delhi and Madras and the rest were distributed in varying numbers among the remaining twelve branches. The present dispute has a long history into the details of which it is hardly necessary to go but as both sides have made reference to it, some of the leading events connected with bank disputes in general and the present dispute respecting the Reserve Bank, in particular, may be mentioned.

As is well-known, there has been a rise in the prices of commodities since 1939 and workmen earning wages and persons in the fixed income groups are specially affected. Between the years 1946 and 1949 there were set up numerous commissions and tribunals to deal with disputes between the commercial banks and their employees. In 1946 strike notices were served on many banks in Bombay, Bengal and the United Provinces. In Bombay Sri H. V. Divatia dealt with a dispute between the Bank of India and its employees, happily settled by consent (15 August 1946) and again with a dispute between 30 named Banks in Bombay and their employees. The award was given on 9 April 1947. That award was extended to Ahmedabad Bank employees by another award published on 22 April 1948. Conciliation proceedings were conducted by Sri R. Gupta between the Imperial Bank of India and its employees in Bengal which concluded on 4 August 1947. Other awards and adjudications were made by Sri S. C. Chakravarti and Sri S. K. Sen. In the United P

In 1946 the association delivered a charter of demands for revision of pay scales and allowances of the employees of the Reserve Bank from 1 April 1946 and after negotiations some revision in wages and dearness allowances was effected. During the interval between this revision and the appointment of the Sastri tribunal other revisions took place. When the Sastri tribunal gave its award in March 1953, the association in May of the same year delivered a revised charter of demands to the Reserve Bank but owing to the pendency of the appeal before the Labour Appellate Tribunal, the demand could not be considered. The Reserve Bank, however, assured its employees that after the decision of the Labour Appellate Tribunal was known, the entire question would be reviewed. When the Labour Appellate Tribunal gave its decision in April 1954, the association served a fresh charter of demands on 18 May 1954, but the decision of the Appellate Tribunal was modified by Government and on 17 September 1954 a commission presided

On 11 July, 1959, the association submitted a fresh charter of demands asking for a complete revision of the pay structure and invoked the norms settled at the Fifteenth Indian Labour Conference and asked for improvement generally in the conditions of service. As the Reserve Bank was not agreeable to negotiate, the association called upon the Reserve Bank to ratify the code of conduct evolved at the Sixteenth Indian Labour Conference and to proceed to arbitration but the Reserve Bank declined. The association served a notice of strike and threatened cessation of work

from 25 March 1960. Before this happened the All India State Bank of India Staff Federation had given a notice and there was a strike from 4 March 1960 and on 19 March all bank employees struck work in support and the several references to which we have referred followed.

The Reserve Bank during the years between 1946 and 1960 undertook from time to time revision of salaries and allowances. In 1947 and 1948 dearness allowances were revised and in 1948 there was a general revision of scales of pay as from 1 April 1948. These revisions were made at the demand of the association. In 1951 ad hoc increases in dearness allowances were made and compensatory allowances were introduced and from 1951 local allowances were paid to certain classes of employees serving at some of the important offices of the Reserve Bank and subsequently the scheme of local allowances was extended to a few other branches. In 1954 local allowances were converted into local pay and 25 per cent of the dearness allowances was treated as pay for calculation of retiring benefits, etc. In 1957 family allowances to class IV employees were raised and in 1958 and 1959 dearness allowances were again slightly raised. These increases, though welcome to them, hardly satisfied the demands of the employees. There were ma

> "Your criticism, that the association's charter of demands has been pitched so high as to exclude all scope for satisfactory solution through negotiations, we may point out, is baseless and incorrect, as the charter has been based on the norms set up by the Fifteenth Tripartite Labour Conference at Nainital where the need-based wage formula for Indian worker was evolved, and the coefficient for conversion to arrive at the minimum wage for a middle class salaried employee has been accepted from the Rajadhyaksha report...".

The Association also pointed out that it has been conceded by the Governors of the Reserve Bank in the past that the emoluments of the Reserve Bank employees ought to be higher than those of other bank employees and, therefore, the recommendations of the Pay Commission were irrelevant. In this appeal one of the fundamental points argued is whether the national tribunal was right in rejecting the demand for the inauguration of the need-base formula. It was, however, in this background that the national industrial tribunal was constituted and the whole of the dispute was referred to it.

This reference embraced as many as 22 items in respect of class II and class III employees and 23 items in respect of class IV employees. Some of these were decided in favour and some against the employees. Not much purpose would be served if we mentioned the many points of controversy or the decision on them, for in this appeal the employees have stated their case with commendable restraint and Sri Chari, though he argued it with his customary earnestness and ability, did so appreciating the realities of our national economy. He paid (it may be noted) sincere tributes to the Reserve Bank for its helpful attitude at all times, and expressed regret that there was no conciliation as on previous occasions. Mr. Palkhivala too, on behalf of the Reserve Bank, showed an awareness of the point of view of the employees and on some of the less important points, as we shall show later, agreed to consider the matter favourably.

The dispute now centres round two fundamental or major points and a few others not so fundamental. We shall deal with the main points first and then deal with the others. The first major point concerns employees of class II. This class of employees was in the scales of pay which were settled by the agreement of 2 November 1954. These were :

> #1. Research superintendents Rs. 300-25-400-E. B.-25-650.2. Superintendents and

Sub- Accountants Rs. 275-25-375-E. B.-25-500-25-650.3. Deputy treasurers (Bombay and Calcutta) Rs. 450-25-650.4. Deputy treasurer (Gauhati) Rs. 375-25-550.5. Assistant treasurers Rs. 300-25-450.6. Personal Assistant to the Governor Rs. 320-30-650.7. Personal Assistant Rs. 325-25-550.8. Caretakers, Grade I (Bombay and Calcutta) Rs. 275-10-325-E. B.-12 1/2-400.9. Staff Assistant Rs. 250-25-450-E. B.-25-650.10. Supervisor, Premises Section Rs. 250-15-310-E. B.-20-650.11. Deputy Treasurer (Hyderabad) Rs. 350-25-500.##

There was in addition local pay for these employees equal to 10 per cent of pay, at Bombay, Calcutta, Ahmedabad, New Delhi, Madras and Kanpur. There was also a family allowance of Rs. 10 per child subject to a maximum of Rs. 30 for employees drawing less than Rs. 550 per month with a completed service of 5 years.

The National Tribunal in considering the demands of class II staff of the Reserve Bank came to the conclusion that it could not give any award regarding these employees who were employed in a supervisory capacity. In this connexion the Reserve Bank had pleaded that the reference concerned only those employees who came within the definition of "workman" in the Industrial Disputes Act, 1947, as amended by the amending Act of 1956, and the Reserve Bank had contended that it was futile to fix a time scale for class II staff because every incumbent it was employed in a supervisory capacity and under the existing scales of pay every incumbent at a local pay centre would draw wages in excess of Rs. 500 after three years' service and every other incumbent at the end of five years' service and that most of the employees in that class had entered it by promotion and even at their entry were drawing wages in excess of Rs. 500. The Reserve Bank and further contented that a dispute could only be raised before the nationa

The Association had contended in reply (as it does in this appeal) that the duties performed by these employees were not of a supervisory nature and further that they were doing supervisory work and were not employed in a supervisory capacity. In Reference No. 1 of 1960, Mr. Sule, on behalf of the employees, had contended (a) that workmen could raise an industrial dispute for themselves and for a section of them at any level, (b) that persons who were workmen could raise an industrial dispute regarding their conditions of service not only at stages when they would be workmen but also at stages when they would cease to be workmen under the same employer, and (c) that workmen could raise a dispute on behalf of non-workmen in the same establishment provided they had a direct and substantial interest in the dispute and had a community of interest with such non-workmen.

The National Tribunal in the present award adopted its discussion of the question in paragraphs 5.206 to 5.219 of the award in Reference No. 1 of 1960. It pointed out that the demand by class II supervisory staff envisaged a scale commencing at Rs. 500 and that if the demand were considered favourably, every one in that class would cease to be a workman and such an award was beyond its jurisdiction to make. The national tribunal held that even though by reason of community of interest other workmen might be entitled, having regard to the definition of "industrial dispute, " to raise a dispute on behalf of others, they could not raise a dispute either for themselves or on behalf of others, when the dispute would involve consideration of matters in relation to non-workmen. The national tribunal also held that it would even be beyond the jurisdiction of Central Government to refer such a dispute under the Industrial Disputes Act. The national tribunal, therefore, held that the expression "scales of pay and meth

Before we consider the case of the appellants an event which happened later may be mentioned. The Reserve Bank, by a resolution (No. 8) passed at their 1456 weekly meeting held on 24 April 1963,

increased the scale of pay, dearness allowances, house rent allowances, etc., for class II staff with effect from 1 January 1962, that is to say, the date from which the impugned award came into force. Under the resolution scales of pay, which were acknowledged by Sri Chari, to be as generous as the present circumstances of our country permit, have been awarded. But more than this the minimum total emoluments as envisaged by the definition of wages, even at the commencement of service of each and every member of class II staff on 1 January 1962, now exceed Rs. 500 per month. This, of course, was done with a view to withdrawing the whole class from the ambit of the reference, because, it is supposed, no member of the class can now come within the definition of "workman". We shall, of course, decide the question whethe

However, in view of the importance of the subject and the possibility of a recurrence of such question in other spheres, and the remarks of the national tribunal as to jurisdiction of the Central Government and itself, we have considered it necessary to go into some of the points mooted before us. Before we deal with them we shall read some of the pertinent definitions from the Industrial Disputes Act, 1947 :

> "2. In this Act, unless there is anything repugnant in the subject or context, -
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> # . . . . . .##
>
> (k) "industrial dispute" means any dispute or difference between employers and employers, or between employers and workmen, or between workmen and workmen, which is connected with the employment or nonemployment or the terms of employment or with the condition of labour, of any person;
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> # . . . . . .##
>
> (rr) "wages" means all remuneration capable of being expressed in terms of money, which would, if the terms of employment, expressed or implied, were fulfilled, be payable to a workman in respect of his employment or of work done in such employment, and includes -
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> (i) such allowances (including dearness allowances) as the workman is for the time being entitled to;
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> (ii) the value of any house accommodation, or of supply of light, water, medical attendance or other amenity or of any service or of any concessional supply of foodgrains or other articles;
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> (iii) any travelling concession;
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> but does not include -
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> (a) any bonus;
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> (b) any contribution paid or payable by the employer to any pension fund or provident fund or for the benefit of the workman under any law for the time being in force;
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> (c) any gratuity payable on the termination of his service.

(s) "workman" means any person (including an apprentice) employed in any industry to do any skilled or unskilled manual, supervisory, technical or clerical work for hire or reward, whether the terms of employment be expressed or implied, and for the purposes of any proceeding under this Act in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connexion with, or as a consequence of, that dispute, or whose dismissal, discharge or retrenchment has led to that dispute, but does not include any such person -

(i) who is subject to the Army Act, 1950, or the Air Force Act, 1950, or the Navy (Discipline) Act, 1934, or

(ii) who is employed in the police service or as an officer or other employee of a prison; or

(iii) who is employed mainly in a managerial or administrative capacity; or

(iv) who, being employed in a supervisory capacity, draws wages exceeding five hundred rupees per mensem or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature."

Mr. Chari contends that the exclusion of class II staff is based on a wrong construction if the above definitions, particularly the definition of 'workman', and a misunderstanding of the duties of class II employees who have been wrongly classed as supervisors. He contends alternatively that as class II is filled by promotion from class III, the question could and should have been gone into in view of the principle enunciated in the Dimakuchi Tea Estate case. Mr. Chari in support of his first argument points to the opening part of Section 2(s) where it speaks of "any skilled or unskilled manual, supervisory, technical or clerical work" and contrasts it with the words of Cl. (iv) "being employed in supervisory capacity" and submits that the difference in language is deliberate and is intended to distinguish supervisory work from plain supervision. According to him 'supervisory work' denotes that the person works and supervises at the same time, whereas 'supervisory capacity' denotes supervision but not work.

In support of his contention Mr. Chari has referred to the amendment of the National Labour Relations Act of the United States of America [commonly known as the Wagner Act] by the Labour-Management Relations Act 1947 [commonly known as the Taft-Hartley Act] and the case of the Packard Motor Company v. National Labour Relations Board which preceded the amendment. The Packard Motor Company case arose under the Wagner Act and the question was whether foremen were entitled as a class to the rights of self-organisation and collective bargaining under it. The benefits of the Wagner Act were conferred on employees which by Section 2(3) included 'any employee.' The company, however, sought to limit this wide definition which made foremen employees both at common law and in common acceptance, with the aid of the definition of 'employer' in Section 2(2) which said that the word included "any person acting in the interest of an employer directly or indirectly..." The Supreme Court of the United States in holding that f

This ruling, of course, cannot be used in this context, though as we shall presently see, it probably furnishes the historical background for the amendment in the United States and leads to the next limb of Sri Chari's argument. The minority, speaking through Justice Mr. Douglas, made the following observation which puts the Packard Motor Company case out of consideration -

> "Indeed, the problems of those in the supervisory categories of management did not seem to have been in the consciousness of the Congress... There is no phrase in the entire Act which is description of those doing supervisory work."

In this state of affairs it is futile to refer to this ruling any further, for to derive assistance from any of the two opinions savours of a priori deduction.

The Packard Motor Co. case was decided in March 1947 and in the same year the Taft-Hartley Act was passed. Section 2 of the latter Act defined employer to include. "any person acting as agent of an employer, directly or indirectly. . ." and the term 'employee' was defined to exclude any individual employed as a supervisor. The term 'supervisor' was defined to mean an individual "having authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees or responsible to direct them, or to adjust their grievances, of effectively to recommend such action, if in connexion with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment." Mr. Chari suggests that the Industrial Disputes Act, recognizing the same difficulty, may be said to have adopted the same tests by making a distinction between 'work' and 'capacity.' According to him, these tests pr

The argument is extremely ingenious and the simile interesting, but it misses the realities of the amendment of the Industrial Disputes Act in 1956. The definition of 'workman' as it originally stood before the amendment in 1956 was as follows :-

> "2.(s) 'workman' means any person employed (including an apprentice) in any industry to do any skilled or unskilled manual or clerical work for hire or reward and includes, for the purposes of any proceedings under this Act in relation to an industrial dispute, a workman discharged during that dispute, but does not include any person employed in naval, military or air service of the Government."

The amending Act of 1956 introduced among the categories of persons already mentioned persons employed to do supervisory and technical work. So far the language of the earlier enactment was used. When, however, exceptions were engrafted, that language was departed from in Cl. (iv) partly because the draftsman followed the language of Cl. (iii) and partly because from persons employed on supervision work some are to be excluded because they draw wages exceeding Rs. 500 per month and some because they function mainly in a managerial capacity or have duties of the same character. But the unity between the opening part of the definition and Cl. (iv) was expressly preserved by using the work 'such' twice in the opening part. The words, which bind the two parts, are not - "but does not include any person." They are - "but does not include any such person" showing clearly that what is being excluded is a person who answers the decryption "employed to do supervisory work" and he is to be excluded because being emplo

The scheme of our Act is much simpler than that of the American statutes. No doubt like the Taft-Hartley Act the amending Act of 1956 in our country was passed to equalize bargaining power and also to give the power of bargaining and invoking the Industrial Disputes Act to supervisory workmen, but it gave it only to some of the workmen employed on supervisory work. 'Workman' here includes an employee employed as supervisor. There are only two circumstances in which such a person ceases to be a workman. Such a person is not a workman if he draws wages in excess of Rs. 500 per month or if he performs managerial functions by reason of a power vested in him or by the nature of duties attached to his office. The person who ceases to be a workman is not a person

who does not answer the description "employed to do supervisory work" but one who does answer that description. He goes out of the category of "workmen" on proof of the circumstances excluding him from the category.

By the revision of salaries in such a way that the minimum emoluments equal to wages (as defined in the Act) of class II staff now exceed Rs. 500 per month, the Reserve Bank intends to exclude them from the category of workmen and to render the Industrial Disputes Act inapplicable to them. Mr. Palkhivala frankly admitted that this step was taken so that this group might be taken away from the vortex of industrial disputes. But this position obviously did not exist when the scale was such that some at least of class II employees would have drawn wages below the mark. The reference in those circumstances was a valid reference and the national tribunal was not night in ignoring that class altogether. Further, the national tribunal was not justified in holding that if at a future time an incumbent would draw wage in the time scale in excess of Rs. 500, the matter must be taken to be withdrawn from the jurisdiction of the Central Government to make a reference in respect of him and the national tribunal to be ous

Mr. Chari next contends that considering the duties of class II employees, it cannot be said that they are employed in a supervisory capacity at all and in elucidation of the meaning to be given to the words 'supervisory' and 'capacity' he has cited numerous dictionaries, Corpus Juris, etc., as to the meaning of the words "supervise", "supervisor", "supervising", "supervision", etc. etc. The word "supervise" and its derivatives are not words of precise import and must often be construed in the light of the context, for unless controlled, they cover an easily simple oversight and direction as manual work coupled with a power of inspection and superintendence of the manual work of others. It is, therefore, necessary to see the full context in which the words occur and the words of our own Act are the surest guide. Viewed in this manner, we cannot overlook the import of the word "such" which expressly links the exception to the main part. Unless this was done, it would have been possible to argue that Cl. (iv)

In view of what we have held above, it is hardly necessary to advert to the next argument that under the principle of the Dimakuchi Tea Estate case workmen proper belonging to classes II and III in this reference are entitled to raise a dispute in respect of employees in class II who by reason of Cl. (iv) test have ceased to be workmen. The ruling of this Court in the above case lays down that when the workmen raise an industrial dispute against an employer, the person regarding whom the dispute is raised need not strictly be a 'workman' but may be one in whose terms of employment or conditions of labour the workmen raising the dispute have a direct and substantial interest. The definition of 'industrial dispute' in Section 2(k). Which we have set out before, contemplates a dispute between :

(a) employers and employers; or

(b) employers and workmen; or

(c) workmen and workmen;

but it must be a dispute which is connected with the employment or non-employment or the terms of employment or with the conditions of labour of any person. The word 'person' has not been limited to 'workman' as such and must, therefore, receive a more general meaning. But it does not mean any person unconnected with the disputants in relation to whom the dispute is not of the kind described. It could not have been intended that though the dispute does not concern them in the least, workmen

are entitled to fight it out on behalf of nonworkmen. The national tribunal extended this principle to the supervisors as a class relying on the following observations from the case of this Court :

> "Can it be said that workmen as a class are directly or substantially interested in the employment, non-employment, terms of employment or conditions of labour of persons who belong to the supervisory staff and are, under provisions of the Act, non-workmen on whom the Act has conferred no benefit, who cannot by themselves be parties to an industrial dispute and for whose representation the Act makes no particular provision ? We venture to think that the answer must be in the negative."

It may, however, be said that if the dispute is regarding employment, non-employment, terms of employment or conditions of labour of nonworkmen in which workmen are themselves vitally interested, the workmen may be able to raise an industrial dispute. Workmen can, for example, raise a dispute that a class of employees not within the definition of workman should be recruited by promotion from workmen. When they do so, the workmen raise a dispute about the terms of their own employment though incidentally the terms of employment of those who are not workmen is involved. But workmen cannot take up a dispute in respect of a class of employees who are not workmen and in whose terms of employment those workmen have no direct interest of their own. What direct interest suffices is a question of fact, but it must be a real and positive interest and not fanciful or remote. It follows, therefore, that the national tribunal was in error in not considering the claims of class II employees whether at the instance of memb

It may be mentioned here that Mr. Chari attempted to save the employees in class II from the operation of the exceptions in Cl. (iv) by referring to their duties which he said were in no sense 'supervisory' but only clerical or of checkers. He also cited a number of cases, illustrative of this point of view. Those are cases dealing with foremen, technologists, engineers, chemists, shift engineers, assistant superintendents, depot superintendents, godown-keepers, etc. We have looked into all of them but do not find it necessary to refer to any except one. In Ford Motor Company of India v. Ford Motors Staff Union, the Labour Appellate Tribunal correctly pointed out that the question whether a particular workman is a supervisor within on without the definition of 'workman' is "ultimately a question of fact, at best one of mixed fact and law..." and "will really depend upon the nature of the industry, the type of work in which he is engaged, the organizational set-up of the particular unit of industry and like f

The Reserve Bank has placed on record extract from the manuals, orders, etc., relative to all class II employees and on looking closely into these duties we cannot say that they are not of a supervisory character and are merely clerical or checking. These employees distribute work, detect faults, report for penalty, make arrangements for filling vacancies, to mention only a few of the duties which are supervisory and not merely clerical. Without discussing the matter too elaborately we may say that we are satisfied that employees in class II except the personal assistants, were rightly classed by the national tribunal as employed on supervisory and not on clerical or checking duties. In view of the fact that all of them now receive even at the start "wakes" in excess of Rs. 500 per month, there is really no issue left concerning them, once we have held that they are working in a supervisory capacity.

The next fundamental point requires narration of a little history before it can be stated. In December 1947 there was an Industries Conference with representatives of the Government of India and the Governments of the States, businessmen, industrialists and labour leaders. An industrial truce resolution was passed unanimously which stated inter alia that increase in production was not

possible unless there was just remuneration to capital (fair return), just remuneration to labour (fair wages) and fair prices for the consumer. The resolution was accepted by the Central Government. In 1947 a Central Advisory Council was appointed which in its turn set up a committee to deliberate and report on fair wages for workmen. The report of that committee has been cited over and over again. In the Standard Vacuum Refining Company v. its workmen, this Court elaborately analysed the concept of wages as stated by the committee. The committee divided wages into three kinds : living wage, fair wage and minimum wage. Minimum

(i) Poverty level,

(ii) minimum subsistence level;

(iii) subsistence plus level, and

(iv) comfort level.

The concept of fair wages involves a rate sufficiently high to enable the worker to provide "a standard family with food, shelter, clothing, medical care and education of children appropriate to his status in life but not at a rate exceeding the wage earning capacity of the class of establishment concerned." A fair wage thus is related to a fair workload and the earning capacity. The living wage concept is one or more steps higher than fair wage. It is customary to quote Justice Mr. Higgins of Australia who defined it as one appropriate for "the normal needs of average employee, regarded as a human being living in a civilized community." He explained himself by saying that the living wage must provide not merely for absolute essentials such as food, shelter and clothing but for "a condition of frugal comfort estimated by current human standards" including "provision for evil days, etc. with due regard for the special skill of the workmen." It has now been generally accepted that living wage means that every

During the years wage determination has been done on industry-cum- region-basis and by comparing, where possible, the wage scales prevailing in other comparable concerns. The Constitution by Article 43 laid down a directive principle :

> "The State shall endeavour to secure, by suitable legislation or economic organization or in any other way, to all workers, agricultural, industrial or otherwise, work, a living wage, conditions of word ensuring a decent standard of life and full enjoyment of leisure and social and cultural opportunity..."

It may thus be taken that our political aim is 'living wage' though in actual practice living wage has been an ideal which has eluded our efforts like an ever-receding horizon and will so remain for some time to come. Our general wage structure has at best reached the lower levels of fair wage though some employers are paying much higher wages than the general average.

In July 1957 the Fifteenth Indian Labour Conference met as a tripartite conference and one of the resolutions adopted was :

> "The recommendations of the committee as adopted with certain modifications, are given below :-
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> (1) . . . .

(2) With regard to the minimum wage fixation it was agreed that the minimum wage was 'need-based' and should ensure the minimum human needs of the industrial worker, irrespective of any other considerations. To calculate the minimum wage, the committee accepted the following norms and recommended that they should guide all wage fixing authorities, including minimum wage committees, wage boards, adjudicators, etc;

(i) In calculating the minimum wage, the standard working class family should be taken to consist of 3 consumption units for one earner; the earnings of women, children and adolescents should be disregarded.

(ii) Minimum food requirements should be calculated on the basis of a net intake of 2,700 calories, as recommended by Dr. Aykryod for an average Indian adult of moderate activity.

(iii) Clothing requirements should be estimated at a per capita consumption of 18 yards per annum which would give for the average worker's family of four, a total of 72 yards.

(iv) In respect of housing, the norm should be the minimum rent charged by Government in any area for houses provided under the Subsidised Industrial Housing Scheme for low income groups.

(v) Fuel, lighting and other 'miscellaneous' items of expenditure should constitute 20 per cent of the total minimum wage.

(3) While agreeing to these guide lines for fixation of the minimum wage for industrial workers throughout the country, the committee recognized the existence of instanced in implementing these recommendations. Wherever the minimum wage fixed went below the recommendations, it would be incumbent on the authorities concerned to justify the circumstances which prevented them from the adherence to the norms laid down.

. . . . . .##

The Association and the Union desire that the wage-floor should be the need-based minimum determined at the tripartite conference in the above resolution and that the emoluments of the middle class staff should be determined with a proper coefficient. They suggest a coefficient of 120 per cent in place of the 80 per cent applied by the national tribunal, to determine the wages of the middle class staff in relation to the wages of the working classes. In support of their case the employees first point to the directive principle above-quoted and add that the First Five Year Plan envisaged the restoration of "pre- war real wage as a first-step towards the living wages" through rationalization and modernization and recommended that "the claims of labour should be dealt with liberally in proportion to the distance which the wages of different categories of workers have to cover before attaining the living wage standard." The employees next refer to the Second Five Years Plan where it is stated :

"21. Wages

A wage policy which aims at a structure with rising real wages requires to be

> evolved. Worker's right to a fair wage has been recognized but in practice it has been found difficult to quantify it. In spite of their best efforts. industrial tribunals have been unable to evolve a consistent formula...". (p. 578 para. 21).
>
> The establishment of wage boards, the taking of a wage census and the improvement of marginal industries which operate as a 'drag' on better industries was suggested in that plan. Finally, it is submitted that the Third Five Year Plan has summed up the position thus; in paras 20 and 21 at p. 256 :
>
> "20. "The Government has assumed responsibility for securing a minimum wage for certain sections of workers, in industry and agriculture, who are commercially weak and stand in need of protection. Towards this end the Minimum Wages Act provides for the fixation and revision of wage rates in these occupations. These measures have not proved effective in many cases. For better implementation of the law, the machinery for inspection has to be strengthened...".
>
> "21. Some broad principles of wage determination have been laid down in the report of the Fair Wages Committee. On the basis of agreement between the parties, the Indian Labour Conference had Indicated the content of the need-based minimum wage for guidance in the settlement of wage disputes. this has been reviewed and it has been agreed that the nutritional requirements of a working class family may be reexamined in the light of the most authoritative scientific data on the subject...".

The Association and the union contend that the national tribunal ought to have accepted the tripartite resolution and determined the basic wage in accordance therewith.

The National Tribunal in adjudicating on this part of the case referred to the Crown Aluminium Works v. Workmen where at page 6 this Court observes :

> "Though social and economic justice is the ultimate ideal of industrial adjudication, its immediate objective in an industrial dispute as to the wage structure is to settle the dispute by constituting such a wage structure as would do justice to the interests of both labour and capital, would establish harmony between them and lead to their genuine and wholehearted co-operation in the task of production... in achieving this immediate objective, industrial adjudication takes into account several principles, such as, for instance, the principle of comparable wages, productivity of the trade or industry, cost of living and ability of the industry to pay..... In deciding industrial disputes in regard to wage structure, one of the primary objectives is and has to be the restoration of peace and goodwill in the industry itself on a fair and just basis to be determined in the light of all relevant consideration...".

The national tribunal pointed out that the Planning Commission had set up an official group for study and as a result of the deliberations, the group decided to prepare notes on different aspects of wage so that they could be sent to wage fixing bodies. Four such notes were drawn up and were circulated to the Fifteenth Indian Labour conference and the Fifteenth Indian Labour conference deliberated on them and the resolution on which reliance is placed by the employees was the result. The national tribunal, while appreciating the importance of the resolution, was not prepared to act on it pointing out that it was not binding but recommendatory, that Government did not accept it and that the Reserve Bank not being a party was not bound by it. There is no doubt that Government

in answer to a query from the Pay Commission answered :

> "... The Government desire me to make it clear that the recommendations of the Labour Conference should not be regarded as decisions of Government and have not been formally ratified by the Central Government. They should be regarded as what they are, namely, the recommendations of the Indian Labour conference which is tripartite in character. Government have, at no time, committed themselves to taking executive action to enforce the recommendations".

The National Tribunal, therefore, did not consider itself bound in any way by what the resolution said.

The National Tribunal then considered the resolution on merits as applicable to the case in hand, observing :

> "For the first time in India, norms have been crystallized for the purpose of fixation of need based minimum wage in a conference where the participants were drawn from the ranks of Government, industry and labour. These recommendations represent a landmark in the struggle of labour for fixation of minimum wage in accordance with the needs, for the workmen. The resolution lays down what a minimum wage should be. It recognizes that the minimum wage was "need-based".

The National Tribunal, however, could not accept the resolution because the resolution standardised norms applicable to all industrial workers whatever their age or the number of years of service or the nature of their employment. It felt that there was difficulty in accepting the basis of 3 consumption units at all stages of service or the net intake of 2700 calories at all ages pointing out that this much food was what Dr. Aykryod thought as proper to be consumed. The national tribunal did not see the need for changing the coefficient of 80 per cent. The national tribunal held that in the economy of our country the need-based minimum suggested by the resolution was merely an ideal to be achieved by slow stages but was impossible of achievement instantly.

We have been addressed able and very moving arguments on behalf of the employees by Sri Chari. There can be no doubt that in our march towards a truly fair wage in the first instance and ultimately the living wage we must first achieve the need-based minimum. There is no doubt also that 3 consumption units formula is, if anything, on the low side. In determining family budgets so as to discover the workers' normal needs which the minimum wage regulations ought to satisfy, the size of the standard family is very necessary to fix. One method is to take simple statistical average of the family size and another is to take into account some other factors, such as,

> (i) the frequency of variation in family sizes in certain regions and employments;
>
> (ii) the number of wage earners available at different stages;
>
> (iii) the increase or decrease in consumption at different stages in employment, that is the wage structure and its bearing on consumption.

The plain averages laid down in the Resolution may have to be weighted in different regions and in different industries and reduced in others. It is from this point of view that the Reserve Bank has pointed out that though the consumption units are taken to be 2.25, the earning capacity after eight years' service is sufficient to provide for 3 consumption units as required by the need-base formula.

The question thus is whether the National Tribunal is in error in accepting 2.25 consumption units instead of 3 as suggested in the Resolution.

In our judgment, the Tribunal was not wrong in accepting 2.25 consumption units. But it seems to us that if at the start the family is assumed to be 2.25, it is somewhat difficult to appreciate that the family would take 8 years to grow to 3 consumption units. We are aware that the Sastri tribunal thought of 3 consumption units at the tenth year and the Sen tribunal at the eighth year but we think these miss the realities of our national life. In our country it would not be wrong to assume that on an average 3 consumption units must be provided for by the end of five years' service. The consumption units in the first five years should be graduated. As things stand today, it is reasonable to think that 3 consumption units must be provided for by the end of five years' service, if not earlier.

The difficulty in this case in accepting the need formula is very real. The Reserve Bank is quite right in pointing out that the minimum wage so fixed would be above per capita income in our country and that it is not possible to arrive at a constant figure in terms of money. According to the association and the union, the working class family wage works out to Rs. 165.9 (though the demand is reduced to Rs. 145 by the association and Rs. 140 by the Union), while according to the Reserve Bank to Rs. 107.75. The middle class wage, according to the association, will be Rs. 332.75 while, according to the bank, Rs. 202. This is because emphasis is placed on different dietary components in the first case and the increased differential in the second case. Further the food requirement of 2700 calories was considered by the Pay Commission to be too high and by the Planning Commission (Third Plan) to be a matter for re-examination. It will have to be examined what type of food should make up the necessary calories and

There is, however, much justification for the argument of Sri Chari. The tripartite conference was a very representative body and the resolution was passed in the presence of representatives of Government and employers. There must be attached proper value to the resolution. The resolution itself is not difficult to appreciate. It was passed as indicating the first step to wards achieving the living wage. Unfortunately, we are constantly finding that basic wage, instead of moving to subsistence plus level tends to sag to poverty level when there is a rise in prices. To overcome this tendency our wage structure has for a long time been composed of two items : (a) the basic wage, and (b) a dearness allowance which is altered to neutralize, if not entirely, at least the greater part of the increased cost of living. This does not solve the problem of real wage. At the same time, we have to beware that too sharp an upward movement of basic wage is likely to affect the cost of production and lead to fall in our exp

The next objection to the Award is in respect of the coefficient chosen by the Tribunal. The difference in the cost of living between the members of the clerical staff and the subordinate staff has been held to be an increase of 80 per cent over the remuneration of the latter. This was laid down by the late justice Sri Rajadhyaksha in a dispute between the Posts and Telegraphs Department and its nongazetted employees. Sri Justice Rajadhyaksha's calculation was made thus:

> "In 1922-24 there was a middle class family budget enquiry in Bombay and it was found that a family consisting of 4.58 persons spends Rs. 138-5-0 per month. But the average expenditure of the middle class family in the lowest income group (having incomes between Rs. 75 and 125) per month was Rs. 103-4-0. In 1923 the cost of living index figure was 155 whereas in 1938-39 it was 104. According to these index numbers the cost of living of the same family would be 103 x 10/155 = Rs. 69 in

> 1938-39. The lowest income group in the middle-class budget enquiry consisted of 3.29 consumption units. Therefore, for an average family of 3 consumption units, the expenditure required in 1938-39 would have been 69 x 300 /329 = Rs. 63. According to the findings of the Rau Court of Enquiry a working class family consisting of 3 consumption units required Rs. 35 for minimum subsistence. It follows therefore that the proportion of the relative cost of living of a working class family to that of a middle-class family of 3 consump

The family budget enquiry and the Rau Court of Enquiry were in 1922 and 1940 respectively. The Sen award was in favour of reducing the coefficient, because the income of the working classes had increased remarkably in most cities after 1939. The Sastri tribunal actually reduced it. The Central Pay Commission fixed the minimum pay of middle class employee as Rs. 90 as against the minimum pay of the subordinate staff of Rs. 55, thus making the coefficient 64 per cent. The Labour Appellate Tribunal restored the coefficient to 80 per cent. The association asked for a coefficient of 120 per cent but the tribunal in its award in Reference No. 1 gave reasons for not accepting it. the national tribunal was in the advantageous position of knowing the views of employees of commercial banks and comparing them with the coefficient demanded here. Other unions and federations did not ask for such a high coefficient. The national tribunal not having any date felt helpless in the matter and preserved the coefficient at 80 p

> "In the year of grace 1962 this tribunal is in no better position than the earlier tribunals who have dealt with the matter. The inherent infirmities in this coefficient have been pointedly referred to before me. I am not at all certain whether I would be very much wiser by an enquiry which may be conducted at present. Expenditure is conditioned by the income received by the class of persons whose expenditure is being considered. By and large, over a period of time expenditure cannot exceed the income. The only pattern which such inquiry may reveal may be a pattern based on the income of the class of persons whose case is being considered."

This Court is in no better position than the National Tribunal to say what other coefficient should be adopted. When fresh and comprehensive inquiries are conducted, the results would show whether the coefficient should go up or down. With the rise of wages to higher levels among the working class the differential is bound to be lower and this is a matter for inquiry. Till then there is no alternative but to adhere to the coefficient already established.

We shall now take up for consideration some minor points which were argued by Sri Nargolkar. The first is a demand by the association for a combined seniority list so that promotion may be based on that list and not upon the reports about the work of the employee. The national tribunal dealt with it in Chap. XVII of its award. Regulations 28 and 29 of the Reserve Bank of India (Staff) Regulations, 1948, deal with seniority and promotion and provide :

> "28. An employee confirmed in the bank's service shall ordinarily rank for seniority in his grade according to his date of confirmation in the grade and an employee on probation, according to the length of his probationary service."
>
> "29. All appointments and promotions shall be made at the discretion of the bank and notwithstanding his seniority in a grade no employee shall have a right to be appointed or promoted to any particular post or grade."

Promotion, it will therefore appear, is a matter of some discretion and seniority plays only a small part in it. This seniority is concerned with the internal management of the bank and the national tribunal was right in thinking that the item of the reference under which it arose gave little scope for giving directions to the bank to change its regulations. The national tribunal, however, considered the question and made an observation which we reproduce here because we agree with it :

> "... I can only generally observe that it is desirable that wherever it is possible, without detriment to the interests of the bank and without affecting Efficiency, to group employees in a particular category serving in different departments at one centre together for the purpose of being considered for promotion, a common seniority list of such employees should be maintained. The same would result in opening up equal avenues of promotion for a large number of employees and there would be lesser sense of frustration and greater peace of mind among the employees."

Seniority and merit should ordinarily both have a part in promotion to higher ranks and seniority and merit should temper each other. We do not think that seniority is likely to be completely lost sight of under the regulations and Mr. Palkhivala assured us that this is not the case.

Mr. Hathi next raised the question of seniority between clerks and typists but we did not allow him to argue this point as no question of principle of a general nature was involved. The duties of clerks and typists have been considered by the national tribunal and its decision must be taken as final.

The next point urged was about gratuity. In the statement of the case the association and the union had made numerous demands in regard to gratuity but it appears from paragraph 7, 10 of the award that the dispute was confined to the power to withhold payment of gratuity on dismissal. Rule 5(1) of the Reserve Bank of India (Payment of Gratuity to Employees) Rules, 1947, provides as follows :-

> "5. (1) No gratuity will be granted to or in the case of an employee -
>
> (a) if he has not completed service in the bank for a minimum period of ten years, or
>
> (b) if he is or has been dismissed from service in the bank for any misconduct."

The Association and the union demanded modification of sub-rule (b) quoted above. The Sastri tribunal had recommended that there should be no forfeiture of gratuity on dismissal except to the extent to which the misconduct of them worker had caused loss to the establishment. The Labour Appellate Tribunal modified the Sastri award and decided in favour of full forfeiture of gratuity on dismissal. The Reserve Bank relied on the Express Newspapers (Private) Ltd., and another v. Union of India and others in support of the sub-rule and also contended that there was no jurisdiction in the national tribunal to consider this subject under item 20 of Sch. I or item 21 of Sch. II. The Reserve Bank relied upon item 7 of Sch. I and item 6 Sch. II. The demand of the association and the union was rejected by the national tribunal. It had earlier rejected a similar demand in connexion with the commercial banks. The Reserve Bank did not, however, pursue the argument before us perhaps in view of the later decisions of this C

The next demand was with regard to pensions In the Reserve Bank there are only two retiring benefits, namely, provident fund and gratuity. There is no scheme for pension It appears, however, that a few employees from the former Imperial Bank, who are employed with the State Bank, enjoy

all the three benefits. The demand, therefore, was that the Reserve Bank should provide for all the three benefits, namely, provident fund, gratuity and pension. The Reserve bank contended that the national tribunal had no jurisdiction under the reference to create a scheme of pensions for the employees. The national tribunal did not consider the question of jurisdiction, because it rejected the demand itself. In the statement of the case filed by the association this decision is challenged on numerous grounds. The ground urged before us that the national tribunal failed to exercise jurisdiction in respect of this demand and indirectly declined jurisdiction by rejecting the demand itself. The national tribunal came to the conc

The next demand was with regard to the confirmation of temporary employees. The association had filed a number of exhibits (S. 71, S72, S109 to S112) and the union (R. 45 to R. 47) to show that a very large proportion of employees were borne as temporary employees and that it took a very long time for confirmation of temporary servants. The bank in reply filed schedules. (T. 67 to T. 69 and T. 112 to T. 125). The question of confirmation and the period of probation are matters of internal management and no hard and] fast rules can be laid down. It is easy to see from the rival schedules that probationary periods are both short and long. As no question of principle is involved, we decline to interfere and we think that the national tribunal was also justified in not giving an award of a general nature on this point.

The next point is about the extra payment which the graduates were receiving and the fitment of persons in receipt of such extra amounts, in the new scale provided, In the year 1946 the bank accepted the principle of giving an allowance to employees who acquired degrees while in employment. At the time of the present dispute graduates were in receipt of Rs. 10 as special pay. The question was whether in making fitment in the new time scales these amounts should have been treated as advance increment It appears that the national tribunal] reached different conclusions in the two awards arising from Reference No. 1 and the present reference. In the case of commercial bank the fitment was on a different principle and Mr. Palkhivala agreed to make fitment in the new scale taking into account this special ad hoc pay as a advance increment.

The next demand by both the association and the union was that they should be allowed to participate and represent workers in disputes between an individual workman and the Reserve Bank. The tribunal did not accept this contention for the very good reason that if unions intervene in every industrial dispute between an individual workman and the establishment the internal administration would become impossible. In our judgment, this demand cannot be allowed.

The last contention is with regard to the time from which the award should operate The stand still agreement reached in 1954 expired in October 1957 and the demand was that the award should come into force from 1 November 1957 or at least from 21 March 1960, the date of the reference. The national tribunal has made its award to operate from 1 January 1962. The Reserve Bank, strongly opposes this demand. According to the Reserve Bank, the tribunal acted more than generously and gave more to the employees than they deserved. The Reserve Bank submits that the employees had made exorbitant demands and wasted time over interim award and, therefore, they cannot claim to have the award operate from the date of the reference, much less from 1 November 1957. The Reserve Bank relies upon the Lipton case and also contends that the tribunal, decision is discretionary and this Court should not interfere with such a decision. Reliance is case, Rajkamal Kalamandir (Private), Ltd. v. Indian Motion Pictures Employees' Union

The solution of this dispute depends upon the provisions of Section 17A of the Industrial Disputes Act, 1947. That section reads as follows :

"17A. Commencement of the award

(1) An award (including an arbitration award) shall become enforceable on the expiry of thirty days from the date of its publication under Section 17 :

Provided that -

#(a) . . . . .##

(b) if the Central Government is of opinion, in any case where the award has been given by a National Tribunal,

that it will be expedient on public grounds affecting national economy social justice to give effect to the whole or any part of the award, the appropriate Government or as the case may be the Central Government, may, by notification in the official Gazette, declare that the award shall not become enforceable on the expiry of the said period of thirty days.

(2) Where any declaration has been made in relation to an award under the proviso to Sub-sec. (1), the appropriate Government or of Central Government may, within ninety days from the date of publication of the award under Section 17 make an order rejecting or modifying the award, and shall, on the first available opportunity, lay the award together with a copy of the order before the legislature of the State, if the order has been made by a State Government, or before Parliament if the order has been made by the Central Government.

(3) Where any award as rejected or modified by an order made under Sub-sec. (2) is laid before the legislature of a State of before Parliament, such award shall become enforceable on the expiry of fifteen days from the date on which it is so laid; and where no order under Sub-sec. (2) is made in pursuance of a declaration under the proviso to Sub-sec. (1), the award shall become enforceable on the expiry of the period of ninety days referred to in Sub-section (2).

(4) Subject to the provisions of Sub-sec. (1) and Sub-sec. (3) regarding the enforceability of an award, the award shall come into operation with effect from such date may be specified therein, but where no date is so specified, it shall come into operation on the date when the award becomes enforceable under Sub-sec. (1) or Subsec. (3) as the case may be."

Ordinarily an award comes into operation from the time stated in Sub- sec. (1) The tribunal however, is given the powder to order that its award shall be applicable from another date. The tribunal stated that the date from which the award should come into operation was not a term of reference and the Reserve Bank had also contended that there was no specific demand for retrospective operation of the award. In Wenger & Co., and others v. Their Workmen it was explained that retrospective operation implies the operation of the award from a date prior to the reference and the ward 'retrospective' cannot apply to the period between the date of the reference and the award. There was no claim as such that the award should operate from 1 November 1957 and the demand cannot be considered in the absence of a reference to the national tribunal. The question, however, is whether a date earlier than 1 January 1962 but not earlier than 21 March 1960, should be chosen. Sub-section (4) quoted above gives a discretion to the

In the result the appeal fails and it will be dismissed. it may however, be said that the appeal would have partly succeeded that for the creation of new scales of pay for class II employees and acceptance of some the minor points by the Reserve Bank. In this view of the matter we make no order about costs.

Appeal dismissed

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